

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



OAKLAND UNIFIED SCHOOL DISTRICT,)
Employer,) Case No. SF-UM-154
and) (R-200A)
OAKLAND EDUCATION ASSOCIATION/CTA/NEA,) PERB Decision No. 320
Employee Organization.)
June 20, 1983

Appearances: Ember Lee Shinn, Attorney for the Oakland Unified School District; Kirsten L. Zerger, Attorney, and Michael J. Zaidel, Law Clerk, for the Oakland Education Association, CTA/NEA.

Before Gluck, Chairperson; Tovar and Morgenstern, Members.

DECISION

TOVAR, Member: The Oakland Education Association, CTA/NEA (Association) filed a unit modification petition with the Public Employment Relations Board (PERB or Board) to add all regular certificated substitute teachers who substitute for Unit A members in the Oakland Unified School District (District) into Unit A.¹ The petition was accompanied by

¹The description of Unit A as certified by PERB on June 3, 1977 is as follows:

All certificated employees, including counselors, psychologists, and teachers on special assignments; excluding children's center teachers, children's center teachers' assistants, children's center assistant supervisors, K-12 and children's center substitute teachers, management, supervisory and confidential employees.

proof of support by a majority of employees in the unit requested. The District filed a statement of opposition to the Association's petition on November 19, 1980.

After a hearing on the matter, the hearing officer granted the petition and ordered that the certificated unit, Unit A, be modified to include all substitute teachers who substitute for teachers in Unit A. The District excepts to such a finding.

The Board has reviewed the record in this case and concludes that the hearing officer's findings of fact as set forth in the proposed decision, attached hereto, are free of prejudicial error and are adopted by the Board itself.² The Board further affirms the hearing officer's conclusions of law to the extent they are consistent with the discussion below.

DISCUSSION

In Palo Alto Unified School District/Jefferson Union High School District (1/9/79) PERB Decision No. 84, the Board held that substitute teachers are employees under the Educational Employment Relations Act (EERA).³ Consequently, the main issue which needs to be resolved in this case is whether

²The hearing officer incorrectly found that there were approximately 6,000 certificated employees in the District. We affirm the District's exception and find that there are approximately 9,000 employees in the District: approximately 3,000 certificated and 6,000 classified.

³The EERA is codified at Government Code section 3540 et seq. All code references are to the Government Code unless otherwise specified.

substitute teachers have a sufficient community of interest with the certificated employees for whom they substitute to warrant inclusion in the same unit.

Subsections 3545(a) and (b) of EERA set forth the standards for determining the appropriateness of a unit:

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

(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.

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The Board has interpreted these provisions to create a rebuttable presumption that all classroom teachers will be contained in a single unit. Peralta Community College District (11/17/78) PERB Decision No. 77. The District in this case argues that the potential for disruption standard must be considered before the application of the Peralta presumption. The Peralta presumption favoring a comprehensive teacher unit applies to the question of proper unit placement of substitute teachers, and a single unit will be directed unless disparate

community of interest exists or such application would cause disruption or instability within an already established unit. Therefore, the question of disruption is part of the Peralta test. See Palo Alto/Jefferson, supra, Oakland Unified School District (9/20/79) PERB Decision No. 102.

Community of Interest

To determine whether a community of interest exists among employees, the Board considers the following criteria: method of compensation, wages, hours, employment benefits, supervision, qualification, training and skills, contact and interchange with other employees. Office of Santa Clara County Superintendent of Schools (7/19/78) PERB Decision No. 59.

Also, prominent among the various interest factors is job function. Rio Hondo Community College District (1/25/79) PERB Decision No. 87.

The evidence shows that substitute teachers are called upon to perform nearly all of the job functions of regular teachers. A substitute might administer regular classroom tests as well as standardized tests, grade papers and tests, make lesson plans, provide resource materials, put up bulletin boards, arrange and supervise field trips, participate in extra-curricular activities, supervise aides, participate in disciplinary conferences, participate in parent-teacher conferences and open house, attend faculty meetings and in-service workshops, offer input into the final semester

grades, fill out report cards and fill in information on the cumulative folders. Substitutes teach the same subjects to the same students in the classrooms. They have regular contact with the teachers whom they replace, as well as with other teachers in the school.

As noted in Oakland, supra:

"Substitutes are an integral part of the instructional function of the District, performing the same work and under the same general conditions as do the teachers they replace. They teach the same courses, deal with the same students and perform as circumstances require, virtually all of the replaced teacher's duties. . . . The very word 'substitute' defined as 'one who takes the place of another,' testifies to such community."

