STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LINCOLN UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS LINCOLN CHAPTER #282, Exclusive Representative.	Case No. SA-UM-598 (S-R-127) PERB Decision No. 1194 April 30, 1997

Appearances; Atkinson, Andelson, Loya, Ruud & Romo by Elizabeth B. Hearey and Peter J. Lucey, Attorneys, for Lincoln Unified School District; Sharon R. Furlong, Senior Labor Relations Representative, for California School Employees Association and its Lincoln Chapter #282.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association and its Lincoln Chapter #282 (CSEA) of a Board agent's proposed decision (attached). The Board agent dismissed a unit modification petition filed by CSEA pursuant to PERB Regulation 32781(a)(I)[1] which sought to add 22

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[1]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32781 states, in pertinent part:

> Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board approval of a unit modification may file a petition in accordance with the provisions of this section.

positions to the existing classified bargaining unit in the Lincoln Unified School District (District). The 12 positions consisted of 10 office supervisor I positions, 1 office supervisor II position, and 1 staff secretary, transportation/maintenance position.[2]

The Board has reviewed the entire record in this case, including the proposed decision,[3] CSEA's appeal and the District's response thereto. The Board finds the Board agent's findings of fact and conclusions of law to be free of prejudicial error and hereby adopts them as the decision of the Board itself in accordance with the following discussion.

CSEA'S APPEAL

CSEA offers four exceptions to the Board agent's proposed decision. First, CSEA asserts that the Board has required individual analysis of positions with disputed supervisory status. (Marin Community College District (1978) PERB Decision No. 55; Hemet Unified School District (1990) PERB Decision

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> (a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:
>
> (1) To add to the unit unrepresented classifications or positions.

[2]The parties stipulated that the staff secretary, transportation/maintenance position would be added to the bargaining unit, and PERB issued an October 26, 1995, unit modification order approving the addition. Therefore, the status of this position is no longer at issue.

[3]The Board agent who prepared the proposed decision was substituted for the Board agent who conducted the hearing in this case, pursuant to the provisions of PERB Regulation 32168(b).

No. 820 (Hemet USD).) CSEA argues that the Board agent's analysis of the office supervisor I positions on a group basis does not comply with this requirement, and tends to distort and misstate the duties performed.

Second, CSEA excepts to the Board agent's characterization of the facts and the application of Board precedent. For example, to the extent office supervisors I have been involved in the hiring process, CSEA asserts that the involvement has been limited and isolated and does not warrant a finding of supervisory status. (Oakland Unified School District (1978) PERB Decision No. 50.) CSEA argues that the duties of office supervisors I and II, and other clerical employees, have been established and defined for years. CSEA also asserts that the office supervisors merely control work flow and coordinate work progress, and that office supervisors I and II essentially serve as leadpersons performing duties similar to classified bargaining unit clerical employees. (Redlands Unified School District (1982) PERB Decision No. 235.) CSEA argues that: the assignment of work by office supervisors I and II does not indicate supervisory status because where duties are defined, and the work is clerical in nature, routine assignments do not require independent judgment and are not supervisory; the involvement of office supervisors I and II in work hour and work schedule adjustment is extremely limited, pursuant to established practice, and requires no independent judgment; and the mere involvement in the decision-making process does not render a

position supervisory. (Unit Determination for the State of California (1980) PERB Decision No. ll0c-S (State of California.) Further, CSEA asserts that the Board agent improperly applied the Board's standards concerning involvement in employee evaluations, and that supervisory status is not indicated because the office supervisors I and II are unable to affect terms and conditions of employment through their involvement in the evaluation process. (Hemet USD.)

CSEA's third exception asserts that the Board agent's decision contains many inaccuracies that "created a factually distorted vacuum." CSEA repeats its objections to the Board agent's conclusions involving the assignment and direction of work by office supervisors I and II, and the adjustment of work hours and schedules.

CSEA's final exception asserts that PERB erred in reassigning this case to a Board agent who did not conduct the hearing. CSEA argues that differences in the duties described by various witnesses "could only have been evidenced by the Board agent hearing the case."

DISTRICT'S RESPONSE

The District responds by urging the Board to adopt the Board agent's proposed decision. The District argues that the Board agent's analysis satisfies PERB's requirement that the Board look at the actual nature of the work performed by each incumbent in assessing supervisory status. (Hemet USD.) The District cites numerous examples of the Board agent's individual position

findings. The District also supports the Board agent's application of Board precedent. Finally, the District notes that the Board followed its regulations and established procedures in reassigning the case.

DISCUSSION

CSEA's first exception asserts that the Board agent failed to provide individual legal analysis for each contested position. Hemet USD reviewed PERB precedent and noted that the Board has either used an "individual analysis" of each contested position or considered the typical duties of the position when the evidence indicated substantial uniformity in the duties of the disputed classification. The underlying principle of both approaches is that the Board "must look at the actual nature of the work performed by the incumbents in the position, rather than the work specified in the job description." [Emphasis in original.] (Hemet USD.)

In this case, it is clear that the Board agent examined the actual nature of the work performed by the incumbents of the" office supervisor I and office supervisor II classifications. The Board agent reviewed the actual duties and responsibilities of each incumbent in the disputed classifications, and the typical duties of the positions, not just the work specified in the job descriptions. CSEA's exception, therefore, is without merit.

In its second exception, CSEA argues that the Board agent incorrectly applied PERB precedent in excluding office

supervisors I and II from the bargaining unit. CSEA describes the duties cited by the Board agent as "isolated," "sporadic," and "ministerial."

The various indicators of supervisory status described in the Educational Employment Relations Act (EERA) section 3540.1(m)[4] are to be evaluated in the disjunctive; that is, supervisory status may be found where an employee performs even one of the enumerated functions. (State of California.) The record indicates that all office supervisors I exercise independent judgment in performing at least one function indicative of supervisory status, such as: office supervisors I participated in the hiring process involving clerical or yard duty employees to the extent that they effectively recommended the hiring of the selected candidate; used their discretion in assigning work to clerical employees; made independent decisions concerning staffing needs, hours and work schedules; and had extensive involvement in preparing evaluations of clerical

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[4]EERA is codified at Government Code section 3540 et seq. Section 3540.1(m) states:

> "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

employees, including recommending permanent status for probationary employees. The office supervisor II, while demonstrating no significant involvement in the hiring process, regularly assigned work to clerical employees and exercised independent authority in adjusting work schedules and approving employee leave. The record clearly establishes, therefore, that supervisory status is properly afforded to the office supervisor I and II positions, and CSEA's exception is rejected.

CSEA's third exception is largely a repetition of its first two. CSEA asserts that the facts cited by the Board agent are inaccurate and/or insufficient to support a finding that office supervisors I and II should be excluded from the bargaining unit. As noted above, the Board agent correctly concluded that office supervisors I and II all perform one or more of the supervisory functions enumerated in EERA. CSEA's assertion is not supported by the record.

Finally, CSEA contends that PERB erred in reassigning the case to a Board agent who did not conduct the hearing. PERB Regulation 32168(b) states:

> (b) A Board agent may be substituted for another Board agent at any time during the proceeding at the discretion of the Chief Administrative Law Judge in unfair practice cases or the General Counsel in representation matters. Prior to ordering a substitution the parties shall be notified and provided an opportunity to state objections to the proposed substitution. Substitutions of Board agents shall be appealable only in accordance with Sections 32220 or 32300.

