

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, )  
Employer, )  
and ) Case No. S-R-8  
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, )  
Employee Organization, ) PERB Decision No. 122  
and )  
SERVICE EMPLOYEES INTERNATIONAL UNION, ) March 25, 1980  
LOCAL 535, )  
Employee Organization. )

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Appearances: William E. Brown and Nancy B. Ozsogomonyan (Brown & Conradi) for Sacramento City Unified School District; Charles L. Morrone, Attorney for California School Employees Association; Robert Bezemek (Van Bourg, Allen, Weinberg & Roger) for Service Employees International Union, Local 535, AFL-CIO.

Before: Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

The single issue presented by this case is whether section 3545(b)(2) of the Educational Employment Relations Act<sup>1</sup>

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<sup>1</sup>The Educational Employment Relations Act (hereafter EERA or Act) is codified at Government Code section 3540 et seq. Section 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

precludes Service Employees International Union, Local 535 (hereafter Local 535) from representing classified supervisory employees in the Sacramento City Unified School District (hereafter District) in which Service Employees International Union, Local 22 (hereafter Local 22) represents employees whom members of the proposed supervisory unit supervise. The attached proposed decision by a Public Employment Relations Board (hereafter PERB or Board) hearing officer held that these locals are not the same employee organization. Exceptions to the proposed decision were filed by the intervenor,<sup>2</sup> the

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same employee organization as employees whom the supervisory employees supervise.

All section references herein are to the Government Code unless otherwise noted.

<sup>2</sup>Local 535's petition for recognition was filed pursuant to sections 3544(a), which provides:

An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the public school employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall be based upon majority support on the basis of current dues deduction authorizations or other evidence such as notarized membership lists, or membership cards, or petitions designating the organization as the exclusive

California School Employees Association (hereafter CSEA), which urges that the locals are "functionally the same organization"

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representative of the employees. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the public school employer in which members of the unit claimed to be appropriate are employed.

CSEA intervened in Local 535's petition pursuant to section 3544.1(b) which provides:

The public school employer shall grant a request for recognition filed pursuant to Section 3544 unless:

. . . . .

(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. The claim shall be evidenced by current dues deductions authorizations or other evidence such as notarized membership lists, or membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the organization. Such evidence shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence. If the claim is evidenced by the support of at least 30 percent of the members of an appropriate unit, a question of representation shall be deemed to exist and the board shall conduct a representation election pursuant to Section 3544.7, unless subdivision (c) or (d) of this section apply; or . . . .

as the international union with which they are both affiliated. For the reasons that follow, the Board itself agrees with the hearing officer that no impermissible relationship exists that bars Local 535 from representing the District's classified supervisory employees.

#### FACTS

The findings of fact stated in the hearing officer's proposed decision are free from prejudicial error and are adopted as the findings of the Board itself.

#### DISCUSSION

The EERA defines "supervisory employees" 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. [Section 3540.1(m), emphasis added.]<sup>3</sup>

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<sup>3</sup>The definition of supervisory employee under EERA closely parallels the definition of "supervisor" in the National Labor Relations Act (29 U.S.C. sec. 150 et seq., hereafter NLRA) section 2(11), which provides:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or

It is not uncommon in the public sector for an employee to have the title "supervisor" when her or his job functions are not in fact supervisory. The addition of the language "regardless of job description" to the definition of supervisor in the NLRA compensates for the perceived tendency in the public sector to designate as "supervisors" individuals who in fact have no independent authority to execute managerial functions on the employer's behalf. It reinforces the fact that in determining who is a supervisor PERB must look to the actual job duties of the employee in question. The class of employees who are supervisors under EERA should therefore be comparable to those who would be supervisors under the NLRA. Each group should be comprised only of those employees who in fact perform on the employer's behalf any of the managerial tasks that are listed in the statute. (See, e.g., Wellington and Winter, The Unions and the Cities (1971) at pp. 113-114; see also Final Report of the Assembly Advisory Council on Public Employee Relations (hereafter Aaron Commission Report) (1973) at pp. 94-95.)

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responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

While EERA provides for the exclusive representation of supervisors, it restricts them from representation by "the same employee organization that represents employees whom they supervise." (Sec. 3545(b)(2).) We note that although it is not universal, it is not uncommon for public sector labor statutes to extend limited representational rights to supervisors.<sup>4</sup> But we know of no other jurisdiction that has

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<sup>4</sup>In addition to California, the following states exclude supervisors from all nonsupervisory units: Alaska: Alaska Stat. 14.20.560(f); District of Columbia: D.C. Pers. Man., Ch. 25A, Sec. 8(b); Indiana: Ind. Code Sec 22-6-4-7(d); Michigan: Mich. Comp. Laws Ann. Sec 423.9e; Minnesota: Minn. Stat. Ann. Sec. 179.63(17); New Jersey: N.J. Stat. Ann. Sec 34:13A-6(d)(1); Pennsylvania: 43 Pa. Stat. Sec. 1101.604(5); Utah: Utah Code Ann. Sec. 34-20a-4; Washington: Wash. Rev. Code Sec. 41.59-80(2)-(5); Wisconsin: Wis. Stat. Ann. Sec. 111.70(3)(d).

In the following jurisdictions, supervisors are prohibited from being included in the same unit with the employees they supervise: Maine: 26 Me. Rev. Stat. Ann. Sec. 966(1). Nevada: Nev. Rev. Stat. Sec. 288.170(1); New Hampshire: N.H. Rev. Stat. Ann. Sec. 273-A:8(II).

In Washington, supervisors and rank and file employees may obtain a mixed unit if both groups vote for joinder. (Wash. Rev. Code sec. 28 B.52.20.)

Supervisors are specifically excluded from the definition of "employee" in the following jurisdictions:

Connecticut: Conn. Gen. Stat. Ann. Section 7-467(2). Delaware: 14 Del. Code Ann. Section 4001(e). Iowa: Iowa Code Section 20.4(2). Kansas: Kan. Gen. Stat. Ann. Section 75-4322(a). See also, Kan. Gen. Stat. Ann. Section 75-4325, set out in full in N. 10 supra. Montana: Mont. Rev. Code Ann. Section 59-1602(2). New Mexico: N.M.

EERA's stricture against the representation of supervisors by "the same employee organization" that represents their subordinates.

Neither does the California statute parallel the National Labor Relations Act (29 U.S.C. sec. 150 et seq., hereafter NLRA) in this regard.<sup>5</sup> It is nonetheless instructive for this Board to examine the background that led Congress in 1947 to amend the federal labor act to specifically exclude supervisors from its definition of "employee"<sup>6</sup> since, because

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State Pers. Bd. Regs. Section 2(h).  
Oklahoma: 11 Okla. Stat. Ann.  
Section 548.3(2a). Oregon: Ore. Rev. Stat.  
Section 243.650(17). Rhode Island: R.I.  
Rev. L. Ann Section 28-9.4-2(2). Vermont:  
21 Vt. Stat. Ann. Section 1722(a)(12(B)).  
Wisconsin: Wisc. Stat. Ann. Section  
111.81(15). (Kheel, Labor Law, sec. 49.04  
[2] at ns. 11, 13-15.)

<sup>5</sup>The PERB takes cognizance of federal precedent in interpreting similar or identical statutory provisions. (Sweetwater Union High School District (11/23/76) EERB Decision No. 4, citing Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507, 87 LRRM 2453].) Although the definition of supervisor is substantially the same under the EERA and under the NLRA, under the NLRA supervisors have no organizational rights. (See ns. 7-8 & accompanying text, infra.)

<sup>6</sup>Section 2(3) of the NLRA defines "employee" as:

The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because

of the similarity in the definition of "supervisor" under the NLRA and under EERA, we believe that the same kinds of risks that resulted in no representational rights for supervisors under the NLRA are the bases for the limitations imposed by section 3545(b)(2).

