

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



REDONDO BEACH CITY SCHOOL DISTRICT,)
)
Employer,)
)
and) Case No. LA-R-430B (825)
)
EARLY CHILDHOOD FEDERATION, LOCAL 1475)
AFT,) PERB Decision No. 114
)
Employee Organization,)
)
and) January 17, 1980
)
REDONDO BEACH CITY TEACHERS ASSOCIATION,)
CTA/NEA,)
)
Employee Organization.)
)
_____)

Appearances: David G. Miller, Attorney (Paterson & Taggart) for Redondo Beach City School District; Anne E. Fragasso, Attorney, and Larry Bordan for Early Childhood Federation, Local 1475 AFT; Charles Gustafson, Attorney, and Lauren Sanders for Redondo Beach City Teachers Association.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

In May 1976, the Redondo Beach City School District (hereafter District) voluntarily recognized the Redondo Beach City Teachers Association (hereafter Association) as the exclusive representative of a unit of certificated employees, including children's center teachers. On March 14, 1978, the Early Childhood Federation, Local 1475, AFT (hereafter Federation) filed a request for recognition in a certificated unit consisting solely of children's center teachers.

Following a representation hearing, the hearing officer rendered a proposed decision in which he found that a separate unit of children's center teachers is appropriate and that children's center teachers should vote to determine whether they want to continue to be represented by the Association in a unit of all certificated employees or by the Federation in a separate unit of children's center teachers only. He also found that children's center head teachers are supervisory employees.

The District has filed exceptions to the hearing officer's decision that a separate unit of children's center teachers is appropriate and a self-determination election should be held. For the reasons that follow, the Public Employment Relations Board (hereafter PERB or Board) affirms the hearing officer's decision that a separate unit of children's center teachers is appropriate. It does not, however, order an election in which the children's center teachers can choose to remain in the overall certificated unit since it finds such a unit inappropriate in this case. Rather, it directs an election in the children's center unit only.

No exceptions were taken to the hearing officer's decision that children's center head teachers are supervisory employees and it is therefore not an issue before the Board.

FACTS

The hearing officer's procedural history and findings of fact are substantially correct and are adopted as the findings of the Board itself.¹

DISCUSSION

Section 3545(a) of the Educational Employment Relations Act (hereafter EERA)² sets forth general criteria for determining appropriate units:

¹It is unclear whether the hearing officer's statement that general fund monies may be used to support the children's center is accurate. See Education Code section 8328, which states:

The governing board of any school district or community college district or the county superintendent of schools shall establish in the county treasury a fund to be known as the "child development fund" into which shall be paid all funds received by the district or the county for, or from the operation of, child development services under this division. The costs incurred in the maintenance and operation of child development services shall be paid from the fund, with accounting to reflect specific funding sources.

No other funds of a district derived from the receipt of district taxes or derived from moneys apportioned to the district for the support of schools thereof, except state moneys appropriated for the support of child development services, fees, and federal funds, may be expended for, or in connection with child development services. (Emphasis added.)

²The EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to

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.

the Government Code. Other unit determination criteria are listed in section 3545(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.

(2) 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.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

Section 3545(b)(1) is the only section that is possibly applicable in this case. However, it is unnecessary for us to address the issue of whether or not children's center teachers are classroom teachers under that section. Even if we assume that children's center teachers are classroom teachers, our finding that a combined unit of children's center and regular teachers is inappropriate rebuts the presumption, articulated in Peralta Community College District (11/17/78) PERB Decision No. 77, that all classroom teachers should be in the same unit unless that unit is inappropriate under the criteria in section 3545(a).

In Antioch Unified School District (11/7/77) EERB Decision No. 37, the Board concluded that these criteria "require a weighing and balancing in respect to each other" In this case we find that the separate and distinct communities of interest of children's center teachers and elementary teachers outweigh the considerations advanced by the District with respect to the efficiency of operations and established practices criteria. These separate communities of interest convince us that a unit including both children's center and elementary teachers is inappropriate and a separate unit of children's center teachers is appropriate.

Community of Interest

In determining whether a community of interest exists among employees, PERB considers the following criteria: method of compensation, wages, hours, employment benefits, supervision, qualifications, training and skills, work functions, contact with other employees, integration with work functions of other employees, and interchange with other employees.³ Other factors, such as sources of funding and the purposes of various programs, also have an impact on the interests and employment

³Office of the Santa Clara County Superintendent of Schools (7/19/78) PERB Decision No. 59. These criteria were used by the National Labor Relations Board (hereafter NLRB) in Kalamazoo Paper Box Corp. (1962) 136 NLRB 134 [49 LRRM 1715]. In Antioch Unified School District (11/7/77) EERB Decision No. 37, PERB stated that it follows the NLRB's definition of community of interest as set forth in Kalamazoo.

conditions of public employees, and PERB has considered such factors in examining the community of interest among certificated employees. See, e.g., Oakland Unified School District (3/28/77) EERB Decision No. 15, Peralta Community College District, supra, PERB Decision No. 77. As in Oakland, in which PERB decided that children's center teachers were appropriately placed in a separate unit, almost all of these factors clearly indicate the separate community of interest of children's center teachers.

