

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KINGS COUNTY OFFICE OF EDUCATION,)
)
Employer,) Case No. S-UM-415
) (S-R-491)
and)
) PERB Decision No. 801
KINGS TEACHERS ASSOCIATION,)
)
CTA/NEA,) March 29, 1990
)
Exclusive Representative.)

Appearances: Lozano, Smith, Smith & Woliver by Ellen M. Jahn, Attorney, for Kings County Office of Education; Kings Teachers Association by Ramon E. Romero, Attorney, and Jeffrey M. Jacobberger, Law Clerk, for Kings Teachers Association, CTA/NEA.

Before Hesse, Chairperson; Shank and Camilli, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Kings County Office of Education (KCOE) to a proposed decision of a PERB hearing officer granting a unit modification petition filed by the Kings Teachers Association (KTA). The petition, filed pursuant to Regulation 32781(a)(1),¹ seeks to add the

¹PERB Regulations are codified at California Administrative Code, Title 8, section 31001, et. seq. At the time the petition was filed, PERB Regulation 32781(a)(1) provided:

(a) 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.

This regulation was subsequently amended, effective February 1, 1989. The change had no impact on the disposition of this case.

classification of "nurse"- to an existing unit, already represented by KTA. The existing unit includes speech therapists, special education teachers, and part-time and summer school employees in those positions, and excludes all other certificated employees.

We have reviewed the entire record in this case, including KCOE's exceptions to the proposed decision and KTA's response thereto and, for the reasons set forth below, affirm the decision of the hearing officer granting the unit modification.

STATEMENT OF FACTS

The responsibility of KCOE, as defined in its staff handbook is to:

. . . promote and encourage maximum educational opportunities for county residents and to assure compliance with state and federal laws as they apply to education
. . . to operate essential educational programs and services when districts lack the resources to provide them
(p. iii.)

To fulfill this responsibility, KCOE employs a number of people of diverse occupations including, but not limited to, psychologists, resource specialists, curriculum specialists, program specialists, special education teachers, speech therapists and nurses. These employees report to various work sites at 14 different school districts in the county and/or to county-operated programs and schools. The employees' salaries are funded from various sources, including contracts with outlying school districts, state and federal funds for special education and general fund monies of the county.

KCOE's personnel policies are set forth in a staff handbook which contains personnel practices for all certificated employees. The handbook is applicable to bargaining unit members to the extent it is not inconsistent with the collective bargaining agreement.²

KTA was certified in 1978 as the exclusive representative for the existing bargaining unit of speech therapists and special education teachers, and specified summer school, temporary and part-time teachers in those positions. The current collective bargaining agreement between KTA and KCOE expires on June 30, 1990. At the time of the hearing in this matter, the bargaining unit consisted of approximately 30 special education teachers and speech therapists. The special education teachers are assigned to specific classrooms while the speech therapists generally serve several districts and sites, moving from site to site.

At the time of the hearing, KCOE employed three nurses; Jeanne Russ (Russ), Irene Mendes (Mendes), and Sandra Case-Jorgenson (Case). Case and Mendes were members of KTA's parent organization, California Teachers Association and signed authorization cards that were submitted to PERB by KTA with its

²KCOE excepts to the hearing officer's finding that the handbook and collective bargaining agreement explain the policies and practices of the employer as they relate to personnel and labor relations matters, arguing that the evidence shows that the collective bargaining agreement pertained only to unit members and the handbook to non-unit members. We find the hearing officer's interpretation of the evidence to be supported by the record.

unit modification petition as proof of support. Russ objects to union membership based on personal belief.

Each of the three nurses possesses bachelor's degree in nursing and school health credentials. The nurses are each required to take continuing education courses to maintain their nursing degrees, upon which the school health credential is based. The bargaining unit members have comparable educational backgrounds and must maintain active credentials in their specialized subject areas.

The nurses' assignments vary. Russ has worked for KCOE since 1976 and, at the time of the hearing, was assigned to work in programs for the severely handicapped and pregnant minors. Of the three nurses, Russ has the most contact with unit members. She communicates with unit members on a daily basis, and attends staff meetings and in-service training with them. She also takes an active role in consulting with unit members regarding medication, treatment and rehabilitation programs for individual students in the special education and pregnant minors programs.

