

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Glaziers, Architectural Metal and Glass Workers, Local 718, the International Brotherhood of Electrical Workers, Local 6, and the Sheet Metal Workers International Association, Local 104, to the proposed decision of a PERB hearing officer (attached hereto) denying bargaining units sought by them.

The three unions each had filed a petition to represent specified skilled crafts employees at the San Francisco Unified School District (District) in three separate units containing a total of 18 employees. The hearing officer rejected the proposed bargaining units as inappropriate and proposed instead the creation of one bargaining unit to represent the employees.

The Board has reviewed the entire record in this case, including the proposed decision, transcripts, the exceptions of the three unions and the District's response thereto.¹ The Board finds the hearing officer's decision is consistent with the recent Board decision in the matter of San Francisco Community College District (1994) PERB Decision No. 1068. The Board therefore finds the hearing officer's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

¹The petitioners' request for consolidation of this case with Case No. SF-R-713 (San Francisco Community College District (1994) PERB Decision No. 1068) is denied by the Board. Petitioners' request for oral argument was denied on February 15, 1995.

ORDER

Based on the findings of fact, conclusions of law, and the entire record in this case, the petitions for separate bargaining units of crafts employees filed by the Glaziers, Architectural Metal and Glass Workers, Local 718, the International Brotherhood of Electrical Workers, Local 6, and the Sheet Metal Workers International Association, Local 104, are hereby DENIED.

The Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit Title: Skilled Crafts Residual Unit

Shall Include: The classifications of glazier, glazier supervisor I, electrician, electrician supervisor I, sheet metal worker, sheet metal supervisor I, chief stationary engineer, school heating and ventilation supervisor, plumber supervisor I, maintenance planner, stationary engineer, plumber, automotive mechanic, general laborer and roofer.

Shall Exclude: All other employees, including management, supervisory and confidential employees.²

Within ten (10) days following issuance of this decision, the District shall post on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed, a copy of the Notice of Decision attached hereto as an Appendix. The Notice of Decision shall remain posted for a minimum of fifteen (15) workdays. Reasonable

²The District may contest the supervisory status of any classification or employee pursuant to the parties' stipulation described in the hearing officer's proposed decision (see Proposed Decision, p. 22, fn. 34).

steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

Pursuant to PERB Regulation 33470,³ the Glaziers, Architectural Metal and Glass Workers, Local 718, the International Brotherhood of Electrical Workers, Local 6, and the Sheet Metal Workers International Association, Local 104, shall have fifteen (15) workdays from the date of issuance of this decision to demonstrate to the satisfaction of the San Francisco Regional Director at least 30 percent support in the unit described as appropriate.⁴ An election shall be conducted by PERB unless only one employee organization demonstrates majority support, no other employee organization submits at least 30 percent, and the District grants voluntary recognition. (PERB Regulations 33470 and 33480.)

If no employee organization submits at least 30 percent support, all three petitions shall be dismissed and no election shall be conducted.

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

Members Carlyle and Garcia joined in this Decision.

³PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

⁴Pursuant to PERB Regulation 32700(d), two or more employee organizations may combine their proofs of support as a joint petitioner.

APPENDIX



**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California**

CASE: San Francisco Unified School District
Case Nos. SF-R-799, SF-R-800, SF-R-803
PERB Decision No. 1086

EMPLOYER: San Francisco Unified School District
135 Van Ness Avenue
San Francisco, CA 94102
(415) 241-6068

EMPLOYEE ORGANIZATIONS
PARTY TO PROCEEDING:

Glaziers, Architectural Metal and Glass Workers,
Local 718,
2660 Newhall Street, Suite 100
San Francisco, CA 94124
(415) 467-1585

International Brotherhood of Electrical Workers,
Local 6,
55 Fillmore Street
San Francisco, CA 94117
(415) 861-5752

Sheet Metal Workers International Association,
Local 104,
1939 Market Street
San Francisco, CA 94103
(415) 621-2930

FINDINGS:

The Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit Title: Skilled Crafts Residual Unit

Shall Include: The classifications of glazier, glazier supervisor I, electrician, electrician supervisor I, sheet metal worker, sheet metal supervisor I, chief stationary engineer, school heating and ventilation supervisor, plumber supervisor I, maintenance planner, stationary engineer, plumber, automotive mechanic, general laborer and roofer.

Shall Exclude: All other employees, including management, supervisory and confidential employees.

Pursuant to PERB Regulation section 33450, within ten (10) days following issuance of this Notice of Decision, the San Francisco Unified School District (District) shall post on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed, a copy of this Notice of Decision. The Notice of Decision shall remain posted for a minimum of fifteen (15) workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

Pursuant to PERB Regulation 33470, the Glaziers, Architectural Metal and Glass Workers, Local 718, the International Brotherhood of Electrical Workers, Local 6, and the Sheet Metal Workers International Association, Local 104, shall have fifteen (15) workdays from the date of service of this decision to demonstrate to the satisfaction of the San Francisco Regional Director at least 30 percent support in the unit described as appropriate. An election shall be conducted by PERB unless only one employee organization demonstrates majority support, no other employee organization submits at least 30 percent, and the District grants voluntary recognition. (PERB Regulations 33470 and 33480.)

If no employee organization submits at least 30 percent support, all three petitions shall be dismissed and no election shall be conducted.

Dated: _____ SAN FRANCISCO UNIFIED SCHOOL DISTRICT

By: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR FIFTEEN (15) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED, OR COVERED WITH ANY OTHER MATERIAL.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

| | | |
|---|---|---------------------|
| SAN FRANCISCO UNIFIED SCHOOL DISTRICT, |) | |
| |) | |
| Employer, |) | Representation |
| |) | Case Nos. SF-R-799, |
| and |) | SF-R-800 & SF-R-803 |
| |) | |
| GLAZIERS, ARCHITECTURAL METAL AND GLASS WORKERS, LOCAL 718, |) | |
| |) | |
| INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 6, |) | PROPOSED DECISION |
| |) | (8/18/94) |
| and |) | |
| |) | |
| SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 104, |) | |
| |) | |
| Employee Organizations. |) | |

Appearances; Sonnenschein, Nath & Rosenthal, by Lee T. Patterson, Attorney, for San Francisco Unified School District; Neyhart, Anderson, Reilly & Freitas, by John L. Anderson and William J. Flynn, Attorneys, for Glaziers, Architectural Metal and Glass Workers, Local 718, International Brotherhood of Electrical Workers, Local 6 and Sheet Metal Workers International Association, Local 104.