Children's center teachers and elementary teachers are paid from separate salary schedules, with children's center teachers receiving significantly lower salaries. In Oakland, children's center teachers with teaching credentials were paid according to the regular public school teachers' salary schedule. In contrast, in this case, even those children's center teachers holding teaching credentials are paid significantly less than credentialed elementary teachers.

Because children's centers are open approximately 11 hours per day, children's center teachers work different hours than regular teachers. The centers are open year-round and center teachers work 254 days per year, with one day per month of scheduled vacation. In contrast, elementary teachers work 180 days per year. In Oakland, credentialed children's center teachers worked the same number of days per year as regular district teachers, while other children's center teachers

worked all year. In this case, no distinction is made between children's center teachers with credentials and those without; they all work many more days per year than elementary teachers.

As in Oakland, children's center and regular teachers receive the same fringe benefits and are evaluated under the same procedures. Supervision of children's center employees is separate from that of other certificated employees through at least two levels. Hiring procedures are also separate through several administrative levels, although all final decisions must be approved by the Board of Education.

Licensing requirements for children's center teachers are different from those of elementary teachers. Most children's center teachers hold permits while regular teachers must be fully credentialed. There is no distinction in working conditions between children's center teachers with credentials and those without, in contrast with Oakland where credentialed children's center teachers were treated more like regular district teachers.

The work functions of children's center teachers and regular teachers differ. While both groups interact with children, the focus of the children's center teachers is to provide child care rather than the traditional, subject-oriented education provided by regular teachers.

The record showed little contact between children's center and elementary teachers, even on an informal basis. The two

groups do not have common faculty meetings or in-service training sessions. Although each children's center is located at an elementary school site, the facilities and playgrounds have a separate identity. Many of the children's center students also attend elementary school during the regular school day, but apparently little or no effort is made to coordinate the two programs.

Under State law, children's center teachers and elementary teachers have separate lay-off provisions and seniority lists.⁴ In the Redondo Beach District, transfers between the two programs are almost nonexistent.

The sources of funding and budgets for the two programs are totally separate. No local funds are used to support the children's centers, nor are children's center funds used to support other District programs. The impact that this separation may have on negotiations can be demonstrated by the fiscal situation in the District. Monies available for regular District programs have declined while the children's center program has developed a surplus reserve and has engaged in deficit spending to lessen that reserve. Negotiation priorities are likely to be different for both parties when revenues are declining than they are in a more stable financial atmosphere. Thus, separate funding sources and budgets are often indicative of separate communities of interest.

⁴Education Code section 8366.

In Peralta, the Board found a lack of community of interest between Skills Center teachers and regular community college teachers based on the distinctive means of funding the Skills Center positions, lack of continuity of employment, differing instructional practices and working conditions, differences in curriculum and educational purpose, and a different method of compensation. As the discussion above indicates, similar differences exist between children's center teachers and regular teachers in the present case. There are distinctions between this case and Peralta: children's center teachers have a greater continuity of employment; Skills Center teachers must have the same credentials as other community college teachers. But on balance, we find that the decision in Peralta supports our decision that children's center teachers do not share a community of interest with regular teachers.

Established Practices

This is the first case before the Board itself involving a request to sever a group of employees from an existing unit in which negotiations have taken place. It therefore presents the question of what significance should be accorded to negotiating history as an established practice under the EERA.⁵

⁵The Board indicated that negotiations history is encompassed in the term "established practices" in Antioch, supra, EERB Decision No. 37, at p. 5.

The District argues that in this case, the established practices criterion should be weighted heavily. We disagree. We have considered the negotiating history between the District and the Association, and find little in it to counterbalance the lack of community of interest between children's center and elementary teachers.

The negotiating history is quite short; the Association had represented the unit for less than two years when the Federation filed its request for recognition as the representative of the children's center teachers. The unit was the result of a voluntary recognition and was never reviewed or approved by the Board or its agents. The exclusive representative did not originally seek to represent the children's center teachers, but the District would not voluntarily recognize the Association as the exclusive representative unless children's center teachers were included in the unit. After representing the children's center teachers for less than two years, the Association formally requested to delete them from the unit.

The children's center teachers have not been involved in the negotiating activities of the exclusive representative. Although the record contains no evidence of overt conflict between children's center and elementary teachers, it is apparent that the two groups have not learned to "pull together." According to an Association negotiator, Association

members do not understand the duties of children's center teachers or even know the teachers. This is indicative of the separation between the two groups.

It has been PERB's policy to encourage voluntary recognitions and settlements among the parties subject to its jurisdiction. The Board also has a strong interest in labor relations stability. Therefore we are loathe to upset working relationships and will not disrupt existing units by granting severance petitions lightly. In this case, however, the negotiations history does little to support a finding that stability would be enhanced by maintaining the existing unit. The employee organization never sought to represent children's center teachers and a majority of the teachers do not wish to be represented by the Association. Given these facts and in view of the lack of community of interest between the children's center and regular teachers, the Board finds that it is appropriate to establish a separate unit of children's center teachers.

