

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARIN COMMUNITY COLLEGE DISTRICT,)
)
Employer,)
)
and)
)
UNITED PROFESSORS OF MARIN, AFT LOCAL 1610,)
)
Employee Organization,) Case No. SF-R-140
)
and) PERB Decision No. 64
)
MARIN ACADEMIC ASSOCIATION,)
)
Employee Organization,) August 10, 1978
)
and)
)
MARINERS CALIFORNIA TEACHERS ASSOCIATION,)
)
Employee Organization.)
)

Appearances; R. V. Godino, Attorney (Breon, Galgani, and Godino) for Marin Community College District; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg and Roger) for United Professors of Marin, AFT Local 1610; Mary S. Roy, Representative for Marin Academic Association; A. Leonard Bjorklund, Jr., Attorney for Mariners California Teachers Association.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members.

DECISION

This case is before the Public Employment Relations Board on exceptions to the attached hearing officer's proposed decision. The Marin Community College District excepts to that portion of the hearing officer's proposed decision determining

that college coordinators are not management employees within the meaning of section 3540.1(g) of the Educational Employment Relations Act (hereafter EERA).¹ The hearing officer determined that the position of college coordinator is not managerial, but is supervisory within the meaning of section 3540.1(m) of the EERA.

We have considered the record and the proposed decision in light of the exceptions and briefs. We affirm the proposed findings of fact, discussion and conclusions of law made by the hearing officer concerning the position of college coordinator.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The position of college coordinator is not managerial within the meaning of section 3540.1 (g) of the EERA, but is supervisory within the meaning of section 3540.1(m) of the EERA.

Harry Gluck Chairperson

Jerilou Cossack Twohey, Member

Raymond J. Gonzales, Member

¹The EERA is codified at Government Code section 3540 et seq.

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of:

MARIN COMMUNITY COLLEGE DISTRICT,)

Employer,)

and)

UNITED PROFESSORS OF MARIN, AFT LOCAL 1610,)

Employee Organization,)

and)

MARIN ACADEMIC ASSOCIATION,)

Employee Organization,)

and)

MARINERS CALIFORNIA TEACHERS ASSOCIATION,)

Employee Organization.)

Case No. SF-R-140

Appearances: R. V. Godino, Attorney (Breon, Galgani, and Godino) for Marin Community College District; Robert J. Bezemek, Attorney (VanBourg, Allen, Weinberg and Rogers) for United Professors of Marin, AFT Local 1610; Mary S. Roy, Representative, for Marin Academic Association; A. Leonard Bjorklund, Jr., Attorney, for Mariners California Teachers Association.

Before Angela Pickett-Evans, Hearing Officer.

of all certificated employees, including non-credit instructors and college coordinators. On May 4, 1976 the District filed a petition with the Educational Employment Relations Board requesting determination of the appropriate unit. The District's position was that the appropriate unit included all certificated employees, including non-credit teachers, but that college coordinators should be excluded on the basis of their alleged management status. A hearing was held on March 11, 15, 28, and 29, addressing the following issues:

1. Whether the appropriate unit includes part-time non-credit instructors as well as part-time and full-time credit instructors;

2. Whether college coordinators are supervisory or managerial employees.

APPROPRIATE UNIT; ANALYSIS AND
CONCLUSIONS OF FACTS AND LAW"

I. Introduction

Section 3545(a) of the Educational Employment Relations Act (EERA)³ states that when the appropriateness of a unit is in question:

... the Board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

³ Government Code Section 3540 et seq.

Section 3545(b) (1) requires that in all cases:

...a negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

Belmont School District⁴ and Petaluma City Elementary and High School Districts⁵ held that the definition of "classroom teacher" is limited "only to the regular full-time probationary and permanent teachers employed by a district." Accordingly, the factors delineated in Section 3545(a) need not be evaluated with respect to the inclusion of full-time instructors within the negotiating unit. Since part-time credit and part-time non-credit instructors are not "classroom teachers" within the meaning of Section 3545(b) (1);, however, the factors specified in Sections 3545(a) control whether those classification of instructors will be included within the negotiating unit in this case.

In the discussion which follows, attention first will be directed toward the question of whether part-time credit instructors should be included within the negotiating unit to which full-time instructors belong. Secondly, the question of inclusion of part-time non-credit instructors will be addressed.