The reassignment in this case occurred in accordance with this provision. CSEA's exception is rejected.

ORDER

The unit modification petition filed by the California School Employees Association and its Lincoln Chapter #282 is hereby DISMISSED.

Members Johnson and Dyer joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

LINCOLN UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS LINCOLN CHAPTER #282, Exclusive Representative	Representation Case No. S-UM-598 (S-R-127) PROPOSED DECISION (8/20/96)

Appearances: Atkinson, Andelson, Loya, Ruud & Romo by Peter J. Lucey, Attorney, for Lincoln Unified School District; Sharon R. Furlong, Senior Labor Relations Representative, for California School Employees Association and its Lincoln Chapter #282.

Proposed Decision by Robin E. Wright, Board Agent.

PROCEDURAL HISTORY

On May 22, 1995, the California School Employees Association and its Lincoln Chapter #282 (CSEA) filed with the Public Employment Relations Board (PERB or Board) a unit modification petition pursuant to PERB Regulation 32781(a)(I).[1] CSEA petitioned to add twelve positions to the existing classified bargaining unit in the following job classifications: Office

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[1]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32781 states, in pertinent part:

> (a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:
>
> (1) To add to the unit unrepresented classifications or positions.

Supervisor I, Office Supervisor II and Staff Secretary, Transportation/Maintenance.

The Lincoln Unified School District (District) filed its opposition to CSEA's petition on June 19, 1995. The District asserted that all of the positions were supervisory and must be excluded from the bargaining unit. A settlement conference was conducted by a Board agent on August 2, 1995, however, the parties were unable to reach a settlement.

An evidentiary hearing was conducted on October 23-25, and November 13 and 14, 1995.[2] After an extension of time, the parties filed post-hearing briefs on February 13, 1996. Upon receipt of the briefs the case was submitted for proposed decision.

This case was subsequently transferred to the undersigned for preparation of the proposed decision. (PERB Regulation 32168(b).)

FINDINGS OF FACT

The District is a public school employer within the meaning of the Act. CSEA is an exclusive representative within the meaning of the Act and is the representative of a unit of classified employees in the District.

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[2]At the hearing, the parties stipulated that the Staff Secretary, Transportation/Maintenance position would be added to the bargaining unit. A unit modification order was issued by PERB on October 26, 1995 approving the addition of this classification to the classified bargaining unit. The status of this position is, therefore, not addressed in this decision.

The Lincoln Unified School District has approximately 8,700 students at 13 school sites. The District is comprised of nine elementary schools, one middle school, one high school, one continuation high school and an Independent Learning Center. There are approximately 402 classified employees in the bargaining unit represented by CSEA.

Office Supervisor I

There are ten Office Supervisor I positions in the District. An Office Supervisor I is assigned to the middle school and to each of the nine elementary schools. In addition, there are one or two clerical employees at each of these schools. The office supervisors work 11 months each year. The clerical employees work 10 months each year and report to work when school opens. The office supervisor reports to the school principal.

At each school site, the office supervisor and the clerical employees work together in a small office behind a counter which separates visitors from the work area. The office supervisor and the clerical employees are interrupted frequently throughout the day by inquiries from students, parents, staff and other visitors. The clerical employees are generally the first to assist visitors at the counter. However, the office supervisors also spend a great deal of time each day at the counter assisting students, parents and visitors.

In most cases, the clerical employees are responsible for tracking attendance. This involves entering absences in the computer, calling parents to verify absences, late slips,

attendance reports, class lists and preparing ADA reports. Other duties may consist of student registration, preparing and maintaining student cumulative folders, daily lunch count, free/reduced lunch program applications, daily school bulletin, filing, copying and answering phones. In addition, periodic reports are prepared such as those involving child nutrition and student immunization.

While there is some crossover of duties among the office staff, office supervisors are generally responsible for staff attendance and obtaining substitutes, purchase orders, tracking the school's budget, transportation requests, school facility scheduling, office equipment repair and maintenance, preparing the school newsletter and correspondence.

Pamela Hamilton

Pamela Hamilton is the office supervisor at Sierra Middle School. She has been in this position since January 1993. Prior to that time she served as the staff secretary at the same school. Hamilton's immediate supervisor is Principal Scott Peebles. A dean of students is also assigned to the school.

Hamilton allegedly supervises Deborah DeCosta, a staff secretary who works full-time and Michelle McCoy a part-time instructional aide who works three hours a day.

Hamilton and DeCosta both applied for the vacant office supervisor position at Sierra Middle School. Hamilton was selected. DeCosta was later hired as the staff secretary to fill the position vacated by Hamilton when she was promoted to office

supervisor. Hamilton initially established DeCosta's regular job duties, assigning the same duties to DeCosta that she was responsible for when she held the position. She also trained DeCosta in her new duties.

Although Hamilton has rarely altered DeCosta's duties, she will ask her to set aside work to undertake special projects to meet upcoming deadlines. Hamilton reviews the work she gives to DeCosta and, if necessary, returns it to her for correction of errors. DeCosta sends regularly assigned reports directly to the District office or returns projects to Hamilton depending on the assignment. Occasionally the principal or dean of students will give work directly to DeCosta such as copying, making a phone call or running a report. Most of the principal's work is given to Hamilton to complete or delegate to the clerical employees.

A portion of McCoy's duties involve the supervision of students sent to the office for in-school suspension. When Hamilton determines there are enough students, she directs McCoy to open the in-school suspension. If there are not enough students, McCoy is assigned other office duties by Hamilton such as copying and filing student cumulative folders.

Hamilton and the principal jointly established DeCosta's schedule. Both Hamilton and DeCosta work 7:00 a.m. to 4:00 p.m. At one time Hamilton suggested to the principal that DeCosta begin work one half hour later, but DeCosta's hours remained unchanged.

Hamilton originally established the lunch schedule for the office staff. After a period of time, DeCosta requested that the lunch schedule be changed because she was alone in the office during the busy student lunch period. After a discussion with DeCosta and McCoy, Hamilton staggered the lunch schedule to provide for two people in the office during the lunch period. Hamilton did not seek the principal's approval to make this change.

At the beginning of one school year, DeCosta informed Hamilton that she was unable to finish updating the student database during regular work hours. Hamilton recommended that the principal permit DeCosta to work overtime to complete the work. Overtime was authorized by the principal. Another time, Hamilton denied DeCosta's request for overtime, without taking the request to the principal.

Before scheduling compensatory time off, DeCosta checks with Hamilton to determine whether the schedule would accommodate her absence. DeCosta or Hamilton then lets the principal know that DeCosta will be out of the office.

Hamilton and the principal jointly prepare DeCosta's annual performance evaluation. Hamilton and the principal discuss and determine the ratings and comments provided on the evaluation form. Both sign the evaluation form and they meet jointly with DeCosta to go over the evaluation. Hamilton does not evaluate McCoy, the instructional aide. McCoy's evaluation does not reflect her office duties.

DeCosta brings questions concerning District policy or procedures to Hamilton. For example, DeCosta checks with Hamilton when she has a question concerning student residency qualifications. DeCosta testified that she views Hamilton as her supervisor and refers to her as such. When dealing with difficult parents or problems, DeCosta will refer them to Hamilton.