Mendes and Case are each assigned to several outlying school districts and sites and, consequently, have less interaction with unit members than does Russ. Their time is spent providing nursing care to ill or injured students, administering state-mandated screening tests (eg. vision, hearing, scoliosis) and making referrals based on the results of the tests. Some of those referrals are to unit members. The nurses do communicate with special education teachers and speech therapists in the

ordinary course of their work. Additionally, Mendes interacts weekly with unit members through her assignment to the county-operated infant care program and, on occasions, when she substitutes for Russ. Mendes and Case are not required to, and do not typically, attend staff meetings with special education teachers and speech therapists.

The nurses basically have the same work year (183 days) and specified work hours per day (7 hours) as the bargaining unit members. They work from a salary schedule which specifies the same entry-level salary as that specified on the salary schedule for bargaining unit employees. The nurses, like all county employees, are paid on a monthly basis by check from the county office. Their benefit package is almost identical to that provided bargaining unit members, except that unit members are allotted, under the collective bargaining agreement, an extra personal necessity leave day per year. Bargaining unit members may attain tenure; nurses do not.

KCOE is organized into six departments. Each department is headed by a director. The nurses report to and are supervised and evaluated by the director of student services. The speech therapists report to and are supervised and evaluated by the director of alternative school. The special education teachers report to and are supervised by their on-site school principal, Barbara Sousa, who, in turn, reports to the director of special education. All of the directors report to the associate superintendent.

All certificated employees are evaluated pursuant to the Stull Act.³ The evaluation criteria and forms used to evaluate the nurses and bargaining unit members differ, in that the form used for instructional personnel places emphasis on pupil progress, instructional techniques and other subjects that do not directly relate to the typical duties or objectives of the nurses. Each year, the nurses discuss with their supervisors their objectives, which are tailored to their assignments. At the end of the year, the nurses review their progress with their supervisors.

The contract negotiations between KCOE and KTA for the collective bargaining agreement now in effect lasted approximately 20 hours. KTA is the only employee organization with which KCOE has an obligation to negotiate.

DISCUSSION

The Educational Employment Relations Act (EERA)⁴ section 3545(a) sets forth the criteria to be used in determining the appropriateness of units:

. . . 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.

Education Code Article 11, sections 44660 through 44665.

⁴EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

The Board has applied these criteria in other cases where the question arose as to the appropriateness of including pupil services personnel in a unit of certificated instructional personnel. (Grossmont Union High School District (1977) EERB Decision No. 11, and Los Angeles Unified School District (1976) EERB Decision No. 5.)⁵ In each case, the Board found that, due to the similarities in education, training, salaries, fringe benefits, assignments, Stull Act evaluations, credentials, supervision, interaction with other certificated employees, and the sharing of common goals, a unit including pupil services employees together with certificated instructional personnel was warranted.

Community of Interest

We agree with the hearing officer's conclusion that the facts of this case do not warrant a result different than that reached in the earlier cases as to community of interest. Credential requirements for nurses and bargaining unit members are more similar than dissimilar—employees in both groups have bachelors' degrees or higher degrees plus specialized training. Although some differences in salary exist between nurses and bargaining unit members, entry-level salaries are the same and salary ranges are comparable. With the exception of the benefit of an extra personal leave day for unit members, fringe benefits for the nurses are identical to those afforded unit members.

⁵PERB was known as Educational Employment Relations Board prior to January 1, 1978.

Like the unit members, nurses are evaluated pursuant to the Stull Act. Although differences in format and evaluation criteria differ, such differences are insignificant according to the rationale in Grossmont, supra, EERB Decision No. 11. We find that distinction in the lines of supervision between the nurses and unit members not so significant as to be a determining factor in assessing community of interest.

KCOE excepts to several of the hearing officer's determinations regarding the existence of a community of interest between the nurses and the bargaining unit members. First, KCOE argues that the hearing officer erred in finding that the nurses work the same number of hours as the bargaining unit members, since the nurses are allotted one hour for lunch and the bargaining unit members have only a one-half hour lunch period. Although there is some conflict in the evidence, the weight of the evidence supports the factual finding of the hearing officer. Furthermore, even assuming an error on the part of the hearing officer in this regard, we do not find such an error to be prejudicial.

