

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



JEFFERSON UNION HIGH SCHOOL DISTRICT, )  
Employer, ) Case No. SF-R-573  
and )  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ) Case No. SF-R-573  
LOCAL 856, ) ORDER VACATING  
Employee Organization. ) PERB Decision No. 83  
April 13, 1979

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The employee organization's petition for recognition and the employer's statement of exceptions to the hearing officer's proposed decision having been withdrawn, and the Board being in accord, PERB Decision No. 83 is hereby vacated.

Public Employment Relations Board

by

J. STEPHEN BARBER

Executive Assistant to the Board

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS, )  
LOCAL 856, ) January 4, 1979  
Employee Organization. )  
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Appearances; Joseph H. Clasgens III (Deputy District Attorney of San Mateo) for Jefferson Union High School District; and Kenneth N. Silbert, Attorney (Brundage, Beeson, Tayer and Kovach) for Freight Checkers, Clerical Employees and Helpers, Local 856, Bay Area Professional and Vocational Employees Division, International Brotherhood of Teamsters.

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

DECISION

Jefferson Union High School District (hereafter District) excepts from the attached hearing officer's proposed decision that five District building and grounds supervisors are "supervisors" within the meaning of section 3540.1(m) of the Educational Employment Relations Act (hereafter EERA or the Act),<sup>1</sup> and that they constitute an appropriate bargaining unit for representation by Freight Checkers, Clerical Employees and Helpers, Local 856, Bay Area Professional and Vocational Employees Division, International Brotherhood of Teamsters (hereafter Local 856).

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<sup>1</sup>The Educational Employment Relations Act is codified at Government Code section 3540 et seq. All references are to the Government Code unless otherwise specified.

The Public Employment Relations Board (hereafter the Board) adopts the hearing officer's findings of fact and law, and affirms that decision insofar as it holds that building and grounds supervisors meet the criteria of section 3540.1(m)<sup>2</sup> and are supervisors for the purposes of the Act. We find that the record is inadequate to support the hearing officer's determination that they constitute an appropriate negotiating unit under section 3545(b)(2),<sup>3</sup> however. Accordingly, we remand this case for further testimony on the issue of whether certain other unrepresented employees that have been stipulated to be management employees<sup>4</sup> are actually section 3540.1(m) supervisors.

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<sup>2</sup>Sec. 3540.1(m) 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 to 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.

<sup>3</sup>Sec. 3545(b)(2) provides:

A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

<sup>4</sup>Sec. 3540.1(g) defines "management employee" as:

...any employee in a position having significant responsibilities for formulating district policies or administering district programs . . . .

## FACTS

The District is comprised of five high schools and one continuation high school. With the exception of five building and grounds supervisors, and ten<sup>5</sup> positions stipulated to be confidential<sup>6</sup> or management employees, all District classified employees are represented by AFSCME (blue collar and cafeteria) or CSEA (clericals).

Four employees were stipulated confidential, including three secretaries who have access to all District negotiation proposals and supporting materials and are responsible for preparing materials for negotiations. The district accountant, who is regularly consulted by District negotiators regarding the budgetary impact of proposals, is similarly aware of District negotiation proposals before they are made.

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**5**The hearing officer's recommended decision erroneously states that 11 positions were stipulated confidential or management. Those in fact covered by stipulation are:

Confidential: secretary to the superintendent, secretary to the deputy superintendent for personnel, secretary to the assistant superintendent for business, district accountant;

Management: deputy superintendent for personnel, assistant superintendent for business, assistant superintendent for educational services, director of pupil personnel services, district supervisor of buildings and grounds, director of food service.

<sup>6</sup>Sec. 3540.1(c) defines "confidential employee" as:

...any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

Six positions were stipulated as management employees. The deputy superintendent for personnel, second in the administrative hierarchy, is the District's chief negotiator. S/he has the authority to approve, modify or reject personnel policy changes. The assistant superintendent for educational services, who makes all policy decisions on curriculum changes, also participates in negotiations. The assistant superintendent for business, fourth in the administrative hierarchy, participates in negotiations and District board meetings. The person in this position is authorized to modify recommended budget policy that affects the District's "physical plan" and is on the "management team."