Donna Deutscher

Donna Deutscher has been the office supervisor at Pacific School, a K-8 school, for three years. Her immediate supervisor is Principal Debbie Holmerud. She allegedly supervises Elena Garrett who works full-time as a staff secretary. Garrett has worked at the school in this position for 10 years. Deutscher and Garrett both applied for the office supervisor position at Pacific School when it became vacant three years ago. Deutscher was the successful candidate. Garrett was "dismayed" that she was not selected to be the office supervisor.

Garrett testified that she considers Principal Holmerud to be her immediate supervisor. Garrett said that she receives all of her assignments directly from Holmerud and returns the completed projects to her. Principal Holmerud testified that Garrett reports to Deutscher. Holmerud gives assignments directly to Garrett when they fall within her area of responsibility. Holmerud gives new projects to Deutscher to decide what part, if any, Garrett will do.

Holmerud stated that Deutscher came to her with the idea to cross-train the office staff. Deutscher and Garrett would learn the various aspects of each other's duties to allow the office to continue to function if one of them is out of the office. Holmerud agreed and Deutscher transferred responsibility for purchase orders to Garrett and provided instruction on how to prepare the forms. Deutscher took over responsibility for student suspension letters.

Deutscher has asked Garrett to prepare reports, flyers and to coordinate the class picture schedule as she did the year before. Deutscher has also reviewed and corrected work completed by Garrett. Last year was the first year Garrett filled out kindergarten immunization forms and she was unfamiliar with all of the requirements. Deutscher also reviews the student accident forms prepared by Garrett and she reminds Garrett when information is missing. Garrett also asked Deutscher to review a flyer she prepared. Deutscher reviewed the flyer, circled the errors and returned it to Garrett to make the corrections.

Yard duty supervisors report their absences to Deutscher if they are out sick or want to take personal necessity leave or a floating holiday. On in-service days when there are no students on campus, Deutscher assigns office duties to the yard supervisors. When a yard duty position became vacant Principal Holmerud asked Deutscher to provide input on a candidate for the position. Deutscher's report on the candidate was favorable,

Holmerud agreed and the candidate was hired in a permanent position.

Deutscher begins work at 7:15 a.m., Garrett at 7:30 a.m. Last year, Garrett asked Deutscher if she could start work earlier. Deutscher said no, because Garrett was already having trouble arriving for work on time. Another time, Garrett made a request to reschedule her lunch hour in order to participate in a Black History program with the students. Deutscher and Principal Holmerud jointly agreed to let Garrett take a later lunch hour.

Garrett discusses her absence requests with the principal if she knows about them in advance and coordinates with Deutscher to make sure there are no scheduling conflicts. With unplanned absences or illness, Garrett calls Deutscher and also reports her absence to the District as required by calling the District's automated absence reporting system. Deutscher fills out the absence report forms and gives them to Principal Holmerud to sign.

When she was the principal at Lincoln Elementary, it was Holmerud's practice to have the office supervisor evaluate the clerical staff. During her first year at Pacific School, Holmerud asked Deutscher to prepare Garrett's annual performance evaluation. Deutscher had not done it the year before. Deutscher prepared Garrett's evaluation in March 1995. Deutscher rated Garrett high in every category except attendance. Her comments were positive, but she noted some attendance concerns.

Principal Holmerud reviewed the evaluation before Deutscher gave it to Garrett.

Garrett later objected to being evaluated by Deutscher rather than the principal and she filed a grievance. In response to the grievance, Holmerud rewrote Garrett's evaluation. Holmerud copied the evaluation exactly as Deutscher had written it and signed as the evaluator. Garrett asked Holmerud to redraft the evaluation to reflect her own words. Holmerud complied, preparing a third evaluation using her own words to express the same comments.

Deutscher has verbally counseled Garrett. She has discussed with Garrett that she needed to be more focused on her responsibilities in the office, that certain information should not be given to parents prior to a student's enrollment, and that she should be more careful with her appearance when dealing with parents.

Jill Harris

Jill Harris has been the office supervisor at Tully C. Knoles, a K-8 school, for three years. She reports to Principal Suzanne Fagundes and allegedly supervises Mary Anderson and Jennie Castillo. Anderson, a Clerk Typist II for 10 years, works five hours a day in the office and two hours each day in a kindergarten class. Castillo, also a clerk typist, works in the office four hours a day.

Harris, Anderson and Principal Fagundes comprised the panel that conducted interviews for Castillo's position. The panel

members interviewed, ranked and agreed on the selection of Castillo to the part-time clerk typist position. Harris assigned Castillo the duties of the previous clerk. Harris provides training to Castillo, helps her prioritize her daily tasks and continues to work closely with her on such duties as the free/reduced lunch applications.

Anderson has been in her position for 10 years and is familiar with her duties. All three of the office staff work cooperatively as a team. If the office is busy and Anderson is unable to finish the attendance before leaving for her kindergarten assignment, Harris will either finish it or assign it to Castillo.

In addition to their regular duties, Harris gives assignments on a regular basis. Harris picks up work daily from the principal's desk and decides how to delegate the work. Occasionally, the principal will assign a project directly to a clerical employee based on the employee's regular duties. The principal's work is returned to Harris for review.

Harris opens the mail and delegates work received from the District office. Harris also assigns other one-time projects. For example, a large computer order arrived and Harris asked Anderson to take charge of numbering the computers and getting them to the classrooms.

Anderson asks Harris to review letters or memos to teachers she has prepared, assisting her with wording or to correct

spelling. Harris also checks attendance data that Anderson enters in the computer.

For several years Anderson has returned to work one week early to help in getting the school ready to open. Harris contacts Anderson and arranges for her early start. Harris schedules a meeting with the clerical employees at the beginning of the year to go over assignments for the upcoming year.

Harris has on occasion authorized overtime for Anderson without getting the principal's approval. Harris has also asked Castillo to work extra time to help cover the office when needed. Harris also considered and granted Castillo's request to change her schedule to start work one half hour later. Harris did not seek the principal's approval.

When out sick, Anderson and Castillo first call Harris at home then they call the District office. They also arrange for the use of personal necessity leave with Harris. Harris prepares the employee time sheets and submits them to the principal for her signature.

Harris prepares the evaluations for Anderson and Castillo, signs as evaluator, and meets with them individually to review the evaluation. Harris then gives the evaluations to the principal for her review and signature. Harris' last evaluation of Castillo was favorable and it will change her status from probationary to permanent.

Harris has verbally counseled Anderson about the way she spoke to a student. Both Anderson and Castillo refer to Harris as their boss and on Bosses' Day she received gifts from them.

Joyce Manetti

Joyce Manetti has been the office supervisor at Claudia Landeen, a K-7 school, for six years. For the two years prior to her appointment as office supervisor Manetti was the clerk typist at Claudia Landeen. The principal is Barbara Davis. Manetti allegedly supervises Bonnie Goodwin, a full-time Clerk Typist II. Goodwin has been employed by the District for 10 years.