Before the NLRA was amended to specifically exempt supervisors from its coverage, the National Labor Relations Board (hereafter NLRB) concluded that supervisors were "employees" within the meaning of the NLRA. Accordingly the NLRB initially extended organizational rights to supervisors and further said:

[N]o reason appears for limiting the choice of such employees to a bargaining agent other than that which represents the [rank and file] bus drivers. [Harmony Short Line Motor Transportation Co. (1942) 42 NLRB 757, 760.]

The next half decade saw several switchbacks in the NLRB's position on the organizational rights of supervisory employees and on the ancillary question of whether supervisors should be represented in the same unit as rank and file employees.<sup>7</sup>

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of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as . . . a supervisor . . . [29 U.S.C. sec. 152(3), emphasis added.]

<sup>7</sup>E.g., Union Collieries Coal Co. (1942) 44 NLRB 165, 168 (expressing doubt whether "an appropriate unit for collective bargaining purposes may include both supervisors and their

When the NLRB established units of supervisors, it took the view that it was powerless to do otherwise:

The sole issue before us is whether these supervisory employees are protected by the statute in the exercise of their right to organize and bargain collectively. We do not view the statute as vesting with us a discretionary authority to expand or contract the jurisdictional limits considered and expressed by Congress. That the supervisory personnel here involved are "employees" within the meaning of Section 2(3) of the Acts is self-evident from the definition of "employee," which is so broad in terms as to make discussion a barren academic exercise . . . . Indeed, the specific exclusion of three kinds of employees from the provisions of the Act confirms what the language makes clear, that Congress intended to cover all other employees, including supervisory personnel. [Union Collieries Coal Co. (1942) 44 NLRB at pp. 167-168.]

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subordinates"); Godchaux Sugars, Inc. (1942) 44 NLRB 874, 877 (refusing to deny statutory protection of the rights of supervisors "merely because they have selected a representative which is an affiliate of the same parent organization as is the spokesman for subordinate employees"; Stanley Company of America (1942) 45 NLRB 625 (insisting upon separate units for supervisors and their subordinates); The Maryland Drydock Company (1943) 49 NLRB 733, 741 (overruling prior inconsistent decisions and holding that "in the present stage of industrial administration and employee self-organization, the establishment of bargaining units composed of supervisors exercising substantial managerial authority will impede the processes of collective bargaining, disrupt established managerial and production techniques, and militate against effectuation of the policies of the Act"; Packard Motor Car Company (1945) 61 NLRB 4 (enf'd, Packard Motor Car Co. v. National Lab. Rel. Bd. (1947) 330 U.S. 485 [91 L.Ed. 1040]) (reembracing the NLRB's earlier view that supervisors have organizational rights under the NLRA).

When it declined to establish such units, the NLRB looked to the impact the organization of supervisors might have on the rights of rank and file workers:

While it may be conceded that the question is close, we are no longer convinced that from the mere determination that a supervisor is an employee it follows that supervisors may constitute appropriate bargaining units . . . .

In making this determination it is relevant . . . for us to inquire as to the effect that their inclusion will have upon the exercise of the rights of self-organization and collective action of the production employees, and it is further relevant for us to inquire whether our determination in any particular case that supervisory employees constitute a unit appropriate for collective bargaining will so compromise the status of such employees as to result in disruption of the practice of collective bargaining rather than industrial peace.

. . . . .

We are now persuaded that the benefits which supervisory employees might achieve through being certified as collective bargaining units would be outweighed not only by the dangers inherent in the commingling of management and employee functions, but also in its possible restrictive effect upon the organizational freedom of rank and file employees. [The Maryland Drydock Company (1943) 49 NLRB at pp. 738-739.]

In 1947 Congress took the matter out of the NLRB's hands. It amended the NLRA to exclude supervisors from the statutory definition of "employee" (NLRA sec. 2(3)) and to exempt employers from the duty to consider supervisors as employees

for the purpose of any national or local collective bargaining law. (NLRA sec. 14(a).)<sup>8</sup>

By excluding supervisors from the coverage of the NLRA, Congress intended:

. . . to redress a perceived imbalance in labor-management relationships that was found to arise from putting supervisors in the position of serving two masters with opposed interests. [Beasley v. Food Fair of North Carolina (1974) 416 U.S. 653, 661-662 [40 L.Ed.2d 443, 94 S.Ct. 2023]. See also NLRB v. Bell Aerospace Co. (1974) 416 U.S. 267 [40 L.Ed.2d 134, 94 S.Ct. 1757].]

In other words, as amended, the NLRA protects employers from the risk that the union ties of supervisors will impair their ability to apply the employer's policies to their subordinates in the employer's best interest. (NLRB v. Pilot Freight Carriers, Inc. (4th Cir. 1977) 558 F.2d 205 [95 LRRM 2900] cert. den. 434 U.S. 1011.)

Section 3545(b)(2) serves several purposes: It confirms the Legislature's intent that supervisory employees are

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<sup>8</sup>NLRA section 2(3) is set forth at n.6, supra. NLRA section 14(a) provides:

Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining. [29 U.S.C. sec. 164(a), emphasis added.]

entitled to organize and negotiate collectively under EERA; it requires all of an employer's supervisory employees to negotiate in the same unit; and it precludes that unit from having the same representative as the employer's rank and file workers. The statute is thus a compromise: it does not prohibit supervisors from exercising collective negotiating rights, but it does not give them unfettered discretion to select their own representation. Rather supervisory employees must negotiate in a unit comprised of all of the employer's supervisors and only of supervisors. This unit must have an exclusive representative which is not the same employee organization which represents the subordinates of unit members.

The Aaron Commission Report indicated that:

The chief argument of those who, although advocating that supervisors be given the statutory right to bargain collectively, oppose allowing them either to be included in a bargaining unit with nonsupervisory employees, or to be represented by an organization that also represents nonsupervisory employees, is that when the two groups are represented by the same organization, an inevitable and irreconcilable conflict of interest is created. They contend that the supervisors' loyalty thereby becomes divided between management and the organization representing the nonsupervisory employees. [Aaron Commission Report at p. 95.]

Since the California Legislature chose to allow supervisors to negotiate only in their own units and not to be represented by the same employee organization that represents

nonsupervisory employees, we conclude that section 3545(b)(2) was designed to respond to the kinds of conflicts noted in the Aaron Commission report and also to serve to some extent purposes similar to those served by the NLRA's exclusion of supervisors: to protect management's interest in the undiluted loyalty of those employees to whom it delegates supervisory responsibilities and to guard against potential conflicts of interest between supervisors and the employees they supervise. While these same purposes might also have been served by denying supervisory employees any organizational rights, the Legislature determined not to avoid the tension between the interests of management and its supervisory employees, but to minimize this tension by requiring PERB to place supervisors and rank and file workers in separate units with different representatives. Thus the Legislature struck a balance between the supervisory employees' interest in negotiating collectively and the employer's interest in preventing its supervisors from sharing the specific organizational aims of their subordinates.

While this separation also functions to foreclose any possibility that supervisors might directly or indirectly dominate the negotiating policies of the rank and file organization (or vice versa), that was not, in our opinion, the reason underlying the enactment of section 3545(b)(2).

Although Local 535 and Local 22 are both members of the same International, Service Employees International Union (hereafter the SEIU International or International), we do not believe that affiliation necessarily creates the risk of dual loyalties that section 3545(b)(2) seeks to avoid. We are persuaded in this regard by the fact that the Legislature patterned much of the language of the EERA on the NLRA but did not adopt an "affiliation" test to disqualify an employee organization from representing supervisors.<sup>9</sup> But we do believe that when two employee organizations are affiliated with the same International, this Board must carefully scrutinize their relationship in order to determine whether they are in fact separate and autonomous entities that act independently from each other and from their common parent. If either organization in fact dictates the other's course of action, they are the "same employee organization." Similarly if their parent organization in fact controls both of them in such a manner and to such a degree as to render those locals mere alter egos of the International,

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<sup>9</sup>Compare NLRA section 9(b)(3) which restricts the NLRB from combining guards and nonguards in the same unit, and which further provides that:

[N]o labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. [29 U.S.C. sec. 159(b)(3), emphasis added.]

unable to determine and control their own course of action, then the International is the true representative of both units, in violation of EERA.