⁴ EERB Decision No. 7, December 30, 1976.

⁵ EERB Decision No. 9, February 22, 1977.

II. Part-Time Credit Teachers Share a Community of Interest with Full-Time Teachers.

Los Rios Community College District⁶ held that part-time instructors in the Los Rios district had a sufficient community of interest with full-time teachers to warrant their inclusion in the same negotiating unit. That case, which rejected the view that NLRB precedents concerning four year colleges are applicable to the community college system of California, based its conclusion concerning community of interest on the similarities which existed between the two groups of teachers with respect to compensation, participation in the governance system, ability to obtain tenured employment, and working conditions.⁷

The similarities in duties, skills, working conditions, interests and rights which exist between part-time credit and full-time credit teachers in the present case are more significant than were the similarities between the same ranks of teachers in Los Rios. In this case, as in Los Rios, the content and quality of courses taught by either grouping of teachers are identical, and courses taught by either are transferable to other institutions in the state; the minimum academic standards required of either set of instructors are similar;⁸ both categories of instructors may participate in the governance system of the District; both are evaluated in a similar manner;⁹ both have equal access to instructional facilities; and both

⁶EERB Decision No. 18, June 9, 1977.

⁷The leading NLRB case, New York University, 205 NLRB 4, 83 LRRM 1549 (1973), excluded from the bargaining unit of university teachers those instructors who were not employed in "tenure track" positions.

⁸See discussion below at page 17.

⁹See discussion below at page 14.

have similar instructional responsibilities, including teaching, preparation, and writing and grading examinations.

Where there are differences between the two strata of teachers in the present case, those differences are no greater than differences found between part- and full-time teachers in Los Rios. For example, in both cases, the hiring procedures for part-time instructors (in this case, for part-time instructors teaching six units or less) are less formal than those followed for instructors teaching full-time; part-time teachers have no offices, although they keep informal office hours; only full-time teachers are eligible for sabbatical; only full-time teachers are required to attend departmental meetings; not all part-time teachers are eligible for any form of health benefit; and many part-time credit teachers have outside employment.

And there are further similarities between the two strata of teachers in the instant case which were not held in common by part- and full-time teachers in Los Rios. In this case, both classifications of teachers may, and do, teach either during the day or the evening; both have written contracts; both are paid on the same day of the month; both have access to the grievance process; and both have access to funds for field trips and conferences.

Since the record in this case shows an even closer community of interest between part- and full-time credit teachers than was present in Los Rios, it is concluded that, based on community of interest criteria, part-time credit teachers and full-time teachers should be included within the same negotiating unit.

Established practices. Section 3545(a) states that the established practices between and among employees is an additional **factor** to be evaluated in determining the appropriateness of the **negotiating** unit. The Board has held that little weight should be given to the established practices of employees which antedated the passage of the EERA unless it is shown that unit composition under the Winton Act was established in a bilateral context. Sweetwater Union High School District.^{10/} In any event, there is little evidence on the record of the present case which sheds light on this issue. It is known that between 1970 and 1975 an employee organization operated for the benefit of part-time faculty members; but the record is silent as to the extent to which other organizations operated within the District, and the degree to which part-time credit faculty were integrated with full-time faculty within them. The full facts concerning established practices cannot accurately be derived from this sparse record; thus, the recommendation that part-time and full-time credit teachers be joined in the same unit rests with the community of interest analysis discussed above.¹¹

¹⁰ EERB Decision No. 4, November 23, 1976.

¹¹ The parties presented no evidence concerning efficiency of operations, an additional factor listed in Section 3545(a). Accordingly, no finding is made with respect to that issue.

III. Part-Time Non-Credit Teachers Share a Community of Interest with Part-Time Credit Teachers and Full-Time Teachers.

Even though Los Rios, supra, did not deal directly with the question of the inclusion of non-credit and credit teachers within the same negotiating unit.^{12/} the community of interest standards enunciated in that case are applicable, by analogy, to the issue at hand. We now proceed to a comparison of the particular interests shared between teachers in the present case with those shared by instructors in Los Rios.