The clerk typist position has been vacant three times since Manetti was promoted to office supervisor. Manetti participated in the hiring process for two of the three clerk typists. After she was promoted, Manetti sat on the interview panel for the clerk position with the principal and the retiring office supervisor. After the interviews were concluded the principal asked Manetti to recommend the person she would be most comfortable working with. Her recommended candidate was selected. The second interview panel consisted of Manetti and the principal. Again, Manetti's recommendation was accepted by the principal. The current clerk typist, Bonnie Goodwin, transferred from another school and did not participate in an interview process.

Manetti initially assigned Goodwin her regular duties. Manetti also gives Goodwin additional projects on an almost daily basis; many are clerical assignments. Other assignments have

involved kindergarten immunization records, student vision screening, and the out-of-state student report. The principal occasionally asks Goodwin to make copies or retrieve a file. However, most of the principal's work is given to Manetti to determine who will do the work.

Manetti reviews Goodwin's work, such as the ADA reports, checking for errors and she reviews letters and memos prepared by Goodwin.

The yard duty staff report their absences to Manetti and arrange for personal necessity leave with her. Manetti obtains substitutes when yard duty staff is absent. Goodwin reports her absences to Manetti by calling her at home when she is out sick. She also checks with Manetti before she schedules personal necessity leave.

At the beginning of the school year, Manetti schedules a meeting with Goodwin to set the work priorities for the year. Manetti calls other meetings throughout the year as time permits to discuss workload and procedures.

Manetti has prepared the annual performance evaluation for each of the clerk typists since being appointed to the office supervisor position. Manetti determines the ratings and comments, signs the evaluation form and meets with the clerk to review the evaluation. Manetti prepared the probationary evaluation for the prior clerk after which the clerk obtained permanent status. Goodwin testified that during her 10 years with the District she has met with the principal only once to

review her evaluation. The evaluation discussed with the principal had been prepared by Manetti who had previously met with her to review the evaluation.

Manetti does not evaluate the yard duty staff, but she has provided input at the principal's request. The principal has also sought her input in hiring a yard duty candidate. The principal hired the candidate recommended by Manetti.

Goodwin directs questions to Manetti and will refer difficult parents to her. Manetti has provided verbal counseling to Goodwin when she was abrupt with a parent or student.

Lynell Engle

Lynell Engle is in her sixth year as an office supervisor at Mabel Barron Elementary. She reports to Principal Dean Welin. Engle allegedly supervises two clerical employees. Joyce Brown is classified as a Clerk Typist II. She has held this position for 16 years and she works 6& hours a day. Linda Powell has been a Clerk Typist I at Mabel Barron for six years. She works three hours a day.

Engle, Brown and Powell have worked together at Mabel Barron Elementary for many years. While their regular duties have long been established, Engle has directed or authorized changes in these assignments. For example, Brown asked Engle to reassign attendance reporting to Powell, the part-time clerk. Engle agreed and made the assignment without obtaining the principal's approval. On another occasion, Engle transferred responsibility for the prime time report from herself to Brown.

Engle also assigns other projects as they arise. Engle directed Brown to prepare the ethnic count for the District office. After she completed the work, Brown returned it to Engle to be checked. Although the principal will occasionally ask Brown to make copies or phone calls, most of the principal's work is given to Engle to delegate as she sees fit.

Engle reviews and corrects assignments as necessary. Before they go to the principal for signature, Engle checks the immunization letters to parents which are prepared by Brown. If Brown has questions about a project given to her by Engle, Engle provides instruction or training.

Engle has adjusted work schedules and arranged for the clerical employees to work extended hours. To assist with student registration, each year Engle arranges for Brown to return to work a few days before school begins. When Brown was out on an extended medical leave, Engle increased Powell's hours to cover Brown's duties and brought in a part-time substitute to cover Powell's work. Engle informed the principal of the arrangements she had made. On another occasion, Engle changed Powell's work schedule by directing her to start work one hour later so she would be available to cover the office during the lunch hour.

Brown calls Engle when she is out sick. She also arranges her personal necessity leave with Engle.

Engle prepares the evaluations for Brown and Powell, setting ratings and providing comments. Engle reviews the evaluations

individually with each of them. Afterward she submits the evaluations to the principal for his signature. The principal has never changed an evaluation. Following completion of Powell's probationary period, Engle recommended that she be granted permanent status.

Brown and Powell view Engle as their supervisor and Brown refers problems to Engle. Engle has provided some verbal counseling to Powell. She has instructed her to be careful of what she says to the children and to watch her temper.

Barbara Pike

Barbara Pike has been the office supervisor at John R. Williams School for the past seven years. Her immediate supervisor is Principal Mark Calonico. Pike allegedly supervises Denise Chelli, a full-time Clerk Typist II, and Donna Monaco, clerk typist, who works in the office two hours a day. Both have worked in their present positions for three years.

Pike participated in the hiring process for both Chelli and Monaco. Together with the principal, Pike screened applications, drafted interview questions and joined in interviewing the candidates. Pike and the principal agreed on the selection of Monaco as the part-time clerk. Following the interviews for the full-time clerk Pike selected Chelli, but the principal chose another candidate. Pike explained the reasoning for her choice and the principal agreed. Chelli was hired for the position.

Pike initially assigned duties to Chelli and provided her with training. She first gave Chelli student registration, then

gradually added attendance and other duties. In addition to her regular duties, Pike assigns projects as they arise and sets deadlines. On assignments done for the District office Pike asks that they be returned to her at least one day before they are due so she can review the work. When Monaco was hired, Pike reassigned duties from Chelli, giving Monaco the daily lunch count and preparation of student cumulative folders.

Other than occasionally asking Chelli to make a phone call, the principal gives his work to Pike. Pike keeps the confidential assignments and delegates other work to Chelli. Pike has asked Chelli to prepare the schedule for Red Ribbon Week and student class pictures. When Pike receives an urgent project she instructs Chelli to set aside her regular work to complete the assignment. When she completes a project, Chelli will ask Pike if there is anything else she needs to have done before returning to her regular duties.

Prior to the start of the school year, Pike arranges for Chelli to start work two weeks early to help with student registration. Pike obtains the principal's approval to pay Chelli for the extra time. Pike has arranged for Chelli to work overtime on several occasions, recommending that the principal approve the overtime. The principal has never denied a request for overtime from Pike.

Every two years the school alternates between an early and late schedule to accommodate the bus transportation schedule. At the beginning of the school year, Pike adjusts Chelli's schedule

to reflect the school's early or late schedule. Pike also meets with Chelli to let her know what duties need to be done first thing in the morning and to go over her expectations for the year. Pike has also changed Monaco's schedule. She originally worked later in the day, but Pike changed her schedule to work in the morning when the office is busy.

When she is out sick, Chelli calls Pike and the District office. Chelli fills out an absence form and submits it to Pike. The use of personal necessity leave is arranged with Pike. Pike checks to make sure leave time is available and that it does not conflict with the schedule. She then checks with the principal before approving the leave.

Yard duty staff report absences to Pike. When someone is absent, Pike finds a substitute and directs the staff in what areas need to be covered. Pike will change yard duty schedules if necessary to make sure everything is covered. Pike makes these arrangements without obtaining the principal's approval. Pike also jointly participates with the principal in interviewing and hiring yard duty staff.