Although the District did not argue that in this case there is sufficient interchange between the two locals themselves to make them "the same employee organization," the hearing officer addressed this issue sua sponte and concluded there is not. Without adopting the specific discussion of the hearing officer, the Board also finds that there are not such connections between these two locals as to make them "the same employee organization." There was no evidence in this case that either local controls the other; rather the record showed that the two locals are completely separate and autonomous from each other.

In its exceptions, CSEA renews the argument posited in the District's post-hearing brief that in this case there are numerous ways in which the SEIU International impermissibly controls its locals.<sup>10</sup> While the International's constitution contains many provisions that affect the locals, only some of these arguably pose a threat of the kind of

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<sup>10</sup>CSEA cites specifically the financial relationship between the International and its locals, as well as the regulatory powers the International's constitution gives it over the locals. The District's post-hearing brief argued in addition that the internal structure of the International organization results in members of different locals indirectly financing their sisters and in local delegates to the International convention voting on policy decisions that affect other locals.

control that could result in the type of conflict of interest section 3545(b)(2) was designed to prevent. For example, the International constitution empowers the International president to negotiate and enter into national, regional, or area-wide collective bargaining agreements and empowers the International executive board to merge locals. Both of these powers appear to provide means by which the International could fuse the interests of supervisory and rank and file locals in violation of section 3545(b)(2). Likewise the International president's power under certain circumstances to impose a trusteeship upon a local arguably creates the potential for the International to steamroller its locals.

But PERB's certification of a local as the exclusive representative does not automatically authorize the International to negotiate in the local's stead. (Cf. NLRB v. General Electric (2d Cir. 1969) 418 F.2d 736 [72 LRRM 2531]; Independent Stove Co. v. NLRB (8th Cir. 1965) 352 F.2d 553 [60 LRRM 2407].) Moreover, the statute itself empowers PERB:

To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations. [Section 3541.3(m).]

Finally, union trusteeships are controlled by federal law and may not be imposed willy-nilly by the International.

(Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Secs. 461-466.)

Even were this not the case, the mere potential for the International to exercise its lawful powers in a manner inconsistent with the purposes of section 3545(b)(2) is insufficient in our view to disqualify sister locals from representing rank and file and supervisory employees in separate units in the same district. Certainly the International can exercise these powers over employees who are covered by the EERA in ways that are consistent with the statute.

Moreover, if at a later date the International does attempt to exercise these controls in a manner inconsistent with the EERA, (e.g., if the International prescribed the local's negotiating aims and strategies, or insisted that the International appoint the local's negotiating team) the Board can then reevaluate the relationship between the organizations representing supervisors and their subordinates and take whatever steps are necessary to serve the purposes of the Act.

Based on the foregoing, we hold that Local 535 and Local 22 are not the same employee organization within the meaning of section 3545(b)(2).



Harry Gluck, Chairperson, concurring:

I agree that the potential for "divided loyalty" among supervisory employees was a matter of concern to the California Legislature when it enacted the provisions dealing with the rights of public school employees to organize and engage in collective negotiations. However, I find this theory too fragile as the sole support for distinguishing the California approach to supervisory employees' rights from that of the private sector.

Congress saw fit to remove supervisors entirely from coverage under the federal labor law.<sup>1</sup> California, however, has only limited supervisors' right to select an exclusive representative. See section 3545(b)(2) of the EERA. The basis for this distinction, at least in part, lies elsewhere: in the need to avoid conflict between supervisory and nonsupervisory employees within the labor organization and the potential for domination of that organization by either one of the two groups.

Inherent in the federal law exclusion of supervisors was Congressional concern that supervisor participation in

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<sup>1</sup>29 U.S.C., sections 151 et seq., section 2(3) as amended in 1947 (hereafter NLRA).

organizational activities creates, per se, a broad bias which disadvantages the employer.

. . . Congress was concerned about the effect of unrestricted unionization of first-line supervisors. Congress believed that fraternal union feelings would tend to impair a supervisor's ability to apply his employer's policy to subordinates according to the employer's best interests.

. . . . .

(Congress) withdrew certain protections from "supervisory" employees in order to give employers more freedom to prevent a pro-union bias from interfering with the independent judgment of employees holding supervisory positions. (Emphasis added) (NLRB v. Pilot Freight Lines, Inc. (4th Cir. 1977) 95 LRRM 2900, 2902.)

Reflected also is a philosophical conviction that supervisory employees, by their very nature, can take care of themselves.

. . . Congress was concerned with more than just the possibility of conflict of interest in labor relations if supervisors were unionized;

"Supervisors have demonstrated their ability to take care of themselves without depending on pressures of collective action."<sup>2</sup>

But, in its most recent treatment of the subject, the Supreme Court has affirmed that a major rationale for the supervisory exclusion under the NLRA was that:

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<sup>2</sup>NLRB v. Textron, Inc. (1974) 416 U.S. 267 [85 LRRM 2945, 2950], quoting H. Conf. Rep. No. 510, at 35, 80th Con, 1st Session (1947).

. . . Congress sought to protect the rank-and-file employees from being unduly influenced in their selection of leaders by the presence of management representative in their union. "If supervisors were members of and active in the union which represented the employees they supervised it could be possible for the supervisors to obtain and retain positions of power in the union by reason of their authority over their fellow union members while working on the job." NLRB v. Metropolitan Life Insurance Co., 405 F.2d 1169, 1178 (CA2 1968) (NLRB v. Yeshiva University (1980) \_\_\_\_\_ U.S. [Daily Labor Report, BNA, 2/20/80, at 6-7]).

In view of this legislative history, the California Legislature's specific grant of collective bargaining and related organizing rights to supervisors in the public school system must be viewed as its acknowledgement that supervisory employees may better address their employment problems through the bilateral process of bargaining rather than by reliance on individual relationships with their employers. Further, that the Legislature did not see in union membership alone the danger of a pro-union bias which would result in the derailing of loyalties to the employer is manifest by the fact that the only organizational limitation placed on supervisors is that of not being represented by the same organization as that representing their subordinates. This distinction between the congressional and legislative attitudes is further evidenced by the fact that the definition of supervisory status is the same in the EERA and under the NLRA. Compare EERA section 3540.1(m) with NLRA section 2(11). This common definition eliminates any

to a breakdown of the negotiation process designed to promote stability and harmony in employer-employee relations.

No persuasive evidence of the existence or likelihood of such domination appears in the record. I, therefore, concur in the conclusion ~~reached~~ by Member Moore.

Harry Gluck, Chairperson

Raymond J. Gonzales, Member, dissenting:

I agree with Member Moore's discussion of the legislative purpose behind the enactment of the restrictions on supervisory representation in section 3545(b)(2). That section is indeed a compromise between the interest of supervisory employees in negotiating collectively and the interest of employers in the undivided loyalty of employees to whom they delegate supervisory authority. If supervisory employees are represented by the same employee organization as employees whom the supervisory employees supervise, the supervisors' loyalty is divided between their employer and rank and file employees who are their fellow organization members.

"differences" as the reason for the distinctive approaches taken by the respective legislatures.

I perceive in this focus on the specific representative organization, the Legislative determination to prevent a particular labor organization which enjoys exclusive representational status from being dominated in its contract negotiation and administration by either its supervisory or rank-and-file constituents to the disadvantage of the other group. Such domination by one of the two groups could easily lead to self-interest policy-making, coercion of nonsupervisory personnel by their superiors, interference with supervisory obligations to the employer by the subordinates and even subversive domination of the employee organization by the employer through its supervisors who are members. Any one or combination of these circumstances would frustrate the purpose of the statutory scheme and lead to chaos in employer-employee relations.