Efficiency of Operations

In determining that a separate unit of children's center teachers is appropriate and that the existing combined unit is not, the Board has considered the evidence relating to efficiency of operations and found that, in this case, that criterion does not outweigh the community of interest factors which demonstrate the inappropriateness of a combined unit.

The size of the unit alone is not determinative as it was in Gilroy Unified School District (7/20/79) PERB Decision No. 98. In that case, because the unit would have consisted of 6 out of 314 certificated employees, PERB declined to create a separate unit of six children's center teachers, finding that such a unit would "unduly fragment the bargaining unit and impair the efficiency of the District's operations." (Supra, at p. 12.) There the Board placed overriding significance on the efficiency of operations criterion. In the present case, the proposed children's center unit consists of approximately 30 out of 225 certificated employees. Therefore, the efficiency of operations criterion is outweighed by the separate community of interest.

In conclusion, we find the disparities in community of interest between the children's center teachers and regular teachers in this case so great as to render the existing unit inappropriate, despite countervailing factors related to established practices and efficiency of operations. A separate children's center unit is found to be appropriate.

Election

The hearing officer ordered a self-determination election in which the children's center teachers could vote to be represented by the Federation in a separate unit or by the Association in the existing unit. We disagree with this order. A self-determination election may be appropriate when

both units on the ballot are appropriate. In this case, however, we have found that the existing unit, which includes both children's center and elementary teachers, is inappropriate under the criteria in section 3545(a). It would, therefore, be improper to allow children's center teachers the choice of remaining in an inappropriate unit.

ORDER

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

1. A unit of all children's center teachers excluding all other employees including management, confidential and supervisory employees, is appropriate for the purpose of meeting and negotiating, provided that an employee organization becomes the exclusive representative thereof.

2. Within 15 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 in such unit 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.

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.

~~By: Raymond J. Gonzales, Member~~

~~Harry Glück, Chairperson~~

~~Barbara D. Moore, Member~~

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



REDONDO BEACH CITY SCHOOL DISTRICT,)
) Representation
Employer,) Case No. LA-R-430B (825)
)
-and-) PROPOSED DECISION
)
EARLY CHILDHOOD FEDERATION, LOCAL 1475 AFT,) (5/18/79)
)
Employee Organization,)
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-and-)
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REDONDO BEACH CITY TEACHERS ASSOCIATION,)
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Appearances: David G. Miller, Attorney (Paterson & Taggart) for Redondo Beach City School District; Larry Bordan for Early Childhood Federation, Local 1475 AFT; Charles Gustafson, Attorney, and Lauren Sanders for Redondo Beach City Teachers Association.

Before Terry Filliman, Hearing Officer.

I ISSUES

This case involves the filing of a request for recognition seeking to sever children's center teachers from an existing certificated employee negotiating unit at a time when no contract or recognition bar is in effect. Assuming the request is procedurally appropriate, the specific issues are:

1. Is a separate unit of children's center teachers appropriate in this district based upon community of interest and efficiency of operations factors;
2. If so what weight should be accorded to "established practices" or bargaining history of the existing unit in determining the appropriateness of the requested unit;

3. Are children's center head teachers supervisory employees.

II PROCEDURAL HISTORY

On May 20, 1976, the Redondo Beach City School District (hereafter District) notified the Public Employment Relations Board¹ (hereafter PERB or Board) that it had granted voluntary recognition to the Redondo Beach City Teachers Association (hereafter RBCTA) for a unit of certificated employees. The unit also included children's center teachers and children's center head teachers. On February 10, 1977, the District and RBCTA executed a negotiated agreement for a term ending June 30, 1978.

On March 14, 1978, the Early Childhood Federation, Local 1475, AFT (hereafter Federation) filed a request for recognition to represent a certificated unit consisting solely of children's center teachers. Head teachers were included in the unit by an amended request filed on June 28, 1978. The RBCTA did not intervene. On April 10, 1978, the Los Angeles Regional Director of PERB administratively determined that the Federation request was timely², procedurally appropriate³, and contained a sufficient showing of support.

¹By Chapter 1159, statutes of 1977, effective January 1, 1978, the Educational Employment Relations Board was renamed the Public Employment Relations Board.

²Neither the contract bar nor the recognition bar established by Government Code section 3544.1 were in effect to invalidate the request. Specifically the request for recognition was filed within the period between 90-120 days prior to the expiration of a previous contract.

³Implicit in the regional director's determination that the petition was appropriate for hearing is the finding that a request for recognition to sever a portion of a previously recognized unit is appropriate pursuant to Government Code section 3544 et seq.

On May 10, 1978, the District denied recognition of the Federation. A unit determination hearing was held on August 28, and September 21 and 22, 1978.⁴ The matter was submitted on November 3, 1978.