Pike prepares the annual performance evaluations for Chelli and Monaco. The principal reviews the evaluations and adds comments before Pike meets with the clerk to go over the evaluation. The principal has never changed an evaluation prepared by Pike. Pike does not do yard duty evaluations but she does provide input when the principal prepares their evaluations.

Pike has verbally counseled Monaco that at times she was working too slowly. She also talked to a yard duty supervisor, suggesting that it was inappropriate to drink Pepsi while working in the yard.

After being appointed an office supervisor, Pike initiated the preparation of a handbook for the certificated staff which sets out the office staff responsibilities and provides other useful information concerning the school. The principal thought it was a good idea and in the following years he has added sections to the handbook.

Debbie Crozier

Debbie Crozier is the office supervisor at Lincoln Elementary where she has been for the last 11 years. The principal is John Kirilov. Crozier allegedly supervises two clerical employees. Dorothea Moore is a Clerk Typist II. She works five hours a day and has been at Lincoln Elementary for three years. Michelle Isbell is also a Clerk Typist II. This is her first year in this position. She works six hours a day in the office and two hours a day as a clerical aide for the teachers„

Crozier sat on the interview panel with the principal and two previous office clerks when Moore was hired. All of the panelists agreed on Moore's selection. Crozier also participated in the hiring of the previous clerk typist. Crozier and the principal made up the panel. Following the interviews, Crozier and the principal had different choices. The principal let

Crozier select the candidate because she was the supervisor and would be working with the office clerk.

At the beginning of each school year, Crozier meets with the clerical employees. Crozier prepares and gives each of them a document entitled "Basic Office Responsibilities." In this document, Crozier identifies individual office duties, work schedules and lunch breaks, and sets goals and priorities for the office. In the document, Crozier reminds the clerical employees that the refusal to address concerns raised by the office supervisor will be reflected in their yearly evaluations. Crozier schedules other meetings during the year as needed.

When Moore was hired, Crozier established her regular duties and she adds assignments daily. Moore returns the daily assignments to Crozier when they are completed. Crozier checks the assignments for errors and asks Moore to make corrections, if necessary.

Virtually all of the principal's work is given to Crozier to complete or delegate. Moore testified that she will on occasion make a phone call at the request of the principal. Crozier has also reassigned duties between Moore and Isbell. Crozier added ADA reports to Moore's duties and transferred absence reports to Isbell. Crozier also asked Isbell to handle the mail because Moore was too slow.

Each year, after discussing overtime needs with the principal, Crozier arranges for Moore to start work two weeks before school begins to help with student registration. Crozier

also arranged for Moore to work overtime when Isbell was out on bereavement leave. Crozier made these arrangements without checking with the principal.

When Crozier learned that Moore was entitled to a thirty-minute lunch hour, she gave Moore the option of eating lunch on her break or taking a lunch break and extending her work day by thirty minutes. Moore chose to take a lunch break, so Crozier added thirty minutes to her work schedule.

Moore calls Crozier when she is out sick, then she reports her absence to the District office. She also checks with Crozier before using personal necessity leave. One year, Moore requested leave of 4 or 5 days to travel out-of-state. Crozier approved Moore's absence but informed her that she would need approval from the District for the unpaid leave. Moore's unpaid leave was approved by the District. Isbell required quite a bit of personal necessity leave when her brother was ill. She arranged for this time with Crozier.

Crozier evaluates the clerical employees. She completes and signs the form, meets individually with each clerk and then submits the evaluation to the principal to add his signature. Last year, the previous clerk, Kathy Magellan, objected to her evaluation and she filed a grievance. The principal rewrote her evaluation after receiving input from Crozier. The only change the principal made to Magellan's evaluation was to add a star to one category.

Crozier has verbally counseled the clerical employees, instructing them in areas that need improvement. For example, she discussed problems with student emergency cards that were misfiled. Crozier also instructed Moore that her discussions with her son's teacher should take place outside the office.

The clerical employees consider Crozier to be their supervisor. Moore testified that the principal leaves Crozier in charge when he is away from the school. Moore refers parents or questions that she cannot or does not want to handle to her supervisor. She has also referred to Crozier as her "boss."

Claudia Toledo

Claudia Toledo has been an office supervisor for seven years, the last three years at Brookside Elementary. Her immediate supervisor is Principal Jim Benevides. She allegedly supervises Terry Jackson, a part-time office clerk. Jackson has been employed by the District for five years. For the last year she has worked approximately four hours a day as an office clerk at Brookside.

Toledo and the principal participated jointly in Jackson's hiring as an office clerk at Brookside. With the principal, Toledo screened 50 applications and interviewed three candidates. Both agreed on Jackson's selection. While an office supervisor at Tully C. Knoles School, Toledo was on the interview panel for a clerk typist position. At the completion of the interviews the other panel members asked Toledo for her recommendation. Her choice was hired as the clerk. Toledo has also participated in

the interviews for yard duty supervisors at Brookside. Toledo provided input and she and the principal agreed on the selection of two yard duty supervisors.

Toledo initially established Jackson's regular duties and provided training. She sets deadlines for the completion of projects and reviews Jackson's work for errors. For example, Jackson prepares the day care billing letters to parents. Toledo reviews the letters and checks the billing figures before Jackson mails them. Occasionally the principal will ask Jackson to make copies or call a student to the office. The remainder of the principal's work is given to Toledo. Toledo delegates some of the work to Jackson who returns it to Toledo.

Toledo has prepared written "office procedures" which describe the duties that must be accomplished throughout the day and sets the priorities for these daily tasks. Toledo prepared this so Jackson would know what to do in her absence.

Yard duty staff check in with Toledo when they arrive. Toledo gives them their assignment, telling them what areas they are assigned to cover. Toledo obtains substitutes when yard duty staff are absent by contacting the District office.

Toledo has arranged for Jackson to return to work early before school begins. She has also authorized Jackson to work extra hours when the workload is heavy during the beginning and end of the school year, when there is a large project to finish, and to cover the office when Toledo is out. Toledo makes these arrangements without obtaining the principal's approval. When

Jackson's hours were permanently increased, Toledo adjusted Jackson's schedule to work during the morning when the office is especially busy. Jackson calls Toledo when she is out sick and arranges personal necessity leave with Toledo.

Toledo has prepared the annual performance evaluations for the clerical employees she allegedly supervises since she was appointed an office supervisor. Toledo rates the employees, adds comments and signs the evaluation form. She then meets individually with each employee to review the evaluation. Last year, Toledo and the previous principal jointly evaluated Jackson. Toledo provided input and the principal actually wrote the comments on the evaluation form. The principal met with Jackson to review the evaluation.

Toledo has provided verbal counseling to clerical employees while working at other school sites. Toledo talked to one clerk about her negative attitude and another clerk about increasing her effort and being a team player.

Jackson views Toledo as her boss and she refers difficult parents to Toledo for assistance.

Shirley Nacry

Shirley Nagy has been the office supervisor at Village Oaks Elementary for seven years. The principal is Louise King. Nagy allegedly supervises Judy McMillan, a full-time Clerk Typist II and Maxine Bennett, a SIP Clerk who works *3³X* hours a day. For a portion of her day, Bennett reports to the principal and the teaching staff for parts of her duties. Nagy assigns her other

duties such as typing and verifying attendance. Bennett returns these assignments to Nagy for her review.