The point made is more than academic in this case. It demonstrates that something more than mere common affiliation or connection with another organization must be shown in order to deny representational status to a union of supervisory employees. That "something more" is the opportunity for domination and control by a group with disparate interests and the likelihood that internal dissension would inevitably lead

However, I disagree with the majority's conclusion that the relationship between SEIU and its locals does not necessarily create the risk of dual loyalties that section 3545(b)(2) seeks to avoid. The relationship is such that supervisory employees who are members of one local are likely to feel a conflict of interest between their duties as supervisory employees and their loyalty to their SEIU brothers and sisters who are members of another local. SEIU has the authority to exercise substantial control over its locals. Even if that control is not always exercised, the loyalty that SEIU members are bound, by oath, constitution and by-laws, to show their fellow members is likely to conflict with their duty, as supervisors, to their employer. Furthermore, the majority's decisions in this case and Fairfield-Suisun Unified School District (3/25/80) PERB Decision No. 121 create a distinction between SEIU and the California School Employees Association (hereafter CSEA) which I believe was never contemplated by the Legislature. For these reasons, I believe that the term "employee organization" for purposes of section 3545(b)(2) should be interpreted to preclude supervisory employees from being represented by a local organization that is part of the same statewide or national employee organization as the local representing rank and file employees.<sup>1</sup>

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<sup>1</sup>This does not mean that I would interpret "employee organization" to include the national or statewide organization

The majority discounts the degree of control exercised by SEIU over its locals. SEIU's constitution and by-laws contain many provisions emphasizing this ultimate control.<sup>2</sup>

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whenever the term is used in the EERA. In this situation, however, it seems clear to me that the Legislature did not intend "employee organization" to be limited to the specific entity recognized as the exclusive representative of the rank and file employees. Such a limitation would enable organizations to circumvent the intent of section 3545(b)(2) by formally dividing into two locals while continuing to function as one.

<sup>2</sup>See, e.g.:

Art. III, Sec. 2(a). The International Union shall have jurisdiction and supervision over the Local Unions and their members and over all affiliated bodies.

Art. VIII, Sec. 1(f). The International President shall be empowered to negotiate and enter into national, regional, or area-wide collective bargaining agreements, including company-wide or multi-employer agreements, and to coordinate activities toward this end in consultation with the Local Unions involved.

Art. X, Sec. 6A. [The International Executive] Board is specifically authorized to:

A. Establish, adopt, prescribe and order such procedures, rules and regulations, consistent with this constitution, as are required for the direction and management of the affairs of this International Union and its constituent subordinate bodies and to repeal or amend the same;

Art. XI. Unless authority to the contrary has been granted by the International President, no Local Union or affiliated body shall call a strike without previous

As these provisions make clear, SEIU is far more than a mere amalgamation of affiliated, but relatively independent,

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notification to the International President, who shall have the right to veto any strike to be called by a Local Union or affiliated body. If the International President has vetoed any such strike, the Local Union or affiliated body may not call the strike thus vetoed.

Art. XII, Sec. 4. No Local Union shall have any right to pay any bills before it pays its full obligation to the International Union each month.

Art. XIII, Sec. 3. The International Executive Board may consolidate or merge existing Local Unions under such terms and conditions as the International Executive Board may determine when in the opinion of the International Executive Board the interests and welfare of the International Union and the membership thereof will be better served by such action.

Art. XIV, Sec. 3. The constitution and bylaws of all Local Unions and affiliated bodies and amendments thereto must be submitted to the International Union and be approved before they become valid; provided, however, that notwithstanding such approval, the constitution and bylaws of all Local Unions and affiliated bodies shall at all times be subordinate to the constitution and bylaws of the International Union as it may be amended from time to time. If a Local Union or an affiliated body shall not have secured the approval of a valid constitution and bylaws, the provisions contained in the constitution and bylaws of the International Union as it may be amended from time to time shall govern said Local Union and affiliated body insofar as applicable. Regardless of approval, if any conflict should arise between the constitution and bylaws of a

organizations; rather, it is a unified organization which

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Local Union and affiliated bodies or any amendments thereto, and the constitution and bylaws of the International Union as it may be amended from time to time, the provisions of the constitution and bylaws of the International Union shall govern.

Art. XVI, Sec. 1. Local unions, their officers or members, . . . may be charged with:

. . . . .

(1) Violation of any specific provision of this constitution or of the constitution and bylaws of the Local Union;

(2) Violation of the oath of loyalty to the International Union and the Local Union;

. . . . .

(11) Disobedience to the regulations, rules, mandates and decrees of the International Union or the Local Union;

. . . . .

(13) Working as a strike breaker or violating wage or work standards established by the International Union or Local Union . . .

Art. XVII, Sec. 7. All Local Unions determined by the International Executive Board to be within the jurisdiction of a Joint Council, conference or division shall affiliate with it and comply with its bylaws. The International Executive Board may in its discretion modify these requirements.

Art. XXIV. No Local Union, provisional local or organizing committee can dissolve, secede or disaffiliate while there are seven

possesses ultimate authority over its member locals.<sup>3</sup>

While this authority may rarely be exercised to control negotiations and day-to-day contract administration at the local level, certainly the potential is there. The majority decision discounts this, arguing that PERB can act to remedy any problems with the relationship between the organizations representing supervisors and their subordinates that may arise through SEIU's use of its authority over its locals. But PERB may not know of the International's exercise of control over

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dissenting members; . . . In the event of secession, dissolution or disaffiliation, all properties, funds and assets, both real and personal, of such Local Union or affiliated body shall become the property of the International Union.

[Emphasis added.]

<sup>3</sup>See Leiserson, *American Trade Union Democracy* (1959) p. 87, quoted in I Kheel, *Labor Law* (1978) section 3.02[1], fn. 4, pp. 3-4:

Local unions are mere subdivisions of the national organizations whose constitutions provide for their government as a state does for its counties, cities, towns, and villages. The amount of home rule they enjoy is determined by the national, and they are bound by the laws of their national governments. They are authorized to adopt local constitutions and by-laws and the national constitution usually prescribes the form of local government. National laws provide for the suspension, merging, and abolition of local unions. Local officers may be removed by the national executives who may appoint administrators to manage their affairs, sometimes without the consent of the local members.

its locals; unless the District or a rival organization somehow becomes aware that the locals representing its supervisory and nonsupervisory employees are receiving guidance and instructions from a higher level, PERB is unlikely to learn of the conflict. Furthermore, the authority the International has over its locals may not be exercised until a crisis situation, such as a strike, arises. Under those circumstances, PERB's normal processes by which it could attempt to remedy the fact that the locals representing the supervisory and nonsupervisory employees are acting as the same employee organization would not be adequate. The employer would have already felt the consequences of the divided loyalties of its supervisory representatives.

When we consider the very substantial likelihood of conflicts of interest for supervisory employees arising from the authority the International has over its locals, it is understandable why the Legislature would want to anticipate and prevent such problems rather than attempting to remedy them after the fact. By finding SEIU and its locals to be the same employee organization for purposes of section 3545(b)(2), we can avoid conflicts stemming from the International's authority.

However, I believe that the conflicts the Legislature sought to prevent in section 3545(b)(2) are inherent rather than merely potential in the relationship between SEIU and its locals. The majority speaks of management's interest in the

undiluted loyalty of those employees to whom it delegates supervisory responsibilities and of the potential conflicts of interest between supervisors and the employees they supervise. Such loyalty and conflict of interest problems arise when supervisors and nonsupervisors are represented by locals of the same International even if there is an argument that the International exercises little actual authority over its locals. When an employee joins a local of SEIU, s/he becomes a member of and owes loyalty to the International as well as the local organization. New members are required to make a pledge in which they promise to attempt to prevent other SEIU members from being wronged:

"I . . . . . ,  
sincerely pledge upon my honor that I will  
faithfully observe the constitution and  
bylaws of this Union and of the Service  
Employees International Union.

"I promise never to discriminate against a  
member on account of creed, color,  
nationality, ancestry, or sex, nor will I  
knowingly wrong a member or see a member  
wronged if it is in my power to prevent it.