Also on the "management team" are the director of food service and the District supervisor of building and grounds. The director of food service oversees the District's food service program and is responsible for menu planning, buying food and equipment, and visiting the individual high school cafeterias to check that the right amount of food is properly served. The director of food service also works with cafeteria managers to design routines for providing food at each cafeteria.

The District supervisor of buildings and grounds, who is in charge of maintenance and operations, handles the maintenance budget. This individual participates in the interviewing and hiring of new building and grounds crew members, supervises the

building and grounds supervisors<sup>7</sup> and in some instances deals directly with personnel problems upon being made aware of them by the building and grounds supervisors.

Both the District supervisor of buildings and grounds and the director of food service participate in negotiations with respect to matters relevant to the programs they administer.

The director of pupil personnel services, who coordinates District counselors and nurses, was also stipulated to be a management employee. That individual formulates District policy on pupil expulsions, and is in charge of all testing.

#### DISCUSSION

Under section 3543.4,<sup>8</sup> individuals who hold confidential or management posts would be barred from representation in

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<sup>7</sup>We do not address at this juncture the problem of representation of supervisors except to acknowledge the tension created by section 3545(b)(2)'s apparently contradictory mandates that all District supervisors must be in one unit, but that supervisors may not be represented by the same employee organization that represents the employees they supervise.

<sup>8</sup>sec. 3543.4 provides that:

No person serving in a management position or a confidential position shall be represented by an exclusive representative. Any person serving in such a position shall have the right to represent himself individually or by an employee organization whose membership is composed entirely of employees designated as holding such positions, in his employment relationship with the public school employer, but, in no case, shall such an organization meet and negotiate with the public school employer. No representative shall be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position or a confidential position.

Local 856's proposed supervisory unit.<sup>9</sup>

The Board agrees that the stipulated facts support the conclusion that the district accountant and the three secretaries in question are confidential employees. Each in the course of duty has regular and early access to strategic District negotiating information.<sup>10</sup> Just as the Act reserves to the employer a nucleus of individuals to assist in employer-employee relations, it exempts these persons from coverage by the Act.<sup>21</sup>

The stipulated facts similarly show that the deputy superintendent for personnel, the assistant superintendent for business, and the assistant superintendent for educational services are management employees. In each case an attempt was made to stipulate to the ultimate fact that "this individual has significant responsibilities for formulating District

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<sup>9</sup>Sec. 3545(b)(2) is cited at n. 3, supra.

<sup>10</sup>See Sierra Sands Unified School District (10/14/76) EERB Decision No. 2, at 2-3; Fremont Unified "School District (12/16/76) EERB Decision No. 6, at 10.

<sup>11</sup>Sec. 3540.1(j) states:

"Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees. (Emphasis added.)

policies and administering District programs." But this is not determinative.

The Board has an obligation to look into the entire record and, in accord with California law, is not bound by the parties' stipulations on the legal conclusions to be drawn from stipulated facts.<sup>12</sup> The parties cannot by their stipulations divest the Board of its powers and duty to review designated management positions<sup>13</sup> and determine appropriate units.<sup>14</sup> In this case, however, the evidence adduced at the hearing reveals that the deputy superintendent for personnel, the assistant superintendent for business, and the assistant superintendent for educational services play significant and autonomous roles in District policymaking; each has "significant responsibilities for formulating district policies or administering district programs,"<sup>15</sup> and is not subject to immediate supervision in this regard.<sup>16</sup>

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<sup>12</sup>see e.g. Glade v. Superior Court (1978) 76 Cal.App.3d 738, 744; Estate of Burson (1975) 51 Cal.App.3d 300, 306 [124 Cal.Rptr. 105]; Leonard v. City of Los Angeles (1973) 31 Cal.App.3d 473, 476; People v. Southern Pacific Co. (1962) 208 Cal.App.2d 745, 747-748 [25 Cal.Rptr. 644]. See also Centinela Valley Union High School District (8/7/78) PERB Decision No. 62 at 2-4; Hartnell Community College District (1/2/79) PERB Decision No. 81.

<sup>13</sup>sec. 3540.1(g).

<sup>14</sup>sec. 3541.3(a).

