

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT,)
)
Employer,) Case No. SF-UM-262
) (SF-R-46A)
and)
) PERB Decision No. 370
FAIRFIELD-SUISUN UNIFIED TEACHERS)
ASSOCIATION, CTA/NEA,) December 27, 1983
)
Employee Organization.)
_____)

Appearances: Gregory J. Dannis, Attorney (Breon, Galgani, Godino & O'Donnell) for Fairfield-Suisun Unified School District; Priscilla Winslow, Attorney for Fairfield-Suisun Unified Teachers Association, CTA/NEA.

Before Tovar, Jaeger and Morgenstern, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (Board) on an appeal filed by the Fairfield-Suisun Unified School District (District). The District disputes the decision of the Board Agent which granted the petition filed by the Fairfield-Suisun Unified Teachers Association, CTA/NEA, to modify the established unit of certificated employees to include the District's hourly adult education teachers.

We have reviewed the attached administrative determination of the Board Agent in light of the District's appeal and the entire record in this matter. Finding it to be free from

prejudicial error, we adopt it as the decision of the Board itself.

ORDER

Based upon the foregoing findings of fact, conclusions of law and the entire record in this matter, it is hereby ORDERED that the unit modification petition filed by the Fairfield-Suisun Unified Teachers Association, CTA/NEA, is GRANTED, thereby adding the hourly adult education teachers to the established certificated unit.

Members Tovar and Jaeger joined in this Decision.

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FAIRFIELD-SUISUN UNIFIED TEACHERS ASSOCIATION/CTA/NEA,)	
)	Administrative
)	Determination
Exclusive Representative.)	(5/4/83)
)	

PROCEDURAL HISTORY

The Fairfield-Suisun Unified Teachers Association/CTA/NEA (Association) was recognized as the exclusive representative of the established certificated unit in the Fairfield-Suisun Unified School District (District) on August 10, 1977.¹ On July 21, 1982, the Association filed a unit modification petition with the Public Employment Relations Board (PERB or Board) to add to the unit all certificated employees paid on an hourly basis, i.e., hourly adult education teachers.

On August 18, 1982, the District filed an opposition to the unit modification petition, arguing that the employees in question do not share a community of interest with regular

¹The established unit includes all certificated employees excluding designated management employees, temporary employees, school psychologists, per diem substitute employees, summer school teachers, and employees paid on an hourly basis.

teachers, that they are not eligible for tenure under the Education Code,² and that prior PERB precedent dictates exclusion of adult education teachers from the unit.

An investigation was held on November 4, 1982, at which time the parties submitted joint exhibits and, subsequently, entered into stipulations of fact which form the record in this case.

The issue to be decided herein is whether or not the addition of hourly adult education teachers to the established certificated unit is appropriate.³

DISCUSSION

PERB Regulation 32781(a)(1) provides that a recognized or certified employee organization may file with the regional office a petition for unit modification:

- (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.

Government Code section 3545(a) and (b) sets forth the standards for determinations of an appropriate 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

²The issue of tenure was not raised by the District in the stipulations nor in its brief and is thus not addressed herein.

³Full-time certificated adult education teachers were added to the unit pursuant to an agreement entered into by the parties on February 22, 1978.

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.

COMMUNITY OF INTEREST

The Board has interpreted section 3545 as establishing a rebuttable presumption that all classroom teachers should be contained in a single unit, absent a showing of a lack of community of interest between the groups. In Peralta Community College District (11/17/78) PERB Decision No. 77, the Board held that:

Reading subsection 3545(b) together with its companion subsection (a) gives rise to the presumption that all teachers are to be placed in a single unit save where the criteria of [subsection (a)] cannot be met. In this way, the legislative preference, as the Board perceives it, for the largest possible viable unit of teachers can be satisfied. Thus, we would place the burden of proving the inappropriateness of a comprehensive teachers' unit on those opposing it. (Id., at p. 10.)

Although early PERB decisions excluded adult education teachers from certificated units, recent precedent has placed similar groups of employees in the comprehensive teacher unit.

In Dixie Elementary School District (8/11/81) PERB Decision No. 171, the Board held that substitute teachers perform substantially the same kind of work as regular teachers and should be included in the same bargaining unit.

In El Monte Union High School District (10/20/80) PERB Decision No. 142, the Board found that home teachers, enrichment teachers and evening continuation teachers shared a community of interest with regular teachers despite such differences as work location, work hours, courses taught and lack of evaluation procedures.