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The Board has not yet passed on the question of whether non-credit instructors within a community college context share a community of interest with credit teachers. The Board has passed on the issue of inclusion of ~~high school~~ adult education teachers in three cases: ~~Petaluma Elementary and High School District~~, EERB Decision No. 9, February 22, 1977; ~~Lompoc Unified School District~~, EERB Decision No. 13, March 17, 1977; and ~~New Haven Unified School District~~, EERB Decision No. 14, March 27, 1977. In each case the Board determined that there was an insufficient community of interest between adult education teachers and high school teachers to warrant inclusion of adult education teachers in the negotiating unit. Those cases are distinguishable from the instant case. Although there are some similarities between adult education teachers in those cases and non-credit teachers in the community college context of this case (particularly with respect to terms of employment), there are overwhelming distinctions between them. In those cases, adult education classes were vocationally (or "enrichment") oriented; they had only an oblique curricular connection to regular day classes; they served a constituency which was distinct from that which was served by the high schools; classes were held at night; and there was no discernible interchange between adult education and high school teachers. In the present case, non-credit teachers are integrated to a much higher degree into the curriculum of the colleges, and, as the following discussion shows, they share a substantial community of interest with part-time credit teachers as well as full-time teachers.

1. Eligibility for leave. In Los Rios, both classifications of teachers were eligible for sick leave, and only full-time teachers were eligible for leaves of longer duration. In the present case, all strata of teachers are eligible both for sick leave and paid jury duty leave, and only full-time teachers are eligible for leaves of longer duration.

2. Compensation, In Los Rios, compensation of full-time and part-time teachers was related in that part-time teachers received a percentage of the first step of the full-time salary schedule. In the present case, part-time credit teachers receive a pro-rata percentage of the amount paid to full-time teachers, while non-credit teachers are paid by the hour.¹³

3. Contracts. In Los Rios, the contracts of part-time instructors were contingent on the enrollment of 20 students, whereas those of full-time instructors contained no such contingency. There were exceptions to the minimum enrollment requirement, however. In the present case, the contracts of part-time credit and non-credit instructors are contingent on a minimum enrollment figure, whereas the contracts of full-time instructors have no contingency clause. However, in this case (just as in Los Rios) numerous exceptions exist which allow a class to be taught in spite of under-enrollment. For credit classes:

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Another aspect of the compensation scheme for certificated employees is worth noting as well: many part-time credit instructors supplement their earnings with outside employment, just as do most part-time non-credit instructors.

...exceptions may be made in classes required for graduation, for a major, or for a career, in classes offered irregularly, in classes which can be offered only in limited classroom or laboratory facilities, in classes which are part of an experimental or pilot program, in classes subject to statutory and state regulations mandating class size, and in classes whose cancellation would effect a financial disadvantage for the college.¹⁴

For non-credit classes, there is a simpler exception:

The Office of Instruction may work for an overall average of 20 students per class, using discretion in continuing classes of considerable value educationally although the expected 20 may not enroll.¹⁵

4. Evaluations. In Los Rios, the methods used to evaluate full-time and part-time teachers were very similar, except that part-time evening instructors and full-time instructors were evaluated by different offices. In the present case, all teachers are evaluated, although full-time teachers are evaluated more often than are part-time teachers, who, in turn, are evaluated more often than non-credit teachers. (Full-time faculty are evaluated during their first year, then are evaluated once every year thereafter.

The evaluation is carried out by an evaluation team consisting of the chairperson of the department, another member, if desired, of the department which employs that particular instructor, and an administrator. Full-time faculty members may choose from among four methods of evaluation: student evaluation with student question-

¹⁴Marin Community Colleges Handbook, Sections 6045.

¹⁵Ibid, Section 6230.

naire, peer evaluation with peer visitation of the class, learning outcome evaluation, and self-evaluation. Part-time credit instructors are evaluated during their first year, and every third year thereafter. They may choose from among three methods of evaluation. Part-time non-credit instructors are evaluated during their first quarter of instruction, and are evaluated thereafter "if there is a problem". (Testimony of Caryl Darrow, Tr. 86:16). The evaluation procedure for non-credit instructors consists of staff monitoring of a class and consideration of student evaluations.

