

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SOUTH BAY UNION ELEMENTARY SCHOOL)
DISTRICT,)
)
Employer,) Case No. SF-R-698
)
and) PERB Decision No. 816
)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION AND ITS ELK RIVER)
CHAPTER 766,)
)
Employee Organization.)
_____)

Appearance: Harland & Gromala by Richard A. Smith, Attorney, for South Bay Union Elementary School District.

Before Hesse, Chairperson; Craib and Camilli, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the South Bay Union Elementary School District (District) to a proposed decision of a PERB administrative law judge (ALJ). Pursuant to PERB Regulation 33050(a)³ the California School Employees Association and its Elk River Chapter 766 (CSEA) filed

¹PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 33050(a) provides:

A request for recognition by an employee organization seeking to become the exclusive representative of an appropriate unit shall be filed with the employer. A copy of the request shall be filed currently with the regional office. The request shall be signed by an authorized agent of the employee organization and shall be on a form provided by the Board.

a request for recognition. In its request, CSEA sought a wall-to-wall unit of all classified employees of the District, excluding management, supervisory and confidential employees. The ALJ concluded that a unit consisting of all classified employees of the District, excluding management, supervisory and confidential employees, is appropriate.

We have examined the record, including the transcript, exhibits, proposed decision and the District's exceptions, and reverse the ALJ's proposed decision for the reasons discussed below.

FACTUAL SUMMARY

On November 7, 1988, CSEA filed a request for recognition with the District. CSEA sought a single comprehensive unit for all classified employees of the District. By letter dated December 12, 1988, the parties were notified by the PERB San Francisco Regional Office that CSEA had submitted adequate proof of support with its petition. On December 21, 1988, the District denied recognition of CSEA as the exclusive representative of the District's classified employees. The District denied CSEA's request for recognition on the basis that the proposed wall-to-wall unit was inappropriately broad, and that there should be three separate units consisting of: (1) office workers; (2) blue-collar workers; and (3) teacher aides.²

²The District also denied recognition on the basis that the unit inappropriately included one confidential employee, the superintendent's secretary, and two supervisory employees, the head of maintenance and operations and the cafeteria manager. Before the hearing on this matter, the parties reached an

The District is a small school district in Humboldt County which employs approximately 37 classified employees³ and is comprised of two schools: South Bay and Pine Hill. South Bay School also functions as the District office."

Each school site is assigned one school secretary. In addition, a clerk is assigned to the District office at South Bay School. The three clerical employees perform a variety of office-related skills, including typing, accounting, and receptionist tasks. The two school secretaries are supervised by a site administrator, who reports to the superintendent. The clerk is directly under the superintendent's supervision. All three clerical employees report to work at 8 a.m. The two school secretaries work an 8-hour day, while the clerk works a 7-hour day. All three clerical employees work a 10-month work year.

The District also employs two full-time custodians, one part-time custodian, one full-time bus driver/custodian, and one full-time bus driver/maintenance employee. The custodial

agreement that: (1) the superintendent's secretary should be excluded from the bargaining unit as confidential; (2) the position of cafeteria manager should be included in the bargaining unit; and (3) the position of supervisor of custodian and transportation should be excluded from the bargaining unit as supervisory.

³The exact number of classified employees is difficult to determine. The parties agree that 33 positions are classified. There is some confusion regarding the status of six "playground noon-duty supervisors." While the parties agree that Education Code section 45103 excludes part-time playground positions from a classified bargaining unit, the record is unclear whether two of these playground noon-duty employees should be excluded. This discrepancy is irrelevant as the unit petitioned for includes all classified employees of the District, excluding management, supervisory and confidential employees.

employees also perform maintenance work, and are under the direct supervision of the maintenance-operations supervisor. The full-time custodians and bus drivers are all eligible for benefits. The part-time custodian does not receive benefits. The two bus driver/custodial maintenance employees report to work at the South Bay School in the morning and then are assigned to sites for the balance of the day until the time they are required to drive the buses. The custodians and bus drivers report to work at staggered times, depending upon the nature of their work. The bus drivers are the first to report to work, followed by the full-time custodians, and then the part-time custodian. The bus driver/custodian employee and bus driver/maintenance employee are 12-month employees. The custodians are all 10-month employees.