Before Les Chisholm, Hearing Officer.

PROCEDURAL HISTORY

On February 1, 1993, the Glaziers, Architectural Metal and Glass Workers, Local 718 (Local 718) filed a request for recognition with the San Francisco Unified School District (District or Employer) for a unit including the classifications of glazier (class code 7326) and glazier foreman (7233).

The International Brotherhood of Electrical Workers, Local 6 (Local 6) filed a request for recognition with the District on February 17, 1993, seeking a unit of electricians or related

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

classes, including employees in 41 classifications. The Local 6 petition further indicated that the unit sought is identical to the unit it represents with the City and County of San Francisco (City), and alleged that the District is a joint employer with the City.

On March 4, 1993, the Sheet Metal Workers International Association, Local 104 (Local 104)¹ filed a request for recognition with the District for a unit of sheet metal workers and related classes, identifying four class codes, and also indicated that the unit sought is identical to a unit of the joint employer or City.

Each of the petitions was properly served on the San Francisco Regional Office of the Public Employment Relations Board (PERB or Board).² In each case, PERB issued determinations that the Petitioners had demonstrated majority support, and the Employer filed an employer decision which denied voluntary recognition and questioned the appropriateness of the unit sought. The Petitioners each filed timely requests for Board investigation pursuant to PERB Regulation 33230. Settlement conferences were held with the parties on June 24 (SF-R-799) and July 8, 1993 (SF-R-800 and 803), but no agreement was reached.

¹Local 718, Local 6 and Local 104 shall be referred to collectively herein as Petitioners.

²PERB's regulations, found at California Code of Regulations, title 8, section 31001 et seq., describe the procedures for recognition requests beginning at section 33050. The Local 718 petition is identified as PERB Case No. SF-R-799; Local 6's as SF-R-800 and Local 104's as SF-R-803.

The three cases were consolidated for hearing before the undersigned and the hearing was conducted on October 4 and 5, 1993, December 2, 1993 and February 11, 1994. Each party-submitted a brief in timely fashion, and the matter was submitted for decision on June 16, 1994.

FACTS

The District operates more than 100 schools and programs throughout the City, with a combined average daily attendance in excess of 66000.³ The District employs over 5,000 certificated staff and nearly 4,000 classified employees.⁴ Currently, the District has nine established bargaining units: certificated personnel,⁵ certificated supervisors,⁶ paraprofessionals,⁷ clerical and technical services,⁸ maintenance and operations,⁹

³California Public School Directory. California Department of Education, 1994.

⁴Official notice is taken of PERB's own case file records concerning the numbers of employees and bargaining units of the Employer. (See, e.g., Sacramento City Unified School District (1979) PERB Decision No. 100, at fn. 5.)

⁵Represented by United Educators of San Francisco (UESF).

⁶Represented by United Administrators of San Francisco.

Represented by UESF. This unit was voluntarily recognized in December 1977.

⁸Voluntary recognition was granted to Service Employees International Union, Local 790 (SEIU) in July 1980.

⁹Also represented by SEIU based on voluntary recognition in July 1980.

carpenters and locksmiths,¹⁰ accountants and engineers,¹¹ painters¹² and gardeners.¹³

In addition to the employees at issue here, the following groups of classified employees are among those which are unrepresented at the District: stationary engineers, plumbers, truck drivers, automobile mechanics, piano tuner, laborers, roofers, payroll clerks, and various computer programmer and technician classifications.

District/City Relationship

The Education Code includes numerous provisions relating to the employment of classified staff in public schools, but notes the following exception at section 45100:

These provisions shall not apply to employees of a school district lying wholly within a

¹⁰The District granted voluntary recognition to Bay Counties District Council of Carpenters (also identified as United Brotherhood of Carpenters and Joiners, Local 22) in March 1982 for a unit consisting solely of the carpenter classification. The locksmith classification was added to the unit by mutual agreement in December 1993.

¹¹The unit represented by International Federation of Professional and Technical Engineers, Local 21 (IFPTE), includes accountants, civil, electrical and mechanical engineers, building inspector, school construction coordinator, industrial hygienist, architect and architectural assistants. Voluntary recognition was granted by the District in August 1982.

¹²Voluntary recognition was granted to Painters Union Local 4 in June 1987.

¹³Voluntary recognition was granted to Laborers' International Union of North America, Local 261 (LIUNA) in May 1980. The District agreed in June 1990 to resolve a dispute over placement of two asbestos abatement worker classifications via a self-determination election. (The employees selected representation by SEIU in the maintenance and operations unit, and LIUNA's unit continues to include only gardeners.)

city and county which provides in its charter for a merit system of employment for employees employed in positions not requiring certification qualifications. . . .

Education Code section 45318 further specifies as follows:

In every school district coterminous with the boundaries of a city and county, except for those paraprofessionals excluded from the charter provisions by a resolution adopted by the governing board of that district pursuant to section 45100, employees not employed in positions requiring certification qualifications shall be employed, if the city and county has a charter providing for a merit system of employment, pursuant to the provisions of that charter providing for that system and shall, in all respects, be subject to, and have all rights granted by, those provisions; provided, however, that the governing board of the school district shall have the right to fix the duties of all of its noncertificated employees.