<sup>15</sup>Sec. 3540.1(g).

<sup>16</sup>See Los Rios Community College District (6/9/77) EERB Decision No. 18 at 18-19; Lompoc Unified School District (3/17/77) EERB Decision No. 13 at 19-21 and 22.

The Board will not normally question the managerial or supervisory status of employees unless exceptions are filed. But when the record reveals a likelihood that the law has been misinterpreted or misapplied, the Board has a duty to ascertain whether an error has been made, and to correct it. Here, the record does not support a finding that the director of pupil personnel services, the director of food service, and the District supervisor of buildings and grounds are management employees. The evidence suggests, rather, that the work responsibilities of these individuals bear at least some of the hallmarks of supervisory status. While managerial employees exercise discretion in formulating and administering district policies and programs, supervisory employees are those with 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 to 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.<sup>17</sup>

For example, the parties stipulated that the director of pupil personnel services "coordinates counselors and nurses." This description is as consonant with supervisory as with management status. Although this individual also makes recommendations concerning District policy on student

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<sup>17</sup>Sec. 3540.1(m).

expulsions, it is not self-evident that this constitutes "significant responsibility for formulating District policies or administering District programs."

The testimony also suggests that the director of food service may have supervisory responsibilities. Planning menus and working with cafeteria managers to design food service routines intimates that this individual has at least a modicum of control over work assignment. It seems improbable that the director of food service is charged with the duty to see that the cafeterias run properly, without the authority to demand change if they are not.

Mere input in District negotiations on cafeteria items is insufficient to transmute an individual from employee to management. The right of the District to obtain knowledgeable information about discrete segments of its operations, and the right of otherwise eligible workers to employee organization representation are here coequal. The purposes of the Act are not served by disqualifying all employees who aid the District in preparing for negotiations from membership in an appropriate negotiating unit.

Equally, participation in a management team does not per se preclude an individual from being an "employee" for the purposes of the Act, especially when the management team is described as nebulously as it is here:

Q. Are you part of the District management team?

A. Yes, I am.

Q. Could you tell us what that is?

A. The management team, let's see if I can put it right, are all the ones in management and we get together and discuss policy and things that happen in the District.

Q. As a result of those discussions are changes in policy made?

A. Sometimes.

We discount, as well, the District building and grounds supervisor's limited role in District negotiations, and decline to stigmatize an employee who participates in a management team as unstructured as that described here. Mere administration of a District program, including budget responsibilities, is inadequate to compel the conclusion that the District building and grounds supervisor is a management employee. As the Board majority observed in Lompoc Unified School District,<sup>18</sup> the "or" in section 3540(g) must be construed as "and" in order to achieve the obvious purposes of the Act;<sup>19</sup> otherwise the Legislature has given supervisors negotiating rights with one hand,<sup>20</sup> and taken them away with the other.<sup>21</sup>

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<sup>18</sup>EERB Decision No. 13 (3/17/77) at 19-21 and 22.

<sup>19</sup>See Houge v. Ford (1955) 44 Cal.2d 706, 712.

<sup>20</sup>Sec. 3545(b)(2). See also sec. 3540.1(m).

<sup>21</sup>sec. 3543.4. See also sec. 3540.1(g).

Apart from the responsibilities discussed above, the District building and grounds supervisor clearly has some of the same enumerated indicia of supervisory employees possessed by the high school building and grounds supervisors. It is even possible that further testimony would reveal a community of interest between these employees.

It is also possible that persons in the disputed job classifications are disqualified from representation in the supervisory unit on different grounds. While EERA section 3545(b)(2) requires all District supervisory employees to be in the same unit, this provision may be qualified by section 3545(b)(3), which prohibits classified and certificated employees from being included in the same unit. Therefore if any of these positions require certification, the statute may require that they be excluded from the classified supervisory unit.<sup>22</sup>

#### ORDER

The Public Employment Relations Board ORDERS that:

(1) The position of building and grounds supervisor is supervisorial within the meaning of section 3540.1(m) of the EERA.

(2) The positions of secretary to the superintendent, secretary to the deputy superintendent for personnel, secretary to the assistant superintendent for business

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<sup>22</sup>~~we~~ note that the resolution of this precise question is unnecessary to the Board's determination of the instant case.

and District accountant are confidential within the meaning of section 3540.1(c) of the EERA.