The District operates a cafeteria at the South Bay School, where meals are also cooked and packed for the Pine Hill School. The cafeteria is staffed by a cafeteria manager/cook, an assistant cook and a half-time kitchen helper. The cafeteria manager/cook is a full-time position. The assistant cook works slightly less than full-time. Both the cafeteria manager/cook and assistant cook receive benefits. Although the kitchen helper is eligible to participate in a benefit program on a pro rata basis, the employee has chosen not to do so. The cafeteria employees work only during the school year. The assistant cook and kitchen helper report to the cafeteria manager/cook.

The District employs 22 instructional aides, who work with children under the direction of teachers. The aides prepare

small group activities, tutor students, correct papers, assemble materials, and assist in classroom activities. Prior to being hired, instructional aides must pass a minimum competency test. The aides are assigned to both school sites and are supervised by the classroom teachers. All but one of the aides are part-time employees who receive no benefits. The full-time aide receives benefits. Because of funding limitations, most aides work less than a full school year. The one full-time aide works a 10-month work year. While the starting time for aides varies according to the nature of the position, the majority of the aides start work at 8:30 a.m.

Pay raises have been granted to classified employees over the past several years. The cafeteria manager/cook testified that she sought an individual salary adjustment in 1984-85. The custodian testified that, due to a reclassification, two employees received salary increases and job description changes. The superintendent testified that in 1986-87, the classified employees received a 6-percent salary increase, plus benefit increases for those who received benefits. In 1987-88, the classified employees received a 2-percent salary increase. In 1988-89, the classified employees in column one of the salary schedule received a 4-percent salary increase, while all other employees received a 3-percent salary increase.

Testimony indicated four occasions where one classified employee substituted for another classified employee. Specifically, an instructional aide filled in for an account

clerk, secretary, and custodian. There was also an example where a playground supervisor filled a custodian position. The superintendent testified that these assignments were voluntary and at the request of employees who wanted the opportunity to substitute as a way of earning extra money. If necessary, the District would replace an instructional aide temporarily assigned to a full-time or higher-paying position with a substitute from outside the District. If outside substitutes were not available, the aide position would remain vacant and the employee would be allowed to stay in the higher-paying or higher-rated position.

The classified employees in the District have never before been organized for collective bargaining purposes. The cafeteria manager/cook, who serves as treasurer of CSEA, testified that she received 27 membership applications from the classified employees.

DISCUSSION

Standards for determining appropriate units are set forth in section 3545(a) of the Educational Employment Relations Act (EERA):⁴

(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

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

size of the unit on the efficient operation of the school district.

In Sweetwater Union High School (1976) EERB Decision No. 4,⁵ the Board established three presumptively appropriate units: (1) instructional aides; (2) office technician and business services; and (3) operations-support services. The operations-support services unit included transportation, custodial, gardening, cafeteria, maintenance and warehouse employees. By creating three presumptively appropriate units for classified employees, the Board determined that a strong community of interest generally exists among the employees in each of these groups.

However, the Sweetwater presumption is rebuttable. In Compton Unified School District (1979) PERB Decision No. 109, the Board discussed the Sweetwater presumption and placed the burden upon the party seeking a unit or units different than the Sweetwater unit configuration. Specifically, the Board stated:

The EERA does not prescribe that "the most appropriate" unit be awarded; rather, the statute repeatedly refers to "an appropriate unit." [Fn. omitted.] Thus, by requiring an employee organization to establish that a variant unit is more appropriate than a Sweetwater unit, the Board gives weight to its preference for Sweetwater units without converting them into "most appropriate" or "only appropriate" units. In this sense, an employee organization need not rebut the Sweetwater presumption in order to obtain a variant unit.

In contrast, to defeat the establishment of a Sweetwater unit when no other unit has been petitioned for, the employer or employee

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

organization [fn. omitted] must demonstrate that based on all of the criteria enumerated in section 3545(a), the Sweetwater unit is in fact inappropriate. Since the Board has determined that the Sweetwater units presumptively meet the section 3545(a) unit determination criteria, a Sweetwater unit will invariably be granted when no other unit is requested unless the presumption is rebutted by evidence showing that, because the section 3545(a) criteria are not in fact met, the Sweetwater unit is inappropriate. (Id. at pp. 7-8.)