McMillan has been at Village Oaks for one year. Nagy sat on the interview panel with the principal and three other panelists when McMillan was hired. Each of the panelists participated in interviewing the candidates, prepared ratings, discussed the candidates and jointly selected McMillan.

When she was hired Nagy initially assigned McMillan some of the duties of the prior clerk. Nagy increased McMillan's duties as she became familiar with her duties. Nagy no longer finds it necessary to review McMillan's regular daily assignments, but she does review specific assignments and, if corrections are necessary, asks McMillan to make them.

McMillan directs questions or problems to Nagy. McMillan has asked Nagy to clarify policies and procedures and has asked for direction on how to prepare a report. After dealing with an angry parent, McMillan will ask Nagy for guidance on how to better handle the situation.

Nagy makes arrangements each year for both McMillan and Bennett to report to work two weeks before school starts and to work one week after school is out. Nagy schedules the office staff's lunch period and breaks to make sure the office is always covered. Nagy also puts together the yard duty schedule, assigning times for yard supervision and student supervision.

The prior clerk typist, Carol Clary, originally worked part-time. As school enrollment increased, Nagy recommended on three

separate occasions that Clary's hours be increased. Clary's hours were increased each time until eventually her position was full-time.

Nagy prepares the evaluation for the clerk typist position. She determines the ratings and comments, signs the form, meets with the clerk and then submits the evaluation to the principal for her signature. The principal has never challenged Nagy's ratings. Nagy also prepared the "First Probationary Report," evaluating McMillan during her first year.

Ann Endicott

This is the sixth year Ann Endicott has served as office supervisor at Colonial Heights. Her immediate supervisor is Principal Laura Wilson. She allegedly supervises Amelia Miramontes, a full-time Clerk Typist II who has been in this position for three months. Endicott also supervises Jane Carson, Clerk Typist II, who works 1 hours a day. Carson has been in this position for 10 years.

The full-time clerk typist position has been vacant three times since Endicott has been at Colonial Heights. Endicott participated in filling the vacancy each time. Endicott was on the interview panels, ranked the candidates and discussed them with the other panel members. In each case the principal asked Endicott to recommend with whom she would work best. Endicott's candidate was selected each time.

Miramontes is the most recent clerk. For her arrival, Endicott prepared a welcoming memo which set out Miramontes'

basic duties. Endicott gave her the assignments of the previous clerk, phasing them in over time. Endicott would assign a new task, demonstrate how to do it and then check her work afterwards.

Endicott sets deadlines for projects by putting due dates on the clerical employees' calendars. She also sends them memos reminding them when something is due. For example, Endicott notes on Miramontes' calendar when the ADA reports are due. Endicott does not often review the daily regular assignments once the clerical employees are trained, but she does review projects such as the ADA report. If Endicott finds mistakes she discusses them with the clerk and shows them how to make the corrections.

Concerned that the filing of the student cumulative folders was behind, Endicott wrote a note to Carson directing her to complete the filing by a specified date. She has also provided Carson with a list of tasks when Carson stated that she did not have enough to do.

Endicott generally calls meetings with the clerical employees after lunch on Mondays to discuss what is coming up for the week and to give the clerks an opportunity to raise any concerns. Endicott also meets with the principal about every two weeks to go over "things" and to bring matters to the principal's attention such as student or parent concerns.

Endicott has authorized overtime in the past. Now she checks with the principal first because the budget is tight. The principal has never turned down her requests for overtime.

Endicott set Miramontes' work hours, changing them from the hours that the previous clerk worked the year before. Endicott also changed Carson's hours from morning to the middle of the day. Prior to changing Carson's work schedule Endicott wrote a memo to the principal explaining that the change was necessary to cover the busy lunch period. The principal told her to make the change as she proposed. The clerical employees check with Endicott before scheduling personal necessity leave.

Endicott is responsible for evaluating the clerical employees. She rates the employee, writes comments, signs the form and reviews the evaluation with the employee. On two occasions, Endicott and the principal met jointly with Carson to discuss her evaluation when the principal had some concerns with Carson's work. Another time the principal wrote the comments on the evaluation with input from Endicott regarding areas Carson needed to improve. Carson provided a written rebuttal to the evaluation and Endicott prepared and attached a written explanation. Endicott has also recommended that the two prior clerks pass probation.

Both Miramontes and Carson refer to Endicott as their boss. Endicott has verbally counseled Carson, talking with her about excessive absences and the manner in which she spoke with a student.

Office Supervisor II

Vicky Trent

There is *one* Office Supervisor II position in the District which is assigned to the high school, Vicky Trent has been an Office Supervisor II at Lincoln High School for four years. Unlike the Office Supervisor I's, Trent is a 12-month employee. Trent reports to Katey Talbot, the chief educational officer (CEO) at the high school. The school has two principals, four deans, four staff secretaries, an athletic director and the administrative systems supervisor. Trent allegedly supervises Maria Costa, staff secretary; Linda Garrett, registrar and data processing clerk; and Mary Hogan, Arlene Neri and Joanne Campigli, attendance clerks. Costa also assists the administrative systems supervisor, and the attendance clerks work with the principal responsible for attendance matters.

Trent and Costa are situated together in an office located at the front of the building. Garrett is alone in a separate office. The three attendance clerks are together in an office at the back of the building which is directly accessible by the public.

As part of her regular duties, Trent coordinates projects for the CEO. The CEO, Katey Talbot, testified that project details are not her strong point and she relies on Trent to determine how to complete a project and what portion to assign to other staff. She indicated that Trent has the authority to pull staff off of other assignments to complete a project. For

example, Trent has asked Costa to set aside her regular work to get information to another staff member concerning computer training. Trent also asked Costa to put together a list of teachers based on certain criteria and to check on an employee's absence. Trent has asked Garrett to prepare mailing labels and tells her when they are needed.

While most of her assignments to Costa are verbal, Trent has left notes for Costa instructing her to update the off-campus passes and has told Costa what tasks to assign to student workers. When a miscommunication occurred over repair of a teacher's phone, Trent sent Costa a note instructing Costa to check with her before making future repair requests.

Trent sets deadlines for assigned projects and she reviews the work when it is returned to her. After reviewing assignments, Trent returns projects, if necessary, for correction of errors.

Trent provides training to the clerical employees on new computer applications. When Costa has questions about how to do something or on District policies or procedures, she generally starts with Trent. The attendance clerks periodically come to Trent for direction and guidance, and she assists them with computer questions.

When the mail room was moved to another building, Trent recommended a staffing change which was accepted and implemented by the CEO. Trent also selected Michelle Isbell to substitute for Costa when she was on maternity leave.

Trent is authorized to approve schedule modifications. For example, Trent will approve requests to leave early or come in late for a doctor's appointment. Trent has asked Costa to reschedule her lunch if she is going to be in a meeting. Last year, Trent granted Garrett's request to start work earlier because the air conditioner was not working. Trent also arranged for the clerical employees to come in during the summer for training on the new computer system in order to complete the training before school opened. Trent arranged for the staff to receive compensatory time off for their days in training. Costa calls Trent when she is out sick and the clerical employees check with Trent before taking a floating holiday. If there is some problem with the selection of a particular day, Trent asks the employee if she can reschedule her time off.

