STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN JOSE UNIFIED SCHOOL DISTRICT, Employer, and SAN JOSE FEDERATION OF TEACHERS, LOCAL 957 Employee Organization, and SAN JOSE TEACHERS ASSOCIATION, CTA/NEA, Employee Organization.	Case No. SF-R-536 PERB Decision No. 90 February 14, 1979

Appearances: Michael Taggart, Attorney (Paterson & Taggart) for San Jose Unified School District; Anne Fragasso, Attorney for San Jose Federation of Teachers, Local 957; and John Muir, Attorney (La Croix & Schumb) for San Jose Teachers Association, CTA/NEA.

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

DECISION

This case is before the Public Employment Relations Board (hereafter Board) on exceptions taken by the San Jose Federation of Teachers (hereafter Federation) to the hearing officer's proposed decision. The Federation objects to the hearing officer's conclusion that a negotiating unit consisting of all hourly adult education teachers is appropriate.

The Board has considered the record as a whole and the attached proposed decision in light of the exceptions. The Board agrees with the hearing officer's conclusion that all

hourly adult education teachers should be included in a single unit, and hereby adopts the hearing officer's proposed decision to the extent that it is based on evidence relating to community of interest, established practices and efficiency of operations.[1]

ORDER

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

A unit consisting of all hourly adult education teachers who are not on the regular teachers salary schedule is appropriate for meeting and negotiating.

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, or (2) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition. Voluntary recognition requires majority proof of support in all cases. See Government Code section 3544 and 3544.1.

---

[1]The Board notes that the hearing officer stated that adult education teachers are supervised by site principals. They are supervised by center coordinators. However, this discrepancy does not affect the conclusion reached.

The date used to establish the number of employees in the above unit shall be the date of this 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 unit.

By: Harry Gluck, Chairperson Jerilou Cossack Twohey, Member

Raymond J. Gonzales, Member, concurring:

I would totally adopt the hearing officer's proposed decision and not simply rely on that portion of the decision relating to Government Code section 3545(a) criteria as applied to the facts of this case.

Further, I would note that the fact that I have concurred in finding a unit of all hourly adult education teachers appropriate, which includes both full- and part-time hourly adult education instructors, in no way affects my view that part-time and full-time community college teachers should not be in the same unit. (See Hartnell Community College District (1/2/79) PERB Decision No. 81, dissenting opinion; Los Rios Community College District (6/9/77) EERB Decision No. 18, dissenting opinion.) The two situations are completely distinguishable.

Raymond J. Gonzales, Member

PUBLIC EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of: San Jose Unified School District, Employer, and San Jose Federation of Teachers, Local 957, Employee Organization, and SAN JOSE TEACHERS ASSOCIATION, CTA/NEA, Employee Organization.	Case No. SF-R-536 PROPOSED REPRESENTATION DECISION April 6, 1978

Appearances: Michael Taggart, Attorney (Paterson & Taggart), for San Jose Unified School District; Anne Fragasso, for San Jose Federation of Teachers, Local 957; and John Muir, Attorney (La Croix & Schumb), for San Jose Teachers Association, CTA/NEA.

Proposed Decision by Bruce Barsook.

PROCEDURAL HISTORY

On August 30, 1976, the San Jose Federation of Teachers, Local 957 (hereinafter "Federation"), filed with the San Jose Unified School District (hereinafter "District") a request for recognition as the exclusive representative of a unit of hourly adult education teachers who teach ten or more hours per week and who are not on the teacher's salary schedule. On December 17, 1976, the Federation filed an amended request for recognition evidencing the change in the number of teaching personnel created by the beginning of the fall term. On January 25, 1977, the San Jose Teachers Association, CTA/NEA

(hereinafter "Association"), submitted a notice of intervention, seeking to become the exclusive representative of the identical unit.

On January 31, 1977, the District formally notified the Public Employment Relations Board (hereinafter "PERB") that it doubted the appropriateness of the proposed unit. A formal hearing was conducted in this matter on September 8, 1977.

The District's position is that adult education teachers should not have a separate negotiating unit, but should be included in the regular certificated classroom teachers unit already in existence in the District. As an alternative position and in the event it is decided that adult education teachers should be excluded from the regular classroom teachers unit, the District favors a unit containing all adult education teachers regardless of the number of hours per week they teach. The Federation's position is that adult education teachers should have a separate negotiating unit, but such unit should contain only those teachers teaching ten or more hours per week. The Association's position is that adult education teachers should have a separate negotiating unit which should include all such teachers irrespective of the number of teaching hours per week.

