

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



WEST CONTRA COSTA UNIFIED SCHOOL
DISTRICT,

Employer,

and

PUBLIC EMPLOYEES UNION, LOCAL ONE,

Exclusive Representative.

Case No. SF-UM-561-E

PERB Decision No. 1404

September 12, 2000

Appearances: Atkinson, Andelson, Loya, Ruud & Romo by Joshua E. Morrison, Attorney, for West Contra Costa Unified School District; Kathy Rollins, Senior Business Agent, for Public Employees Union, Local One.

Before Dyer, Amador and Baker, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on exceptions filed by the Public Employees Union, Local One (Local One) to a hearing officer's proposed decision (attached) granting a unit modification petition filed by the West Contra Costa Unified School District (District). The District's petition seeks to remove the classifications of cafeteria leadworker and cook/manager 1, school lunch (cook manager) from the general services, maintenance and operations unit represented by Local One.

After reviewing the entire record including Local One's exceptions and the District's response, the Board hereby affirms the ALJ's proposed decision and adopts it as the decision of the Board itself.¹

ORDER

The unit modification petition in Case No. SF-UM-561-E is hereby AFFIRMED.

Members Dyer and Baker joined in this Decision.

¹ In its exceptions, Local One points out that at page 6 of the proposed decision, an erroneous reference is made to the union to which Donna Butler (Butler) belongs. It appears that this is an inadvertent error which did not affect the outcome of the case. The record supports Local One's assertion that Butler is a member of Local One.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

WEST CONTRA COSTA UNIFIED SCHOOL)	
DISTRICT,)	
)	Representation
Employer,)	Case No. SF-UM-561
)	
and)	PROPOSED DECISION
)	(5/4/2000)
PUBLIC EMPLOYEES UNION,)	
LOCAL ONE,)	
)	
Exclusive Representative.)	
)	
)	

Appearances: Atkinson, Andelson, Loya, Ruud & Romo by Joshua E. Morrison, Attorney, for West Contra Costa Unified School District; Kathie Rollins, Senior Business Agent, for Public Employees Union, Local One.

PROCEDURAL HISTORY

On March 29, 1999,¹ the West Contra Costa Unified School District (District) timely filed a unit modification petition with the Public Employment Relations Board (PERB or Board) to remove the classifications of cafeteria leadworker and cook/manager 1, school lunch (cook manager), from the general services, maintenance and operations unit represented by Public Employees Union, Local One (Local One).² Local One filed its opposition to the request on April 19. A settlement conference/investigation held on June 21 failed to resolve the

¹All dates herein are 1999 unless otherwise noted.

²PERB Regulation 32781(b)(4) affords an employer the opportunity to petition to delete classifications or positions which are inappropriate to the unit during the window period of a collective bargaining agreement. (PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.)

matter, and a formal hearing was held on November 15, 16 and 17. Briefs were filed and the case was submitted on January 21, 2000.

FACTS

Food service employees work at each of the District's 42 elementary and 10 secondary schools. Only the secondary schools employ cook managers and cafeteria leadworkers. The two cook managers oversee kitchens in which food is prepared and served. The eight cafeteria leadworkers oversee kitchens which receive and serve food from the central kitchen and various vendors.

Heidy Camorongan has been the Director of Food Services for 16 years. Reporting directly to her are Gwendolyn White and Robin Wilson, food service area supervisors. White and Wilson each supervise food service employees at five secondary schools, including one cook manager and four cafeteria leadworkers each.³ Camorongan holds monthly meetings attended by White, Wilson, cook managers and cafeteria leadworkers.

Visits to the kitchens by White and Wilson are sporadic, often less than once a week, and typically last from 15-30 minutes. Generally, they visit a site when they are called by a cook manager or cafeteria leadworker to troubleshoot problems with computers or point-of-sale cash registers, address disciplinary problems, or deliver supplies. Phone contact is

³Wilson and White also each supervise food service employees at 20 elementary schools. Wilson testified that she supervises more than 75 food service employees, including substitutes, who are in the bargaining unit. White stated that she supervises 40-50 employees.

much more frequent, and is also typically initiated by the cook manager or cafeteria leadworker.

Cook managers and cafeteria leadworkers work five days a week. Their hours vary from five hours a day (in a school with no breakfast program) to seven and a half or eight hours. The number of other food service employees (school lunch worker I's, II's and cashiers) at each kitchen varies from four to nine, and their shifts vary from one to five hours. In addition, some sites employ from two to ten student volunteers, who are selected by the cook managers and cafeteria leadworkers.

Cook managers and cafeteria leadworkers oversee the operation of the kitchen while working alongside the other food service employees as a team. Any problems that arise are resolved by the cook manager or cafeteria leadworker.

All of the kitchens have cafeteria lines and snack bars; some also have food carts and at least one has a Taco Bell concession. Some of the cook managers and cafeteria leadworkers rotate the job assignments of the employees in their kitchens; others do not. The decision to do so is made by the cook managers and cafeteria leadworkers based on such factors as past practice and the desires and skill levels of the employees.