In the present case, CSEA has filed a petition for one wall-to-wall unit of classified employees. In order to rebut the Sweetwater presumption, CSEA must show that the wall-to-wall unit is more appropriate than a Sweetwater unit configuration.

While the ALJ properly stated the above standards, the Board finds that the facts in the record do not support the ALJ's conclusion that a single unit of classified employees is appropriate.

There is no dispute that this case involves a small school district with approximately 37 classified employees. With regard to the number of employees, the Board has noted that "the number of employees (however small) is not, alone, a basis for concluding that a wall-to-wall unit is appropriate." (Shasta Union High School District (1977) EERB Decision No. 34, p. 2; Greenfield Union School District (1977) EERB Decision No. 35, p.2.) The Board stated that a wall-to-wall unit may be appropriate where there exists interchangeable functions and parallel working conditions consistent with the community of interest required to find a unit appropriate under EERA section

3545(a). While the Board also stated that there may be a situation where the number of employees is so small that to find other than a wall-to-wall unit may adversely affect the efficient operations of a school district, the Board did not have the facts before it to find a wall-to-wall unit appropriate.⁶

In the present case, the classified employees at the District perform the same job functions as those employees described in Sweetwater. The instructional aides are involved in directly assisting in the educational development of students, work regular hours, are directly supervised by classroom teachers, and must pass a competency exam.

The office technicians and business services employees (secretaries and clerk) generally perform clerical and record-keeping work, including typing, accounting and receptionist duties.

The remaining employees in the operations-support services group (custodial, maintenance, transportation and food services employees) are responsible for providing a proper physical environment and support services for students. These duties include cleaning and repairing District facilities as well as providing food, preparing meals and providing transportation.

Although CSEA argues, and the ALJ finds, that the employees' salaries, benefits and hours are not dependent on their job

⁶Shasta Union High School District, supra, involved a district with four sites employing 158 classified employees. Greenfield Union School District, supra, involved a district with five sites employing 110 classified employees.

titles/classifications, the facts demonstrate that their work duties are indeed different. To support his findings that a wall-to-wall unit is appropriate, the ALJ also relies on common supervision and interchange of job functions. However, the un rebutted testimony of Superintendent Turner indicates that there are distinct levels of supervision. The instructional aides are supervised by classroom teachers. The two secretaries are supervised by the site administrator, while the one clerk is supervised by the superintendent. The cafeteria employees are supervised by the cafeteria manager. The custodian, bus driver/custodian, and bus driver/maintenance employee are supervised by a maintenance-operations supervisor. Despite this testimony, the ALJ concluded that, due to the very small size of the District and the fact that the managers and supervisors are only one level below the superintendent, the employees share a degree of "commonality of supervision." This conclusion is not supported by the record, which demonstrates that there are three separate schemes of supervision.

The interchangeability functions the ALJ relies upon are instances where part-time employees⁷ volunteer to substitute for higher-paying positions. The record included only four examples where an instructional aide volunteered to substitute for a clerical or custodial position. There is no evidence of interchange between bus drivers and instructional aides or

⁷Of the 22 instructional aides, 21 are part-time employees.

between the operations-support services employees and clerical employees.

While the ALJ states that the record suggests that the establishment of three units would create "excessive fragmentation of a cohesive unit," the testimony does not address the effect or impact of multiple units upon the efficiency of the District's operations. The superintendent testified that she thought it would be in the best interest of the District and the collective bargaining process to have three separate units due to: (1) the distinct and special needs of management in terms of supervision and issues relating to part-time and full-time employees; and (2) the different skills and different job duties that distinguish the employees.

One of the custodians testified that she is a job steward in the CSEA chapter and that the employees wanted to be organized in one unit for collective bargaining purposes. The cafeteria manager/cook testified that, in her position as treasurer of the CSEA chapter, she received 27 membership applications. As the testimony of the three witnesses does not indicate the effect or impact of multiple units on the efficiency of the District's operations, there is no basis other than the small number of employees to conclude that multiple units would provide a significant hardship to the District. In fact, the District argues that multiple units are in the best interest of the District and the collective bargaining process, while CSEA, in its post-hearing brief, simply asserts that "the 'efficiency' of

multiple units over a single unit is absurd." Due to the lack of evidence on this issue, the Board concludes that there is no showing that multiple units would adversely affect the efficiency of the District's operations.