5. Governance System. Both part-time and full-time instructors participated in the governance system in Los Rios. In the present case, only credit instructors are entitled to participate in that system. (Both campuses have two levels of governing systems: an academic senate [called coordinating council at Indian Valley Colleges] and campus-wide committees. At College of Marin, there are nine campus-wide committees, of which 60 instructors are members; at Indian Valley Colleges, there are three campus-wide committees.) However, only two of the 60 instructors in committees at College of Marin are part-time credit instructors, and none of those on the Indian Valley Colleges' committees are part-time credit instructors. Of the members of the academic senate at College of Marin, three are part-time credit teachers; and of the members of the coordinate council at Indian Valley Colleges, none are

part-time credit teachers. Thus., the fact that non-credit instructors do not participate in the governing bodies of the two colleges in the District is not a strong factor showing a divergence of community of interest: there is no practical discrepancy between the participation of part-time non-credit, and part-time credit, instructors.

6. Support services. In Los Rios, both part-time and full-time instructors had equal access to audiovisual facilities and student assistants. In the present case, all strata of teachers are given access to school support services, including duplicating supplies, audiovisual equipment, the counseling staff and lab assistants.¹⁶ In the present case, as in Los Rios, only full-time instructors have offices.

7. Office Hours. In Los Rios, part-time instructors were not required to keep office hours, whereas full-time instructors were so required. The same is true in the present case. In addition, in this case both categories of part-time instructors consult with students on an informal basis.

In Los Rios, both full-time and part-time instructors had certain common rights and characteristics which are not shared by instructors in the present case. Such differences are based on the number of units taught by an instructor rather than on the credit/non-credit distinction.

¹⁶ According to the District Handbook, credit teachers are given priority over non-credit teachers for the use of "instructional facilities." Whether "instructional facilities" is a term synonymous with the services listed above is not made clear in the record. In any event, there is no evidence that any actual conflict has arisen, or is likely to arise, with respect to the use of those facilities.

8. Health benefits. In the present case, as in Los Rios, only full-time instructors and part-time instructors teaching a minimum percentage of a full-time load (12 units, in this case) are eligible for health benefits. (In this case, only 21 percent of part-time credit instructors, and no non-credit instructors, are eligible for those benefits.)

9. Credential requirements. In Los Rios, almost all teachers held community college credentials. In the present case, all teachers hold some credential, and there are substantial similarities between the credential requirements for credit and non-credit part-time teachers.¹⁷ As indicated above, most non-credit teachers are credentialed to teach credit classes, and the actual academic qualifications of each group of instructors are quite similar.

¹⁷ Section 87275 of the Education Code (as reorganized, April 30, 1977) and Title V of the California Administrative Code set out the various academic requirements for attaining community college credentials. (1) Teachers who teach in excess of 12 units must hold a Master's degree. (2) Two distinct credentials are available for those seeking to teach less than 12 units of community college classes." The prerequisites for obtaining a temporary ("Special Limited Services") credential are (a) graduation from high school or possession of a General Education Development Diploma, and 6 years of appropriate occupational experience, or (b) possession of an A.A. degree, or completion of 60 semester units of course work, and four years of appropriate occupational experience. For a non-temporary ("Limited Service") credential, the requirements are (a) graduation from high school, and six years of appropriate occupational experience, plus 60 clock hours or four semester units of teacher training; (b) possession of an A.A. degree, or completion of 60 semester units of course work, and four years of appropriate educational experience, plus 60 clock hours or four semester units of teacher training; (c) possession of a B.A. degree, plus two years appropriate occupational experience; or (d) four years of higher education, plus certification by the district in each subject in which the applicant has adequate training and experience to teach, Cal. Admin. Code, Title 5, Sections 52572-73, 52560-64. (3) For non-credit instructors, the prerequisites for obtaining a credential ("Certificate of Qualification") are four years of higher education (120 semester units), or four years of occupation experience, plus certification by the district that the applicant has adequate training and experience to teach the classes for which the applicant is to be employed. Cal. Admin. Code, Title 5, Section 52600.