The District attempts to refute the presumption supporting the inclusion of substitutes into Unit A by pointing to various "differences between the regular and substitute teachers which destroys any community of interest between them." These include:

Wage and fringe benefit differences. PERB in the past has not found this factor persuasive standing alone since for all practical purposes the hours, wages and other terms and conditions of employment are mainly within the District's control. Consequently, differences in wages and hours do not negate a finding of appropriateness because these are conditions previously imposed unilaterally and may well be the policies the employees wish to change through negotiations.

See, Redwood City Elementary School District (10/23/79) PERB Decision No. 107.

No reasonable expectation of continued employment. The Board has held that it is reasonable for substitute teachers as a class to expect future employment given that the school employer repeatedly employs substitutes as a regular and integral part of the work force. See Dixie Elementary School District (8/11/81) PERB Decision No. 171.

Potential conflict of interest between substitutes and Unit A members. The District offers two examples: First, the District made conclusory statements that there would be a potential conflict between substitutes and regular teachers because teachers who are ill and have exhausted their sick leave receive the difference between their salary and the salary paid to the substitute who was employed to replace them. We have no evidence that this conflict in some substantial way diminishes the community of interest between the substitutes and regular teachers. There was testimony that in practice this has never been a problem in the District because the Association has obtained proportional wage increases for teachers as well as substitutes.

Second, there also was no evidence presented to support the allegation of a potential conflict between substitutes and Unit A members due to the "evaluative"⁴ nature of the

⁴The District claims that, since Unit A members have the

teachers' right to request a substitute. Although the existing contract permits teachers to request specific substitutes, that request can be denied by the District administration.

Therefore, Unit A members do not have ultimate control over who is selected as a substitute for their classrooms.

Differences in Credentialed Status

The District also asserts that somehow there is no community of interest between substitutes and regular teachers because currently a large percentage of substitutes hold emergency credentials.⁵ The District claims that emergency-credentialed substitutes do not share the same devotion to

right to request a substitute, this puts Unit A teachers in an "evaluative" relationship with the substitute. This term may be misleading, since it is the site administrators, such as principals, who generally evaluate the substitutes.

⁵Education Code section 44254 provides:

Emergency credentials may be issued in accordance with regulations adopted by the commission.

The terms, reasons, and justification for the issuance of such credentials shall be regularly reported to the Legislature, as well as their number, kind, and other pertinent information. Emergency credentials shall only be authorized when insufficient certified teachers are available.

An emergency credential may not be issued unless the holder has completed at least 90 semester units of college work. Emergency credentials for pupil personnel services shall not be valid for the purpose of

teaching as a profession as do regular certificated teachers and are also less competent. First of all, the issue of competency is not a criterion for proper unit placement. While substitutes and regulars may have different credentials, this does not overcome the community of interest we have found them to have. In addition, emergency credentialed substitutes meet the established statutory requirements, supra.

In reviewing the community of interest criteria, we note that the Association has a history of representing the substitute teachers. Since the enactment of EERA, the District had informally recognized the Association as the de facto representative of substitutes in informal grievances, salary disputes, and other employer-employee problems. Substitutes also participate within the Association through their substitute caucus.

Interference with the Efficiency of Operations and Disruption Issues.

The District argues that inclusion of substitutes in the existing bargaining unit would be disruptive primarily because the existing collective bargaining agreement will have to be

determining pupil eligibility for placement in special education classes or programs.

With the exception of this chapter, any reference in any law or regulation to a "provisional credential" shall be deemed to mean an "emergency credential."

substantially revised. The Board in El Monte Union High School District (10/20/80) PERB Decision No. 142 approved the inclusion of substitutes into the existing bargaining unit stating:

. . . negotiation of a supplementary agreement covering the petitioned for employees imposes no greater burden on the parties than would the negotiation of a separate agreement. Nor, in the future, do negotiations covering all employees in the modified unit present any more potential for disruption than bifurcated negotiations covering two separate units. (At page 11)

In the instant case, the District would have an obligation to negotiate regardless of whether substitutes were placed in a separate unit or folded into the existing unit.

Thus, having to negotiate additional provisions of an existing contract is not in and of itself disruptive. Oakland Unified School District (9/20/79) PERB Decision No. 102. Additionally, there is no disruption since the District is not obligated to reopen matters applicable to regular teachers.

