

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

SAN JOAQUIN COUNTY OFFICE OF
EDUCATION,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION,

Petitioner.

Case No. SA-RR-1043-E

PERB Decision No. 1627

May 4, 2004

Appearances: Atkinson, Andelson, Loya, Ruud & Romo by Paul M. Loya, Attorney, for San Joaquin County Office of Education; Maureen C. Whelan, Staff Attorney, for California School Employees Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the San Joaquin County Office of Education (County) to a Board agent's proposed decision (attached) finding appropriate a unit petitioned for by the California School Employees Association (CSEA). The petition for recognition sought to establish a bargaining unit comprising the classifications of recruiter, migrant services assistant, secondary school advisor, support services facilitator and youth advocate within the County's migrant education program.

The Board has reviewed the entire record in this case, including the proposed decision, the County's exceptions and CSEA's response. The Board finds the Board agent's findings of fact and conclusions of law to be free of prejudicial error and adopts the them as the decision of the Board itself.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, the Board finds that a unit of migrant education employees sought by the California School Employees Association is appropriate.

Pursuant to Educational Employment Relations Act (EERA)¹ section 3544(a) and PERB regulations,² the Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

- Unit Title: Migrant Education
- Shall Include: Recruiter, Migrant Services Assistant, Secondary School Advisor, Support Services Facilitator and Youth Advocate within the County Office's Migrant Education Program.
- Shall Exclude: All other employees, including management, supervisory and confidential employees.

Pursuant to PERB Regulation section 33450, within 10 days following issuance of this Notice of Decision, the San Joaquin County Office of Education shall post on all employee bulletin boards a copy of the Notice of Decision attached hereto as an Appendix. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

The Board hereby ORDERS that Case No. SA-RR-1043-E be REMANDED to the Sacramento Regional Director for proceedings consistent with this decision.

Members Whitehead and Neima joined in this Decision.

¹EERA is codified at Government Code section 3540, et seq.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

APPENDIX



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

CASE: San Joaquin County Office of Education and California School Employees Association
Case No. SA-RR-1043-E

EMPLOYER: San Joaquin County Office of Education
2901 Arch-Airport Road
Stockton, CA 95206

EMPLOYEE ORGANIZATION
PARTY TO PROCEEDING:

California School Employees Association
5375 West Lane
Stockton, CA 95210

FINDINGS:

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

Unit Title: Migrant Education

Shall Include: Recruiter, Migrant Services Assistant, Secondary School Advisor, Support Services Facilitator and Youth Advocate within the County Office's Migrant Education Program.

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

Pursuant to the California Code of Regulations, title 8, section 33450, within 10 days following issuance of this Notice of Decision, the San Joaquin County Office of Education shall post on all employee bulletin boards a copy of the Notice of Decision attached hereto as

an Appendix. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

Dated: _____

San Joaquin County Office of Education

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR A MINIMUM OF FIFTEEN (15) WORKDAYS. REASONABLE STEPS SHALL BE TAKEN TO ENSURE THAT THIS NOTICE IS NOT REDUCED IN SIZE, ALTERED, DEFACED OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN JOAQUIN COUNTY OFFICE OF
EDUCATION,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION,

Petitioner.

REPRESENTATION
CASE NO. SA-RR-1043-E

PROPOSED DECISION
(10/2/2003)

Appearances: Atkinson, Andelson, Loya, Ruud & Romo, by Paul M. Loya, Attorney, for San Joaquin County Office of Education; Maureen C. Whelan, Staff Attorney, for California School Employees Association.

Before , .

PROCEDURAL HISTORY

On September 12, 2002, the California School Employees Association (CSEA) filed the above-referenced request for recognition with the San Joaquin County Office of Education (County Office or Employer) and the Public Employment Relations Board (PERB or Board). The petition, as initially presented, described the appropriate unit as including all employees of the Employer's Migrant Education Program.

