

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MENDOCINO COMMUNITY COLLEGE DISTRICT,)
)
Employer,) Case No. SF-R-615X
)
and) PERB Decision No. 144
)
MENDOCINO PART-TIME FACULTY)
ASSOCIATION) November 4, 1980
)
Employee Organization.)
_____)

Appearances: Ronald A. Glick, for Mendocino Community College District; Peter Ferris for Mendocino Part-time Faculty Association.

Before: Gluck, Chairperson; Moore, Member.

DECISION

The Mendocino Community College District (hereafter District) has excepted to a Public Employment Relations Board (hereafter PERB or Board) hearing officer's proposed decision holding that a unit of part-time certificated faculty¹ is appropriate. For the reasons that follow, the Board itself affirms the hearing officer's decision.

¹The unit found appropriate by the hearing officer is: All part-time certificated faculty, excluding part-time instructors or counselors classified "contract" or "regular" by the District according to the Education Code, and all full-time certificated employees.

PROCEDURAL HISTORY AND FACTS

The hearing officer's statement of the procedural history and findings of fact in this case is free from prejudicial error and is adopted by the Board itself. He did, in his footnote 5, state: ". . . for purposes of this decision, the community of interest between and among full-time and part-time employees is irrelevant." We do not agree with this observation but find in it no prejudicial error in light of all the facts and conclusions of law that follow.

DISCUSSION

The Association contends that a unit of part-time faculty is appropriate. In response, the District argues that the appropriate unit of certificated employees must contain both part-time and full-time faculty. The hearing officer finds the District, by arguing for a single unit, is seeking to modify the already recognized and represented full-time faculty unit. We disagree with the hearing officer's characterization of the District's presentation of its single unit argument, and view the District's position as merely doubting the appropriateness of the unit sought.²

²All references are to the Government Code unless otherwise noted. Section 3544.1 states in pertinent part:

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

- (a) The public school employer desires that

This case, like Arcadia Unified School District (5/17/79) PERB Decision No. 93, presents the Board with the question of unit appropriateness where an already established unit is currently in place.³ However, unlike Arcadia, supra, both the established unit of full-time faculty created by the District's voluntary recognition of Mendocino College Instructors Association, CTA/NEA (hereafter MCIA) and the

representation election be conducted or doubts the appropriateness of a unit.

.....

PERB rule 33190(d) states in pertinent part:

(d) The employer shall use "Format B" if it has not granted voluntary recognition. A request for a representation hearing to resolve a unit dispute may be raised by "Format B" or by the employer filing a subsequent petition pursuant to section 33220.

.....

(3) Reasons for Denial of Recognition.

(A) Does the employer doubt the appropriateness of the proposed unit? If so, what classifications or positions remain in dispute? State the employer's position regarding the dispute.

.....

³This fact, in part, distinguishes the instant matter from the PERB decisions relied on by the District where full-time and part-time faculty were included in the same unit, e.g., Los Rios Community College District (6/9/77) EERB Decision No. 18; Rio Hondo Community College District (1/25/79) PERB Decision No. 87; Hartnell Community College District (1/2/79) PERB Decision No. 81.

petitioned-for unit in the instant matter are comprised of classroom teachers. The appropriateness of the petitioned-for unit must, therefore, be considered in light of Peralta Community College District (11/17/78) PERB Decision No. 77. The Board found there that sections 3545(a) and (b) (1)⁴ give rise to the presumption that all classroom teachers are to be placed in a single unit. The presumption, however, is rebuttable since section 3545(a) requires the Board to decide the question of a unit's appropriateness on the basis of three criteria: (1) community of interest, (2) past practices, including the extent to which the employees belong to the same employee organization, and (3) the effect of the size of the unit on the efficient operation of the District.

⁴Section 3545(a) and (b) (1) state:

(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

(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.