The cook managers and leadworkers independently select food items from established inventory and vendor lists for their kitchens, and propose items to be added to those lists. They also set their school menus within the parameters of the available food lists. All of the cook managers and cafeteria

leadworkers have a desk with a computer where they do their paperwork; some desks are located in a space separate from the kitchen.⁴

Cook managers and cafeteria leadworkers organize promotional activities to encourage students to use the cafeterias. Examples of these activities include Beanie Baby and cookie give-aways to students selected by computer.

Food service employees are required to report their absences to the food service office downtown. The office will then call the cook manager or cafeteria leadworker to inform her of the absence. Some food service employees also notify their cook manager or cafeteria leadworker directly of their absence. Cafeteria Leadworker Glenda Anderson testified that she requires her employees to call her before calling the food service office. Breakfast workers report their absences first to their cook manager or cafeteria leadworker, since breakfast begins before the food service office opens.

Substitutes are assigned by a secretary in the food service office. If a cook manager or cafeteria leadworker requests a particular substitute, that request is honored based on availability. In addition, requests that a certain substitute not be assigned are also honored. Sometimes they may be given the choice of an unwanted substitute or none at all. Because of the shortage of food service substitutes in the District,

⁴Cashiers also have a designated work space.

absences in the kitchens go uncovered approximately 20 percent of the time.

Many of the cook managers and cafeteria leadworkers have prepared duty statements for the jobs in their kitchens. These are used as a training tool for new substitutes.

When no substitute is available for an absence at lunchtime, the cook manager or cafeteria leadworker typically closes a snack bar window, and, as one witness testified, the kitchen staff "picks up the pace." Sometimes additional time (overtime) is necessary to cover the extra work. The cook manager or cafeteria leadworker then decides how much time is assigned and to which employees. Use of additional time must be pre-approved by the area supervisors or the food service director. If no one is available in the food service office to approve such a request, the cook manager or cafeteria leadworker will leave a message that she is assigning the time and to which employees. Testimony indicated that while the cook managers and cafeteria leadworkers must justify these requests, they are always granted. After the work is completed, the cook manager or cafeteria leadworker will report the amount of additional time worked by each employee.

While some cook managers and cafeteria leadworkers are not aware that the Local One contract⁵ requires that additional time be assigned by seniority to permanent employees before long-term

⁵See Joint Exhibit 1 (collective bargaining agreement between the District and Local One).

substitutes,⁶ they all tend to follow this practice. Exceptions are made, however. Cook Manager Cathryn Reiker testified that she does not assign overtime to one employee who works too slowly, and Anderson stated that she does not assign additional time to one employee because of her unavailability.

When a breakfast worker is absent without prior notice, the cook manager or cafeteria leadworker may fill in. One leadworker testified that if she knows about a breakfast absence in advance, she will ask one of her permanent lunch employees to cover it rather than request a substitute. She then informs the office, and usually will "get an okay with that." Substitutes are not called for absent student employees.

Overtime is pre-approved by Camorongan for cook managers and cafeteria leadworkers during the month of September for processing student applications for the District's free/reduced meal program. The cook managers and cafeteria leadworkers often assign overtime to the employees in their kitchens to assist them in processing these applications.

The Local One contract allows for logging overtime in 5-10 minute increments and submitting the log for payment when an hour has accrued. Donna Butler, a cafeteria leadworker for 10 years, testified that she felt intimidated by her area supervisor into not reporting her overtime. Butler, who is also a California School Employee Association job steward and a long-term member of

⁶A significant number of food service positions are filled by long-term substitutes.

the negotiating team, said that she has been "given the third degree" by Wilson when requesting overtime. She stated that she always feels threatened that her request might not be approved when overtime is needed for anything other than an absence or schedule change. Nevertheless, Wilson has never denied her requests.

White and Wilson are currently responsible for completing all food service evaluations. However, since they are rarely at the sites to observe employees at work, they rely almost completely on information solicited from the cook managers and cafeteria leadworkers in filling out the evaluation form. The only information to which they have direct access is attendance records.

While none of the cook managers or cafeteria leadworkers are required to fill out evaluations for the employees in their kitchens, some have performed evaluations during past years, especially for substitute employees.⁷ Glenda Anderson testified that during her 11-year tenure as cafeteria leadworker she has prepared all the evaluations for employees at her site.

Food service vacancies are filled from the top three candidates on an eligibility list. Candidates are certified for the list by a majority vote of a joint labor/management team, then placed on the list by seniority. The top three candidates are interviewed by either Camorongan, Wilson or White.

⁷Evidence of evaluations completed by cook managers and cafeteria leadworkers subsequent to the filing of the unit modification is disregarded.

Camorongán then selects an individual to fill the vacancy. Most food service vacancies are filled through promotions of permanent food service employees and the hiring of substitute employees.