By letter dated October 18, 2002, PERB advised the parties of its administrative determination that CSEA had demonstrated proof of at least majority support in the petitioned-for unit, that no interventions had been filed, and that the Employer could lawfully grant voluntary recognition. Pursuant to PERB Regulation 33190,¹ the County Office filed notice on November 5, 2002, that the Employer was denying recognition on grounds that the unit sought

¹ PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

was not an appropriate unit under the Educational Employment Relations Act (EERA)² and further requested that PERB investigate and resolve the unit appropriateness dispute in accordance with EERA section 3544(a) and PERB regulations.³

On December 20, 2002, PERB conducted a settlement conference in this matter. Also on December 20, 2002, CSEA filed a unit modification petition (SA-UM-716-E) proposing to add Migrant Education Program employees to the established unit of instructional assistants, or paraprofessionals, that is represented by CSEA and its Chapter 755. By letter dated January 16, 2003, CSEA requested that its representation petition be held in abeyance while the unit modification petition was addressed.

Another settlement conference was conducted on February 13, 2003, but no resolution of the unit dispute was reached. The matter was then set for hearing, a prehearing conference was held on March 13, 2003, and a hearing was conducted by the undersigned in Case No. SA-UM-716-E on March 27 and April 4, 2003.

However, at the request of the parties, the undersigned also facilitated discussion of settlement options by the parties in a meeting on April 10, 2003. At that meeting, the parties agreed that the classifications of Child Assistant, Job Coach, Job Development/Job Coach, Migrant Early Childhood Specialist, Migrant Service Tutor, Preschool Tutor and Recreation Specialist would be added to the existing Instructional Assistants unit. The parties further agreed that Case No. SA-UM-716-E would be considered closed upon the issuance of a Unit Modification Order by PERB confirming the accretion of the named classifications to the unit. The Order followed on April 11, 2003. The parties also agreed that the formal hearing record

² EERA is codified at Government Code section 3540 et seq.

³ The Employer had, by earlier correspondence dated September 23 and October 2, 2002, expressed concerns as to the appropriateness of the unit.

created in Case No. SA-UM-716-E would be relied upon to decide the issues raised in the representation case (Case No. SA-RR-1043-E). Finally, the parties stipulated that the issue to be decided is whether the classifications of Recruiter, Migrant Services Assistant, Secondary School Advisor, Support Services Facilitator and Youth Advocate constitute an appropriate bargaining unit for purposes of meeting and negotiating under EERA.

The parties each filed post-hearing and reply briefs, and the matter was submitted for decision on May 20, 2003.

FINDINGS OF FACT

General

The County Office is organized into five divisions: Administration, Business Services, Educational Services, Special Education/SELPA, and County Operated Schools and Programs. The only established bargaining unit of classified employees at the County Office is the CSEA-represented unit of instructional assistants, including about 120 employees. Those employees, with the exception of the Migrant Education positions added pursuant to the agreement and Order in SA-UM-716-E, are under the Special Education/SELPA division.

The Migrant Education Department is under Educational Services and is administered by a Director II, Sonia Duffoo, and a Director I, Olivia Sosa-Kropp. The County Office has operated a regional migrant program, for San Joaquin and Contra Costa counties, since 1999. The program is funded with federal money. The County Office serves as a liaison between the federal and state Departments of Education, and the various school districts. Nine Project Manager II's, a Project Manager I and two Coordinator I's supervise the programs and employees within the Department.

All County Office employees are hired through a process administered by the Human Resources Department, using a standard application form and interview process. All classified

positions have a one-year probationary period, and all are employed subject to the provisions of Education Code section 45100 et seq.

Job Duties

The primary role of Recruiters is to identify and recruit migrant children, and certify their eligibility, to receive the services of the program pursuant to federal guidelines. To do so, they establish contacts with other agencies that serve the migrant community and with businesses (such as growers and packing houses) that employ migrant workers. Recruiters visit work sites and homes to make contact with migrant families and to enroll students.

The Migrant Services Assistants function as a liaison between the schools, migrant families and the Migrant Education Program. They recruit students for after school, Saturday and summer program activities; assist with Parent Advisory Committee meetings; encourage participation by parents; coordinate health and social services; and often provide transportation for the students and their parents for program services and activities. Employees in this classification are also often asked to provide translation assistance, and are often asked by teachers to call parents to communicate the teacher's concerns. They often visit students and parents in the home.

