STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

JIM V. ZAIKOWSKY, ET AL, Charging Parties, vs. WESTMINSTER SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-80 EERB Decision No. 42 December 16, 1977
JIM V. ZAIKOWSKY, ET AL, Charging Parties, vs. WESTMINSTER TEACHERS ASSOCIATION, Respondent.	)	Case No. LA-CO-14

Appearances: Thomas C. Agin, Ph.D., for California Pupil Services Labor Relations.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

This case is before the Educational Employment Relations Board upon the appeal by Jim V. Zaikowsky, et al, of the dismissal by the General Counsel of their charges against the Westminster School District and the Westminster Teachers Association.

The parties charge the District with a violation of Government Code Section 3543.5 (a), claiming they have been denied their individual rights to be designated as management employees. In the attached Notice of Dismissal, the hearing officer dismissed the charge.

The Board has considered the charge, the Notice of Dismissal and the appeal of the Notice of Dismissal. We are in agreement with the Notice of Dismissal and the rationale contained therein, and therefore the hearing officer is sustained.

By: Raymond J. Gonzales, Member

Reginald Alleyne, Chairman

Jerilou H. Cossack, Member, concurring.

I concur in the result reached by the majority's summary affirmance of the

hearing officer's decision in this case. However, I do not agree that Government Code Section 3540.1(g)[1] should be interpreted literally to give the public school employer in every case the exclusive right to designate management.

An employer will typically designate management status because doing so will preserve for itself a core of loyal employees. On the other hand, it may, for reasons adverse to the EERA, decline to designate employees as management. For example, a refusal to designate could stem from the employer's desire to infiltrate the bargaining unit with employees who favor management. The inclusion of these employees in the unit would tend to dilute the strength of an employee organization and upset the balance necessary to promote collective negotiating. Employees clearly have the right to be free of employer domination and interference in the exercise of their rights guaranteed by the EERA.

The majority's literal reading of Section 3540.1(g) as to the exclusive right to designate management leaves the EERB with little, if any, flexibility to deal with a situation designed to frustrate harmonious employer-employee relations.

Jerilou H. Cossack, Member

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[1] Gov. Code Sec. 3540.1(g) states:

> 3540.1. As used in this chapter:
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> (g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Educational Employment Relations Board.