"I agree to educate myself and other members  
in the history of the labor movement and to  
defend to the best of my ability the  
principles of trade unionism."

Also, a provision in SEIU's constitution and bylaws provides:

Art. XV, Sec. 1: No member of this  
International Union shall injure the  
interests of another member by undermining  
such member in connection with wages or  
financial status or by any other act, direct  
or indirect, which would wrongfully  
jeopardize a member's office or standing.

Thus, members of SEIU owe other members, including members of other locals, a certain loyalty and duty of support. If the supervisors and the employees they supervise are both represented by SEIU locals, supervisory employees' loyalty will be divided between the interests of the employer and those of the rank and file employees. Supervisors who continue to work during a strike, for example, could certainly be seen as undermining the striking SEIU members' interests in wages. While a certain amount of divided loyalty is inherent in allowing supervisory employees to organize and negotiate with the employer,<sup>4</sup> I believe that section 3545(b)(2) limits that division by requiring that supervisory employees be represented by a completely different organization than that representing the nonsupervisory employees. This means that two locals of the same national or statewide organization cannot represent both groups of employees.

It is a long established tradition among labor unions to argue the case of complete autonomy for their locals, but one need only attend a statewide or regional convention of these so-called independent locals to see the complete unity and

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<sup>4</sup>As noted in the majority decision, the NLRA specifically excluded supervisors from its definition of "employee," thereby denying them any rights under that statute. In so doing, Congress considered and rejected the idea that supervisors could be represented by organizations composed entirely of supervisors. See Beasley v. Food Fair, Inc. (1974) 416 U.S. 653, n. 6 [86 LRRM 2196].

commitment to a single purpose among these locals. In fact, it is the unity, brotherhood and camaraderie that has resulted in the growth, power and constancy of the larger labor unions. This is not necessarily an undesirable result, but to suggest that supervisory and rank and file members represented by different locals of the same union do not have common goals is ludicrous.

The majority finds it significant that the Legislature chose not to use the language used in the NLRA to limit the organizations which may be certified as representatives of guards. NLRA section 9(b)(3) provides in part that:

[N]o labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. [29 U.S.C. sec. 159(b)(3).]

If the Legislature had used this language as a model, supervisory employees could not have been represented by any organization which admits any rank and file employees in any district to membership. The Legislature did not intend to go this far: under section 3545(b)(2), the fact that an SEIU local represents nonsupervisory employees in one district does not prevent another SEIU local or perhaps even the same local from representing supervisory employees in a different district. This, rather than a reluctance to use the

"affiliated" language, could have been the reason that the Legislature chose not to model section 3545(b)(2) on NLRA section 9(b)(3), and does not at all signal an intent to allow different locals of the same national or statewide employee organization to represent supervisory and nonsupervisory employees in the same district.

Finally, the Board today, in Fairfield-Suisun Unified School District, supra, PERB Decision No. 121, has ruled that separate chapters of CSEA are the same employee organization for purposes of section 3545(b)(2). Thus CSEA is precluded from representing both supervisory and nonsupervisory employees in the same district, even in separate chapters, while SEIU, as long as it uses separate locals, can do so.

I find it difficult to believe that the Legislature, knowing that SEIU and CSEA were the primary employee organizations attempting to organize public school classified employees, intended section 3545(b)(2) to be interpreted so as to make such a basic distinction between the two rivals. Nor do I think it is wise for this Board to do so. Under the Board's decision in the present case, if CSEA wishes to compete with SEIU for both supervisory and nonsupervisory employees, it will have to change its basic organizational structure to that of a traditional union with relatively autonomous local organizations. If it does not, it would seem to be at a competitive disadvantage with its major rival.

In conclusion, SEIU has authority over both locals, and members of both locals are members of SEIU; as such they owe a certain amount of loyalty to both SEIU and its members. I believe that the Legislature intended section 3545(b)(2) to provide the employer with loyal representatives while providing those representatives with a right to be represented. But the Legislature also intended to minimize the risks of divided loyalty and conflicts of interest inherent in such a compromise by ensuring that supervisors are represented by a completely different employee organization from that which represents the employees they supervise. A separate local of the same employee organization is simply not sufficiently different.

~~Raymond J. Gonzales, Member~~

PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF CALIFORNIA

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,	)	
	)	
Employer,	)	Representation
	)	
and	)	Case No. S-R-92
	)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,	)	
	)	
Employee Organization,	)	<u>PROPOSED DECISION</u>
	)	
and	)	(10/26/78)
	)	
SERVICE EMPLOYEES INTERNATIONAL UNION,	)	
LOCAL 535,	)	
	)	
Employee Organization.	)	
	)	

Appearances: William E. Brown, Attorney (Brown & Conradi) for the Sacramento City Unified School District; Charles Morrone, Attorney for the California School Employees Association; and Bari Stolmak and Robert J. Bezemek, Attorneys (Van Bourg, Allen, Weinberg & Roger) for the Service Employees International Union, Local 535.

Before Ronald E. Blubaugh, Hearing Officer.

PROCEDURAL HISTORY

This case presents the single question of whether Service Employees International Union, Local 535,<sup>1</sup> is the same employee organization as Service Employees International Union, Local 22.<sup>2</sup>

<sup>1</sup>Hereafter, Service Employees International Union, Local 535, will be referred to as "Local 535."

<sup>2</sup>Hereafter, Service Employees International Union, Local 22, will be referred to as "Local 22."

Currently, Local 22 represents all of the classified nonsupervisory employees of the Sacramento City Unified School District.<sup>3</sup> Local 535 now seeks to represent the District's classified supervisory employees. The District contends that Local 535 is precluded from representing the supervisory employees because Local 535 and Local 22 are legally the same organization. The Educational Employment Relations Act<sup>4</sup> prohibits supervisory employees from being represented by the same employee organization as that which represents those persons whom the supervisory employees supervise.<sup>5</sup>

On March 14, 1978, Local 535 filed a petition requesting the District to recognize it as the exclusive representative of a classified supervisors' unit. On March 28, 1978, the California School Employees Association<sup>6</sup> filed an intervention for the classified supervisory unit. On April 14, 1978, the District issued a response contesting the standing of both Local 535 and CSEA to represent its classified supervisory

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<sup>3</sup>Hereafter, the Sacramento City Unified School District will be referred to as the "District."

<sup>4</sup>Government Code section 3540 et seq.

<sup>5</sup>Government Code section 3545(b)(2) provides as follows:

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>6</sup>Hereafter, the California School Employees Association will be referred to as the "CSEA."

employees. The District challenged Local 535 because as of that date Local 22 had been certified as the exclusive representative of employees in three of the District's four classified units. The District challenged CSEA because as of that date CSEA was a party to a run-off election with Local 22 to determine the exclusive representative of a unit of paraprofessional employees. Subsequently, Local 22 won the election and was certified as exclusive representative of the paraprofessional employees unit. At the start of the Public Employment Relations Board hearing into this matter on July 5, 1978, the District withdrew its challenge to the standing of CSEA to become the exclusive representative of a supervisory unit.

At the start of the hearing the parties joined a stipulation that the following positions are appropriately within the classified supervisory unit: Assistant operation supervisor, cafeteria manager III, cafeteria manager II, cafeteria manager I, carpenter foreman, electrician foreman, electronics technician foreman, food service area supervisor, glazier foreman, laborer gardener foreman, painter foreman, plumber foreman, roofer foreman, school plant operations manager III, school plant operation manager II, school plant operation manager I, shop foreman carpenter, supervisor-accounts payable, supervisor-classified personnel services office, supervisor-data control, supervisor-electronic data processing operations, supervisor-electronic data processing systems and programming, supervisor-general accounting, supervisor-key entry section, supervisor-

payroll, supervisor-purchasing, supervisor-reproduction, supervisor-special officers, supervisor-special projects and program accounting, supervisor-transportation, supervisor-warehouse.