10. Hiring Practices. In Los Rios, the hiring process for full-time teachers was more extensive than it was for part-time teachers. In the present case, full-time hiring involves more massive screening and interviewing, through more departments, than does part-time hiring, and the hiring process followed for many part-time credit and non-credit teachers is identical. (Full-time hiring involves advertising for the position, invitation of applications, affirmative action screening, interviews with applicants by a selection committee, and final approval by the Board of Trustees.) Applicants for part-time credit positions exceeding six units are hired by the faculty within the academic department, with assistance from the administration. Hiring for these positions usually involves a limited amount of advertising, and the principles of affirmative action generally apply. For part-time credit positions not exceeding six units, basic hiring responsibilities are placed with the department in which the instructor would teach. Part-time non-credit hiring is conducted by the assistant dean of instruction, with the participation of the departments as needed. Customarily, the hiring process involves submission by the applicant of a proposed course outline: the hiring decision is based on the assessed quality of the proposed course, as well as the teacher's abilities. Just as in Los Rios, hiring, procedures in the present case become more intensive in proportion to the number of classes which the prospective teacher might teach, rather than in relation to the credit or non-credit nature of "the course.

And further, there are considerable similarities between all groups of teachers in this case which did not exist between part-time and full-time instructors in Los Rios:

11. Supervision. Supervision of all certificated personnel is carried out by the same individual at each college, i.e., the director of educational services, at Indian Valley Colleges **and the** assistant dean of instruction **at College** of Marin.

12. Grievance Procedure. All faculty have access to the grievance procedure, and any faculty member may be the subject of a student grievance.

13. Tenure. All instructors may acquire tenure.
(See footnote 14, above, and accompanying text.)

14. Workshop/travel funds. All faculty may attend in-service workshops and all have access to funds for field trips and conferences.

15. ADA funds. Non-credit classes generate state funds equal to those generated by similarly-sized credit classes. (Average Daily Attendance, or ADA, funds are generated by any given class based on the number of students who attend that class.)

16. Bereavement leave/jury duty leave. All instructors, whether full-time or part-time, credit or non-credit, are eligible both for bereavement leave and paid jury duty leave.

17. Classes. Credit classes are offered both during the day and the evening, as are non-credit classes. Some classes may be taken either for credit or non-credit. In addition, many non-credit classes which are not available for credit are similar in difficulty and substance to credit classes. (On the other hand, non-credit classes are offered on a quarterly basis, whereas credit classes- are offered per semester.)

In addition to the community of interest factors shared by all District instructors, certain basic educational principles also serve to unify their roles. A sharp schism once existed between the functions of non-credit classes and credit classes. But non-credit classes no longer serve merely a secondary, recreational objective within the District - they now comprise an integral part of a movement geared toward providing continuing education to all segments of the population of Marin, and the range of non-credit classes offered spans from the highly academic, through those which are vocationally oriented, on to those which are geared toward recreation.

The Five-Year Plan of the California Community Colleges Board of Governors gives evidence of the extent to which integration is sought between credit courses and non-credit courses:

The Community Colleges of California are...dedicated to the principle that society will benefit when all persons within it have the opportunity for lifelong learning. To that end, the California Community Colleges are committed to providing career development, skills improvement and job retraining along with a full range of academic courses to broaden cultural, ethical, social and self-awareness. In addition, Community College Districts may introduce and provide for avocational, civic and recreational pursuits, some of which will not be funded from state resources but from local resources and/or fees.

And, more than being a purely theoretical objective, the goal expressed by the Board of Governors has been met to a high degree within the District. Non-credit classes have evolved to a point where they presently are offered during the same hours as are credit classes, and many non-credit classes address academic and technical subjects, just as credit classes address vocational or recreational subjects. For example, non-credit classes are available

in the areas of behavioral science, business education, counseling, humanities, languages/philosophy, technical/industrial skills, electronics, and blueprint drawing. Credit classes are available in such diverse areas as jewelry design, automotive body and fender repair, film making, general work experience, drama, chorus, intramurals and camping for recreational leaders.

Moreover, non-credit classes are equivalent, in many topical areas, to credit classes offered in the District and elsewhere, both in academic and vocational subjects. An illuminating example of this equivalency is the apprenticeship program offered both at College of Marin and Indian Valley Colleges. The apprenticeship program is one aspect of the vocational programs offered by the District.¹³ Students may become apprenticed in the areas of auto mechanics, body and fender work, carpentry, mill cabinet work, painting and decorating, and plumbing. Apprenticeship instructors are craftspersons who have a minimum of six years experience in their fields beyond an initial learning period of three to five years. Formerly available only as non-credit courses, apprenticeships now are offered only for credit.

Since 1971, when the apprenticeship program was converted to a credit program, neither the substantive aspects of the program, nor the qualifications of the instructors within it, have been altered.