Camorongán testified that she relies on input from White and Wilson when making hiring decisions. They, in turn, obtain their information from the cook managers and cafeteria leadworkers. Camorongán also testified that she does not refer to evaluations when making decisions regarding promotions or step increases. She stated that she knows the permanent employees, and would hear any complaints about their performance from their cook manager or cafeteria leadworker.

ISSUE

Are cook managers and cafeteria leadworkers supervisory employees within the meaning of the Educational Employment Relations Act (EERA)?⁸

DISCUSSION

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

"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

⁸EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

routine or clerical nature, but requires the use of independent judgment.

The Board has held that since section 3540.1(m) is written in the disjunctive, an employee need only perform or effectively recommend one of the enumerated functions or duties to be found to be a supervisor. (Sweetwater Union High School District (1976) EERB⁹ Decision No. 4 (Sweetwater).) The performance of supervisory duties must include the use of independent judgement. Routine or clerical decision making which does not require the use of independent judgment precludes a finding of supervisory status. (Lincoln Unified School District (1997) PERB Decision No. 1194 (Lincoln) citing Unit Determination of the State of California (1980) PERB Decision No. 110c-S.) In California State University (1983) PERB Decision No. 351-H, the Board held that

. . . 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 judgement is precluded. [Citation.]

In this case, the District argues that cook managers and cafeteria leadworkers possess supervisory authority in a number of the functions enumerated above. First, the District asserts that cook managers and cafeteria leadworkers effectively

⁹Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

recommend hiring and promotional decisions through their involvement in the evaluation process. The District claims that Camorongan makes hiring and promotional decisions based on input from the area supervisors, who, in turn, get their information regarding employee performance from the cook managers and cafeteria leadworkers.

Interpreting the statutory definition of supervisor, the Board has noted that final decisions regarding hiring, discipline and salaries are traditionally reserved to persons far removed from the employee's immediate supervisor. (Campbell Union High School District (1978) PERB Decision No. 66 (Campbell); Sweetwater.) Therefore, the ability to indirectly, but effectively, bring about changes in employment status, usually through the evaluation process, is accorded great weight. Accordingly, supervisory status will be afforded an employee if she or he has the authority to effectively recommend promotion, discharge or hiring. (Campbell.) However, conducting evaluations or effectively recommending the outcome of the evaluation process is only indicative of supervisory status when it can be shown to have an effect on promotions and terminations and when it is not subject to substantial review. (Lincoln; Hemet Unified School District (1990) PERB Decision No. 820; Sanger Unified School District (1989) PERB Decision No. 752 (Sanger); State of California, supra, PERB Decision No. 110c-S.)

While some cook managers and cafeteria leadworkers have sporadically performed evaluations (and one has done so

consistently), this responsibility currently lies with the area supervisors. They rely almost completely on information from the cook managers and cafeteria leadworkers when making performance assessments. However, there was no evidence presented regarding the extent to which these evaluations are reviewed or modified by Camorongan. More importantly, Camorongan does not refer to the evaluations when making promotional or hiring decisions. Instead, she relies on her personal knowledge of the candidates on the eligibility list, and on information from the area supervisors, who interview the applicants. Only if she were unsure about the performance of a particular individual would she consult the cook managers and cafeteria leadworkers.

Even if the opinions of the cook managers and cafeteria leadworkers were sought, there was no evidence as to the extent upon which their opinions are relied when filling a vacancy in food service. Such remote participation in the hiring process, if any, does not rise to the level of "effective recommendation" as described above.

However, cook managers and cafeteria leadworkers do possess other indicia of supervisory authority, such as the authority to assign and direct work at their sites. While the food service employees work as a team and some kitchens may "run like a well-oiled machine", it is the cook managers and cafeteria leadworkers who decide whether to rotate staff assignments and whether to use a substitute to cover an absence. Additionally, they are "the only authority on-site and neither substantial review nor prior

approval is required for them to carry out day-to-day operations of their kitchens." (Antioch Unified School District (1984) PERB Decision No. 415 at Ad. Det., p. 9, citing California State University, supra, PERB Decision No. 351-H.)

Cook managers and cafeteria leadworkers also demonstrate supervisory authority by effectively recommending the authorization of overtime. (Sanger; San Diego Unified School District (1977) EERB Decision No. 8.) District policy requires the cook managers and cafeteria leadworkers to obtain prior approval to assign additional time to the food service workers, and they must also justify their requests. However, these decisions are often made prior to receiving approval, and it is the cook managers and cafeteria leadworkers who determine how much time is assigned to which individuals. Coupled with the fact that their requests are never denied, these factors lead to a determination that cook managers and cafeteria leadworkers effectively recommend the assignment of overtime in their kitchens.

CONCLUSION AND ORDER

For the reasons stated above, it is found that the positions of cook/manager 1, school lunch, and cafeteria leadworker are supervisory. Therefore, the unit modification petition filed by the West Contra Costa Unified School District to delete these positions from the unit represented by Public Employees Union, Local One, is GRANTED.

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 within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service,

in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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 Regs., tit. 8, secs. 32300, 32305, 32140, and 32135 (c) .)

JerilynGelt
Hearing Officer