The Secondary School Advisor (SSA) assists migrant students in grades 7 through 12 toward graduation. Like the Migrant Services Assistants, they act as a liaison between teachers, counselors, parents and students, and are the primary migrant program contact at the high school level. The SSA's also make home visits, assist students in utilizing community and school resources, and recruit students for participation in school and migrant activities. Their function often emphasizes helping "at-risk" students and out-of-school youth.

The Support Services Facilitator is focused on the facilitation of health and social services for migrant students. This involves identifying both needs for health-related services

and the resources to meet those needs, including resources to help cover costs of such services. The Facilitator assists with scheduling of appointments, answering questions of parents, translation and transportation. Employees in this position spend more than 50 percent of their time in the field, including organizing and working at health fairs and making home visits. These employees also teach healthy habits to students, such as proper methods for brushing and flossing teeth.

The Youth Advocate works with and for out-of-school youth who are ages 18 to 22. They work with educational agencies and the out-of-school youth with a goal of furthering the youth's education in adult education programs, community colleges, or other appropriate programs. This overall function involves determining appropriate placements for the youth, developing a plan with the youth, advocating for the youth and their families, serving as a liaison with the educational agencies involved, and providing follow-up support for the youth. Like the other Migrant Education positions, employees in the Youth Advocate classification make home visits.

Supervision and Work Location

Recruiters and Youth Advocates are supervised by Harold Porrás, Project Manager II. Recruiters work out of the same office as Mr. Porrás but Youth Advocates are located at a separate location.

Four different Program Manager II's supervise both Migrant Services Assistants and Secondary School Advisors. Two other Project Manager II's supervise either Migrant Services Assistants or Secondary School Advisors but not both. Employees in both classifications are often located, in terms of their home base, at a different location than their supervisor.

The Support Services Facilitators (often referred to by the parties as Health Facilitators) are now supervised by Olivia Ortiz, Coordinator I, though they previously worked under the supervision of different Program Manager II's on a geographic basis.

Wages and Benefits

Recruiters are paid on Range G (\$11.88 to \$14.42 per hour) of the salary schedule. The Migrant Services Assistant and Support Services Facilitator classifications are on Range J (\$12.99 to \$15.79 per hour). The Secondary School Advisors and Youth Advocates are on Range K (\$13.37 to \$16.26 per hour).

All classified employees of the County Office receive benefits as described in the Education Code, including sick leave, vacation and holidays. All full-time classified employees of the County Office receive health benefits, and all Migrant Education employees are full-time.

Hours of Work

All Migrant Education employees are eight hour employees. Employees in the Recruiter classification work 12 months per year, while other Migrant Education employees work less than 12 months (198 workdays).

All of the employees at issue frequently work evenings and/or weekends, especially to assist with conferences and workshops for parents and/or students. The employees do not receive overtime but instead adjust their schedules.

Qualifications, Education and Training

Each of these five classifications requires that the incumbent be bilingual in English and Spanish, have a driver's license, and have at least a high school education. The SSA, Support Service Facilitator and Youth Advocate classifications also require some college course work.

The job descriptions for these classifications also emphasize communication skills and experience/understanding of the migrant community.

ISSUE

Is a bargaining unit including the classifications of Recruiter, Migrant Services Assistant, Secondary School Advisor, Support Services Facilitator and Youth Advocate an appropriate bargaining unit for purposes of meeting and negotiating under EERA?

POSITIONS OF THE PARTIES

CSEA

CSEA first argues that the unit determination standards developed by the Board in Sweetwater Union High School District (1976) EERB⁴ Decision No. 4 (Sweetwater) and its progeny are not controlling in this matter. CSEA contends that, because the Sweetwater units were established in the context of K-12 school districts, the Migrant Education employees at issue here, who work for a county office of education, are entitled to placement in a separate technical unit. CSEA compares the relevant factors to those considered by the Board in Marin Community College District (1978) PERB Decision No. 55 (Marin), where a separate unit of technical/quasi-professional employees was approved. In Marin, the Board expressly distinguished its decision from the line of cases beginning with Sweetwater. CSEA further relies on the Board's establishment of technical units at the University of California and California State University under the Higher Education Employer-Employee Relations Act (HEERA).⁵ (See Unit Determination for Employees of the California State University and

⁴ Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

⁵ HEERA is codified at Government Code section 3560 et seq.