A community of interest between the part-time and full-time faculty is presumed under Peralta, supra.⁵ However, the record here is replete with facts tending to rebut the Peralta presumption of appropriateness. Full-time and part-time faculty members have historically maintained separate organizations and have been unable or unwilling to cooperate with each other in their dealings with the employer. The Mendocino Part-time Faculty Association's (hereafter Association or MPFA) predecessor, the Mendocino College Faculty Association (hereafter MCFA) attempted in April 1978 to be included with full voting rights in the Faculty Senate Council. Their request was denied by a vote of the full-time faculty. Shortly thereafter, MCFA changed its name to MPFA, apparently because the full-time faculty were not interested in working with the part-time faculty. During the 78-79 academic year, MCIA began organizing actively for collective negotiations. MPFA met with MCIA on several occasions and asked to be included in the latter's unit. These attempts were rebuffed. In February 1979, the District voluntarily recognized a unit of full-time faculty represented by MCIA. In the fall of 1979, MPFA sought, through discussions with the MCIA, to modify the full-time unit to include part-time faculty. MCIA was agreeable to including the part-time faculty

⁵It is in this respect that the hearing officer's statement in his footnote 5 was incorrect.

but was unwilling to agree to equal representation on the negotiating team. Thereafter, MPFA decided to seek a separate unit and filed the petition in the instant matter. MCIA continued to negotiate with the District for full-time faculty and reached a collective agreement on July 1, 1980 which remains in effect until June 30, 1983.⁶

An aspect of the second criterion of past practice is the extent to which the employees belong to the same employee organization.⁷ The record indicates that there have only been one or two part-time faculty members who have held membership in the full-time faculty association, MCIA. At the time of the hearing in April 1980, there were no part-time faculty who were members of MCIA. This almost complete segregation of membership, coupled with the history of separate representation and negotiation, clearly militates against the

⁶This fact does not appear in the record. However, an administrative agency may take official notice of its records. Antelope Valley Community College District (7/18/79) PERB Decision No. 97, pp. 23-24. PERB rule 32120 requires in pertinent part:

[e]ach employer entering into a written agreement or memorandum of understanding with an exclusive representative pursuant to the EERA, . . . shall file an executed copy of the agreement and any amendments thereto with the regional office within 60 days after execution of the agreement, memorandum or amendment.

⁷Section 3543(a), supra.

presumption that one unit of certificated employees in this District would be appropriate.

In light of the third criterion concerning the size of the unit, we note the following: The full-time faculty unit consisting of 31 employees has been established since February 1979. A negotiated agreement will remain in effect until June 1983. There are approximately 130 part-time teachers. To require their inclusion in the existing unit is likely to create severe disruption of the existing negotiating relationship, particularly in view of the historically uncooperative relationship between the two faculty groups.

Finally, we do not find that establishing a separate unit of part-time faculty would have an adverse affect on the efficiency of District's operations. The District argues that a finding of two appropriate units would double the District's work and therefore be inefficient, costly, and interfere with the education of students. However, while the District may now prefer to deal with a single, comprehensive faculty unit, it was the District which voluntarily recognized the unit of 31 full-time faculty in February 1979. At that time, it raised no objection to the division of its teaching staff for purposes of dealing with personnel relations. Moreover, the District offers no evidence to support its speculation that a requirement to deal with petitioners in the collective negotiations context will negatively impact on the District's

operations. The Board does not find two faculty units to be inherently damaging to school operations.

For the foregoing reasons, the Board finds that the part-time faculty unit is appropriate under section 3545(a) and that the Peralta, supra, presumption has been rebutted in light of the facts of this case.

However, the hearing officer excluded from the unit, without explanation, "part-time instructors or counselors classified 'contract' or 'regular' by the District according to the Education Code." While the parties consented to this exclusionary language at the hearing, the District took exception to the assertion that the quoted terms are derived from the Education Code. In light of this exception, we have examined the record and find no evidence upon which this Board can clearly ascertain the composition or size of the excluded classes of part-time employees. Thus, the separate unit of part-time faculty which has been approved here is incomplete absent adequate evidence identifying these part-time faculty members and justifying their omission from the unit.

The Board, therefore, retains jurisdiction over the matter and remands to the hearing officer, for the purpose of taking evidence and hearing argument, the question of whether any part-time instructors should be excluded from the approved unit. The hearing officer shall expedite this matter and

return the record to the Board itself. Post hearing arguments shall be oral and included in the submitted record.

ORDER

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

1. A unit consisting of all part-time certificated faculty, excluding those who are managerial, supervisory or confidential employees, is appropriate for negotiating in the Mendocino Community College District provided that an employee organization becomes the exclusive representative.

2. This case is remanded to the hearing officer to take evidence on an expedited basis as to the identity of teachers classified as "regular" and "contract" part-time employees of the District and as to whether such teachers should be excluded from the unit established by this order. Oral argument on the matter, if any, shall be made on the record which shall be returned directly to the Board itself for disposition.