The Board rejected a similar disruption argument in Dixie Elementary School District (8/11/81) PERB Decision No. 171, indicating that: "while it may be that additional issues now will have to be addressed as part of collective bargaining, such a burden cannot be avoided under the Act."

While the diversity that already exists in the District in terms of the types of employees that are covered and portions of the contract that relate to different groups within

Unit A⁶ may lead to complex negotiations, it does not rise to the level of disruption.

In addition, the District states there would be a "potential for disruption" by including over 1,000 substitutes into a unit of approximately 3,000 employees. Presumably, the District implies that the inclusion of such a large number of substitutes would disrupt the negotiation process. We reject this conclusory assertion on the part of the District because we have already found that there exists a community of interest among substitutes and regular teachers.

Finally, although it doesn't specify the consequence of the numerical variance, the District disputes the hearing officer's figures on the exact number of active substitutes. We find this argument irrelevant to the issues at hand. A sufficient showing of support was demonstrated by the Association at the appropriate time based on data provided by the District. The District has admitted that the figures it advanced at the hearing were inflated and contained overlap. In determining units the Board deals with classifications, not overall number of employees. We therefore find this argument irrelevant.

⁶The current contract covering Unit A employees includes, for example, different salary schedules for psychologists, a ten-month work year for K-12 versus a twelve-month work year for all other Unit A members, and fewer preparation periods for some teachers.

Although the District argues that the crossover among bargaining units will pose an added administrative burden in that the pool of substitute teachers who substitute for Unit A teachers also substitute for Unit B teachers and hourly adult education teachers, it completely failed to demonstrate how this crossover would pose an administrative burden on its operations.

Moreover, "crossover" employees are common in private sector employment. The National Labor Relations Board (NLRB) considers employees who perform two kinds of tasks to be "dual-function" employees. NLRB policy is to include these employees in the requested unit if they have sufficient interest in the unit's conditions of employment, even if they spend less than 50 percent of their time in unit work. Berea Publishing Co. (1963) 140 NLRB 516 [52 LRRM 1051]. Employees who perform functions for more than one unit are entitled to representation in both units if necessary. Inconvenience to the employer is not a factor. As the NLRB explained in Berea, supra:

[W]e can perceive no distinction between the part-time employee who may work for more than one employer, and the employer [sic] who performs dual functions for the same employer. We believe the policies of the [NLRA] are best effectuated by according to each the same rights and privileges in the selection of the majority representative for the unit in which he works. Id., at 1053.

Finally, the District excepts to the hearing officer's proposed order granting the unit modification to include "all substitute

teachers who substitute for teachers in Unit A."⁷ It argues that it is unclear what the term "regular" certificated substitutes means. This exception is without merit. Irrespective of the petition, the testimony and evidence presented at the hearing by the Association and the District pertained to all substitutes.⁸ The District produced no evidence at the hearing to indicate that the term "regular" substitutes would not include all of the substitutes. In fact, the District's own post-hearing brief characterizes the Association's petition as follows: "The Association has petitioned for all those substitute teachers who perform Unit A work." at p. 40 (emphasis supplied). The District's own statement is an admission demonstrating it understood that all substitutes were at issue in this proceeding. We, therefore, find the hearing officer's proposed order appropriate since the matter has been fully litigated, and find the District to have waived any defect in the petition.

⁷The petition sought to include "all regular certificated substitute teachers."

⁸The Association clearly intended to include all substitutes in its petition. In the Association's post-hearing brief, their statement of the case indicates they filed a request to modify its Unit A "to include all certificated substitute teachers." p. 3. (Emphasis supplied.)

The Association has consistently sought to represent all certificated substitute teachers. See Oakland Unified School District (3/28/77) EERB No. 15, and Oakland Unified School District (9/20/79) PERB No. 102.

CONCLUSION

There is extensive evidence of an existing community of interest among substitutes and the employees they replace, and there is little or no evidence indicating that placing the substitutes into Unit A would create disruption in employee relations or interfere with the efficiency of the District's operations. Consequently, we find the District did not sufficiently rebut the Peralta presumption and, therefore, grant the petition for unit modification.

ORDER

The unit modification petition filed by the Oakland Education Association, CTA/NEA is hereby GRANTED. Unit A, the certificated unit, is therefore modified to include all substitute teachers who substitute for teachers in Unit A.

Member Morgenstern joined in this Decision.