During the hearing evidence was taken about each of the positions proposed for inclusion in the classified supervisory unit and about each position stipulated for exclusion as being either managerial or confidential. Because the evidence supports the stipulations, the hearing officer will not disturb them in this proposed decision.

#### FINDINGS OF FACT

The Sacramento City Unified School District has 58 elementary schools attended by approximately 22,739 students, 11 junior high schools attended by approximately 9,059 students, seven senior high schools attended by approximately 10,844 students, and six adult schools attended by approximately 12,000 students. The District employs approximately 1,995 regular classified employees, including those who work less than four hours per day.<sup>7</sup>

Following a 1976 hearing, the Educational Employment Relations Board<sup>8</sup> directed that there should be four negotiating

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<sup>7</sup>These statistical facts were obtained from EERB Decision No. 30 (9/20/77), the original unit determination decision involving this District. The facts recited in Decision No. 30 were drawn from the record developed at a hearing in October of 1976.

<sup>8</sup>Effective January 1, 1978, the Educational Employment Relations Board was renamed as the Public Employment Relations Board, chapter 1159, Statutes of 1977.

units for the District's classified employees. The four units are: a unit of all security officers, a unit of all instructional aides, a unit of all operations-support services employees, and a unit of all office-technical and business services employees.

An election was held in the four units on November 9, 1977. As a result of that election, Local 22 was certified on November 18, 1977 as the exclusive representative of the security officers, operations-support services and office-technical and business services units. However, challenged ballots were determinative in the instructional aides unit. Following resolution of the challenged ballots, a runoff election was conducted by mail ballot from April 3, 1978 through April 14, 1978 between Local 22 and CSEA. As a result of the runoff election, Local 22 was certified on May 3, 1978 as the exclusive representative of the instructional aides unit.<sup>9</sup>

The Service Employees International Union<sup>10</sup> is the parent organization of both Local 22 and Local 535. The International has approximately 900 affiliated local unions in the United States and Canada. The relationship between the International and its local unions is set forth in the International constitution and bylaws. The policies of the International are

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<sup>9</sup>Official notice is taken of documents in the Sacramento City Unified School District representation case files S-R-8, S-R-234, S-R-355, and S-R-429.

<sup>10</sup>Hereafter, the parent organization of Local 22 and Local 535, the Service Employees International Union, will be referred to as the "International."

established at the regular quadrennial or special conventions of delegates elected by the local unions (constitution, article IV). Convention delegates elect the International president, the International secretary-treasurer, nine vice-presidents and 32 members of the International executive board (constitution, article VI, sec. 1). The convention delegates also have the power to amend the International constitution (constitution, article XXIII). In order to oversee the financial accounting of the International, delegates to the regular convention elect a five-member Board of Auditors. The board of auditors meets on a semiannual basis to review the books and accounts of the International secretary-treasurer (constitution, article VI, sec. 3).

Between conventions, the International executive board has the power to transact all business of the International (constitution, article X, sec. 1). The constitution gives the International executive board extensive powers, including the power to decide questions of jurisdiction relating to local unions and other affiliated bodies.

Day-to-day operation of the International is vested in the hands of the International president and the other officers. The International president has authority over the general supervision and direction of the affairs of the International, including the general supervision of all organizing (constitution, article VIII). The International president has the power to appoint a trustee to take charge and control the affairs

of a local union or an affiliated body:

. . . for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of this International [u]nion, whenever the International [p]resident has reason to believe that such action is required. (Constitution, article VIII, sec. 7(a).)

The International president also has veto power over the ability of any local union to call a strike. Section XI of the International constitution reads as follows:

Unless authority to the contrary has been granted by the International [p]resident, no [l]ocal [u]nion or affiliated body shall call a strike without previous notification to the International [p]resident, who shall have the right to veto any strike to be called by a [l]ocal [u]nion or affiliated body. If the International [p]resident has vetoed any such strike, the [l]ocal [u]nion or affiliated body may not call the strike thus vetoed.

It is apparent from the constitution that the International has supervisory authority over the operation of the various local unions. The constitution gives the International "jurisdiction and supervision over the local unions and their members and over all affiliated bodies" (constitution, article III, sec. 2(a)). The International executive board has the authority to consolidate or merge existing local unions "under such terms and conditions as the International [e]xecutive [b]oard may determine when in the opinion of the International

[e]xecutive [b]oard the interests and welfare of the International [u]nion and the membership . . . will be better served by such action" (constitution, article XIII, sec.3). In cases of conflict between the International constitution and local constitutions, the International constitution prevails:

The constitution and bylaws of all [l]ocal [u]nions and affiliated bodies and amendments thereto must be submitted to the International [u]nion and be approved before they become valid; provided, however, that notwithstanding such approval, the constitution and bylaws of all [l]ocal [u]nions and affiliated bodies shall at all times be subordinate to the constitution and bylaws of the International [u]nion as it may be amended from time to time. If a [l]ocal [u]nion or an affiliated body shall not have secured the approval of a valid constitution and bylaws, the provisions contained in the constitution and bylaws of the International [u]nion as it may be amended from time to time shall govern said [l]ocal [u]nion and affiliated body insofar as applicable. Regardless of approval, if any conflict should arise between the constitution and bylaws of a [l]ocal [u]nion and affiliated bodies or any amendments thereto, and the constitution and bylaws of the International [u]nion as it may be amended from time to time, the provisions of the constitution and bylaws of the International [u]nion shall govern. (constitution, article XIV, sec. 3.)

The International constitution sets the minimum dues to be charged to all local union members (constitution, article XIV, sec. 6). The International constitution requires all local unions to remit to the International \$1.80 per member per month (constitution, article XII, sec. 1(a)). Of this amount, the International is required to set aside a sum of not more

than five cents per member per month for political education and action. The International is required to set aside a sum of 20 cents per member per month in a strike fund for redistribution to local union members engaging in authorized strikes or in cases of lockouts. Whenever the charter of a local union is revoked, the International receives all of its documents, records, property and funds (constitution, article XII, sec. 7).

The International constitution places the discipline of individual members primarily under the responsibility of the local unions. A member may be charged with any of 14 offenses specifically listed in the constitution (constitution, article XVI). Among the offenses of which a member may be charged is:

[w]orking as a strike breaker or violating wage or work standards established by the International [u]nion or a [l]ocal [u]nion. . . .

The executive board of the local union acts as the trial body unless its constitution and bylaws provide for another procedure. While the primary responsibility for discipline is with the local union, the constitution also provides that:

If the International [p]resident believes that charges filed against a member or officer of a [l]ocal [u]nion involve a situation which may seriously jeopardize the interests of the [l]ocal [u]nion or the International [u]nion, the International [p]resident may assume original jurisdiction, remove the proceedings from the trial body of the [l]ocal [u]nion, and upon at least ten days notice, hold a hearing on the charges either personally or before a hearing

officer or officers [who need not be members of this organization] designated by the International [p]resident. If the hearing is conducted by a hearing officer or officers, the International [p]resident shall make the decision upon the record taken at the hearing and the report of the hearing officer or officers. (Constitution, article XVI, sec. 2(f).)

Upon the completion of the trial, either the member accused or the member who filed the charge may appeal the result to the International executive board which has the full power of review. An appeal from any decision of the International executive board may be taken to the next convention.

Local 535, which seeks to represent the District's classified supervisory employees, has approximately 6,800 members. Most of Local 535's members are employed as social workers by various counties. The local constitution and bylaws identify Local 535's jurisdiction as "all [s]ocial [s]ervice [w]orkers and related classes of employees employed within the [s]tate of California . . . ." Local 535 was organized in about 1964 by a group of social workers in the Los Angeles County Welfare Department. They affiliated with the Building Service Employees International Union, which was later renamed as the Service Employees International Union. Subsequently, Local 535 extended its geographical territory beyond Los Angeles County, reaching the Sacramento County Welfare Department in 1967. Currently, the local represents welfare department employees in most of the state's large urban counties and some middle-size counties. The local also represents employees in

the City of Berkeley Health Department, nurses at some private hospitals, employees at some blood banks and employees at some residential treatment facilities.