ISSUES

1. Should adult education teachers be included in the regular certificated classroom teachers negotiating unit?

2. If not, what is the appropriate negotiating unit for adult education teachers?

FINDINGS OF FACT

Adult education for the greater San Jose area is administered as part of the Regional Program which is a consortium of six districts which participate in three programs: The Regional Vocational Center; the Regional Occupational Program; and the Metropolitan Adult Education Program (MAEP). The San Jose Unified School District is the administering agency for these three programs and employs the personnel. These programs cover the boundaries of the participating districts, which are: Milpitas Unified School District, East Side Union High School District, San Jose Unified School District, Santa Clara Unified School District, Campbell Union High School District and Los Gatos School District (which is not involved in the MAEP). Most of the adult school teachers in question herein teach in the Metropolitan Adult Education Program. A few also teach in the Regional Occupational Program and at the Regional Vocational Center.

The San Jose Unified School District has about 52 sites. The Regional Program utilizes approximately 250 classroom sites at a variety of locations, such as school buildings, churches, offices and industry plants.

The District has an ADA of approximately 38,000. The ADA of the Regional Program is approximately 10,000 with 8,000 of that in the MAEP.[1]

---

[1]ADA generated by a resident of another school district is credited back to that district. Each participating district pays its share to the San Jose Unified School District for the program, which includes the instructors' salaries.

Excluding the Regional Program, the District has approximately 1,800 certificated employees. During 1976-77, there were approximately 1,700 teachers in the Regional Program and it was estimated that there would be approximately 2,000 teachers for the 1977-78 school year. Some regular day school teachers teach adult education classes. All teachers in the adult education program are employees of the San Jose Unified School District and any teacher who qualifies becomes tenured in the San Jose Unified School District.

Under the meet and confer process of the Winton Act,[2] it was agreed that all adult education teachers would be hired as hourly employees except for grandfathered full-time contract positions.[3]

A full-time teaching load for regional instructors is 30 hours per week. There are a few hourly instructors who teach 30 hours per week. About 150 Regional Program teachers teach ten or more hours per week.[4]

---

[2]Former Ed. Code Sec. 13080 et seq., repealed Stats. 1975, Ch. 961, Sec. 1, effective July 1, 1976.

[3]There are 24 full-time contract teachers who work exclusively for the MAEP and three full-time contract teachers who work part-time for the MAEP and part-time for the Regional Occupational Program. These employees, along with 45 other full-time contract teachers working for either the Regional Occupational Program or the Regional Vocational Center, have been included in the recognized certificated negotiating unit of the District.

[4]This represents about nine percent of all regional program teachers.

Adult education teachers, with the exception of the 27 full-time contract teachers, are paid pursuant to an hourly salary schedule with a provision for increased compensation based on hours of experience. Regular day school teachers are paid a yearly salary in accordance with their salary schedule and are eligible for increased compensation based on additional education. Regular day school teachers who teach adult education receive the hourly rate in addition to their regular salary. Hourly adult education teachers who teach 15 or more hours per week are entitled to a pro rata share of fringe benefits.[5]

Recruitment and hiring of adult education teachers is separate from that of regular day school teachers. Although adult education teachers are required to have teaching credentials, those who teach nonacademic (i.e., vocational) subjects need possess only a designated subjects teaching credential which does not require a baccalaureate degree.[6]

Adult education teachers are supervised by one of three adult school principals. Adult education teachers are informally evaluated but not under the provisions of the Stull Act.[7] Adult education teachers have a different grievance

---

[5]Of the approximate 1,700 adult education teachers in 1976-77, 108 (6.4 percent) taught 15 or more hours per week.

[6]cf., Ed. Code Secs. 44256, 44260.

[7]Ed. Code Sec. 44660 et seq.

procedure from regular day teachers. Adult education teachers can achieve tenure but only as adult education teachers. Their tenure is not transferrable to the regular day program.[8]

There is little interaction between the adult education faculty and the day school faculty. Most adult education classes are taught at night and a significant number of the classes do not even meet at District building sites. Faculty meetings for the adult education program are separate from those of the regular day school program. The two programs have different annual calendars. The MAEP is year-round while regular day teachers teach a 180 day work year.

The Metropolitan Adult Education Program is large and diversified. There are academic courses, programs for the handicapped, programs for senior citizens, parent education and occupational training, as well as a broad spectrum of courses designed to meet the avocational interests of the community. Classes taught by adult education teachers are generally more vocationally and avocationally oriented than regular day school classes and are geared predominantly towards adults.

Classes offered in the adult education program are determined by continued community interest in a pre-existing class or by suggestion from an instructor who wishes to teach a proposed subject which is also determined as meeting a community need. In contrast, courses offered in the regular day program

---

[8]cf., Ed. Code Secs. 44887, 44890.

other than those mandated by state law, are initially developed by teachers in cooperation with the department chairperson. The idea is then studied by the vice principal before a final determination is made by the principal.