The District is the only school district to which these provisions apply, but substantively identical provisions apply to the San Francisco Community College District (SFCCD).¹⁴

The Court of Appeal, harmonizing the Education Code provisions applicable to SFCCD with the City Charter¹⁵ and the

¹⁴Education Code sections 88000 and 88137 were enacted only after the SFCCD was established as a district separate and apart from the District. Section 5.100 of the City Charter provides that all "public schools of the city and county shall be under the control and management of a board of education," and section 5.101 describes the powers and duties of that board. Effective August 8, 1972, the Charter provides at section 5.104 for a separate governing board for the community college district of the city and county.

¹⁵The City Charter provides for a Civil Service Commission (CSC) at Article III, Chapter 5, sections 3.660 and 3.661, and sets forth Civil Service Provisions in Article VIII, Chapter 3, sections 8.300 et seq.

Educational Employment Relations Act (EERA),¹⁶ resolved a dispute over the status of SFCCD as a public school employer under EERA in United Public Employees. Local 790. SEIU. AFL-CIO v. Public Employment Relations Board (September 1989) 213 Cal.App.3d 1119 [262 Cal.Rptr. 158] (United Public Employees),¹⁷

The court found that SFCCD hires and fires its employees, supervises them on the job, assigns duties, administers leaves and other benefits provided under the City's civil service system, grants other benefits, sets salaries, and determines what holidays will be taken by employees. (United Public Employees.) The City, through its civil service system, establishes classifications, qualifications and lists of persons eligible for appointment, awards certain fringe and leave benefits, and administers retirement and a health service plan. (Ibid.) In sum, in the court's view, SFCCD and the City had "successfully harmonized and divided their responsibilities over the employees." (Ibid.) The court thus concluded that SFCCD is a public school employer and that SFCCD and the City are "joint employers" of SFCCD's classified employees.¹⁸ (Ibid.)

¹⁶EERA is codified at Government Code section 3540 et seq.

¹⁷The court's decision in United Public Employees thus reversed the Board's finding that SFCCD is not under PERB's jurisdiction (San Francisco Community College District (1988) PERB Decision No. 688), finding more persuasive the Board's reasoning in an earlier case (San Francisco Community College District (Barnes) (19 86) PERB Order No. Ad-153).

¹⁸The court cites NLRB v. Browning-Ferris Industries. Etc. (3d Cir. 1982) 691 F.2d 1117, 1128 [111 LRRM 2748] for the proposition that "where two or more employers exert significant control over the same employees -- where from the evidence it can

As discussed more fully below, Petitioners contend that the District is likewise a joint employer with the City, but the District disputes their analysis.

The City's Bargaining Units

The City is subject to the provisions of the Meyers-Milias-Brown Act (MMBA),¹⁹ which provides collective bargaining rights for employees of cities, counties and special districts, and has adopted an Employee Relations Ordinance (ERO)²⁰ pursuant to the MMBA. City bargaining units are established by the ERO. In all, there are over 200 bargaining units which have been established under the ERO, with representation by more than 30 separate employee organizations.²¹

Unit 1 - Crafts (Unit 1) is comprised of multiple bargaining sub-units for each "building trade or other craft or group which has historically established separate bargaining units in private industry or the journeymen of which normally attain status through the completion of a substantial period of apprenticeship." (San Francisco Administrative Code, section 16.210.) There are more than 30 such units which exist within the Unit 1 framework.

be shown that they share or co-determine those matters governing essential terms and conditions of employment -- they constitute 'joint employers'. . . ."

¹⁹Government Code section 3500 et seq.

²⁰San Francisco Administrative Code, section 16.200 et seq.

²¹SEIU, for example, represents several different bargaining units under the City structure.

Local 718 represents Unit 1-H which includes some 13 employees in two classifications: glazier supervisor I (code 7233) and glazier (code 7326). Local 6 represents Unit 1-L, comprised of over 600 employees in 42 job classifications, including electrician supervisor I (code 7238) and electrician (code 7345).²² Local 104 represents Unit 1-V with about 35 employees in three classifications: heat and ventilation inspector (code 6235), sheet metal worker (code 7376) and sheet metal supervisor I (code 9345).

The representation of existing District units of classified employees generally parallels those in the City where the classifications are utilized by both the City and District.²³ There are exceptions to this general rule, however. For example, a number of classifications represented with the City by IFPTE are not included in the District's IFPTE unit even though the classifications do exist at the District, and LIUNA represents only gardeners at the District even though its City unit includes laborers. Also, a limited number of classifications are represented at the District by a different employee organization than at the City.

²²Local 6 also appears as the representative of Unit 1-M, which consists of only one classification (transportation equipment shop supervisor) and which has no incumbents. (Petitioner's Exhibit No. 7.)

²³There are numerous examples of classifications utilized by the City which are not used by the District. Conversely certain classifications, such as community relations specialist, SFUSD (class code 9976) and the instructional aide series are used exclusively by the District.

Civil Service Provisions

The City's civil service system sets up a "merit and fitness" system of employment, including provisions for testing and examinations,²⁴ appointments from a list of certified eligibles based on the "rule of three scores," and disciplinary suspensions and dismissals, which applies to most employees.

The civil service system also provides for the setting of compensation for most covered employees based on the principle of "like compensation . . . for like service." The Charter requires for most employees that compensations be fixed "in accord with the generally prevailing rates of wage for like service and working conditions in private employment or in other comparable governmental organizations" in California. Under the Charter's provisions, the CSC conducts salary surveys using "benchmark" comparisons based on classification and recommends a compensation schedule or adjustments each year.

The CSC's compensation recommendations are normally reflected in a Salary Standardization Ordinance (SSO) adopted by the City's Board of Supervisors. The SSO sets forth salary schedules, vacation and sick leave accruals, holidays, shift differentials, night duty pay and other components of compensation. The SSO includes frequent reference to specific provisions which have been negotiated as a part of a memorandum of understanding (MOU) between the City and an exclusive

²⁴District employees have been involved in the administration and grading of these examinations.

representative, but in many cases wages are not addressed by the MOU.²⁵

The SSO states that its provisions apply to the District and the SFCCD.²⁶ In addition, the District's Board of Trustees has by resolution adopted the provisions of the SSO each year as applicable to its classified employees. When the City negotiated "furlough days" agreements with its exclusive representatives after the veto of the proposed 1993-94 SSO,²⁷ the District sought similar agreements for its classified employees, including those in dispute in this matter, and all crafts groups which received furlough days from the City also have furlough days with the District.