Similarly, in Redwood City Unified School District (10/23/79) PERB Decision No. 107, the Board found ample evidence to include summer school teachers in the same unit with regular teachers since, among other things, they both hold credentials, prepare lesson plans, and instruct students, often in similar academic subjects, in Rio Hondo Community College District (1/25/79) PERB Decision No. 87, the Board also included summer session teachers in a unit of full-time and part-time teachers, noting that the summer courses, like regular year courses, are offered in both day and evening sessions and are both available for credit.

Of the estimated 64 hourly adult education teachers in this District, approximately 20 of them teach both in the adult education teachers program and the K-12 program. In addition to the hourly teachers, there are 16 full-time adult education

teachers in the District who are already members of the regular certificated unit and are covered by the same contract as the regular teachers.

Hourly adult education teachers, like contract adult education teachers and regular teachers, must hold a valid California teaching credential. Over 50 percent of the hourly adult teachers in the District hold standard or general credentials; the remainder hold adult education credentials. Hourly adult education teachers perform the same kind of work as contract adult education and regular teachers, teaching many of the same courses including such traditional academic subjects as government, history, geography, mathematics and English. Hourly adult education teachers, like contract adult education and regular teachers, prepare lesson plans, give tests and grade students. Both hourly and contract adult education teachers are to be evaluated periodically by the adult school principal and/or his assistants.

Adult education classes may be cancelled if a specified number of students do not attend. However, it is reasonable for adult education teachers as a class to expect continued employment since the District has consistently employed adult education teachers as an integral part of its work force.

(Dixie Unified School District, supra at p. 5).

There are differences, as the District states, between hourly adult education teachers and contract adult education

teachers and regular teachers. Hourly adult education teachers are paid on a different salary schedule and they do not receive fringe benefits (although they do accrue sick leave). Contract adult education teachers are required to attend meetings relating to developing scholarships and other academic matters, while attendance by hourly adult education teachers is voluntary. Sites for adult education classes are in locations other than K-12 school sites, and the adult education program is funded separately from the general fund and the monies cannot be commingled. The differences in sites and funding, however, also exist between contract adult education teachers and regular teachers, who are already included in the same unit. Furthermore, in light of the PERB precedent previously discussed herein, these differences are not substantial enough to establish a lack of community of interest between the hourly adult education teachers and the current bargaining unit members.

ESTABLISHED PRACTICES

As noted in Government Code section 3545(a) above, in addition to community of interest, the Board must also look to established practices when making a determination of unit appropriateness. Relevant established practices include efficiency of operations and negotiating history.⁴

⁴Based on the stipulated facts of this case, no history of collective negotiating exists for adult education hourly employees.

In Livermore valley Joint Unified School District (6/21/81) PERB Decision No. 165, the Board held that the efficiency of operations criterion is a factor militating against fragmentation of units, for the larger the number of units over which a district is obliged to negotiate, the greater must be its allocation of resources. The Board has also held that there exists no more potential for disruption in negotiations over a unit modified to include a category of teachers (substitutes) than in negotiations covering two separate units. Oakland Unified School District (9/20/79) PERB Decision No. 102.

In the instant case, the District contends that the proposed unit modification would have a deleterious effect on timely settlements and therefore on its efficiency of operations. However, such an argument is highly speculative. Furthermore, logic dictates that the addition of hourly adult education teachers to the established certificated unit would reduce, rather than increase, the number of negotiation sessions which would be required between the District and the Association if two separate units existed.⁵

⁵The District contends that a separate unit of hourly adult education teachers would be more efficient than the proposed modification. However, there has been no petition filed for such a unit. Therefore, the issue of a second unit is not before the Board in this case.

Considering the community of interest criteria between and among hourly adult education teachers, contract adult education teachers and regular teachers, and the efficient operation of the District, it is concluded that the hourly adult education teachers should be included in the established certificated unit.

CONCLUSION

Based upon the foregoing and the entire record in this matter, the unit modification petition filed by the Fairfield-Suisun Unified Teachers Association/CTA/NEA is granted, thereby adding hourly adult education teachers to the established certificated unit represented by the Association.

An appeal of this decision pursuant to PERB Regulations 32350 through 32380 may be made within 10 calendar days following the date of service of this decision by filing an original and 5 copies of a statement of the facts upon which the appeal is based with the Board itself at 1031 18th Street, Suite 200, Sacramento, California 95814. Copies of any appeal must be concurrently served upon all parties and the San Francisco Regional Office. Proof of service pursuant to Regulation 32140 is required.

DATED: May 4, 1983

Janet Caraway
Director of Representation

By:

Jerilyn Gelt
Board Agent