Adult education classes may be cancelled and the teacher dismissed if there is insufficient student enrollment.[9] In contrast, regular day teachers do not face the prospect of dismissal if one of their classes has an insufficient enrollment.

The only evidence relating to efficiency of operation was testimony by Mr. Lambre, the District's manager of employee relations. He stated that meeting and negotiating with a separate adult education teachers unit would consume additional time and effort. Mr. Lambre testified that the time consumed in negotiating the contract covering the regular certificated unit was affected by the fact that it was a three year contract and that it was the first contract to be negotiated for the unit.[10] Mr. Lambre negotiates with three classified units as well as the regular certificated unit.

Testimony regarding past practices was also minimal. Under

---

[9]However, a full-time contract adult education teacher whose class is cancelled because of insufficient enrollment is not released, but given another class assignment or other duties.

[10]Testimony revealed that it took the District approximately 360 hours to prepare for negotiations and 180 hours to negotiate the contract.

the Winton Act,[11] the Certificated Employee Council (hereinafter "CEC") represented both regular full-time and hourly part-time teachers. There is no evidence that either the Federation or the Association has recently sought to represent adult education teachers and regular day teachers in a single unit. In fact, the evidence indicates the contrary. In response to a Federation request, the District, the Federation and the Association reached an agreement that salaries and fringe benefits for adult education teachers would be raised six percent in return for a waiver among these parties stating that if an adult education unit were determined to be appropriate, no contract negotiations would be held for the 1977-78 school year.

DISCUSSION AND CONCLUSIONS

I. Adult Education Teachers Should Be Excluded From The Regular Classroom Teacher Unit

Government Code Section 3545, Subsections (a) and (b)(1) set forth the criteria for determining the appropriateness of a nonsupervisory certificated unit:

> (a) In each case where the appropriateness of the unit is an issue, 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.

---

[11] *Ante*, fn. 2.

(b) In all cases:

(1) 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.

The District contends that pursuant to Section 3545(b) (1), adult education teachers must be included in the existing certificated unit because they are classroom teachers.

The District's argument is not persuasive. The PERB has determined that for purposes of the Educational Employment Relations Act (hereinafter "EERA"), the definition of classroom teacher is limited "only to the regular full-time probationary and permanent teachers employed by a district."[12] Applying this definition to adult education teachers, the PERB, in Petaluma City Elementary and High School District,[13] concluded that such teachers were not classroom teachers within the meaning of Section 3545(b) (1).

Three PERB decisions have held that adult education teachers should be excluded from the regular certificated

---

[12]Belmont Elementary School District, EERB Decision No. 7, Dec. 30, 1976,; Petaluma City Elementary and High School District, EERB Decision No. 9, February 22, 1977 at p. 2.

[13]Ibid.

unit.[14] Due to insufficent evidence on the issues of past practices and efficient operation, all three decisions were based on the community of interest standard. Similarly, the evidence in this case is not significant on the criteria of past practices and efficient operation.[15] Thus, as in the prior PERB decisions, the community of interest criterion is determinative.

The community of interest evidence presented in this matter is substantially similar to that found in the three prior cases. As was the case in these prior PERB decisions: adult education teachers are not required to have a college education; recruitment is different; classes are more vocationally oriented; if enrollment is insufficient, the class is dropped and the teacher is released; adult school teachers are supervised by adult school staff; the decision to offer a course depends upon the needs of the community, availability of qualified instructors, availability of facilities and the availability of funds; although tenure is available, it is not applicable to day school; teachers are paid on an hourly basis; and a different

---

[14] Petaluma City Elementary and High School Districts, supra EERB Decision No. 9, February 22, 1977; Lompoc Unified School District, EERB Decision No. 13, March 17, 1977; New Haven School District, EERB Decision No. 14, March 22, 1977.

[15] Although the District argues that its efficiency of operation would be impeded by the creation of an adult education unit, evidence indicates that such a creation would not have such dire effects. For example, the District is already meeting and negotiating with three classified units and one certificated unit.

school year exists for adult teachers and regular day teachers.

The District seeks to distinguish these cases by arguing that adult education teachers: Teach some students who are regular day school students; are paid from general funds; receive fringe benefits; have the same line of supervision as regular teachers, which is to the site principal; attend faculty meetings; where properly credentialed with a designated subjects credential, can also teach in the day program; and full-time adult education teachers are already included in the regular unit.

The District's argument is not convincing. It is true that adult education teachers can teach regular day school students under some circumstances. The fact that adult education teachers are paid from the general fund is irrelevant to their community of interest. Fringe benefits are available to some hourly teachers. However, fringe benefits are only available to those who work 15 or more hours per week. Of approximately 1,700 teachers, only 108 (6.4 percent) qualify for these benefits.