District employees generally receive the benefits set forth in the SSO. As noted in the SSO, SFCCD and District employees

²⁵For example, the 1991-95 MOU between the City and Local 6 notes that many of its provisions are excerpted from the SSO and states the intent of the parties to "in no way amend or alter the meaning, interpretation or the administration" of such provisions. The MOU includes articles on sewage premium pay, lead electrician premium and standby pay, but does not include a salary schedule.

²⁶City Charter section 5.101 specifies that

Compensations of non-teaching and non-technical employees shall be fixed in accordance with the salary standardization provisions of this charter.

²⁷The 1992-93 SSO remained in effect for 1993-94 due to a veto of the proposed SSO by the mayor. Certain employee organizations in the City, including the union representing plumbers, chose to litigate the salary increase issues and did not negotiate furlough days agreements. The furlough days agreements which were negotiated for City employees also provided for dental benefits plan coverage.

receive the same number of paid holidays as do City employees, but the school districts may and do designate different holidays than those observed by the City. SFCCD and District employees are covered by a different dental benefits plan than employees of the City and received dental benefits earlier than City employees. District employees are covered by the same health and retirement plans as are City employees.

To hire a glazier, electrician, sheet metal worker or other classified employee, the District requests an eligible list from CSC, utilizing the same list and examination process as used by City departments. The actual hiring decision is made by the District. The District's classified employees are under the City civil service system; they can transfer into or from City or SFCCD positions, carry vacation and sick leave credits with them upon transfer, and have District experience count toward any experience requirement for a promotional examination. Because glazier, electrician and sheet metal worker are designated as "citywide" classes for layoff purposes, a District employee in one of these classes subject to layoff could "bump" a less senior employee in a City department (or vice versa).

Organization and Supervision

The employees at issue here are employed in the District's Building and Grounds Department (Department), whose director is Anne Warren and which has as its central purpose the maintenance

and repair of school buildings.²⁸ Most of the Department's employees are assigned to a shop under the direction of one of three maintenance managers. Bill O'Brien is responsible for plumbing, heating, ventilation and air conditioning, and equipment service. Pete Schwab has the paint, roofing, carpenter, sheet metal, plaster, electrical and auto repair shops. Darryl Poindexter heads the locksmith, glass, landscape, piano, sewing equipment repair and typewriter repair shops.

Many of the shops, including glass, sheet metal and electrical, have a supervisor or foreman who makes the day-to-day work assignments and oversees the work performance of the employees in that particular shop.

Most Department employees report to and work out of either the 834 Toland Street facility or the 801 Toland Street facility. An exception is gardeners who report directly to school sites. The 834 Toland location houses the electrical, plumbing, paint, carpenter, glass, lock, typewriter and piano shops, plus administrative offices. The 801 Toland location includes the sheet metal shop, plus storage space for shop vehicles, equipment and supplies, and the accounting and purchasing offices.

The Department has a Work Control Center which takes all calls from sites requiring emergency repairs. The phone in the Center is staffed during the day by a Department clerical employee, but is also staffed as needed by the maintenance

²⁸One school site, however, is serviced by the City Department of Public Works (DPW).

managers and shop supervisors according to a schedule developed by Darryl Poindexter.

Communication with shop employees is accomplished via a two-way radio system and beepers. The same radio band and phone numbers are used for all shops.

Working Conditions

Most employees in the Department normally work from 8 a.m. to 4:30 p.m. with a one-half hour lunch break and both morning and afternoon breaks. Glaziers, sheet metal workers and electricians work off of standard job order and timecard forms, and sign in at school sites using a common logbook.

Department employees carry a standard photo identification badge and drive District vehicles (automobiles and trucks), which have the City seal on them. The District vehicles are a different color than those used by City departments. Fuel for the District vehicles is purchased at City service areas using a computerized billing system.

Crafts employees commonly work in hazardous and/or unpleasant environments, and share many safety concerns. Crafts employees work with their hands, with a variety of hand and power tools, and often work with machinery. Uniforms are not required but employees wear coveralls or similar clothing; safety shoes are required.

Up to 50 percent of the Department's work involves emergency situations, often caused by vandalism. Broken glass and doors,

and electrical outages are examples of emergency calls. Some emergency calls require more than one shop to respond.

Job Duties and Qualifications

The glazier classification requires a high school education, completion of an apprenticeship and two years journey level experience. Glaziers cut, grind and fit glass, plastic and stainless steel, and install and repair windshields, windows, doors, mirrors, desk tops and skylights. Glaziers operate a variety of shop tools, machinery and equipment, including saws, sanders and a tilt table.

The sheet metal worker classification also requires a high school education, apprenticeship and two years journey level experience. Sheet metal workers cut, form, fabricate, repair and install a variety of items. They fabricate toilet partitions, gutters, duct work, fences, basketball poles and metal playground equipment. They do not work with glass, wood or plastic. Sheet metal workers use a variety of hand and power tools, including drills, punch machines, welding machines, shearers and cutters, metal rollers and saws.

The electrician classification requires completion of high school, completion of an apprenticeship and three years journey level experience. Electricians work with and repair wiring, conduits, switches, fixtures, exterior and interior lighting, clock and bell systems, fire alarm and emergency light systems, motors and controls, scoreboards, and sound systems. They use

hand tools, drills, die cutters, saws and a variety of other power equipment.

The painter, plumber, stationary engineer, locksmith and carpenter classifications have comparable education, training and experience requirements. Gardeners, laborers and truck drivers are not required to complete an apprenticeship program or equivalent, though gardeners are subject to a requirement of prior education or experience in landscape gardening.

Employee Interaction

Crafts employees have participated in common training programs concerning asbestos, and information on safety issues is sometimes issued to all shops by the Department. The shop foremen discuss safety issues in their regular meetings, but most safety training takes place in the individual shops.