Colleges (1981) PERB Decision No. 173-H and Unit Determination for Technical Employees of the University of California (1982) PERB Decision No. 241-H.)

CSEA asserts that the Migrant Education employees differ from clerical employees based on more specialized skills, the degree to which they work independently and off site, and requirements for more education and experience. CSEA further notes that the Migrant Education employees at issue do not perform routine clerical duties, do not primarily perform recordkeeping work, and are not required to have secretarial or office experience nor knowledge of business machines.

Likewise, CSEA contends that the Migrant Education employees are distinguished from instructional assistants, or paraprofessionals. Here, citing San Diego Unified School District (1977) EERB Decision No. 8,⁶ CSEA contends that the “primary function” of the paraprofessional is to assist a teacher with students in the classroom, and that the Migrant Education employees differ because they do not work in a classroom with a teacher, do not teach educational concepts and work under a separate line of supervision from instructional assistants. CSEA also argues that the hours, work schedules, training requirements, and minimum requirements of the instructional assistants differ from those of Migrant Education employees.

Finally, CSEA distinguishes the frequent interaction of Migrant Education employees with students and their families from the instructional relationship that paraprofessionals have with students and from what it characterizes as the incidental contact that clerical employees have with students.

⁶ CSEA also cites the definition of paraprofessional found in Education Code section 45330.

Employer

The County Office argues, first, that the proposed unit should not be approved as it differs from the Board-preferred units established under Sweetwater and cases following that decision. The County Office further contends that CSEA's case for the proposed unit fails when the factors of community of interest, established practices, and the effect of the size of the proposed unit on the efficient operations of the employer are considered. (Pittsburg Unified School District (1976) EERB Decision No. 3; Monterey Peninsula Community College District (1978) PERB Decision No. 76.)

The County Office argues that the Migrant Education employees lack the separate and unique community of interest required to find they constitute a more appropriate unit than the preferred units under Sweetwater. In this context, the Employer contends the employees at issue lack common supervision, have differing job duties,⁷ are paid in three different salary ranges, work out of different locations and have little contact or interaction. Also noted in this argument is that the Recruiters, unlike the other contested classifications, work 12 months per year.

Regarding factors the five disputed classifications have in common with other employees, the County Office notes that all its classified employees, except instructional assistants, are paid monthly and on the same salary schedule; that the salary ranges of the disputed employees are shared with other classifications; and that all classified employees receive the same health benefits and Education Code benefits (such as sick leave, vacation and layoff rights). The Employer's argument also cites similarities in qualifications, training and skills among the disputed classifications and those excluded from the proposed unit.

⁷ According to the Employer, the only common job duties of the Migrant Education employees are those involving clerical and recordkeeping functions, and use of general office equipment, that are also common to classifications not included in the proposed unit.

While the County Office agrees with CSEA that the Migrant Education employees at issue lack a community of interest with paraprofessionals, the Employer concludes the disputed classifications do share a community of interest with clerical employees. This aspect of the Employer's argument is summarized as follows:

[The disputed classifications] have similar wages, method of compensation, hours, employment benefits, qualifications, training and skills. They perform work on and off site and maintain ongoing communication with other [County Office] employees. Moreover, their work functions are similar. The disputed positions and the clericals spend a significant amount of time on the phone, preparing paperwork, inputting computer data, contacting other schools, districts, and agencies, dealing directly with parents and students, screening students for health referrals, and handling enrollment and qualification issues.

With regard to established practices, the County Office notes that the only current unit is that including instructional assistants and, now, certain Migrant Education classifications. The County Office further asserts there is no evidence of any other employee group having a history of meeting with the employer about employment issues.