(3) The positions of deputy superintendent for personnel, assistant superintendent for business and assistant superintendent for educational services are managerial within the meaning of section 3540.1(g) of the EERA.

(4) The case is remanded for further testimony on the issue of whether the positions of director of pupil personnel services, District supervisor of building and grounds and director of food service are managerial or supervisory.

~~By: Jerilou~~ Cossack Twohey, Member Harry Gluck Chairperson

Raymond J. Gonzales, Member, concurring:

I concur in the affirmance of the hearing officer's decision that the position of building and grounds supervisor is supervisory. I also concur in the majority's decision to remand this case for further evidence on the positions of the director of personnel services, director of food service, and the District supervisor of building and grounds. Parties can stipulate to facts, and should be encouraged to do so; such stipulations should be binding on the Board. Parties can also stipulate to the status of positions. However, these stipulations, which go to the legal conclusions to be drawn from facts, are not binding on the

Board.<sup>1</sup> The question is how closely should these stipulations be scrutinized and when should they be overturned.

Board rule 33000<sup>2</sup> provides:

It is the policy of the Board to encourage the persons covered by the Act to resolve questions of representation by agreement among themselves, provided such agreement is not inconsistent with the purposes and policies of the Act and the Board.

This policy will be thwarted if parties' stipulations are too easily overturned; the parties will be less inclined to make agreements if the issues must be litigated anyway.

On the other hand, the Board should be reticent in allowing parties to stipulate away fundamental employee rights. I believe that a purpose of the EERA is to make negotiating rights broadly available to full-time district employees.<sup>3</sup> An agreement between the parties that certain employees are management deprives those employees of any protection under the EERA. Thus, such agreements should be carefully scrutinized. If the stipulated facts do not clearly support a finding that the employees are managerial within the meaning of section 3540.1(g), the agreement should not be accepted. As the majority opinion sets forth, the facts on the director of personnel services, the director of food service, and the District supervisor of building and grounds, obtained through stipulation and testimony, are not indicative of managerial status.

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<sup>1</sup>See, e.g., Glade v. Superior Court (1978) 76 Cal.App.3d 738, 744; Leonard v. City of Los Angeles (1973) 31 Cal.App. 3d 473, 476.

<sup>2</sup>California Administrative Code, title 8, section 33000.

<sup>3</sup>Lompoc Unified School District (3/17/77) EERB Decision No. 13, p. 20.

While I agree with the majority in this case, I am uneasy about the majority's increasing tendency to examine all issues, disputed or not, in every case that comes before us. It is my preference that parties be encouraged to agree through stipulations, as long as those stipulations are not improper. Giving the parties leeway in settling disputes themselves, even if such settlements differ from how the Board would have resolved the issues, expedites administrative proceedings and enhances the relationship between the parties. Also, a party should not be deterred from appealing an issue to the Board for fear that other aspects of the case, satisfactorily resolved, will be overturned or modified.<sup>4</sup> Therefore, I will let stipulations stand unless they clearly contravene the EERA or consistent policies established by the Board.<sup>5</sup> Stipulations between employers and employee organizations which deprive entitled employees of all statutory rights contravene the EERA and should not stand.

Raymond J. Gonzales , Member

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<sup>4</sup> See my dissent in Monterey Peninsula Community College District (10/16/78) PERB Decision No. 76, pp. 17-18.

<sup>5</sup> Centinela Valley Union High School District (8/7/78) PERB Decision No. 62.

PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of: )  
JEFFERSON UNION HIGH SCHOOL DISTRICT, )  
Employer )  
and ) Case No. SF-R-573  
INTERNATIONAL BROTHERHOOD OF )  
TEAMSTERS, LOCAL 856, ) Proposed Decision  
Employee Organization. ) January 20, 1978

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Appearances: Joseph H. Clagens, Attorney, for Jefferson Union High School District; Kenneth N. Silbert, Attorney, for International Brotherhood of Teamsters, Local 856.

Before Jeff Paule, Hearing Officer.