Shop foremen also discuss coordination of work in their meetings. Under a "team maintenance" program, all work projects at a school site will be scheduled on the same day, which results in employees from various shops working together under the leadership of a maintenance manager. However, even if working under the team maintenance program, the individual crafts tend to work independent of one another.

Employees in the various crafts normally work alone or with another employee from the same shop. There are tasks, however, which require one craft to assist another. For example, an electrician may need an item fabricated by the sheet metal shop in order to hang a light fixture. This interaction is neither

unusual nor a daily occurrence. Glaziers and carpenters have projects which overlap more often than do the glaziers and plumbers. Laborers are assigned to the carpenter shop but are available to assist other shops as needed.

Employees will also use equipment in other shops where they require the use of a specialized tool or machine that their shop does not have. Such cross-use of equipment is again neither rare nor an everyday event. The City's DPW and the District sheet metal workers also use specialized equipment in each other's shop on a routine basis, due to the close physical proximity of the two shops (about six blocks) and the similarity of job tasks.

Both the 801 and 834 Toland Street locations have common lunch rooms which may be utilized by employees, but employees often eat lunch away from the Toland Street area or in their individual shop. A meal truck parked outside the location is frequented by many of the Department's employees.

An annual awards event and the occasional organization of activities, such as a bowling league, involve employees from the various crafts. At least some shops schedule periodic social events for just that shop's employees.

Representation and Negotiations History

The District's chief negotiator is Bruce Julian, who has served in that role since 1986. The negotiating team also includes James Casassa, a consultant for contract administration and negotiations, and the manager of classified personnel. Reductions in District funding over the past few years have

reduced the number of support staff positions in the Classified Personnel Office.

Though recognized in 1980, the first agreement negotiated for the gardeners unit was effective April 1, 1991 through March 31, 1994. This agreement, like those with the carpenters, painters and IFPTE, specifies an intent

to establish a mutually satisfactory-
arrangement between [the parties] regarding
only those certain conditions of employment
within the discretion of the District. . . .

Regarding wages, the agreement requires the District to pay according to the schedule found in the SSO. A side letter agreement was executed on December 15, 1992, regarding the granting of paid furlough days due to the salary freeze caused by the mayor's veto of the 1991-92 SSO.

The Painter's Union, recognized in 1987, negotiated an agreement effective June 1, 1988 through June 30, 1991. No negotiations have occurred over a successor agreement. That agreement also provided for wages to be paid according to the SSO, and also included provisions for taper premium, sandblasting premium and lead person pay which were identical to those in the SSO.

The Carpenter's Union, first recognized in 1982,²⁹ has an agreement with the District effective February 1, 1993 through January 31, 1996. The agreement calls for payment of wages in

²⁹The Carpenter's Union attempted to file a new representation petition in 1990, but PERB declined to process the petition based on the earlier recognition.

accordance with the SSO as adopted by the City Board of Supervisors, "unless the results of Charter authorization for collective bargaining supersede [SSO] authority." This latter caveat reflects recent amendments to the Charter allowing City unions to opt out of the prevailing wage salary survey system of wage setting and to elect to bargain wages instead.³⁰ To date, the crafts unions have chosen to remain with the prevailing wage system. The District has given notice it will not honor classification or pay rate changes negotiated by the City, and will pay such classifications at the SSO rate unless the District negotiates otherwise itself.

Concerning negotiations with the crafts units now in place, Julian testified that he has, since 1986, had approximately a dozen meetings with LIUNA, ten meetings with the Carpenter's Union and six with the Painter's Union. The District's experience with these negotiations is that they spend about two hours in preparation and follow-up for every hour at the table, not counting time spent on contract administration and record keeping.

As noted above, Julian also met with other crafts unions regarding the furlough days agreements, but otherwise has not negotiated with the Petitioners.

³⁰Charter sections 8.409 et seq.

POSITIONS OF THE PARTIES

Petitioners

Approval of the units sought is required in order to harmonize EERA with Education Code section 45318 and the City-Charter, and with the court's finding in United Public Employees. Government Code section 3540 specifies in relevant part that EERA

shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

The District's classified employees are a part of the City civil service system pursuant to Education Code section 45318 and PERB may not order a result which supersedes this arrangement.

Denial of the units requested would also deny the right to representation by an exclusive representative guaranteed by EERA, as no other possible unit is appropriate and any other unit would result in dual representation of employees. Glaziers, sheet metal workers and electricians are already represented by the Petitioners; any other unit structure would result in glaziers, for example, being represented for certain purposes by Local 718 and by a different organization, if any, at the District.³¹

³¹Even if Local 718 became the representative of the District unit, this same defect would be true for sheet metal workers and electricians.

These employees cannot be added to an existing unit without the consent of the exclusive representative; Petitioners are not interested in representing a unit of all unrepresented employees; and a "catch-all" unit is not appropriate where separate units have already been granted to carpenters, painters and gardeners.

PERB should not follow its traditional Sweetwater³² analysis here due to the joint employer status of the City and District and because the Sweetwater units are not available as an option. Further, the EERA unit criteria favor approval of these units under the facts of this case.

Glaziers, sheet metal workers and electricians share a greater community of interest with like employees of the City than they do with one another, or with other crafts employees of the District. In the areas of salary setting, layoffs and apprenticeship requirements, each craft has concerns unique to the particular craft.

Approval of the units requested would avoid potential inefficiencies for the District, the employees and employee organizations. A situation where employees are represented by the same organization at the City and the District will avoid the potential confusion which would result from having two representatives.

³²In Sweetwater Union High School District (1976) EERB Decision No. 4 and its progeny, the Board approved as presumptively appropriate a three-unit structure for classified employees: instructional aides, office/technical and business services, and operation and support services (including crafts employees). (Prior to January 1, 1978, the Board was known as the Educational Employment Relations Board (EERB).)