Second, KCOE excepts to the hearing officer's finding of fact that bargaining unit members work at all sites where nurses work, noting that two of the three nurses are assigned to outlying districts which have no county employees. Thus, KCOE reasons, at least two of the three nurses have no interaction with bargaining unit members. Consequently, KCOE concludes, the interaction prong of the community-of-interest test set forth in

Grossmont is not satisfied. KTA concedes, in its response to KCOE's exceptions, that the hearing officer erred in finding that unit members work at all sites where the nurses work. KTA argues, however, that the hearing officer's misstatement was slight as unit members work at "nearly all" of the sites to which the nurses are assigned. Again, we must find that the error made by the hearing officer was slight and nonprejudicial to the ultimate decision in this case.

While there is not a great deal of interaction between two of the three nurses and the unit members in this case, there is some interaction between two of the nurses and the unit members, and daily interaction between the third nurse and unit members. The interaction that occurs between the nurses and unit members cannot be fairly compared with that which occurs between employees who work together in one location. The fact that two of the nurses' assignments take them to a number of outlying areas naturally limits their interaction with fellow employees. Notably, the speech therapists are similarly isolated and do not appear to have any greater contact with fellow unit members than do the nurses. Thus, we find the interaction criteria of the community-of-interest prong of the appropriateness of unit test satisfied.

Third, KCOE argues that the nurses do not share a common goal with unit members and, therefore, cannot be found to share a community of interest with them. KCOE reasons that the fact that speech therapists and special education teachers provide

instruction to special education students, while nurses provide health services to the general student population, demonstrates a lack of common purpose. Significantly, the nurses' job descriptions indicate that they do participate in special education programs. Russ is indeed assigned to the special education program. Furthermore, as noted above, PERB has already decided that pupil services employees may be appropriately placed in a unit with instructional personnel. (See Grossmont Union High School District, supra; EERB Decision No. 11 and Los Angeles Unified School District, supra, EERB Decision No. 5.) In our view, the nurses share with the unit members the common goal of providing services to Kings County school districts which lack the resources to provide such services on their own.

Effect of Size of Unit on Efficient Operation of District

KCOE took the position during the hearing that it would prefer, over the proposed unit modification, either a separate unit of nurses or a separate unit of pupil services personnel. A separate unit would necessitate separate contracts. KCOE has failed to demonstrate how separate contracts would increase its efficiency of operations. Furthermore, PERB precedent supports the combining of pupil services personnel in a single unit with instructional employees. (Id.)

Extent to Which Employees Belong to Same Employee Organization

At the time of the hearing, two of the three nurses belonged to KTA's parent organization, the California Teachers

Association. The third nurse, Russ, objected to union membership based on personal belief.

Propriety of KCOE's Request for Dismissal Based on Lack of Support

In its exceptions, KCOE argues that the unit modification petition should now be dismissed for lack of majority support, since one of the two nurses who supported the petition resigned her position shortly before a proposed decision was issued in this case. This argument is meritless. First, this argument is not based upon anything in the record in this case, but is based upon copies of a letter of resignation attached to KCOE's exceptions. PERB Regulation 32300(b) provides that "[r]eference shall be made in the statement of exceptions only to matters contained in the record of the case."

Second, even assuming KCOE could overcome its evidentiary problem, a review of PERB regulations reveals that the adequacy of the proof of support is determined at the time the petition is filed. (See PERB Regulations 32700, 32781, and 32786.) Thus, since KTA submitted a valid proof of support when it filed the petition, we decline to dismiss the petition on the grounds that support may be lacking now.

ORDER

Based upon the entire record in this case, the Board hereby GRANTS Kings Teachers Association's unit modification petition, and ORDERS that the nurse classification be added to the existing certificated unit represented by Kings Teachers Association. The Board further ORDERS that this case be REMANDED to the Sacramento

Regional Director, who shall take appropriate action consistent with this decision.

Chairperson Hesse and Member Camilli joined in this Decision.