III A CHILDREN'S CENTER TEACHER UNIT

A. Findings of Fact - Community of Interest

1. Unit Size

The District has an enrollment of approximately 5,260 pupils in grades K-8. It operates 14 elementary schools. The existing certificated unit includes approximately 225 employees. At three school sites - Lincoln, Franklin, and Toleda - the District operates children's centers offering programs for preschool, kindergarten and elementary-aged pupils. The children's centers employ approximately 30 certificated employees.⁵

⁴At the hearing, the hearing officer inquired into the appropriateness of the inclusion of certain substitutes in the recognized certificated unit on the basis that the Federation petition had raised a "question" concerning representation in a unit not previously approved by PERB. Subsequently, in Peralta Community College District (11/17/78) PERB Decision No. 77, and Palo Alto Unified School District (1/9/79) PERB Decision No. 84 the Board decided that appropriate unit standards would only be applied to future proposed units. Therefore, evidence unrelated to the issues proposed by the parties is not utilized nor is any decision rendered regarding uncontested positions in the existing unit.

⁵All parties stipulate that the children's center teachers in issue are certificated rather than classified employees.

Of the 270 children enrolled in the centers, 90 are preschool-aged, 44 are also enrolled in kindergarten and approximately 136 are also enrolled in elementary school.

2. Hours

The centers are open weekdays approximately 11 hours per day on a year-round basis. Children's center teachers work 254 days per year and receive 1 day per month scheduled vacation. Elementary teachers work 180 days per year from 8:30 a.m. to 3:45 p.m. and receive no scheduled vacation.

3. Qualifications

Children's center teachers are required to hold a permit issued by the Commission on Teacher Preparation and Licensing. The permit requires four years of college with specified courses in early childhood education. Elementary teachers are required to hold a credential which requires four years of college plus a fifth year specializing in education courses and student teaching. A credential may be substituted for a children's center permit, but a permit holder may not teach elementary school without a credential. Approximately 11 children's center teachers hold a credential.

4. Program Funding Source

The children's center program is funded by federal funds, state funds and parent fees. No local funds are used to support the center. While an increasing percentage of general school district funds are derived from the state under recent school finance legislation, such funds are maintained separate from state funding for children centers. No children's center

funds may be used to support other school district programs or salaries. Although general fund monies may be used to support the children's center, uncontradicted testimony indicated that the school board has declined to use general funds to pay for children's center program deficits or children's center teacher salaries.

Since 1969, the District has suffered a drastic reduction in general fund revenues due to a 50 percent decline in student enrollment. More recently, general revenues were cut 10 percent between 1978 and 1979 as a result of Proposition 13. Between 1977-78 and 1978-79 school years, pupil enrollment also dropped approximately 10 percent. As an indicator of the general decline in District revenues, 80 certificated employees were laid off in the spring of 1978. In contrast both the separate budget for the children's center and the number of students enrolled remained constant between 1978 and 1979. During the period of 1975-79 the District expended more money from the children's center budget than it derived in income in order to reduce surplus reserve funds which had accumulated in previous years.

5. Salaries

State law requires that a specified minimum percentage of the school district budget be used to pay certificated employees salaries. No similar requirement exists that a certain percentage of the children's center budget be used to pay employees salaries. Children's center teachers and elementary teachers are paid from separate salary schedules.

While each schedule includes pay ranges based on educational service and steps based upon experience, the criteria for advancement is significantly different. Children's center teachers are paid a monthly salary for the 12 month period ranging from \$629 to \$957. Elementary teachers are paid an annual salary for the school year ranging from \$10,282 to \$19,754. A children's center teacher holding a regular elementary teaching credential is paid a significantly lower salary from the children's center salary schedule than if placed on the regular certificated salary schedule at the same range and step. Generally all teachers receive the same fringe benefits, retirement benefits and leave eligibility except for vacation pay. Under the most recent negotiated contract children's center teachers received a 5 percent salary increase while regular teachers received a 3 percent salary increase.

6. Seniority and Layoff

Children's center teachers and elementary teachers have separate seniority lists and separate lay-off provisions under state law. The March 15 deadline for notification of lay-offs of regular teachers is not applicable to children's center teachers. No children's center teachers have been affected by the lay-off of approximately 80 regular teachers during 1978-79.

7. Transfers

Evidence regarding transfers between the children's center program and the regular classroom is inconclusive. While transfers of credentialed teachers in either program are

hypothetically possible, in fact transfers are extremely rare because of the difference in compensation between the programs, the drastic decline in employment in the regular program, and the lack of bumping rights by elementary teachers over children's center teachers.