Employer

The question of whether the District and City are joint employers is not at issue in this matter. However, the Petitioners' contention that the District is "obligated to conform to various City regulations is unconstitutional," pursuant to Article IX, Section 6 of the California Constitution:

No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.

The proposed units must be denied as inappropriate under Sweetwater and Compton Unified School District (1979) PERB Decision No. 109 (Compton). The subject employees share a community of interest with each other and with the District's other skilled crafts employees, and thus Petitioners have not met their burden of demonstrating a "separate and distinct" community of interest as required under Compton.

The District's skilled crafts employees work on common projects, and share in common supervision, transportation, meetings, training, work location, and policies. These factors demonstrate a "level of functional integration" which requires rejection of the Petitioners' request under Foothill-DeAnza Community College District (1977) EERB Decision No. 10 and other cases.

In addition, approval of the proposed units would pose undue hardships on the District. The District's declining resources

are already strained by the existing units, and further fragmentation would significantly worsen the situation.

Separate representation of additional crafts groups would "destroy the functional integration which is so critical to the efficient operation of the District." It would be "impossible" for the District to simply agree to accept terms and conditions which the Petitioners negotiate with the City and thus the bargaining obligations imposed on the District by these requested units are so significant as to require disapproval.

The only appropriate unit is an all-inclusive skilled crafts unit. The District is prepared to stipulate to the establishment of such a unit³³ and the Board should order same.

ISSUE

Are separate units of glaziers, sheet metal workers and electricians at the District appropriate under EERA?³⁴

³³Julian testified that one employee organization (Teamsters) has expressed interest in representing such a unit.

³⁴Pursuant to a stipulation of the parties, this decision will address only the unit appropriateness of the three proposed units. Should one or more units be ordered by a final decision of the Board, the Employer may within 60 days of that decision object to the inclusion of positions on the basis of supervisory status. Further hearings will be held on any supervisory issues unless the parties are able to resolve the dispute, with relevant portions of the record of this proceeding incorporated therein.

This decision will also be limited to those classifications which the record shows are currently in use at the District. (See Marin Community College District (1978) PERB Decision No. 55 and Mendocino Community College District (1981) PERB Decision No. 144a.)

DISCUSSION

Jurisdiction

Neither party disputed, and the record supports finding that the District is a "public school employer" as defined by EERA section 3540.1(k),³⁵ its employees are "public school employees" as defined by 3540.1(j), and the Petitioners are "employee organizations" as defined by section 3540.1(d).

Rule of Law

In each unit determination case, the Board is required to follow the criteria set forth in EERA section 3545(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.

The Board ruled early in its history that it must determine in each case the "appropriateness" of a unit without being limited only to a choice between "an" or the "most" appropriate unit, and

³⁵The dispute over the arguable joint employer status of the District with the City involves the question of how PERB's jurisdiction should be applied, not whether PERB has jurisdiction under EERA. The District offers no authority for its interpretation of the Constitution holding that Education Code sections 45100 and 45318 and the City Charter provisions for a civil service system are not applicable to it. Further, PERB lacks authority to determine the constitutionality of provisions of the Education Code. (See San Ramon Valley Unified School District (1989) PERB Decision No. 751.) For purposes of this decision, the logic of the court's ruling in United Public Employees shall be extended to consider the City and District as joint employers.

must in each case weigh and balance the statutory criteria in order to achieve consistency of application and the general objectives of EERA. (Antioch Unified School District (1977) EERB Decision No. 37; see also Marin Community College District, supra, PERB Decision No. 55.)

In Sweetwater, the Board announced its preference for three units of classified employees: instructional aides; office-technical and business services; and operations and support services. The significance of the Sweetwater "preferred" units was further explained in Compton where the Board held that

a variant unit will not be awarded unless it is more appropriate than the Sweetwater unit based on a separate and distinct community of interest among employees in the variant unit or other section 3545(a) criteria. (Emphasis added; fn. omitted.)

In Compton, the Board rejected a separate unit for skilled crafts employees, and included them with the operations and support services unit despite a petitioner's demonstration of 84 percent membership among the skilled crafts employees.

In later denying a unit of hourly bus drivers, where other bus drivers were already included in the operations and support services unit, the Board noted that:

Every classification possesses a community of interest among its members. Janitors, undisputably, have more in common with other janitors than they do with gardeners, but we have yet to find a separate unit of only janitors appropriate, absent unusual circumstances.

(San Diego Unified School District (1981) PERB Decision No. 170 (San Diego).)

Significantly, however, the discussion in cases such as Compton and San Diego occurs in the context of weighing the potential appropriateness of a proposed unit against a Sweetwater unit. None of these cases directly answers the question of how the Sweetwater presumption helps guide the analysis where Sweetwater units are not available.

As noted in Pleasanton Joint School District/Amador Valley Joint Union High School District (1981) PERB Decision No. 169 (Pleasanton), citing Compton:

[A] presumptively appropriate unit configuration does not establish the "only appropriate" unit or even the "most appropriate" unit.

In Pleasanton, the Board approved a separate unit of school psychologists who would normally be included in a teachers unit, attaching considerable significance to the fact that the District had previously agreed to a teachers bargaining unit which excluded the psychologists. See, also, Mendocino Community College District (1980) PERB Decision No. 144 and Long Beach Community College District (1989) PERB Decision No. 765 (part-time faculty units approved where existing unit of full-time faculty established by voluntary agreement). In all three of these cases, the Peralta³⁶ presumption favoring a single unit of certificated personnel was overcome by the facts of the case.

Thus, in light of PERB precedent, the questions posed by the instant case are: (1) Does the record support a finding that the

³⁶Peralta Community College District (1978) PERB Decision No. 77.

glaziers, sheet metal workers and electricians have "separate and distinct" communities of interest which warrant their inclusion in separate units, and/or (2) does this case present "unusual circumstances" warranting approval of the proposed units, and/or (3) does the existing bargaining unit structure at the District warrant approval of the three units sought here, and/or (4) may the proposed units be approved despite the Employer's efficiency of operations concerns?