Because Local 535 is a statewide organization, it does not have general membership meetings. The local is subdivided into chapters which generally follow geographical lines. Each chapter is entitled to write its own bylaws and elect its own officers. The chapters function semiautonomously from the statewide local. Membership meetings generally are held once a month in each of the chapters. The business of the statewide local is conducted at meetings of the statewide executive board. Each chapter sends delegates on a proportional basis to the executive board meetings which occur at intervals of about six to eight weeks.

In Sacramento, Local 535 has an office at 1220 "H" Street. The local rents its office space from a law firm which owns the building. Local 535 has never rented office space from Local 22 and has never used the offices of Local 22. The Local 535 officer who organized the District's classified supervisory employees is Art Grubel, a field representative. He is assigned to represent Local 535 in Sacramento, Stanislaus and Solano Counties. Mr. Grubel represents the welfare supervisors' bargaining unit in Sacramento County, a health and community services bargaining unit in Stanislaus County and a health and welfare supervisors' unit and health and welfare employees' unit in Solano County. Mr. Grubel's salary is

paid by local funds and no part of it is drawn from the International. The International provided no assistance to Local 535 in the effort to organize the District's classified supervisory employees. Mr. Grubel did all the organizing himself without any assistance or information from Local 22 or anyone employed by Local 22. Mr. Grubel testified that he has no personal knowledge about Local 22 or how it operates. The dues rate of Local 535 is 1 percent of a member's gross monthly salary.

One officer of Local 535 holds an office in the International. David Crippen, the administrative officer of Local 535, is a member of the International executive board. In 1976, Local 535 sent four delegates to the International convention. In addition to its affiliation with the International, Local 535 is affiliated with the California State Council of Service Employees, the Western Conference of Service Unions, and several Service Employees Joint Councils including one in the Bay Area.

Local 22, which represents the employees in the District's nonsupervisory classified units, has approximately 2,600 members. According to its constitution and bylaws, Local 22 is comprised of workers:

. . . employed in any phases of private, non-profit or public employment, including without limitation employees of colleges, schools or universities, public employers (including cities, counties, states, governmental districts, federal agencies and multiple agencies or authorities and

any subdivisions thereof), institutions or agencies, hospitals, nursing homes or other health facilities, and private and public utilities, and all employees thereof including technicians, professionals, para-professionals and para-medicals, or who are engaged in the maintenance, servicing, protection or operation of all types of institutions, buildings or structures, commercial, mercantile or other establishments, edifices and grounds, and their environs, whether private, public, or non-profit, and all categories of employees therein and thereabout, including places of assembly, amusement, recreation, entertainment and the presentation of sporting events.

The geographical jurisdiction of Local 22 is the counties of Sacramento, Yolo, Placer, Sutter, Shasta, Yuba, Butte, El Dorado, San Joaquin, Stanislaus, Mono, Glenn, Colusa, Tehama, Trinity, Siskiyou, Plumas and Sierra. Local 22 is a successor local to a former Local 24 which was chartered exclusively for building janitors in Stockton. In around 1958, the International decided that Sacramento would be a better location for a local union. Local 22 was chartered in Sacramento. Local 24 was disbanded and its responsibilities were transferred to the new Local 22. In the beginning, Local 22 represented only building janitors and employees in service industries. In the early 1960's, the International expanded Local 22's jurisdiction to include hospital workers.

Local 22 conducts a general membership meeting the first Tuesday of each month at the Labor Temple in Sacramento. The Local also holds a regular monthly meeting on the first Monday of each month in Stockton for the Stockton and Modesto members

and a meeting on the third Thursday of each month in Marysville for members in the northern counties. Local 22 maintains its office at 903 30th Street in Sacramento. Local 22 jointly owns the building with SEIU Local 411 which represents certain state employees. Hugh Taylor is the president of Local 22 and Thomas P. Coleman is the executive secretary-treasurer. For the last four years Coleman has been a member of the International Board of Auditors. He also is the president of the Sacramento Central Labor Council.

Local 22 belongs to the bay area council of SEIU locals and to the state council of SEIU locals. At the 1976 International convention, Local 22 had four delegates.

Local 535 and Local 22 have very little relationship with each other. The two locals share no officers and no office space. Officers of the two locals have only passing contact with each other. There is no interchange of employees between the two locals. Each local runs its affairs autonomously subject only to the strictures imposed by the International constitution. In addition to the International SEIU, Local 535 and Local 22 both belong to the state council and the bay area joint council of SEIU locals. Both also belong to the Sacramento Central Labor Council. There are about 40 locals from various international unions which are members of the Sacramento Central Labor Council. The International has no role in the processing of grievances at either local. Neither local has any role in processing grievances by the other.

The decision about whether or not to go on strike is one made by the membership of the local union considering that action, subject to the veto of the International. Local 535 would have no voice in any strike vote that members of Local 22 might take and Local 22 would have no voice in any strike vote that members of Local 535 might take. If either local were involved in a strike, there is no automatic assurance that the other local would honor the picket line. At the hearing, officials of both locals testified that the decision about whether or not to honor the picket line of the other local would be a matter of individual conscience. While each local would ask its members not to cross the picket line of the other local, members would not be instructed that they could not cross the line.

In 1978, Local 22 did receive strike sanction from the Sacramento Central Labor Council against the District.

#### LEGAL ISSUE

Whether Local 535 and Local 22 are the same employee organization within the meaning of Government Code section 3545(b)(2)?

#### CONCLUSIONS OF LAW

If it can be demonstrated that Local 535 and Local 22 are the same employee organization then Local 535 will have no standing to represent the District's classified supervisory employees. Government Code section 3545(b)(2)<sup>11</sup> prohibits

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<sup>11</sup>Footnote No. 5, supra.

supervisory employees from being represented by the same employee organization as that which represents those persons whom the supervisory employees supervise. Local 535 contends it is not the same employee organization as Local 22. The District contends the two locals are actually one organization.

In its brief, Local 535 argues that while it and Local 22 are both members of the International, they are distinct and separate employee organizations. Local 535 points to numerous differences between the two organizations which are illustrated in the record. From these differences and from the absence of interchange between the two locals, Local 535 argues that it plainly is a separate organization from Local 22.

In its brief, the District argues that the two locals are the same employee organization by virtue of their relationship with the International. The District cites numerous sections of the International constitution to illustrate the close inter-relationship between the International and all of its affiliated locals. Because of this relationship between the International and its affiliates, the District concludes that the International and its locals are functionally one organization.

Although there are some significant differences between the EERA and the Labor Management Relations Act, the federal statute (hereafter LMRA) provides a helpful reference in the resolution of this controversy. While the LMRA excludes supervisors from its coverage, its treatment of plant guards provides

an interesting parallel to the EERA's treatment of supervisors.<sup>12</sup>  
The LMRA reads in section 9(b)(3) as follows:

. . . no labor organization shall be certified as the representative of the employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

If the California Legislature had intended to prohibit representation of supervisory employees by an employee organization affiliated directly or indirectly with an employee organization which admits to membership employees other than supervisors, it could have followed language of the LMRA. By adopting the wording of the federal law, the Legislature by reference would have made a whole body of case law on the subject applicable.<sup>13</sup>

However, the California Legislature did not enact identical or analogous language. Rather, the language adopted in section 3545(b)(2) states:

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.

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<sup>12</sup>This analysis follows closely that developed by the hearing officer in the case of Los Angeles Community College District and Classified Union of Supervisory Employees, Local 699, SEIU, AFL-CIO, Representation Case No. LA-R-809 (6/23/78).

<sup>13</sup>Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507, 87 LRRM 2453], sanctions the use of federal precedent in interpreting identical or analogous language in California labor legislation.

Thus, representation is not prohibited by an employee organization that is affiliated directly or indirectly with an employee organization that admits non-supervisory employees to membership. It is only representation by the same employee organization that is prohibited.