8. Interchange

The isolated examples of interchange or lack thereof between children's center teachers and elementary teachers were contradictory and are resolved herein. Each children's center is located on an elementary school site, yet the operation of a center is kept separate from each adjoining elementary school. At each location the facilities and playgrounds have a separate identity. Many elementary school-aged children attend the children's center at each school site both before and after their regular school day. On an informal basis some children's center teachers attempt to discuss common pupil problems with the elementary teachers. No evidence established the regularity of such educational interchange among more than one or two teachers. The playground areas are not used by the children at the same time. Instructional materials are not commonly shared. Children's center head teachers have periodically been invited to elementary school faculty meetings but children's center teachers have not. Children's center teachers and elementary teachers are separately scheduled to attend annual in-service training programs. Children's center teachers operate under a separate policy manual.

9. Administrative Hierarchy

Each children's center is supervised by a head teacher. Head teachers report to a coordinating head teacher who in turn reports to the director of children's centers. Up to the level of director of the children's center, the supervisory hierarchy is distinct. The director of children's center also serves as assistant superintendent of educational services with responsibilities over specialist teachers in several other State funded programs. Three management personnel - the assistant superintendent for education, assistant superintendent of administrative services, and director of fiscal services are paid approximately 10 percent of their salary from the children's center program due to the administrative or fiscal services they provide.

10. Hiring - Evaluation

The hiring and evaluation of employees is initiated by the head teacher in the children's center in a similar manner to the duties of the principal at each elementary school. Final decisions affecting both types of teachers are made in an identical manner by district management.

11. Class Size

The adult-child ratio in the children's centers is set by state law and is substantially greater than the number of certificated employees required by law to be present with regular elementary grade pupils.

12. Purpose of Program

The District circulates a flier to parents of prospective children's center pupils summarizing the purpose of the program as follows:

The children's center is a child development program which provides learning experiences, health and nutrition services for the child, and social services for the entire family.

It is apparent that numerous similarities and differences exist between the purposes of the District's children's center program and its regular elementary education program.

All elementary school-aged pupils are required by state law to attend school regardless of the income level of their parents. Children are eligible to attend a children's center conditioned upon the income of their parents, payment of fees, and availability of funded slots. Children's center teachers have direct daily contact with parents who deliver and pick-up their children from the program. They eat lunch with the pupils, give them naps, assist them in restroom training, toothbrushing and other basic living skills. Undoubtedly both types of teachers overlap in providing educational learning experiences to pupils. The use of lesson plans and student evaluations by children's center teachers indicates that education is a component of the program but is not sufficient to prove that children's centers are established for the same purpose as elementary education.

B. Facts-Negotiating History and Efficiency of Operations

RBCTA had been the exclusive representative of the children's center teachers for approximately two and one-quarter years at the time of hearing. An initial contract covering the employees was executed in February 1977 and expired June 30, 1978. The contract was amended in September 1977 to reflect adjustments in compensation negotiated pursuant to a reopener provision. A second contract was agreed upon by the parties in September 1978. The initial contract was extended by oral agreement of the parties until September 1, 1978.

In its initial request for recognition in 1976 the RBCTA excluded children's center teachers from its proposed unit. Based upon the position of the District the teachers were ultimately included in the recognized unit. During the reopener under the initial contract, RBCTA in March 1978 formally requested to delete children's center teachers from the unit. As represented by testimony of the RBCTA negotiator, these two actions were taken for the following reasons:

1. Children's center teachers have historically never participated in the activities of RBCTA;
2. No children's center teacher ever joined RBCTA; and
3. Association members did not know children's center teachers or understand what their duties were.

The initial contract granted increased benefits and salaries for children's center teachers and elementary teachers alike. No concerted activities or strikes occurred during

negotiations for the contract. Negotiations for the initial contract took approximately 12 to 16 meetings each lasting 4 to 8 hours. The initial RBCTA proposal in 1976 was 105 pages. The RBCTA proposal for the second contract was 12 pages. Due to a consistent decline in enrollment as described above and Proposition 13, the District's budget for the current year was reduced by approximately \$1 million. The district's chief negotiator is also responsible for all business and personnel functions of the district. A portion of these combined functions was previously performed by additional assistant superintendents. The district negotiator estimated that negotiations with a separate children's center unit would take approximately an additional 15 sessions of 6 hours each.

C. Contentions of Parties

The Federation claims that a separate children's center unit is appropriate based on community of interest factors specified in the PERB decision in Oakland Unified School District. It further claims that a history of misunderstanding between the exclusive representative and children's center teachers supports the separation. RBCTA defends its representation of the entire unit, but would not object to severance of the children's center staff.

The district contends that the petition should be denied for the following reasons:

(1) children's center teachers are "classroom teachers" under Government Code section 3545(b)(1) and must be kept in the unit with all other classroom teachers; (2) the small

size of the proposed unit and several other factors are distinguishable from Board precedent which established a separate children's center unit based upon community of interest; (3) the "efficient operation of the school district" would be impaired by a third negotiating unit given its financial situation; and (4) even assuming a distinct community of interest the stable bargaining history since 1976 militates against breaking up the comprehensive certificated unit.

D. Conclusions of Law - Community of Interest.

Government Code section 3545 subdivision (a) establishes the appropriate criteria for determining negotiating units.