Community of Interest

Like San Diego's hypothetical janitors, the District's glaziers, sheet metal workers and electricians each have a community of interest derived from common job functions, supervision, hours of work, qualifications, frequency of contact, and wages, benefits and working conditions. In each case, however, these factors are only distinct to a degree and the District credibly recites factors which these employees have in common, as well as with other crafts employees of the District. While Petitioners emphasize the connections between these employees and their craft counterparts who work for the City, the undersigned is not persuaded that those ties are more significant than the shared community of interest among the District craft employees.

In sum, the community of interest criteria do not compel approval of the three separate craft units requested.

"Unusual Circumstances" Standard

The unusual circumstance in this case derives from the joint employer relationship between the City and District. Certain conditions of employment of the glaziers, sheet metal workers and electricians, including wages, certain benefits and transfer rights, are determined through City processes in which these classifications are represented by Petitioners;³⁷ other conditions of their employment are determined solely by the District. Petitioners submit that this unusual circumstance requires approval of the proposed units, as the only alternative is a scheme where District employees have dual representation.

Petitioners argue that dual representation would violate the statutory right of employees to a single exclusive representative, quoting the following language from EERA section 3540:

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit. . . . [Emphasis added.]

³⁷The District's established practices show the relevance of City Charter provisions relating to salary setting, etc., even if the District protests any suggestion they are required to adhere to the SSO schedules.

Petitioners also contend that such dual representation would result in confusion among employees, employee organizations and employers as to the proper forum for dispute resolution, and impair the efficiency of operation of the joint employers.

Petitioners' reliance on the "single exclusive representative" language in EERA is unpersuasive.³⁸ Petitioners attempt to stretch the meaning of provisions which apply only to public school employer-employee relationships. Education Code section 45318 only requires that the District's employees be covered by the City's civil service system, not that the District be subject to the bargaining unit structure of the City ERO.

Contrary to Petitioners' arguments, EERA does not preclude in every case an employee's placement in more than one bargaining unit. An employee holding two positions with the same employer, e.g., part-time instructional aide and part-time bus driver, might well be included in two separate bargaining units represented by two different exclusive representatives. Such a situation might result in the employee paying dues to two unions, and might even result in some confusion, but the result is not

³⁸Petitioners also rely on the Board's discussion of the practical advantages which accrue from having a common representative with both entities of the joint employer in San Francisco Community College District (Barnes), supra, PERB Order No. Ad-153. That discussion did not occur in the context of a unit determination case; instead, the issue was jurisdictional and is not instructive in this context.

contrary to EERA's general provision of the right of employees to have a single exclusive representative.³⁹

The issue here, of course, does not involve placement of employees in two units of the same employer. If the Employer's position were adopted, the District's employees would still be placed in only one bargaining unit of the public school employer.

Petitioners' expressed concerns about confusion and inefficiency which would accompany dual representation are not supported by the record. The record reflects that at least a limited number of classifications have different exclusive representatives with the District and the City. There is no evidence that this situation has caused any difficulty or confusion for the employees, employers or employee organizations. The Employer and any employee organization representing its classified employees will have to reconcile the means and forum for resolution of certain issues given the interrelationships among the civil service system, City negotiations and the District's own collective bargaining obligations under EERA. The Board, however, must consider only the criteria set forth in EERA in determining the appropriateness of a unit.

³⁹See Unit Determination for Employees of the State of California (1981) PERB Decision No. 110d-S, Oakland Unified School District (1983) PERB Decision No. 320, and Berea Publishing Co. (1963) 140 NLRB 516 [52 LRRM 1051]. The instant case is admittedly distinguishable in that the employees are not "dual function" employees of a single employer, but the analysis is analogous.

Effect of Established District Bargaining Units

Petitioners argue, in part, that the Sweetwater presumption is inapplicable to the instant case because Sweetwater units cannot be established as a consequence of the Employer's earlier agreement to a variety of both Sweetwater and non-Sweetwater units. In addition to paraprofessional, clerical and technical, and maintenance operations units, the District previously agreed to separate units for three crafts groups and a unit which includes accountants, architects and engineers.

The Employer's offer to stipulate to a single skilled crafts unit⁴⁰ does not resolve the question posed by Petitioners as to the relevance of Sweetwater here. In Redondo Beach City School District (1980) PERB Decision No. 114, the Board held that:

It has been PERB's policy to encourage voluntary recognitions and settlements among the parties subject to its jurisdiction. The Board also has a strong interest in labor relations stability. Therefore we are loathe to upset working relationships and will not disrupt existing units . . . lightly.

The policy interests thus expressed mean that, in a case such as the instant matter, the determination of an appropriate unit must be made with consideration only of those classifications not already placed in a unit. These circumstances narrow the available choices to either a residual unit or separate crafts units.

⁴⁰No weight is given the hearsay testimony concerning the Teamsters' interest in representing such a unit. Neither that organization or any other has filed such a petition.

Efficiency of Operations

As noted by the Employer, approval of the three units here would double the number of skilled crafts units at the District (though not double the number of classified units) and would leave the door open to still more such units.⁴¹

The Employer's concerns over the potential impact of the further proliferation of small units of building trades employees cannot be lightly dismissed as "speculative." A finding in the instant case that the glaziers, sheet metal workers and electricians each have a separate and distinct community of interest, sufficient to warrant a separate unit, would make it extremely difficult to deny similar (i.e., separate) units to the remaining building trades groups who clearly share the "unusual circumstances" of these groups. The fact that petitions for such units are not now pending does not negate the Employer's concern over proliferation.

The evidence presented by the Employer on efficiency of operations would not warrant denial of the proposed units on this basis alone.⁴² Particular significance is given in this respect to the testimony concerning the bargaining history with the three existing crafts units, the facial limitation on scope in those agreements, and the absence of any evidence of difficulties caused by the administration of those agreements.

⁴¹Admittedly, the District helped open the proverbial barn door in this instance.

⁴²See, for example, Antelope Valley Community College District (1981) PERB Decision No. 168 and Pleasanton.