Finally, concerning efficient operations of the employer, the County Office contends that the proposed unit, including only 56 of its 772 employees, would constitute the kind of fragmentation and threat of proliferation of units disfavored under EERA and PERB decisions. (Shasta Union High School District (1977) EERB Decision No. 34.)

DISCUSSION

The parties stipulated, and the record supports finding, that the County Office is an employer within the meaning of the EERA, and that CSEA is an employee organization within the meaning of the EERA. The evidence also supports finding, and no party disputes, that the employees at issue are employees within the meaning of the EERA.

Unit Determination Criteria

In each unit determination case, the Board is bound to follow the criteria set forth in EERA at section 3545(a):

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

In Sweetwater, the Board referenced EERA's legislative intent⁸ in holding that:

. . . Implicit in this statement of legislative intention is the notion that the employees will have the ability to choose an organization which is an effective representative. An effective representative will generally be one largely determined by the community of interest and established practices of the employees rather than the efficient operation of the school district.

However, in the same decision, the Board also noted that

. . . It is a legitimate concern that excessive fragmentation of negotiating units may burden an employer with multiple negotiating processes and postures and with a variety of negotiated agreements difficult to administer because their provisions differ. . . .

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

⁸ The relevant portion of section 3540 quoted by the Board reads as follows:

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

achieve consistency of application and the general objectives of EERA. (Antioch Unified School District (1977) EERB Decision No. 37 (Antioch.)

In Sweetwater, the Board announced its preference for three units of classified employees: instructional aides; office-technical and business services; and operations and support services. The significance of the Sweetwater "preferred" units was further explained in Compton Unified School District (1979) PERB Decision No. 109 (Compton) where the Board held that

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

The Sweetwater units were held in Antioch to

reflect a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of an insufficiently divided negotiating unit or units. . . .

In Los Angeles Unified School District (1998) PERB Decision No. 1267, the Board's discussion includes reference to evidence of legislative intent, in the enactment of EERA, that the Board should "find the largest reasonable unit to be the appropriate one for purposes of collective bargaining." (Quoting the California Assembly Advisory Council, Final Report, p. 85 (March 15, 1973); also known as the "Aaron Report.")

While no petition is on file seeking a Sweetwater unit, and thus no such unit can be ordered in this decision, it is still necessary for a party favoring establishment of a unit to show that it has a community of interest separate and distinct from other employees. (Compton; see also Lodi Unified School District (2001) PERB Decision No. 1429.) In Sacramento City Unified School District (1977) EERB Decision No. 30, the Board held that:

. . . A separate unit is not warranted merely because a group of employees share a community of interest among themselves,

when that homogeneous group forms only a part of a larger essentially homogeneous group sharing similar conditions of employment and job functions. . . .

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

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

. . . Every classification possesses a community of interest among its members. Janitors, undisputedly, have more in common with other janitors than they do with gardeners, but we have yet to find a separate unit of only janitors appropriate, absent unusual circumstances. . . . [San Diego Unified School District (1981) PERB Decision No. 170.]

Analysis

CSEA relies in part on the contention that the preferred units established for school districts under Sweetwater are not applicable to a county office of education. In this vein, CSEA notes that the Board expressly distinguished the context of its decision in Marin, a community college district, from the line of decisions involving “regular” school districts. However, the Board has itself not made such a distinction applicable to unit determination for a county office of education, even where opportunities to do so have been presented. (See Office of the Santa Clara County Superintendent of Schools (1978) PERB Decision No. 59; Santa Clara County Office of Education (1990) PERB Decision No. 839.)

Here, where the proposed unit includes many employees who work out of school district offices, and work extensively with employees of “regular” school districts, CSEA’s argument that Marin should be relied upon as more persuasive precedent than Sweetwater and its progeny is not convincing. Even less support is found for relying on cases decided in the context of large, statewide institutions of higher education under a different act.

The Board, describing the essential characteristics of its preferred classified units, has characterized the instructional aides' primary duty as "directly assisting in the educational development of students; has summarized the primary work function of operations-support services employees as providing "a proper physical environment and support services for students"; and has distinguished office-technical and business services employees as those who "generally perform only clerical and record keeping work." (Sacramento City Unified School District, supra, EERB Decision No. 30.)