Although the Board has indicated that a single unit may be appropriate in a small school district, the number of employees alone is not a basis for concluding that a single unit is appropriate. (Shasta Union High School District, supra, EERB Decision No. 34; Greenfield Union School District, supra, EERB Decision No. 35.) In the present case, there is no dispute that the number of classified employees is small. However, the parties have failed to present evidence that interchangeable functions and parallel working conditions exist among the classified employees or that multiple units would adversely affect the efficient operations of the District.⁸ Accordingly, CSEA has failed to show that a wall-to-wall unit is more appropriate than a Sweetwater unit configuration.

ORDER

For the reasons discussed above, the Board finds that the wall-to-wall unit of classified employees requested in the California School Employees Association and its Elk River Chapter 766 request for recognition petition is not appropriate.

⁸In its exceptions, the District argues that, in the alternative, there should be no less than two units; one unit including instructional aides and one unit including the remaining employees. As this argument was not raised prior to the District's exceptions, the issue was not litigated, nor was CSEA placed on notice of the District's argument. Therefore, the Board rejects this argument.

The Board finds the following units are appropriate for meeting and negotiating provided an employee organization becomes the exclusive representative:

Unit A: All instructional aides, excluding (1) management, supervisory and confidential employees, and (2) playground noon-duty supervisors pursuant to Education Code section 45103.

Unit B: All office technician and business services employees (i.e., clerical, secretarial, and clerk positions) excluding management, supervisory, and confidential employees.

Unit C: All operations-support services employees (i.e., custodial, maintenance, transportation, and food services employees) excluding management, supervisory, and confidential employees.

Within fifteen workdays after the employer posts the Notice of Decision, the California School Employees Association and its Elk River Chapter 766 shall demonstrate to the regional director at least 30-percent support in each of the above units.

The regional director shall conduct an election at the end of the posting period in those units which the California School Employees Association and its Elk River Chapter 766 has demonstrated at least 30-percent support, unless it demonstrates majority support in a given unit and the employer grants voluntary recognition in that unit. Voluntary recognition requires majority proof of support in all cases. (See EERA secs. 3544 and 3544.1.)

The date used to establish the number of employees in the above units shall be the date of this decision unless another date is deemed appropriate by the regional director and noticed to the parties. In the event another date is selected, the regional director may extend the time for the California School Employees Association and its Elk River Chapter 766 to demonstrate at least 30-percent support in the units.

The Board hereby ORDERS that this case be REMANDED to the San Francisco Regional Director for proceedings consistent with this decision.

Members Craib and Camilli joined in this Decision.

NOTICE OF DECISION
OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CASE: SOUTH BAY UNION ELEMENTARY SCHOOL DISTRICT
Case No. SF-R-698
PERB Decision No. 816

EMPLOYER: South Bay Union Elementary School District
6077 South Highway 101
Eureka, CA 95501
(707) 443-4828

**EMPLOYEE ORGANIZATION
PARTY TO PROCEEDING:**

California School Employees Association
its Elk River Chapter 766
3865 Lissa Drive
Eureka, CA 95501
(707) 445-1031

FINDINGS:

The Board finds that the following units are appropriate for meeting and negotiating provided an employee organization becomes the exclusive representative:

Unit A: All instructional aides, excluding (1) management, supervisory and confidential employees, and (2) playground noon-duty supervisors pursuant to Education Code section 45103.

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The date used to establish the number of employees in the above units shall be the date of this decision unless another date is deemed appropriate by the regional director and noticed to the parties. In the event another date is selected, the regional director may extend the time for the California School Employees Association and its Elk River Chapter 766 to demonstrate at least 30-percent support in the units.

TO THE EMPLOYER:

This Notice of Decision is provided to you pursuant to PERB Regulation 33440. The attached decision has been served upon each of the above-listed parties pursuant to PERB Regulation 33440.

Pursuant to PERB Regulation 33450, within 10 days following date of issuance, post this Notice "on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed." This Notice shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to insure that this notice is not reduced in size, defaced, altered, covered by any material.

Date: June 26, 1990