3. Jurisdiction over this case is retained by the Board itself for the purposes set forth above.


By: Harry Gluck, Chairperson

Barbara D. Moore, Member

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA



MENDOCINO COMMUNITY COLLEGE)
DISTRICT,)
Employer,)
and)
MENDOCINO PART-TIME FACULTY)
ASSOCIATION,)
Employee Organization.)

Representation
Case No. SF-R-615X
PROPOSED DECISION
(7/21/80)

Appearances: Ronald A. Glick, for Mendocino Community College District; Peter Ferris for Mendocino Part-time Faculty Association.

Before: Fred D'Orazio, Hearing Officer.

PROCEDURAL HISTORY

On January 16, 1980, the Mendocino Part-time Faculty Association (hereafter Association or MPFA) petitioned the Mendocino Community College District (hereafter District) for recognition as the exclusive representative for a unit of part-time certificated employees.¹ No other employee organization intervened, but on February 25, 1980, the District

¹The unit initially petitioned for is as follows:

All part-time instructors and counselors employed by Mendocino Community College District as of January 16, 1980; excluding those part-time instructors or counselors classified "contract" or "regular" by the

denied the request, challenging the appropriateness of the petitioned-for unit, and asserting that only a unit of both full-time and part-time certificated employees, excluding management, supervisory and confidential employees, is appropriate.²

A formal hearing was held on April 3, 1980. Briefs were submitted on June 11, 1980.

ISSUE

Whether a unit of part-time certificated employees in the District is appropriate?

FINDINGS OF FACT

MPFA is an employee organization within the meaning of section 3540.1(d) of the EERA. The District is a public school employer within the meaning of section 3540.1(k) of the EERA. In an attempt to promote better overall working conditions for part-time faculty, and to gain recognition, MPFA went before the District board of trustees in September 1977. At that meeting, MPFA introduced itself as an employee organization, gave a brief report about part-time teaching in the District and handed out copies of its bylaws. In addition, MPFA announced that it had changed its name from MPFA to the

district according to the California Education Code, and all full-time employees in certificated positions with the district.

²There is no dispute as to management, supervisory or confidential employees.

Mendocino College Faculty Association (hereafter MCFA), a change that reflected a desire to foster unity between part-time and full-time faculty. Membership in MCFA was available to all faculty.

In March 1978, MCFA appeared before the President's Advisory Council and was granted informal recognition ³ along with a mailbox on campus and access to faculty mailing lists.

In April 1978, MCFA appeared before the Faculty Senate Council, presented their concerns and asked to be included with full voting rights in that body. By a vote of full-time faculty, that request was denied. Shortly thereafter, MCFA changed its name back to MPFA.

During the next academic year, the Mendocino College Instructor's Association, CTA/NEA, (hereafter MCIA) organized a unit of 31 full-time faculty members and was voluntarily granted recognition by the District on February 21, 1979.⁴

³The record is unclear as to what rights attached to informal recognition.

⁴MCIA did not appear at the hearing, nor did it participate in this proceeding in any way.

According to the official files of the PERB in the San Francisco Regional Office, as of June 1980, negotiations between the District and MCIA for a new contract were in the factfinding stage pursuant to section 3548 et seq. (Mendocino Community College District, SF-M-460, SF-F-40, SF-R-615.) Official notice is taken of this point. Antelope Valley Community College District (7/18/79) PERB Decision No. 97, pp. 23-24.

In the fall of 1979, representatives of MPFA and MCIA discussed the possibility of MCIA modifying the full-time unit to include part-time faculty. These discussions proved fruitless and MPFA then filed the request for recognition at issue in this case. Because the District challenged the appropriateness of a part-time unit, the request for recognition was denied.

There are between 129 and 135 part-time faculty in the District. The parties stipulated at the hearing that a community of interest exists between and among all part-time faculty in the District.

This community of interest may be summarized as follows: Part-time faculty members are paid on an hourly basis, and they are on the same salary schedule. They must meet the same credentialing requirement, their fringe benefits are the same, and they are subject to the same evaluation and hiring procedures. The lines of supervision are the same for all part-timers. Part-timers also earn the same seniority and their job classification is the same. The procedure for requesting textbooks is the same for part-timers. They have no offices and their office hour requirement is the same. They do not attend department meetings. However, they do attend one orientation meeting per term; other discussions about course materials, instruction, etc. are conducted on an informal basis thereafter. There is no in-service training for part-timers.