The previous CEO prepared Costa's annual evaluations with input from Trent. Trent discussed Costa's performance of her duties with the CEO prior to her evaluation. She also provided the CEO with input for Magellan's evaluation. Talbot, the current CEO, has been in her position for less than a year. She has not conducted evaluations of the clerical staff. Talbot testified that it is her intention that Trent will be involved in the evaluation of the clerical employees by providing input and discussing the content of the evaluations.

During the last year, Trent has on several occasions verbally counseled Costa about improving her attitude. She also

counseled two of the attendance clerks on how to get along with the third attendance clerk.

Trent is a member of the Principal's Advisory Committee at the high school which meets twice a month. The members of the committee also include the CEO, principals, department chairs and the Administrative Systems Supervisor. The committee discusses a variety of issues concerning the high school such as discipline, schedule changes and the upcoming accreditation of the school. Trent takes the minutes of the meetings, contributes suggestions and provides input. For example, state law requires visitors to register when entering school grounds. Last year Trent suggested that visitors sign in at the office and obtain a visitor's badge. This suggestion was implemented.

Office Supervisors

Common to all of the office supervisors is their participation in monthly office supervisor meetings with Assistant Superintendent Sarah Hart. The office supervisors also attended monthly management meetings which were held until the previous superintendent left the District in April 1995. The management meetings were also attended by the principals, assistant superintendents and the directors of transportation and security.

The agenda for the monthly office supervisor meetings is set by the office supervisors. They use the meetings to discuss and suggest ways to be more efficient and to receive updates or training on new District policies and procedures, such as the new

crime reporting requirements. The office supervisors also discuss concerns and share information about their respective school sites, involving student enrollment and residency requirements, registration problems, attendance, transportation, food services and school budgets. Hart has also used the meetings to obtain suggestions for carrying out District projects. For example, Hart sought input on how to collect information on recent flood damage to support a FEMA reimbursement application. The office supervisors suggested that Hart redesign the forms to make it easier to collect the data and they would compile the information. The office supervisors collected the required information on flood damage at their respective school facilities either directly or by delegating the damage survey to custodians or teachers. Hart did not provide direction on how to collect the information and she did not involve the principals.

Similarly, Hart asked the office supervisors for input on the best way to complete a District-wide equipment inventory. Rather than hire an outside company to complete the survey, the office supervisors suggested that they could coordinate the collection of data at their respective school sites. Again, Hart dealt directly with the office supervisors and had not informed the principals of this project.

The office supervisors share relevant information from these meetings with the clerical employees they allegedly supervise.

This information may concern changes in District policy or procedures, or solutions to problems developed at other schools.

Office supervisors are paid from the Supervisory and Confidential Salary Schedule and they receive the same benefit package as managers. They do not receive overtime pay when working an extended day.

LEGAL ISSUE

Are the employees in the classifications of Office Supervisor I and Office Supervisor II supervisory within the meaning of section 3540.1(m) of the EERA?

DISCUSSION

EERA section 3540.1(m) defines a "supervisory employee" as:

> . . . any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Board has held that the performance of any one of the enumerated functions listed in EERA section 3540.1(m), or the effective power to recommend such action, is sufficient to render an employee a supervisor under the EERA. (Sweetwater Union High School District (1976) EERB[3] Decision No. 4 (Sweetwater UHSD).) The performance of the supervisory duties must involve the use of

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

independent judgment. Routine or clerical decision-making which does not require the use of independent judgment precludes a finding of supervisory status. (Unit Determination for the State of California (1980) PERB Decision No. ll0c-S (State of California).) In California State University (SUPA) (1983) PERB Decision No. 351-H, the Board stated:

> . . . Independent judgment is indicated where the performance of duties includes the opportunity to make a clear choice between two or more significant alternative courses of action and the power to make that choice is without broad review and approval. Such functions are characterized by significant autonomy and control over the decision-making or recommending processes. Where substantial review or prior approval is required, either by specific action or existing policy, a finding of independent judgment is precluded. [Citation, p. 6.]

The nominal exercise of the statutory criteria is not enough to qualify for supervisory status. (Ibid.) However, the Board has not applied a standard of percentages to the performance of supervisory duties.

In construing the statutory definition of supervisor, the Board has previously noted that final decisions regarding hiring, discipline and salaries are traditionally reserved to persons far removed from the employee's immediate supervision. (Sweetwater UHSD; Campbell Union High School District (1978) PERB Decision No. 66 (Campbell UHSD).) Therefore, the ability to indirectly, but effectively, bring about changes in employment status is accorded great weight in cases under the EERA. (Campbel1 UHSD.) Accordingly, an employee will be found to be a supervisor if he

or she has the authority to effectively recommend the promotion, discharge or hiring of other employees. (Ibid.)

Office Supervisor I

The Board has given great weight to the ability to affect employment status through hiring recommendations. (Campbell UHSD.) In Sweetwater UHSD, head custodians were found to have effectively recommended the hiring of custodians when their recommendations were consistently solicited and adopted by the principal. The Board has rejected, however, mere participation on an interview panel as evidence of "effectively recommending" hiring. (Sanger Unified School District (1989) PERB Decision No. 752 (Sanger USD).)

Most of the office supervisors have participated in the hiring process involving clerical or yard duty employees. Only two, Hamilton and Engle, have not had the opportunity to participate in the hiring process during their tenure as office supervisors. Two other office supervisors, Harris and Nagy, sat on interview panels with the school principal and other staff. The panel members interviewed the candidates, ranked them and jointly agreed on the selected candidate. Harris and Nagy participated on the interview panels, but the evidence does not clearly establish that they effectively recommended the hiring of the successful candidates.

The remaining six office supervisors also participated in interview panels. At the conclusion of the interview process the principal solicited the recommendation of the office supervisor,

and the recommended candidate was selected. On two occasions, the principal and the office supervisor disagreed on which candidate should be hired. In both cases, the principal deferred to the office supervisor's chosen candidate. These actions demonstrate that these office supervisors effectively recommended the hiring of the selected candidates.

The use of independent judgment in the assignment and direction of the work of other employees is also an indication of supervisory status. Supervisory status has been found where the alleged supervisor allocates regular work assignments; alters regular assignments and assigns specific additional tasks; and regularly reviews work and has the authority to direct others to make corrections. (Sweetwater UHSD; Campbell UHSD.) In contrast, making occasional routine assignments in a manner not requiring the exercise of independent judgment is insufficient to demonstrate supervisory status. (Sweetwater UHSD.)

All of the office supervisors use their discretion in assigning work to the clerical employees, although the frequency of assignments varies among the office supervisors. When new clerical employees are hired the office supervisors assign regular duties, often phasing in assignments as the new staff is trained. The office supervisors have also adjusted and reassigned the regular duties of long-time clerical employees. Several of the office supervisors regularly schedule meetings with the clerical employees at the beginning of the school year

and at other times as necessary. They use these meetings to assign and prioritize the duties to be completed each day.

The office supervisors also exercise their authority to direct the clerical staff to set aside their regular duties to complete special or urgent projects and set deadlines for the completion of assignments. The record also reveals that the principals give a majority of their work to the office supervisors who use their judgment in deciding what work to keep and what to delegate to the clerical employees. Some office supervisors no longer find it necessary to review the daily work of long-time clerical employees, but all of the office supervisors review special projects or important assignments such as the ADA reports. Where errors are found the office supervisors note the mistakes and return the assignments for correction.