¹⁸ Approximately half of the student body is enrolled in vocational courses. Most vocational programs are offered only for credit. Vocational classes are available in the areas of auto body and fender repair, automotive technology, banking and finance, bookkeeping, business management, court reporting, data processing, clerical, dental assisting, apprenticeships, nurse's aide and home health aide training, welding, and recreation.

The record in this case establishes that there are compelling similarities between full-time credit, part-time credit, and part-time non-credit instructors. And while there are differences between these categories of instructors, those distinctions are outweighed substantially by elements held in common by all three groups. In addition, as indicated above, many distinctions which appear between non-credit and credit instructors are actually distinctions between instructors teaching an established minimum number of units (e.g., 6 or 12) on the one hand, and those teaching under that prescribed minimum, on the other. (See the factors enumerated 8 through 10, above). Were such distinctions made to be controlling, the appropriate unit in this case would be split into disjunct parcels which both would encumber the negotiating process and hinder effectuation of the purposes of the EERA. On the basis of the record in this case, Section 3545(a) and Los Rios mandate that non-credit instructors, part-time credit instructors and full-time instructors be included within the same negotiating unit, subject to the limitation discussed below in Section IV.¹⁹

IV. The Appropriate Unit Includes All Full-Time Instructors, All Part-Time Credit Instructors Who Have Taught During the Equivalent of Three or More of the Last Six Semesters, Inclusive, and All Part-Time Non-Credit Instructors Who Have Taught During the Equivalent of Four or More of the Last Nine Quarters, Inclusive.

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As stated in Section II of this discussion, there are insufficient facts concerning established practices to grant any weight to that factor in determining the appropriate unit in this case. In addition, since the parties presented no evidence with respect to efficiency of operations (Section 3545(a)), no finding is made on that issue.

Los Rios, supra, held that in order to avoid disruption in the negotiating unit by persons who had only a passing interest in community college teaching, only part-time instructors who had taught the equivalent of three or more of the last six semesters, inclusive, would be included in the negotiating unit. Shasta-Tehama-Trinity Joint Community College District, EERB Decision No. 31, September 26, 1977, stated that an instructor who presently is teaching for a third semester would be considered eligible for inclusion in the negotiating unit under that formula.

In the present case, non-credit instructors teach on the quarter system, while credit instructors teach on the semester system. No case yet decided by the EERB has enunciated an equivalent "passing interest" formula for instructors teaching on the quarter system. While the formula applicable to instructors teaching on the semester system may not be transposed with absolute mathematical equivalency to instructors teaching on the quarter system, it is held that its substantial equivalent renders eligible for inclusion in the negotiating unit any non-credit instructor who has taught the equivalent of four or more of the last nine quarters, inclusive. (Any instructor who presently is teaching for a fourth quarter is eligible for inclusion under this formula.)

COLLEGE COORDINATORS: ANALYSIS AND
CONCLUSIONS OF FACTS AND LAW

I. College Coordinators are Not Managerial Employees

Section 3540.1(g) of the EERA defines managerial employee as:

...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.

Lompoc Unified School District²⁰ held that the above criteria must be met in order for an employee to be found to be managerial.

The Board has stated:²¹

In determining whether an employee is a management employee we must take cognizance of the fact that since managerial employees are not considered employees for the purposes of the Act [Gov. Code Section 3540.1 (j)] and have no negotiating rights [Gov. Code Section 3543.4], great care must be exercised in determining who shall be considered a management employee.

To date, the Board has decided three cases dealing with the issue of the managerial status of employees. In Los Rios Community College District, supra, it determined that financial aid coordinators were not managerial employees in that the budgets which they drafted were subject to multi-level review; their participation in policy discussions was not equivalent to possessing significant responsibilities for formulating those policies; and they had no discretion to deviate from district policy pertaining to their job functions. In Oakland Unified School District, supra, the Board

²⁰ EERB Decision No. 13, March 17, 1977.

-- Oakland Unified School District, EERB Decision No. 15, March 28, 1977, at pp. 6-7.

concluded, upon considerations of the following factors that school psychologists were not managerial employees. Psychologists exercised discretion only in their area of expertise; the extent of their discretion was no more expansive than was that exercised by teachers, who obviously were not management employees; psychologists had no intimate relationship with District officials; and they exercised their authority on a local, rather than District-wide basis. And in Lompoc Unified School District, supra, the Board, after considering the duties of various subject coordinators, held that none of them were managerial employees in that they had no final authority to formulate or approve the programs which they coordinated.