They are required to fill out monthly timesheets. Off-campus instruction is done almost exclusively by part-time faculty. They have no membership in the faculty senate or on District committees, such as budget or curriculum.⁵

There are currently no part-time employees who are members of MCIA. In the past, there have been only one or two part-time employees who have been members of MCIA.

CONCLUSIONS

The Association contends that, based on the criteria set forth in section 3545(a), a unit of part-time faculty is appropriate.⁶

The District argues that, in accordance with the decisions of the Public Employment Relations Board (hereafter PERB or

⁵At the hearing the District pointed out that full-time employees also share a community of interest with part-time employees on many of these terms and conditions of employment. However, for purposes of this decision, the community of interest between and among full-time and part-time employees is irrelevant.

⁶All references are to Government Code unless otherwise noted. Section 3545(a) states:

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.

Board), a unit of both part-time and full-time faculty is appropriate.⁷ Before a part-time unit can be considered appropriate, there must be a determination that a separate community of interest exists which would distinguish the part-time faculty from the full-time faculty. In addition, the District contends that the creation of separate units would be "inefficient and deter District operations."

The Board has determined in several cases that a unit of both part-time and full-time faculty is appropriate. See e.g. Los Rios Community College District, supra; Rio Hondo Community College District, supra; Hartnell Community College District, supra. However, the fact that the Board has, in previous decisions, found an overall certificated unit appropriate does not preclude it from finding a separate unit of certificated employees appropriate under favorable circumstances. Arcadia Unified School District (5/17/79) PERB Decision No. 93, pp. 13-14.

The Board's prior decisions dealing with full-time/part-time faculty issues arose out of circumstances which are distinguishable from those presented here.

⁷The District points to several PERB decisions where full-time and part-time faculty were included in the same unit. e.g. Los Rios Community College District (6/9/77) PERB Decision No. 18; Rio Hondo Community College District (1/25/79) PERB Decision No. 87; Hartnell Community College District (1/2/79) PERB Decision No. 81.

Specifically, a recognized unit of full-time faculty already exists in the District. By its argument that full-time and part-time faculty should be placed in the same unit, the District seeks to modify the full-time unit already represented on an exclusive basis by MCIA. This it cannot do.

California Administrative Code, title 8, section 33260 contains the exclusive procedure for unit modification.

Section 33260 states in relevant part:

33260. Policy. It is the policy of the Board to provide a single mechanism which shall be utilized for the modification of all established units. This system is designed to ensure that all parties to a modification are afforded notice and opportunity to express their views with regard to any proposed modification, and to provide assistance in the resolution of questions raised by the parties to a dispute regarding the modification of a unit.

The Board will not allow a unit modification which is based principally on employee dissatisfaction with the results of negotiations or the exclusive representative; nor will the Board permit a unit modification which impinges on the integrity of another established unit in which there is a different recognized or certified organization or which compromises the exclusivity of such certification.

No unit modification may be made by any procedure other than that contained in this Article. (Emphasis added.)

Section 33261 sets forth who may file a petition, and under what circumstances a petition may be filed.

33261. Petition.

(a) A recognized or certified employee organization may file with the Regional Office a petition for unit modification pursuant to section 3541.3(e) or (m) of the Act:

(1) To add to the unit unrepresented classifications or positions which existed prior to the recognition or certification of the current exclusive representative of the unit, provided such petition is filed at least 12 months after the date of said recognition or certification, except as provided in subsection (2) below;

(2) To add to the unit unrepresented classifications or positions which were included in an original request for recognition or intervention, but disputed as to management, supervisory or confidential status, provided a written agreement of all parties to submit the disputed classifications or positions pursuant to this Regulation 33261(a) (2) was filed with the Regional Office prior to recognition or certification of an exclusive representative in the unit in question.

(3) To add to the unit new unrepresented classifications or positions created since recognition or certification of the current exclusive representative.

(4) To reflect changes in the identity of the exclusive representative other than a new or different representative.

(5) To divide an existing unit into two or more appropriate units.