The office supervisors have also directed staff in the completion of District-wide projects. They coordinated the collection of flood damage information at each school site by delegating the damage survey to custodians and teachers. They also coordinated the District equipment inventory survey at their respective school sites.

The authority to set work schedules, authorize overtime and grant time off without prior approval, or the ability to effectively recommend such action, is also indicia of supervisory status. (Jefferson Union High School District (1979) PERB Decision No. 83 (Jefferson UHSD); San Diego Unified School

District (1977) EERB Decision No. 8; Sanger USD.) However, the routine granting of time off without the use of independent judgment is a ministerial function which precludes a finding of supervisory status. (Modesto City Schools (1984) PERB Decision No. 384.)

At each school, the clerical employees call the office supervisor when they are out sick. Additionally, they are required to report their absences to the District by calling the District's automated absence reporting system. The office supervisors note absences on time sheets which are submitted to the principal for signature. The clerical employees also check with the office supervisor before scheduling personal necessity leave. There is no evidence that the office supervisors have ever denied personal necessity leave requests. The record demonstrates that the recording of absences and approval of personal necessity leave occurs routinely and thus does not support a finding of supervisory status.

Most of the office supervisors have authorized or recommended that overtime be granted or have approved extra hours to cover staff absences or to complete work. The decision to grant overtime has never been denied or rescinded by the principal.

As 10-month employees, the clerical employees start work each year when school opens. At virtually all of the schools the office supervisors have arranged for the clerical employees to return to work before school begins to assist with student

registration and opening the school. While the clerical employees have done this for several years, the office supervisors exercise discretion in deciding when the clerical staff will begin work. Office supervisors have scheduled clerical employees to return to work as few as three days before school opens to two weeks before school begins and arranged various forms of compensation from payment for the extra time to compensatory time off.

The office supervisors have also had extensive involvement in adjusting work schedules or denying requests to change the schedules of the clerical employees. The office supervisors set work schedules for new employees and schedule lunch breaks. They have also adjusted the hours of part-time employees by requiring them to work later in the day to cover the office during the busy lunch period. These changes have been made even where the employee did not support the change. At Village Oaks Elementary, the office supervisor made three recommendations to increase the hours of the part-time clerk in response to increasing school enrollment. Each time the recommendation was approved until eventually the clerk position was full-time.

The office supervisors have made independent decisions concerning staffing needs, hours and work schedules. There is little evidence that principals were consulted or their approval sought. This clearly demonstrates that the office supervisors acted in a supervisory role when taking these actions.

Conducting evaluations or effectively recommending the outcome of the evaluation process is also indicative of supervisory status because evaluations can have a profound effect on promotions and terminations, two factors set out in EERA section 3540.1(m). (Sanger USD; Hemet Unified School District (1990) PERB Decision No. 820.) However, supervisory status will not be found where preparation of the evaluation "is subject to substantial review and approval or where it follows a routine course prescribed by past practice or existing policy." (State of California.)

The office supervisors have had extensive experience in preparing the evaluations of clerical employees. They designate performance ratings, include written comments, and then meet individually with the clerk to review the evaluation. The evaluation is then submitted to the principal for signature. A few times the office supervisor and the principal have jointly prepared the evaluation and reviewed it with the clerk. Where a clerk has objected to the evaluation prepared by the office supervisor, the principal redrafted the evaluation after receiving input from the office supervisor. Several of the office supervisors have prepared evaluations for probationary employees or recommended that employees pass probation. These employees subsequently obtained permanent status.

The office supervisors for the most part have completed the evaluations of the clerical employees without direction or input from the principals. Where the principal is involved, the office

supervisors provide significant input so as to "effectively recommend" the outcome of the evaluation process. Accordingly, the office supervisors have demonstrated supervisory status when conducting evaluations.

The office supervisors have not demonstrated that they participate in the discipline of clerical employees. Most of the office supervisors have verbally counseled staff on matters concerning attitude, appearance, dealing with visitors or completion of tasks. There is no indication that the counseling resulted in actual disciplinary action. (Marin Community College District (1978) PERB Decision No. 55 (Marin CCD).)

The record establishes that the incumbent employees in the Office Supervisor I classification have exercised independent judgment in performing several indicia of supervisor status. Accordingly, I find that they are supervisory employees and must remain excluded from the classified bargaining unit.

Office Supervisor II

There is one Office Supervisor II position in the District which is assigned to the high school. The high school office setting differs from the middle and elementary schools in the number of clerical employees and administrators, the specialized nature of the work of the clerks and their proximity to the office supervisor.

In order to establish supervisory status, the alleged supervisor must exercise independent judgment in the performance

of, or in effectively recommending, at least one of the functions listed in EERA section 3540.1(m). (Sweetwater UHSD.)

The incumbent employee in the Office Supervisor II classification has had no significant involvement in the hiring of clerical staff. She has participated in employee evaluations by providing input to the previous CEO prior to the preparation of the evaluations of two clerical employees. However, there is no evidence that the evaluations reflected the comments of the office supervisor. It must be shown that the alleged supervisor effectively recommends the outcome of the evaluation process. (Chowchilla Union High School District (1994) PERB Decision No. 1040.) Furthermore, the office supervisor has similarly counseled clerical employees at the high school about attitude and working relations but this has not resulted in disciplinary action. (Marin CCD.)

The office supervisor does make regular assignments to the clerical employees. The CEO assigns projects to the office supervisor and expects her to coordinate their completion without specific direction. The office supervisor evidences independent judgment when she decides what portion to assign to the clerical staff, prioritizes assignments by directing staff to set aside their regular work, sets deadlines and reviews the work for errors. (Sweetwater UHSD; Campbell UHSD.)

The office supervisor also assisted in the completion of the District-wide projects involving the flood damage and equipment inventory surveys, delegating assignments to other school staff.

As a member of the high school management committee, she recommended a policy change concerning school visitor badges which was implemented at the high school. The office supervisor also provides guidance on District policy and procedures to the clerical employees.

The office supervisor has also exercised independent authority in adjusting work schedules and approving time off. The office supervisor scheduled the clerical employees to work during the summer to complete computer training and arranged compensatory time off for their days in training. She has asked clerks to reschedule the use of a personal holiday if the absence would create a problem. The office supervisor has also granted a request for an early start work schedule and approves time off for appointments. She also effectively recommended a staffing change for the mail room which was accepted by the CEO.

The supervisory authority of the Office Supervisor II is not as extensive as that exhibited by the Office Supervisor I's. However, an employee need only demonstrate the exercise of independent judgment in the performance of one of the functions listed in EERA section 3540.1(m) . The evidence establishes that the Office Supervisor II exercises authority which impacts the employment relationship by directing the work of the clerical employees and affecting their work schedules. It is therefore determined that the Office Supervisor II is a supervisory employee and must remain excluded from the classified bargaining unit.

PROPOSED ORDER

The unit modification petition filed by the California School Employees Association and its Lincoln Chapter #282 is hereby DISMISSED.

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.)

Robin E. Wright
Board Agent