PROCEDURAL HISTORY

On May 13, 1977, the San Francisco Bay Area Professional and Vocational Employees Division, Teamsters Union Local 856 filed a request for recognition with the Board of Trustees of the Jefferson Union High School District (District) seeking exclusive representation of a classified supervisory personnel unit consisting of five employees who hold the positions of building and grounds supervisors in the District.

On May 19, 1977, the Jefferson Union High School District requested that the Public Employment Relations Board (PERB) hold a unit determination hearing to determine whether the five employees are supervisors within the meaning of Government Code Section 3540.1(m)

and also to determine the appropriateness of the requested unit.

On August 18, 1977 and January 13, 1978, a formal unit determination hearing was held before a hearing officer of the PERB.

#### ISSUES

1. Whether building and grounds supervisors are supervisory employees within the meaning of the Educational Employment Relations Act (EERA).

2. If they are found to be supervisory employees, whether they constitute an appropriate unit.

#### FINDINGS OF FACT AND DISCUSSION

Government Code Section 3540.1(m) states:

"Supervisory employee" means 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 to 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.

The PERB stated in Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976, that "this section of the EERA is written in the disjunctive; therefore, an employee need not possess all of the enumerated functions or duties to be a supervisor. The performance of any one of the enumerated action or the effective power to recommend such action is sufficient to make one a supervisor within the meaning of the EERA."<sup>11</sup><sup>1</sup>

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<sup>1</sup>See also San Diego Unified School District, EERB Decision No. 8, February 18, 1977.

The employee organization in the present case describes various instances in which the building and grounds supervisors are involved in job assignment, training, day-to-day supervision, coordination of overtime assignments, hiring, disciplining and evaluation of employees.

The employer, though acknowledging these involvements, argues that the nature of the responsibility and authority exercised by the building and grounds supervisors is such that the duties are actually clerical and/or advisory in nature, requiring no independent judgment. The employer argues that the distinctions made in several Board decisions, i.e., Lompoc Unified School District, EERB Decision No. 13, March 17, 1977, where the Board found part-time subject coordinators not to be supervisors; New Haven Unified School District, EERB Decision No. 14, March 22, 1977, where the Board found high school department heads not to be supervisors; and Foothill-DeAnza Community College District, EERB Decision No. 10, March 1, 1977, where the Board found that custodial foremen were not supervisors within the meaning of Section 3540.1(m), are similar to those which should be applied herein.

It has been acknowledged by the PERB that the statutory scheme recognizes that public and private sector supervisors differ in the nature of the authority they possess in that public school districts ultimately reserve decisions regarding hiring, discipline and salaries of employees for decision-makers far removed from the employees' immediate supervision. Based on this recognition, the California statutory scheme lends itself to a broader construction of the definition of supervisor contained in the EERA.<sup>2</sup>

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<sup>2</sup>See Sweetwater Union High School District, supra at p. 14.

The record indicates that the building and grounds supervisor assigns the members of the building and grounds crew to tasks that need to be done and sees that the work is done according to schedule, as well as assigning overtime hours and granting time off when it is necessary. The building and grounds supervisor also rearranges work assignments when there is a shortage of personnel. See Carlsbad Unified School District, EERB Decision No. 41, November 29, 1977.

Though a building and grounds supervisor serves merely as one of three individuals on a hiring committee, he is responsible for ongoing evaluation of the custodial staff, submitting his written evaluations to the District building and grounds supervisor. He also has authority to place a letter of reprimand in an employee's file. The building and grounds supervisor is also responsible for training all new employees along with handling day-to-day problems that may arise in terms of performance of work and providing any instruction necessary.

The evidence is somewhat contradictory as to whether the building and grounds supervisor has the authority to transfer and/or take direct disciplinary action against employees, but there is, however, evidence in the record as to at least one instance in which a building and grounds supervisor removed an employee from his job because of his alcoholic condition.

In addition to these duties, the building and grounds supervisor spends approximately two-thirds of his time doing actual maintenance work. The fact that building and grounds supervisors do spend this amount of time doing maintenance work does not, however, detract from the fact that they also perform the supervisory functions listed above.