Gluck, Chairperson, concurring: The community of interest inherent in the comparability of the work and working conditions of substitutes and those teachers whose places they take is manifest. See Oakland Unified School District (9/20/79) PERB Decision No. 102, pp. 10-11. The District has provided no persuasive evidence of significant dissimilarities which would preclude placing both groups in the same unit. Its contention that substitutes are neither as loyal nor competent as regular teachers even if relevant to the issues here, reflects an unsubstantiated opinion. The issuance of credentials, even on

an emergency basis, establishes that the State considers the recipients sufficiently competent to teach in place of regular teachers. Assuming, without so finding, that the District's "loyalty test" is pertinent, respondent has not shown how this alleged shortcoming would preclude carrying on meaningful negotiations.

The District's claim that inclusion of the substitutes would tend to disrupt negotiations and interfere with the efficiency of its own operations amounts, in light of the evidence it offers, to the suggestion that it may have to endure a certain amount of inconvenience if the petition is granted.

I agree that wage differentials, by themselves, are of little probative value in determining unit appropriateness. Beyond the fact that they result from unilateral employer action, and may be modified in subsequent negotiations, it is not the differential itself which bears witness to the matter of community of interest, but what the differential signifies. In the private sector, distinctions in pay practices, such as weekly salary compared to hourly wages, often reflect a lack of operational interrelationship. The example of salaried office workers and hourly-paid production and maintenance workers comes to mind. Similar distinctions have been made between exempt and covered employees. But, where pay differences, as here, are based primarily, if not solely, on the permanent or

temporary status of employees who perform the same work for the employer, they cannot prevail against explicit evidence of community of interest.

The District has failed to overcome the Peralta presumption and the petition should be granted.

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



OAKLAND UNIFIED SCHOOL DISTRICT,)
) Representation
Employer,) Case No. SF-UM-154
) (R-200A)
-and-)
) PROPOSED DECISION
OAKLAND EDUCATION ASSOCIATION/CTA/NEA,) (1/26/82)
)
Employee Organization.)
_____)

Appearances: Ember Lee Shinn, Attorney for the Oakland Unified School District; Kirsten L. Zerger, Attorney for the Oakland Teachers Association/CTA/NEA.

Proposed Decision by Jerilyn A. Gelt.

PROCEDURAL HISTORY

On October 23, 1980, the Oakland Education Association/CTA/NEA (hereafter Association) filed a unit modification petition with the Public Employment Relations Board (hereafter PERB or Board) to add all regular certificated substitute teachers who substitute for Unit A members in the Oakland Unified School District (hereafter District) to Unit A.¹ The petition was accompanied by proof that a majority

¹The description of Unit A as certified by the PERB on June 3, 1977 is as follows:

All certificated employees, including counselors, psychologists, and teachers on special assignments; excluding children's center teachers, children's center teachers' assistants, children's center assistant supervisors, K-12 and children's center substitute teachers, management, supervisory and confidential employees.

of the employees in the unit requested supported the petition. On November 19, 1980, the District filed a statement of opposition in response to the unit modification petition with the PERB. The District based its opposition on two grounds: first, on the grounds of res judicata, contending that the matter had already been litigated and decided by the PERB in Oakland Unified School District (9/25/79) PERB Decision No. 102;² and, second, that there was not a community of interest between substitutes and the regular teachers.

An informal conference was scheduled by the PERB to be held on February 27, 1981. The conference was cancelled by the parties because they had scheduled a meeting for March 12, 1981 to attempt to reach a settlement. No agreement was reached and further numerous communications between the PERB and both parties resulted in a determination that a formal hearing was necessary to resolve the issue. The hearing was held on June 9th and 10th, 1981 at the District Office. Briefs were filed and the case was submitted for decision on August 24, 1981.

FINDINGS OF FACT

The District has an enrollment of approximately 48,000 students in regular classes and approximately 14,000 students in its adult education program. Approximately 6,000

²This position was apparently abandoned by the District, as it was not raised either during the hearing or in its post-hearing brief.

certificated employees are employed in the District and constitute three separate bargaining units: (1) Unit A, comprised of regular certificated employees; (2) Unit B, comprised of certificated Children's Centers employees; and (3) Unit C, comprised of certificated hourly adult education employees. The Association is the exclusive representative of both Units A and B, and the United Teachers of Oakland, AFT, AFL-CIO represents the employees in Unit C.

The District maintains a card file of substitute teachers numbering approximately 500-600 for the 1980-81 school year. Testimony was vague and somewhat contradictory concerning the exact composition of the files, i.e., whether cards for active and inactive substitutes were kept separately, how frequently the inactives were purged, and whether or not an indication was made on a card when a substitute no longer wished to work for the District. A new card file is created each year, and the District sends letters to the active substitutes to remind them to register for the new school year. Applications are also taken from new substitutes each year.