They are generally:

1. community of interest;
2. established practices; and
3. efficiency of school district operations.

Further Government Code section 3545(b)(1) provides:

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. . . [emphasis added].

In Oakland Unified School District (3/28/77) EERB Decision No. 15 the Board defined "classroom teachers" as only those who teach full time in the regular school program. Thus, children's center teachers were not "classroom teachers." In Oakland the Board further found the children's center teachers

lack of community of interest with other regular teachers and should be placed in a separate negotiating unit. In finding the separate community of interest the Board relied heavily upon the following factors:

- (1) Difference in purpose between the programs;
- (2) Separate budget, administration, location of sites between programs;
- (3) Difference in working conditions between employees;
- (4) Difference in licensing requirements for teachers;
- (5) Limited eligibility for enrollment in children's center program;
- (6) Separate hiring and layoff procedures;
- (7) Limited interaction and limited transfer ability between employees;
- (8) Different adult/child ratio.

In Peralta Community College District (11/17/78)

(at pp 25-26) PERB Decision No. 77 the Board revised its definition of "classroom teacher" and its approach to the apparent conflict between applying the criteria of Government Code section 3545(a) and (b)(1) to the same case. While noting that the term "classroom teacher" is not defined in the Educational Employment Relations Act, the Board indicated that it is "applicable to all persons who teach in a classroom for any period of time" (at p. 7). While it need not be decided here it is still unclear whether children's center teachers

meet this definition.⁶

Assuming for this decision that children's center teachers are classroom teachers, PERB established a "rebuttable presumption that all classroom teachers . . . shall be included in a single negotiating unit unless a single negotiating unit is rendered inappropriate because of a lack of community of interest between and among employees, the past practices of the employees, or the effect of the size of the unit on the efficient operation of the district."⁷

Under its new test the Board prefers a single unit of all teachers and would exclude only those employees who demonstrate a lack of community of interest under section 3545 subdivision (a). In Peralta, supra, the Board found skill center teachers to lack community of interest based upon: distinct funding sources; lack of continuity of employment; differing instructional practices and working conditions; differences in educational purpose; and a difference in compensation scheme. (At p. 15.)

In the present case the community of interest between children's center teachers and regular teachers is sufficiently distinct so as to rebut the presumption established by the "classroom teacher" criteria. Clearly the proposed unit of 30 employees is significantly smaller than the unit of 200

⁶It is unresolved whether such employees teach or provide child care. It is also noted that article 6.7 of the negotiated contract describes children's center teachers as "unit members who are not classroom teachers".

⁷Hartnell Community College District, (1/2/79) PERB Decision No. 81, citing Peralta, supra, at page 5.

children's center employees found appropriate in Oakland. This factor will be considered separately under efficiency of operation.

As found in Oakland, supra, the "basic purpose" of the children's center program is to provide child care for parents who are working or being trained for work rather than to provide education for the children. (At p. 25.) Despite the attempt by the District to strengthen the educational component of the program, the basic purpose is set forth in and is regulated by federal and state statutes. The admirable requirement by the District in utilizing lesson plans and student evaluations cannot change the basic structure of the program.

Children's centers are open long hours on a 12 month basis requiring teachers to be at the centers 40 hours per week 12 months per year with scheduled vacations. The entire program is optional and could be eliminated by the school district. Such is not the case with the regular elementary program.

Educational requirements for the teachers are different. A majority of children's center teachers hold permits while regular teachers are fully credentialed. Children's center teachers perform under a separate district policy handbook. The hiring process is distinct except at the top management level. While transfers among credentialed teachers are theoretically possible, in reality elementary teachers never transfer to the children's center program because of the lower salary structure. Children's center teachers have not had the

opportunity to enter the regular program because of differences in licensing requirements and layoffs among regular teachers. The seniority and layoff systems are separate based upon state law. The fact that approximately 80 regular teachers were laid off in 1978 while no children's center teachers were let go highlights the separation of interests and rights between the employees. Each group is paid from separate salary schedules. The children's center schedule offers a lower pay for a longer work year.

The creation of separate budgets, as interpreted by District practices, creates a major distinction between the employees. A fixed percentage of the general fund budget must be paid to support salaries of regular teachers while no such formula exists for children's center teachers. By law no children's center funds may be paid to support the regular program. By District practice no regular funds may be spent to increase salaries of children's center teachers. This separation is dramatized by the recent history of a \$1 million reduction in general fund monies while the children's centers have exercised deficit spending in order to reduce surplus reserves. For example, regular teachers received a 3 percent salary increase recently while children's center teachers received a 5 percent increase.

The teachers do not attend common faculty meetings. The evidence was conflicting as to the degree of interaction between teachers but it is apparent that the contact is not substantial.

The fact that both groups of employees receive common fringe benefits other than vacations and that each of the children's centers is located on a public school site does not outweigh the above evidence of lack of community of interest.