(b) A recognized or certified employee organization, an employer, or both jointly may file with the Regional Office a petition for change in unit determination pursuant to section 3541.3(e) of the Act:

(1) To delete classifications no longer in existence or which by virtue of changes in circumstances are no longer appropriate to the established unit;

(2) To update classification titles where the duties are not changed sufficiently to cause deletion from the established unit;

(3) To make technical changes to clarify the unit description.

(c) An employer and all affected recognized or certified employee organizations may jointly file with the Regional Office a petition pursuant to section 3541.3(e) of the Act to transfer classification(s) from one represented established unit to another, provided neither of the conditions of section 3544.7(b) of the Act exist in any of the units affected by the petition to transfer. Any employee(s) affected by the transfer of classification(s) or position(s) from one represented established unit to another can request, within the posting period provided by section 33262(c), that the Regional Director investigate the proposed transfer and after such investigation determine whether such transfer effectuates the purposes of the Act and Article 6.

The District has not filed a unit modification petition in this case. However, even assuming this proceeding is construed as a section 33260 matter, the District's position is without foundation. This procedure provides only limited circumstances under which an employer may seek to modify an existing unit, and under no reading of this regulation can these circumstances be found to be present here.

Further, as noted, MCIA has not participated in this proceeding, and the full-time faculty unit is not in issue. The Board will not disturb an existing unit when its composition is not at issue. See Arcadia Unified School District, supra, p. 12, citing Palo Alto Unified School District (1/9/79) PERB Decision No. 84. Thus, there is no basis upon which the existing unit of full-time faculty, now represented on an exclusive basis by MICA, can or should be modified to include part-time faculty.

As an alternative to modification of the full-time unit, the part-time unit must be recognized as appropriate if the employees therein are to have the benefits and rights intended by the Legislature when it passed the Educational Employment Relations Act (hereafter EERA). However, the criteria set forth in section 3545(a) must be met if the part-time unit is to be recognized as appropriate in its own right. Thus, the only issue before the hearing officer is whether the unit of part-time faculty, standing on its own, meets the statutory criteria set forth in section 3545(a).

The parties stipulated that a community of interest exists between and among part-time faculty in the District as indicated (supra p. 4). The facts support that stipulation. There is no evidence of established practices which militate against finding the part-time unit appropriate. In fact, membership of part-time faculty in MCIA is non-existent.

Additionally, MPFA has apparently made some efforts to unite part-time faculty and full-time faculty for the purpose of representation and collective bargaining. These efforts have not been fruitful and MCIA has proceeded to represent and negotiate for full-time faculty while MPFA has represented part-time faculty. Injecting approximately 125-130 part-time faculty into a unit of 31 full-time faculty at this point may serve to severely disrupt the pattern of negotiations and representation which has existed between MCIA and the District, thus creating a destabilizing effect on labor relations.

Lastly, the District argues that separate units would be inefficient and result in the costly duplication of efforts by management employees during the bargaining process, thereby undermining the mission of educating students. Even if it were established that some duplication of effort will occur as a result of finding separate units appropriate, it does not necessarily follow that it would undermine the process of education. Moreover, when weighed against the rights of employees under the EERA to participate in activities of employee organizations for purposes of representation and collective bargaining, the balance must be struck in favor of a separate unit for part-time faculty, there being no way to include them in the full-time unit at this juncture.

Based on the foregoing, it is concluded that a unit of part-time faculty is appropriate. A unit of both part-time and

full-time faculty may, under Board decisions, be a more appropriate unit. Nevertheless, as the Board noted in Antioch Unified School District (11/7/77) PERB Decision No. 37, a unit that is appropriate for meeting and negotiating need not be the most appropriate unit.

PROPOSED ORDER

It is the proposed order that the following unit is appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative of the unit:

All part-time certificated faculty; excluding part-time instructors or counselors classified "contract" or "regular" by the District according to the Education Code, and all full-time certificated employees.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on August 11, 1980 unless a party files a timely statement of exceptions and supporting brief within twenty (20) calendar days following the date of service of this 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 August 11, 1980 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 each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, section 32305 (as amended).

Upon notice that this Proposed Decision and Order has become final, the regional director shall conduct an election for a unit of part-time certificated faculty employees as herein described unless the employer grants voluntary recognition. Voluntary recognition requires proof of majority support in all cases. See Government Code sections 3544 and 3544.1.

DATED: July 21, 1980

FRED D'ORAZIO
Hearing Officer