Approximately 50 percent of the substitutes who work in the District hold a valid California teaching credential, while the rest hold an emergency credential.³

³Education Code section 44254 provides:

Emergency credentials may be issued in accordance with regulations adopted by the

There are at least two types of emergency credentials, each allowing the holder different employment opportunities. The first type, which has, as a minimum requirement, completion of 90 hours of college coursework in any subject matter, allows the substitute to work only 30 days in any one position. An exception to this may occur when the teacher whom the substitute is replacing is unable to return for the remainder of the school year; then the assignment may be prolonged in order to allow the substitute to finish out the school year. A second type of emergency credential may be obtained by a person

commission.

The terms, reasons, and justification for the issuance of such credentials shall be regularly reported to the Legislature, as well as their number, kind, and other pertinent information. Emergency credentials shall only be authorized when insufficient certified teachers are available.

An emergency credential may not be issued unless the holder has completed at least 90 semester units of college work.

Emergency credentials for pupil personnel services shall not be valid for the purpose of determining pupil eligibility for placement in special education classes or programs.

With the exception of this chapter, any reference in any law or regulation to a "provisional credential" shall be deemed to mean an "emergency credential".

who is enrolled in a specific college program which leads to a regular teaching credential. In this case, according to testimony by Dr. Robert Rottman, Director of Personnel, the substitute would not be limited to 30 day assignments. There are also emergency credentialed substitutes who hold college degrees.

Substitutes are expected to carry on the work of the teacher whom they are replacing in the classroom. If the teacher has left a lesson plan, the substitute is expected to follow it. If there are no lesson plans, the substitute will make his/her own lesson plans. Substitutes administer tests, both standardized and those developed from their own material. They correct and grade tests and day-to-day assignments, and record grades on report cards. Substitutes maintain bulletin boards, keep attendance records, perform yard-duty, accompany students on field trips and participate in extra-curricular student activities. Substitutes are expected to attend faculty meetings, especially when their assignment is long-term. They attend parent-teacher conferences and discipline students when necessary. It is a regular practice for substitutes to leave a note for the returning teacher regarding what has taken place in the classroom in his/her absence.

Substitutes perform the same tasks as regular teachers when opening the classroom at the beginning of the school year and closing it at the end of the school year. They fill out

cumulative folders for students, including recommendations therein as to whether or not to pass students. Substitutes supervise instructional aides and assign work to them as do regular teachers.

Substitutes may develop instructional materials to aid them in the classroom. One substitute, who had taught as a regular teacher for over 30 years, served on a curriculum development committee while employed as a substitute in the District.

Day-to-day substitutes are paid \$47.00 per day; long-term substitutes are paid \$57.00 per day; and adult education substitutes are paid at an hourly rate of \$15.53. Substitutes receive no fringe benefits, leaves or District-sponsored retirement.

Both substitute teachers and regular teachers are supervised and evaluated by the same on-site administrators. Although District policy requires that a substitute be evaluated after 5-10 days in one assignment,⁴ actual practice has been to evaluate them only after they have served 20 days in the same assignment, thus becoming long-term and eligible for a higher rate of pay.

⁴District Exhibit #1, Administrative Bulletin 8080, calls for evaluation of substitutes after 10 days in one assignment. District Exhibit #4, Substitute Teacher Handbook, published more recently by the Personnel Office, calls for evaluation after 5 days.

DISCUSSION

The District argues that substitutes should not be placed in the same bargaining unit as regular teachers for reasons stated below, but that they should be placed in a separate bargaining unit. The Association filed a petition to represent a separate unit of substitutes on September 1, 1977. The District argued against the appropriateness of the proposed unit, contending that substitutes were not "employees" within the meaning of section 3540.1(j) of the Educational Employment Relations Act (hereafter the Act or EERA),⁵ because they had no written contracts and were not employed in "positions" as that term is used in the Education Code. Citing Palo Alto Unified School District/ Jefferson Union High School District (1/9/79) PERB Decision No. 84, the Board held that the substitute teachers are employees under the EERA. However, a majority of the Board did not agree that the substitute teachers constituted an appropriate separate unit and the

⁵The Educational Employment Relations Act is codified at Government Code section 3540, et. seq. All section references herein are to the Government Code unless otherwise stated.