E. Conclusions of Law - Efficiency of Operation

The finding of a lack of community of interest is not rebutted by a showing that the District's operations will be impaired. The District asserts that the small size of the unit, the impact on it's financial situation, and the length of previous negotiations as factors to support the inefficiency of establishing an additional unit. The proposed unit includes 30 employees. Its size alone is not sufficient to show inefficiency.⁸

In addition the District states that substantial cutbacks in enrollment have resulted in an equivalent decrease in administrative personnel necessary to conduct negotiations. The chief negotiator is also responsible for all District business and personnel functions. Several of the school principals who represent the management team are responsible for more than one elementary school. The chief negotiator was

⁸In Fallbrook Union High School District, (12/4/78) (PERB Decision No. 78. PERB held that a unit size of 40 classified employees could not defeat dividing the employees into smaller otherwise appropriate units. On the other hand the Board found that the unit of 8 instructional aides was too small where some community of interest with other employees existed. See Shasta Union High School District, (10/25/77) EERB Decision No. 34; Greenfield Union School District, (10/25/77) EERB Decision No. 35.

required to spend approximately 40 hours costing out the initial certificated proposal during early contract negotiations. The parties spent 12 to 16 meetings reaching an initial agreement.

It is apparent that the creation of a third negotiating unit would impinge to some unknown degree upon the District's flexibility in deploying its top administrators to various assignments. Yet the efficiency of operations criterion is not an absolute. It must be balanced against the statutory purpose providing a bargaining process to each appropriate unit of employees. The evidence presented by the District tends to show that the substantial inconvenience of an additional negotiating unit occurs in negotiating the first contract. The RBCTA proposal in 1976 was 105 pages. By the time negotiations commenced for a second contract the Association's proposal consisted of only 12 pages. If the district's assumption that a new unit will require an equal amount of negotiation time and effort is true, such expenditure of time will occur again only on a first time basis. In conclusion, the evidence does not warrant a finding that the establishment of a second certificated unit in this District is precluded by the efficiency of operations criterion.

F. Conclusions of Law - Established Practices

(Negotiations History)

In Antioch Unified School District, (11/7/77) EERB Decision No. 37, the Board explained its decision to consistently give little weight to "established practices" in initial unit

determination cases. That decision was based upon a finding of unreliability in determining appropriate units of employees prior to the establishment of the EERA. Looking to the future, the Board stated

Another year from now, the criterion of established practices might well give more weight than the (PERB) now gives community of interest, for once units are established under the EERA and negotiating commences with an exclusive representative, followed by a negotiated agreement covering employees in that unit, a new representation petition seeking a different unit might well be decided with a greater reliance on negotiating history under the Educational Employment Relations Act. (Antioch, supra, at p. 5.)

To date the Board has not been presented with an opportunity to clarify its interpretation or emphasis upon negotiations history established under the EERA. Therefore experience under the National Labor Relations Board is relevant in order to develop an appropriate standard. As a general rule the NLRB will hesitate to change units which have been formed by employees and which have carried on negotiations for substantial period of time (Kheel, Labor Law, section 14.02[2] at pps. 14-28). Typically this issue has arisen in the private sector where craft unions have attempted to sever craft units from older plant-wide industrial units or in the severance of departments from retail store-wide units.

Yet the policy of favoring historical units is not absolute. The history may be discounted or entirely disregarded when:

- (1) negotiating history is brief or incompatible;

(2) the established unit was not originally determined or certified by the NLRB and is found to be repugnant to Board policies (NLRB v. Porter County Farm Bureau Cooperative Association, Inc. (7th Cir. 1963) 314F.2d 133, 136 [52 LRRM 2485]);

(3) the unit conflicts with established Board policy;

(4) circumstances have changed since the original unit was established; and

(5) a history of consistent opposition to inclusion in the larger unit has been demonstrated by the petitioned for employees. See Rainbow Lithographing Company (1946) 69 NLRB 1383 [18 LRRM 1317].

The present case presents a situation where the proposed unit is not sufficiently factually distinct from the children's center unit found appropriate by PERB in Oakland, supra. The established certificated unit was voluntarily recognized and has not been reviewed by PERB as to its appropriateness. During its two and one-quarter years as exclusive representative of the existing unit, RBCTA has negotiated two contracts and a reopener without concerted activity. However, the children's center teachers have remained a separate ad hoc entity with little communication or no formal representation on the negotiating team of the exclusive representative. In fact, RBCTA formally requested to delete the children's center teachers from the unit during negotiations. Such a negotiating history does not present compelling reasons to dispell the appropriateness of the unit based upon community of interest

factors.

6. Self Determination Election

The negotiating history in the recognized unit is given weight to the extent that an election shall be held among the children's center employees to express their desire as to whether they wish to be represented in a separate unit or whether they desire to continue to be represented in the established certificated unit. In effect, the recognized unit is granted a place on the election ballot based upon the extent of negotiation history accomplished without further review of its appropriateness by PERB.