Other state public employee collective bargaining laws, like California, do not preclude supervisors from representation. Rather, the consideration goes to whether supervisory employees should be included in the same unit with non-supervisory employees.<sup>14</sup>

Prior to passage of the EERA, public school employees were governed by the Winton Act.<sup>15</sup> That statute defined "public school employee" as "any person employed by any public school employer excepting those persons elected by popular vote or appointed by the Governor of this state." All public school employees had the right to join and participate in employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.<sup>16</sup>

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<sup>14</sup>For a complete summary and analysis of this out-of-state precedent, see the hearing officer's proposed decision in Los Angeles Community College District, footnote No. 12, supra.

<sup>15</sup>Education Code section 13080 et seq. repealed July 1, 1976.

<sup>16</sup>Ibid. section 13082.

For purposes of meeting and conferring under the Winton Act, supervisory and non-supervisory employees could be represented by the same employee organization.

When it enacted the EERA, therefore, the California Legislature had a series of choices based upon its own experience and that of other jurisdictions. It could have:

1. precluded coverage of supervisory employees;
2. precluded representation of supervisory employees by an employee organization that was affiliated directly or indirectly with an employee organization that represents non-supervisory employees;
3. looked to other states and precluded inclusion in the same unit;
4. continued the Winton Act framework wherein the same employee organization could represent both supervisory and non-supervisory employees.

The California Legislature precluded only representation by the same employee organization. "Same" is defined as resembling in every way: not different in relevant essentials; conforming in every respect; being one without addition, change or discontinuance; having one nature or individuality; corresponding so closely as to be indistinguishable.<sup>17</sup>

Local 535 cannot be described as "indistinguishable" from Local 22. Local 535 primarily represents social workers who are employed by various California county governments. It was formed in Los Angeles in 1964 and gradually extended its geographical territory northward, reaching the Sacramento

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<sup>17</sup>Webster's Third New International Dictionary, unabridged, (1976) at 2007.

County Welfare Department in 1967. Local 22 represents various kinds of employees in health care institutions, persons who are engaged in the maintenance and service of buildings and grounds and school employees. It is the successor to a local founded in Stockton for janitors. Local 22 was chartered in 1958 in Sacramento. Local 535 is a statewide local. Local 22 covers only the northern San Joaquin Valley, the Sacramento Valley and the mountainous areas east and north of the Sacramento Valley.

The two locals have no common officers. They share no employees or facilities. Neither local has any control over the other local. They have separate meetings in separate places. Neither local contributes financial support to the other or participates in the affairs of the other. They operate autonomously under the provisions of the International constitution.

Despite these indicia of separation, the District argues that the two locals are in actuality the same organization. The District has two principal theories for this conclusion:

---By virtue of their financing of the International and their participation in the determination of International policies and practices, each local controls the policies and practices of the other;

---The International so closely regulates the affairs of all of its locals that Local 535 and Local 22 cannot be considered to be separate or independent employee organizations.

These theories will be considered separately.

The District concludes that the two locals control and support each other through their financial support of the International and their participation at the International convention. Moreover, the District notes, each local has an officer who also holds an office with the International and thereby has a voice in the operation of the other local.

These arguments defy reality. There are some 900 local unions within the International. Each supports the International financially and participates in the control of the International according to the size of its local membership. While Local 535 and Local 22 both have a voice in the control over the International, each local is only one of 900. The amount of influence either local could exert on the other through a vote at the International convention is de minimis. An officer of Local 535 is a member of the International executive board. However, he is but one of the 43 members of the International executive board. His control over the affairs of Local 22 are shared to such an extent that he has no effective control over Local 22. An officer of Local 22 sits on the International Board of Auditors but that body focuses its attention on the books of the International and has no relationship with local unions.

The District next reaches into the International constitution to show what it considers to be a strong interrelationship between the International and its locals. The District argues that the International so dictates the actions and limits the

independence of the local unions that the locals must be considered mere subdivisions of the International and not as separate employee organizations. The District notes that the International sets the minimum dues and prohibits local unions from using money for certain purposes. The District also points to certain other facets of the relationship between International and its local unions, including these:

---The International issues all charters and decides all jurisdictional disputes;

---The International president has the power to establish organizing committees and to negotiate regional or areawide contracts;

---The International prohibits local unions from having local constitutions and bylaws in conflict with the International and has certain other powers over local operations;

---The International maintains the right to regulate local record keeping;

---The International has certain veto powers over strikes by local unions and the International charter provides a vehicle for punishing a member who works as a strikebreaker;

---The International requires local unions to belong to joint councils;

---The International may revoke the charter of a local for failing to enforce the provisions of the International constitution.

Contrary to the assertion of the District, these facets of the relationship between the International and its local unions do not make Local 535 the same organization as Local 22. These provisions from the International constitution do demonstrate that all SEIU local unions operate within a framework, characterized by certain mutual obligations between International and local. But the International constitution is significant, also, for the controls it does not place on local unions. While the International has the power to veto a strike by a local union, it has no power to compel a strike. While the International draws its financial support from the local unions, the local unions support their own local operations. The International constitution does not give the International any authority over the processing of grievances and it does not compel one local union to honor the picket line of another. Although the International constitution does permit the filing of charges against members who work as strikebreakers, it also is clear under federal law that a union cannot discipline its members for refusing to participate in unprotected or unlawful activity.<sup>18</sup> Since the courts of California have consistently found that

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<sup>18</sup> See Insurance Workers, et al (1973) 236 NLRB No. 50 [98 LRRM 1245]; NLRB v. International Union of Marine & Shipbuilding Workers of America, et al (1968) 391 U.S. 418 [68 LRRM 2257]; Local 138, International Union of Operating Engineers (1964) 148 NLRB 679 [57 LRRM 1009].

strikes by public employees are unlawful,<sup>19</sup> it is doubtful that union discipline could be imposed on members of either local who refused to honor a picket line of the other union.

It cannot be denied that Local 535 and Local 22 have a relationship to the International and that the International has a relationship to them. It cannot be denied that they both belong to regional and statewide bodies of the International and that they both belong to the Sacramento Central Labor Council. Without doubt, Local 535 and Local 22 have some relationship with each other. But it cannot be said from the evidence in this case that their relationship is so great that it makes them the same employee organization. The Legislature did not prohibit affiliated unions from representing both supervisors and subordinates. It prohibited the same organization from representing the two groups.

For the reasons stated here it is concluded that Local 535 and Local 22 are not the same organization.

#### PROPOSED ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this matter, it is the proposed order that:

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<sup>19</sup> See Almond v. County of Sacramento (1969) 276 Cal.App.2d 32 [80 Cal.Rptr. 518]. Los Angeles Unified School District v. United Teachers of Los Angeles (1972) 24 Cal.App.3d 142 [100 Cal.Rptr. 806]; Pasadena Unified School District v. Pasadena Federation of Teachers (1977) 72 Cal.App.3d 100 [140 Cal.Rptr. 41] mod. at 72 Cal.App.3d 763d.

Service Employees International Union, Local 535 is not the same employee organization as Service Employees International Union, Local 22, or Service Employees International Union, AFL-CIO, CLC, as the phrase "same employee organization" is used within Government Code section 3545(b)(2).

Pursuant to California Administrative Code, title 8, section 32305, this proposed decision and order will become final on November 20, 1978, unless a party files a timely statement of exceptions. See California Administrative Code, title 8, section 32300. 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 November 15, 1978, in order to be timely filed. (See Cal. Admin. Code, tit. 8, sec. 32135.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself.

Within ten (10) workdays after this decision becomes final, the employee organizations shall demonstrate to the Regional Director at least 30 percent support in the classified supervisory unit. The Regional Director shall conduct an election if both employee organizations qualify for the ballot or if only one organization qualifies and the employer does not grant voluntary recognition.<sup>20</sup>

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<sup>20</sup>Voluntary recognition requires majority proof of support in all cases. See Gov. Code secs. 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: October 26, 1978

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Ronald E. Blubaugh  
Hearing Officer