Section 3540.1(j) provides:

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

Association's petition was rejected. Oakland Unified School District (9/20/79) PERB Decision No. 102.

There have been no appreciable changes in the nature of duties performed by substitute teachers nor their community of interest with regular classroom teachers since the separate unit petition was rejected in 1979.

Hence, the only issue to be determined in this case is the appropriateness of adding substitutes to the regular certificated unit (Unit A).

Sections 3545(a) and (b) of the EERA set forth the standards for determining the appropriateness of a unit:

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

(b) (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.

In interpreting these provisions, the Board has set up a rebuttable presumption that all classroom teachers be contained

in a single unit.⁶

The District, in the instant case, argues that substitutes do not share a community of interest with the regular teachers, that established past practices indicate that the proposed modification would be disruptive to employer-employee relations in the District, and that the modification would adversely affect the efficiency of the District's operations.

The District's contention that substitutes do not share a sufficient community of interest with the regular teachers to be included in the same unit is based on evidence that substitutes are paid different wages by different methods than the teachers, that they have different hours of employment (e.g., days worked per year, discretionary preparatory periods), that they receive no benefits, and that they are supervised by different administrators regarding grievances and termination. The Board has held, however, that compensation and fringe benefits are within the control of the District and, by themselves, do not warrant a finding of a lack of community of interest El Monte Union High School District (10/20/80) PERB Decision No. 142. Furthermore, testimony was given that some or all of these differences exist for other categories of employees already contained in Unit A. As to the similarity in

⁶Peralta Community College District (11/17/78) PERB Decision No. 77.

job function between substitutes and regular teachers, the facts indicate that they are required to carry out almost all of the same duties and responsibilities that a regular teacher performs. They teach the same subjects to the same students in the same classrooms. They have regular contact with the teachers whom they replace, as well as with other teachers in the school. They form an integral part of the work force in the District and, as such, share a well-established community of interest with the other members of Unit A.

One premise upon which the District opposes the unit modification petition is that the majority of its substitute pool holds emergency credentials rather than full teaching credentials and would thus be ineligible to work in the capacity of a regular teacher. However, there is no distinction made between the work that an emergency credentialed substitute is expected to perform and the work that a fully credentialed substitute is expected to perform as discussed above. The District's argument, then, is without merit.

In advancing established past practices as an argument against the proposed modification, the District refers to the lengthy and complicated negotiations between the Association and the District over the Unit A contract. No evidence was given, however, that the addition of substitutes would create any more complications than those created by any of the diverse

categories of employees already contained in the unit. In Dixie Elementary School District (8/11/81) PERB Decision No. 171, the Board addressed this argument as follows:

Moreover, while it may be that additional issues now will have to be addressed as part of collective bargaining, such a burden cannot be avoided under the Act. Substitutes and temporary teachers are "employees" under the EERA (Palo Alto/Jefferson); it would facilitate the negotiation process to address the interests of these teachers in a combined rather than a separate unit.

Furthermore, the District has, in the past, informally recognized the Association as a representative of substitutes in informal grievances, salary disputes and other problems involving employer-employee relations.

Arguing that the proposed modification would adversely affect its efficiency of operations, the District contends that conflicting interests between the substitutes and teachers would pose serious problems in areas such as salary, the right of teachers to request particular substitutes and leaves of absence. This argument was not supported by evidence and is purely speculative.

CONCLUSION

Sufficient evidence has been produced to conclude that substitute and regular teachers constitute an appropriate unit. They share a sufficient community of interest and the evidence did not indicate that the proposed modification would

be disruptive or have a negative effect on the District's efficiency of operations. To deny the instant petition would deny representation rights to these employees, especially in light of the fact that a separate unit of substitutes has been petitioned for and denied.⁷ Therefore, the addition of substitute teachers to the regular certificated unit is found to be appropriate.

PROPOSED ORDER

The unit modification petition filed by the Oakland Education Association/CTA/NEA is hereby granted. Unit A, the certificated unit, is therefore modified to include all substitute teachers who substitute for teachers in Unit A.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on February 15, 1982, unless a party files a timely statement of exceptions. See California Administrative Code, title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the executive assistant to the board itself at the headquarters office in Sacramento before the close of business (5:00p.m.) on February 15, 1982, 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

⁷Oakland, supra.

concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the PERB itself. See California Administrative Code, title 8, sections 32300 and 32305, as amended.

Dated: January 26, 1982

Jerilyn Gelt
Hearing Officer