Even though both adult education teachers and regular day teachers are supervised by their site principal the District's argument misinterprets the Board's decisions. The Board has consistently noted in the cases that have come before it that adult education teachers and regular day teachers have separate lines of supervision, which is also true in this case.

The fact that properly credentialed adult education teachers can teach in the day program is not persuasive in light of the additional fact that an adult education teacher of nonacademic subjects need not possess a college degree.

The existence of a few full-time adult education teachers who are already in the regular unit poses somewhat of a problem. However, due to District policy, established through the meet and confer process of the Winton Act, there is a finite number of full-time contract adult education teachers, regardless of the number who actually teach 30 or more hours per week. Current District policy is to only hire adult education teachers on an hourly basis.

For the above stated reasons adult education teachers should be excluded from the regular day school unit.

II. The Appropriate Unit For Adult Education Teachers Is A Unit Composed of All Adult Education Teachers

Having determined that adult education teachers do not belong in the same unit with regular day school teachers, it must now be determined whether an adult education teacher unit is an appropriate unit for purposes of meeting and negotiating. The District and the Association argue that a unit of all adult education teachers is the appropriate unit. The Federation, on the other hand, would include only those

adult education teachers who teach ten or more hours per week. Based on the criteria of Government Code Section 3545(a), it is concluded that a unit of all adult education teachers is an appropriate unit.[16]

As illustrated by the findings of fact, adult education teachers share a community of interest. Their salary structure, method of recruitment and selection for service are the same. Their duties and responsibilities while teaching are the same. They interact with one another during their job hours. Type of classes taught, job expectancy, line of supervision, and length of school year are also similar. As noted previously, these same factors distinguished them from the unit of regular certificated classroom teachers.

The other two criteria noted in section 3545(a), established practices and efficiency of operation, do not alter this determination. The evidence on established practices is inconclusive. The agreement by the District to grant adult education employees a six percent increase in salary and fringe benefits does not indicate a practice of treating adult education teachers separately but rather a decision by the

---

[16]No party argued nor provided evidence that a more appropriate unit would include other employee groups, such as substitutes, summer school employees, etc. Consequently, no determination can be made as to that unit. Nevertheless, as the Board noted in Antioch Unified School District, EERB Decision No. 37, November 7, 1977, a unit that is appropriate for meeting and negotiating need not be the most appropriate unit.

District to unilaterally adjust wages of a category of employees not represented by an exclusive representative. Evidence relating to efficiency of operation is minimal but discloses a belief by the District that it could operate more efficiently with just one certificated unit or in the alternative, one adult education unit. The District's witness testified that additional units would constitute overfragmentation thereby creating an administrative and financial burden on the District.

The Federation's proposal for a unit of adult education teachers who teach ten or more hours per week is not persuasive. As noted above, all adult education teachers generally have the same community of interest. The only notable difference in their community of interest is that those who teach 15 or more hours per week are entitled to a pro rata share of fringe benefits whereas those who work less than 15 hours per week receive no fringe benefits. But this lone difference is greatly outweighed by the other interests which all adult education teachers share. In addition, dividing an adult education unit by the number of hours worked would adversely affect the efficient operation of the District. Because of the existence of fluctuating hours the composition of an adult education unit could change frequently thereby creating a burdensome administrative and financial burden on the District. Furthermore, dividing up adult education teachers by the number of hours worked would invite unnecessary fragmentation. The District could then be faced with a

situation in which it had to meet and negotiate with a unit representing nine percent of adult education employees as well as one representing the other 91 percent. This unnecessary division would unfairly add to the financial and administrative resources the District must allocate to meeting and negotiating with its employee representatives.

The Federation's argument that those who teach ten or more hours per week have a greater interest in the matters subject to collective negotiations does not negate the fact that those who teach less, nevertheless, share such interests. Since the record fails to disclose a meaningful distinction between those who teach ten or more hours per week and those who teach less than ten hours per week, a unit of all adult education teachers shall be the appropriate unit for purposes of meeting and negotiating with the employer.

PROPOSED ORDER

It is the Proposed Decision that the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

> A unit of all hourly adult education teachers who are not on the regular teachers salary schedule.

The parties have twenty (20) calendar days after service of this Proposed Decision in which to file exceptions in accordance with California Administrative Code, Title 8, Section 32300. If no party files timely exceptions, this Proposed Decision will become final on May 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 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, or (2) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition. Voluntary recognition requires majority proof of support in all cases. 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 of this 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 unit.

Dated: April 6, 1978

By_____

Bruce Barsook
Hearing Officer