In this case, college coordinators perform the role of "educational leaders" within each of the three cluster colleges at Indian Valley College. Elected to two year terms by the teachers, they are directly responsible to the college president and to the college committee (composed of administrators, faculty and students). College coordinators have participated in management group meetings concerning collective bargaining, they draft District policies (e.g. pertaining to reassigned time), have preliminary responsibilities with respect to developing the budgets of their colleges, are responsible for presenting recommendations and proposals of the college committees to the Indian Valley College Council, approve requisitions for college expenditures, and work with the president and superintendent on matters related to facilities planning.

In addition, college coordinators make faculty assignments, evaluate certificated employees, allocate teaching units, recommend disciplinary action, interview teaching candidates and make recommendations as to whether they should be hired. But they have no final authority to approve their own proposals (or those of the committees on which they sit) - most of the proposals which they have drafted are subject to a multi-level review process, and they have no discretion to deviate from the District policies which they are responsible to administer. For those reasons, their duties are no more "managerial" than were the responsibilities of even the most management-oriented of the employees whose status was decided in the cases discussed above. The record herein does not support the exclusion of college coordinators from the negotiating unit on the basis of management status.

II. College Coordinators are Supervisors, and Therefore Should be Excluded from the Unit of Certificated Employees.

Section 3540.1(m) of the EERA defines "supervisory employee" as:

...any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Sweetwater Union High School District²² held that the performance of any one of the factors enumerated in Section 3540.1(m) is sufficient to make one a supervisor within the meaning of the Act.

Based on the above authority, it is clear that college coordinators are supervisors within the meaning of the Act. As noted above, they make faculty assignments, evaluate certificated employees, allocate teaching units, recommend disciplinary action, interview teaching candidates and make recommendations as to whether they should be hired.

The record indicates that in at least some of the above areas, the authority exercised by coordinators requires the use of independent judgment. For example, testimony indicated that one college coordinator made independent judgments with regard to personnel matters, reduction of hours worked by hourly employees, and transfer of programs from one college to another. Since only one of the factors enumerated in Section 3540.1(m) must be present in order to find an employee a supervisor, it is recommended that college coordinators be excluded from the unit of certificated employees on that basis.

²²EERB Decision No. 4, November 23, 1976.

PROPOSED ORDER

It is the Proposed Decision that:

1. The following unit is appropriate for the purposes of meeting and negotiating, provided that an employee organization becomes the exclusive representative of such unit:

All full-time certificated employees, all part-time credit certificated employees who have taught the equivalent of three or more of the last six semesters, inclusive, and all part-time non-credit certificated employees who have taught the equivalent of four or more of the last nine quarters, inclusive. As used in this formula, any part-time credit instructor currently teaching in a third semester would be eligible, as would any part-time non-credit instructor currently teaching in a fourth quarter.

2. The position of college coordinator is not managerial, but is supervisory.

The parties have seven (7) calendar days from the receipt of this Proposed Order in which to file exceptions in accordance with Cal. Admin. Code, Title 8, Section 33380. If no party files timely objections, this Proposed Decision will become final on December 7, 1977, and a Notice of Decision will issue from the EERB.

Within ten (10) workdays after the employer posts the Notice of Decision, the employee organizations shall demonstrate to the Regional Director at least 30 percent support in the above unit. The Regional Director shall conduct an election at the end of the posting period if: (1) more than one employee organization qualifies for the ballot in the above unit, or

(2) only one employee organization qualifies for the ballot in the above unit and the employer does not grant voluntary recognition* to that employee organization.

The date used to establish the number of employees in the above unit shall be the date of this Proposed Decision unless another date is deemed appropriate by the Regional Director and noticed to the parties. In the event another date is selected, the Regional Director may extend the time for employee organizations to demonstrate at least 30 percent support in the units.

Dated: November 25, 1977

ANGELA PICKETT-EVANS
Hearing Officer

*Voluntary recognition requires majority proof of support in all cases. See Gov. Code Sections 3544 and 3544.1.