The Employer's concern over fragmentation does, however, favor a residual crafts unit over the alternative of several more single-craft units. The Employer has not proposed including the computer classifications, public information officer or payroll clerks in such a residual unit. It is unclear whether they would include the piano tuner⁴³ and truck drivers.⁴⁴

Conclusion

Given the unavailability of a Sweetwater unit, or even a comprehensive skilled crafts unit, the only available options are: (1) approval of the three units requested, (2) simply denying the units and leaving the employees unassigned to an appropriate unit, or (3) forming a residual unit which includes glaziers, sheet metal workers, electricians, roofers, stationary engineers, plumbers, laborers and auto mechanics.⁴⁵

The community of interest found to exist among the crafts employees of the Building and Grounds Department defeats the attempt to form single craft units. As the Board ruled in

⁴³The piano tuner, sewing machine repairer, typewriter repairer (Unit 2-B) and senior typewriter repairer (Unit 3-B) classifications are included in City units represented by SEIU. While all four classifications are utilized by the Building and Grounds Department, only the sewing machine repairer and typewriter repairer are represented in the District by SEIU.

⁴⁴Truck drivers are included in City Unit 1-F, represented by Teamsters Local 216. Based on the record here, truck drivers are apparently not included in the District's Building and Grounds Department.

⁴⁵Petitioners correctly note that the employee positions at issue here cannot be accreted to any existing unit, absent a petition by the incumbent exclusive representative.

30, in denying a separate skilled crafts unit:

A separate unit is not warranted merely because a group of employees share a community of interest among themselves, when that homogeneous group forms only a part of a larger essentially homogeneous group sharing similar conditions of employment and job functions. [Fn. omitted.]

The glaziers, again like the hypothetical janitors in San Diego, certainly share a community of interest. But that community of interest is not distinct and separate from that shared with other crafts employees with whom they are functionally integrated and share supervision, working conditions, work locations, training and use of tools. The District's earlier decisions to recognize units of carpenters and painters does not require a contrary result, for it is ultimately the Board which determines the appropriateness of a proposed unit in a disputed case.

In denying the units sought, it is also worthy of note that the Legislature did not provide in EERA for the right of individual crafts units to form a separate bargaining unit, though it has done so in other collective bargaining legislation.⁴⁶

⁴⁶The Ralph C. Dills Act, formerly known as the State Employer-Employee Relations Act, provides as follows at Government Code section 3521(b)(6):

(6) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a separate unit of representation based upon occupation. Skilled crafts employees shall include, but not necessarily be limited

The question remaining is whether any unit should be ordered at this time. Simply denying the units sought and leaving it to employees and their employee organizations to guess what course they should next pursue toward representation would form a result incompatible with the purposes of EERA.

As noted by the Board in State of California (Department of Personnel Administration) (1989) PERB Decision No. 773-S,

In unit determination proceedings, PERB clearly has the power to determine an appropriate unit, and the unit ultimately decided upon may be different from the unit proposed by the parties.

As discussed above, employees in the crafts classifications share similar and often related job functions, work under common supervision and working conditions, and have in common similar training and their work with tools and equipment. These employees also have in common similar unit treatment of their classifications under the City ERO, coverage under the City civil service system and are treated similarly for purposes of salary setting under recommendations of the CSC.

Establishment of a unit including all of the currently unrepresented crafts employees in the Building and Grounds Department would also comport with the efficiency of operations concerns of the Employer. A residual unit is also consistent

to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers.

The Higher Education Employer-Employee Relations Act contains a comparable provision at section 3579(d).

with relevant PERB precedent, including Compton, San Diego and Pleasanton.

Based on the totality of the factors discussed above, including such community of interest factors as job functions, supervision, benefits and working conditions, it is determined that a residual unit comprised of currently unrepresented crafts classifications at the District is an appropriate unit for representation purposes under the EERA.

ORDER

For the reasons discussed above, and in consideration of the entire record of the proceeding in PERB Case Nos. SF-R-799, SF-R-800 and SF-R-803, it is hereby ORDERED that a unit comprised of the crafts classifications now unrepresented at the San Francisco Unified School District, including glaziers, sheet metal workers and electricians, is an appropriate unit for purposes of meeting and conferring under EERA, provided an employee organization becomes the exclusive representative. The unit shall include the following classifications:

Glazier (class code 7326), glazier supervisor I (class code 7233), electrician (class code 7345), electrician supervisor I (class code 7238), sheet metal worker (class code 7376), sheet metal supervisor I (class code 9345), chief stationary engineer (class code 7205), school heating and ventilation supervisor (class code 7209), plumber supervisor I (class code 7213), maintenance planner (class code 7262), stationary engineer (class code 7334), plumber (class code 7347), automotive mechanic (class code 7381), general laborer (class code 7514) and roofer (class code 9343).

The unit shall exclude all other employees,⁴⁷ including management, supervisory and confidential employees. The Employer may contest the supervisory status of any classification or employee as previously described.

Pursuant to PERB Regulation 33470, Local 718, Local 6 and Local 104 shall have 15 workdays from the date of issuance of a final decision in this matter to demonstrate to the satisfaction of the regional director at least 30 percent support in the unit described as appropriate.⁴⁸ An election shall be conducted by PERB unless only one employee organization demonstrates majority support, no other employee organization submits at least 30 percent, and the Employer grants voluntary recognition. (PERB Regulations 33470 and 33480.)

If no employee organization submits at least 30 percent support, all three petitions shall be dismissed and no election will be conducted.

A Board agent will contact the parties upon issuance of a final decision in this matter to discuss the further processing of these cases.

⁴⁷The classifications of piano tuner, senior typewriter repairer and truck driver are being omitted from the unit found to be appropriate based on the limited record concerning them. See discussion, ante, at footnotes 43 and 44.

⁴⁸Pursuant to PERB Regulation 32700 (d), two or more employee organizations may combine their proofs of support as a joint petitioner.

Right of Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code of Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (See Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

Les Chisholm
Hearing Officer