CSEA and the Employer both argue that the Migrant Education positions at issue are distinguished from employees in the instructional assistants unit, in part, because they do not work under the supervision of a classroom teacher and do not assist in the delivery of classroom instruction. This argument is well taken and convincing.

The harder question to answer is whether the employees at issue share a community of interest with clerical employees. The Employer relies especially on the evidence concerning an Administrative Assistant at the Venture Academy Charter School and an Enrollment Clerk in Alternative Education. These employees, notes the Employer, handle student enrollments, interact with students and parents, review immunization and other student health records, work at multiple sites, and interact with other agencies. The Employer further argues that the disputed positions and the clerical employees "spend a significant amount of time on the phone, preparing paperwork, inputting computer data, contacting other schools, districts, and agencies, dealing directly with parents and students, screening students for health referrals, and handling enrollment and qualification issues."

However, CSEA's arguments emphasizing the distinctions between clerical employees and the Migrant Education employees is more persuasive. The Migrant Education employees, while they do keep records and use office equipment, are not employed primarily to maintain

records and are not required to have the kind of specialized knowledge of computers and other office machines that clerical employees must have. The nature of their involvement with students and parents is also different than that of clerical employees. While their involvement is not like that of the instructional assistant, the Migrant Education employees, especially the SSA's and Youth Advocates, are much more directly involved in the educational development of students than are clerical employees.

The nature of their work, often involving home and work site visits, is also quite different than that of clerical employees. Further, unlike clerical employees, most are required to have at least some college level course work, and all are required to be fluent in Spanish.

The County Office argues that there is little evidence of direct interaction among the petitioned-for employees. While this is not entirely true, more important is the extent to which the record demonstrates the functional interdependence and interaction of their duties.

The Employer's argument that similarities in wages and benefits defeat the proposed unit is also not convincing. Neither differences nor similarities in areas such as wages and fringe benefits that are subject to the duty to bargain are controlling in a case such as this.

(Santa Clara County Office of Education, supra, PERB Decision No. 839.)

Finally, though the Employer argues that approval of the proposed unit would harm its efficiency of operation and lead to an unwarranted proliferation of units, the record does not provide support for such a finding.

In sum, the evidence supports a finding that the unit proposed by CSEA has a community of interest that is "separate and distinct" from other existing or potential bargaining units (Compton), and that it is an appropriate unit in keeping with the objectives of the EERA (Antioch). The community of interest among the employees in these five classifications is based on their job duties that involve outreach to the migrant community, the requirement they

be bilingual in English and Spanish, their common lines of supervision under the directors of the department, and their qualifications, education and experience.

PROPOSED CONCLUSION AND ORDER

After an examination of the foregoing findings of fact and conclusions of law, and the entire record in this case, it is hereby ORDERED that a unit including the classifications of Recruiter, Migrant Services Assistant, Secondary School Advisor, Support Services Facilitator and Youth Advocate employed by the San Joaquin County Office of Education (County Office or Employer) in its Migrant Education program is an appropriate unit for purposes of meeting and negotiating under the Educational Employment Relations Act, provided an employee organization becomes the exclusive representative. The unit shall exclude all other employees, including management, supervisory and confidential employees.

Pursuant to California Code of Regulations, title 8, sections 33470, 33480 and 33490, the Public Employment Relations Board (PERB or Board) shall conduct an election to determine whether the employees in the above unit wish to be represented by the California School Employees Association, unless the Employer chooses to grant voluntary recognition.⁹ A Board agent will contact the parties upon issuance of a final decision in this matter to discuss the further processing of this case. Should this proposed decision become final, the parties shall be served with a copy of the decision and a notice of decision which must be posted by the Employer pursuant to PERB Regulation 33450.

Right of Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the

⁹The County Office may forego an election since CSEA evidenced majority support and no timely intervention was filed.

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 (5:00 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 , secs. 32135(a) and 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 California Code of Regulations, title 8, section 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 , sec. 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).)

Les Chisholm
Regional Director