Although RBCTA did not file an intervention to the Federation's request for recognition for children's center unit, it is a proper party to any election based upon its current representation of the comprehensive certificated unit for the reason stated above. In directing an election among children's center employees, it is presumed that RBCTA's majority support in the comprehensive certificated unit remains in existence. This fact excuses RBCTA from redemonstrating the 30 percent support in the comprehensive unit. At an election scheduled by the regional director the children's center employees found to comprise an appropriate unit may make a self-determination choice. If the majority of the employees choose the Federation to represent them, such choice will indicate their desire to be represented in a children's center unit. If the majority of the children's center employees vote for RBCTA they will remain a part of the existing comprehensive

certificated unit. The ballot shall also include the choice "no representation".

IV. CHILDREN'S CENTER HEAD TEACHERS

Children's center head teachers are currently in the comprehensive certificated unit. Head teachers are included in the new petitioned-for unit. The District has not waived its right to challenge these employees as supervisory at this time.

Government Code section 3540.1(m) defines a 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.

PERB has decided that the satisfaction of any one of the above criteria is sufficient to make an individual a supervisor under the EERA. Sweetwater Union School District (11/23/76) EERB Decision No. 4; San Diego Unified School District (2/18/77) EERB Decision No. 8.

Head teachers are supervisory employees in that they have effective authority to evaluate, assign work, grant extra hours in addition to the normal contracted work, reprimand and effectively recommend hiring with regard to children's center employees.

Head teachers are paid 25 percent more than children's

center teachers. They do not teach, but spend their entire work day overseeing the operation of their center. They effectively allocate the funds budgeted for their center. The children's center head teachers and the coordinating head teacher jointly interview potential contract employees and make a joint recommendation which is almost routinely followed by the assistant superintendent. As a team the head teachers and coordinating head teacher effectively recommend the hiring of assistant head teachers for each children's center. Although testimony indicated that in the past hiring was controlled more centrally by the director of children's centers, it is found that head teachers have consistently been involved in making hiring recommendations under a revised policy in effect for at least the last one and a-half years. Head teachers evaluate both certificated and classified employees working in their center. They informally adjust minor grievances among staff. Head teachers make written evaluations which are placed in each employee's personnel file. They have reprimanded employees regarding tardiness and improper handling of children. Based upon a positive evaluation a head teacher has recommended more work hours be assigned to an employee. Head teachers approve vacations and assign substitutes to replace employees absent from work. They also approve sick leave requests.

Head teachers independently assign children's center teachers to extra work hours beyond their contracted load when the demand arises. At Franklin Center substantial amounts of extra time or "overtime" are assigned. Head teachers call

meetings of staff and assign teachers to work assignments such as working with preschool children versus elementary aged children.

The Board has not issued a decision regarding the supervisory status of children's center head teachers. The decision in Oakland Unified School District, (4/19/77), EERA Decision No. 15, that assistant head teachers are not supervisory is clearly not relevant here. In that case the assistants were clearly subordinate to the children's center supervisor which was a stipulated supervisory position. The authority of head teachers with respect to their staff appears more analogous to the authority of a principal of a school. Principals were found to be supervisors in San Francisco Unified School District (9/8/77) EERB Decision No. 23.

PROPOSED ORDER

IT IS THE PROPOSED ORDER THAT:

1. An election among eligible children's center teachers may be conducted at a time set by the Regional Director.
2. A unit consisting of all children's center teachers excluding all other employees including management, confidential and supervisory employees is appropriate for purposes of meeting and negotiating, provided that a majority of the children's center teachers voting in the election select the Early Childhood Federation, Local 1475, AFT to represent them.
3. A comprehensive certificated unit including children's center teachers excluding management, confidential and supervisory employees may continue meeting and negotiating, providing that a majority of children's center teachers voting in the election select Redondo Beach City Teachers Association, CTA/NEA to continue to represent them.

4. Children's center head teachers are supervisory employees and are excluded from either unit.

Within 10 work days after the employer posts the notice of decision, Early Childhood Federation, Local 1475 AFT shall demonstrate to the regional director at least 30 percent support in the children's center unit. The Redondo Beach City Teachers Association, CTA/NEA will be presumed to hold a majority support in the comprehensive certificated unit.

The regional director shall conduct an election among the eligible children's center teachers at the end of the posting period if the Federation qualifies to be on the ballot. If no election is conducted, the RBCTA will continue as exclusive representative in the comprehensive certificated unit.

The date used to establish the number of employees in the children's center certificated 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 an employee organization to demonstrate at least 30 percent support in the unit.

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Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on June 7, 1979 unless a party files a timely statement of exceptions within twenty (20) calendar days following the date of service of the decision. Such statement of exceptions and supporting brief must be actually received by the executive assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on June 7, 1979 in order to be timely filed. (See California Administrative Code, title 8, part III, section 32135.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon the other party to this proceeding. Proof of service shall be filed with the Board itself. (See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.)

Dated May 18, 1979

Terry Filliman
Hearing Officer