The part-time subject coordinators in Lompoc, supra, were found not to be supervisors because the record contained uncontradicted evidence that no subject coordinators adjusted grievances, granted leaves of absence, granted time off or assigned work. That is not the case here. The New Haven decision, supra, involved department heads whose roles are fundamentally different than those of the building and grounds supervisors in question here in that they neither perform nor recommend any of the actions listed in the definition of "supervisory employee" and function rather as administrative coordinators giving assistance to less experienced teachers. In Foothill-DeAnza, supra, the evidence was scant and what evidence there was showed that the custodial foremen did not schedule work hours, did not regularly inspect work of others and had only very limited input into the hiring process. What these cases all share is that the persons who were alleged to be supervisors were actually acting in the capacity of administrative coordinators and did not possess the functions enumerated in Section 3540.1(m).

It is found that the situation of the building and grounds supervisors in the instant case is more akin to that of the building services supervisors in San Diego Unified School District, EERB Decision No. 8, February 18, 1977, or the head custodians in Sweetwater, supra. In San Diego, supra, the PERB found that since the building services supervisors prepare work schedules, approve time sheets, and prepare and sign formal work performance evaluations of custodians reporting to them and have the effective power to recommend transfer or discharge, they were supervisors within the

meaning of the EERA. In finding that the head custodians were supervisors in Sweetwater, supra, the PERB stated:

The NLRB and other state public employment relations boards have consistently held that the authority to regularly inspect the work of others and to direct others to correct improperly performed work constitutes responsible direction of other employees in the performance of their work.

In view of the evidence of the building and grounds supervisors' independent authority in the areas of assignment and direction of work, it is found that the building and grounds supervisors are supervisors within the meaning of the EERA. The fact that they play an important role in evaluating employees and in the hiring process serves to bolster this conclusion.

Having found that the employees in question are supervisors within the meaning of the EERA, the next inquiry is whether the five building and grounds supervisors constitute an appropriate unit.

Section 3545(b)(2) requires that:

A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

The record indicates that there are presently two classified units in the School District. The California School Employees Association (CSEA) represents the clerical and business employees and the American Federation of State, County and Municipal Employees (AFSCME) represents the "blue collar positions plus the cafeteria [positions]." Neither of these employee organizations has sought to represent the proposed supervisory unit herein.

The record further indicates that there are eleven positions which have been stipulated to be either management or confidential.

These include: superintendent, deputy superintendent of personnel, assistant superintendent for business, assistant superintendent for educational services, director of pupil personnel services, director of food services and director of buildings and grounds (management); secretary to the superintendent, secretary to the deputy superintendent, secretary to the assistant superintendent for business and accountant (confidential).

The parties presented evidence in support of the above stipulation. After considering the evidence in light of PERB decisions with respect to management designations (see San Francisco Unified School District, EERB Decision No. 23, September 8, 1977 and cases cited therein) and confidential employees (see Sierra Sands Unified School District, EERB Decision No. 2, October 14, 1976), the hearing officer hereby accepts the parties' stipulation.

Thus, having found that the five building and grounds supervisors are the only supervisory employees in the District, a unit of these employees is the only appropriate unit permitted by Section 3545(b)(2). See San Francisco Unified School District, supra.

#### PROPOSED DECISION

It is the proposed decision that:

1. The five building and grounds supervisors are supervisors within the meaning of Section 3540.1(m).

2. A classified supervisory unit consisting of all building and grounds supervisors is found to be appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative of the unit.

The parties have seven (7) calendar days from receipt of the proposed decision in which to file exceptions in accordance with Section 33380 of the PERB Rules and Regulations. If no party files timely exceptions, this proposed decision will become final on February 1, 1978 and a Notice of Decision will issue from the Board.

Within ten (10) workdays after the employer posts the Notice of Decision, the employee organization 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 the employee organization qualifies for the ballot and the employer does not grant voluntary recognition. Voluntary recognition can only be granted to an employee organization which demonstrates a majority showing of interest in the appropriate unit. See Government Code Section 3544 and 3544.1.

The date used to establish the number of employees in the above unit shall be the date this decision becomes final unless another date is deemed proper by the Regional Director and notice is given 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 unit.

Dated: January 20, 1978

Jeff Paule  
Hearing Officer