STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATED ADMINISTRATORS OF LOS ANGELES, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-4248-E PERB Decision No. 1665 July 27, 2004
LOS ANGELES UNIFIED SCHOOL DISTRICT, Employer, and ASSOCIATED ADMINISTRATORS OF LOS ANGELES, Exclusive Representative.	Case No. LA-UM-679-E

Appearances: Parker & Covert by Spencer E. Covert and Barbara J. Ginsberg, Attorneys, for Associated Administrators of Los Angeles; Paul, Hastings, Janofsky & Walker by Robert F. Walker, Attorney, for Los Angeles Unified School District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: These consolidated cases come before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Los Angeles Unified School District (District) to a proposed decision (attached) of the administrative law judge (ALJ). In Case No. LA-CE-4248-E, the underlying charge was filed by the Associated Administrators of Los Angeles (AALA) which alleged that the District unilaterally and improperly designated

25 employee classifications as managerial. AALA also filed a unit modification petition, Case No. LA-UM-679-E, requesting that PERB determine whether the classifications at issue were properly excluded from its unit. In the portion of the proposed decision related to the unit modification petition, the ALJ found that 17 of the 25 disputed classifications were properly designated management within the meaning of the Educational Employment Relations Act (EERA)[1] section 3540.1(g). The remaining eight classifications were not found to be management, and thus, are properly part of AALA's unit.

As for Case No. LA-CE-4248-E, the ALJ found that of the eight classifications improperly designated management, the District committed an unlawful unilateral change with respect to one of the classifications. The ALJ also found that the District committed an unlawful unilateral change with respect to one of the classifications found to be properly designated management.

The Board has reviewed the entire record in these cases, including the proposed decision, the District's exceptions and AALA's response.[2] The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts the proposed decision as the decision of the Board itself.

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

[2]The District's request for oral argument is denied. The record and briefs in this matter adequately present the issues and positions of the parties. Further, pursuant to PERB Regulation 32295, et seq. (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.), the Board did not consider any documents submitted after the filings were complete.

ORDER IN CASE NO. LA-UM-679-E

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is hereby ordered that employees in the following disputed classifications are management employees within the meaning of Educational Employment Relations Act (EERA) section 3540.1(g) and are therefore excluded from the certificated supervisors unit:

Assistant Superintendent, Extended Day Programs
Administrator, Student Auxiliary Services
Director, Elementary/Reading/Standards-Based Promotion Programs
Director, Language Acquisition
Director, Mental Health Services
Director, Integrated Health Partnerships
Director, Pupil Services
Director, Psychological Services
Director, Specially Funded Programs, Compliance and Technical Support
Director, SB1X Programs
Administrator, Adult and Occupational Education Division
Administrative Coordinator, Legislation and Program Planning
Director, School Management Services
Administrator, Certificated Employment Operations
Administrative Coordinator, Special Education Employment Operations
Assistant Superintendent, Instructional Technology[3]

It is further ordered that employees in the following disputed classifications are not management employees within the meaning of EERA section 3540.1(g) and are therefore not excluded from the certificated supervisors unit:

Director, Professional Development
Director, Administrative Academy
Director, High School Programs
Director, Middle School Programs
Administrative Coordinator, Child Development
Director, District Nursing Services
Director, Instructional Support Services, Local District
Director, School Services, Local District

[3]As previously noted, this conclusion applies to the current assistant superintendent even when he was listed as a temporary adviser, MST, management.

ORDER IN CASE NO. LA-CE-4248-E

Based on the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that the Los Angeles Unified School District (District) violated Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c), by unilaterally designating employees in the following disputed classifications as management employees excluded from the supervisors unit:

Director, Administrative Academy
Administrative Coordinator, Special Education Employment Opportunities

Pursuant to EERA section 3541.5(c), it is hereby ORDERED that the District, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally designating employees as management employees excluded from the certificated supervisors unit.

2. Denying the Associated Administrators of Los Angeles (AALA) its right to represent employees in the certificated supervisors unit.

3. Interfering with the right of employees in the certificated supervisors unit to be represented by AALA.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF EERA:

1. Within ten (10) workdays of the service of a final decision in this matter, post copies of the Notice attached hereto as an Appendix at all work locations where notices to unit employees are customarily posted. The Notice must be signed by an authorized agent of the District, indicating the District will comply with the terms of this Order. Such posting shall

be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure the Notice is not reduced in size, altered, defaced or covered with any other material.

2. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the San Francisco Regional Director of the Public Employment Relations Board, in accord with the regional director's instruction.

All other unfair practice allegations are hereby dismissed.

Chairman Duncan and Member Whitehead joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-4248-E, Associated Administrators of Los Angeles v. Los Angeles Unified School District and Representation Case No. LA-UM-679-E, Los Angeles Unified School District and Associated Administrators of Los Angeles, in which all parties had the right to participate, it has been found that the Los Angeles Unified School District violated the Educational Employment Relations Act, Government Code section 3543.5(a), (b) and (c), by unilaterally designating employees as management employees excluded from the certificated supervisors unit.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Unilaterally designating employees as management employees excluded from the certificated supervisors unit.

2. Denying the Associated Administrators of Los Angeles (AALA) its right to represent employees in the certificated supervisors unit.

3. Interfering with the right of employees in the certificated supervisors unit to be represented by AALA.

Dated: _____ LOS ANGELES UNIFIED SCHOOL DISTRICT

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATED ADMINISTRATORS OF LOS ANGELES, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-4248-E
LOS ANGELES UNIFIED SCHOOL DISTRICT, Employer, and ASSOCIATED ADMINISTRATORS OF LOS ANGELES, Exclusive Representative.	REPRESENTATION CASE NO. LA-UM-679-E PROPOSED DECISION (2/ /03)

Appearances: Parker & Covert by Spencer E. Covert, Attorney, for Associated Administrators of Los Angeles; Paul, Hastings, Janofsky & Walker by Robert F. Walker, Attorney, for Los Angeles Unified School District.

Before , .

PROCEDURAL HISTORY

In these consolidated cases, a certificated supervisors union alleges that a school district improperly designated some 25 positions as management. The District asserts the positions were properly designated as management.

The Associated Administrators of Los Angeles (AALA) filed an unfair practice charge against the Los Angeles Unified School District (LAUSD) on December 6, 2000. The original

charge alleged that LAUSD had unilaterally and unlawfully removed approximately 32 employees in 26 classifications from the AALA bargaining unit by designating them as management. On February 23, 2001, the Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint against LAUSD, alleging that 27 listed classifications had been unlawfully removed from the AALA unit. The District filed an answer on March 14, 2001, denying the allegations.

PERB set an informal settlement conference for April 4, 2001, and on that date the charge was placed in abeyance by agreement of the parties. On May 3, 2001, however, AALA requested that the abeyance be lifted and that the charge be moved forward. PERB therefore scheduled a formal hearing to begin on July 30, 2001. The hearing was later rescheduled to begin on July 31, 2001.

On May 25, 2001, AALA filed an amended charge and a motion to amend the complaint to allege that 33 listed classifications had been unlawfully removed from the unit.[1] On July 25, 2001, AALA filed a unit modification petition, asking PERB to determine that the same 33 classifications were improperly excluded from the AALA unit.[2] When the unfair practice hearing began as scheduled on July 31, 2001, AALA moved for consolidation of the amended unfair practice charge with the unit modification petition. The motion was granted.

The hearing was then continued and was ultimately completed on November 13, 14, 15, 16, 19, 20 and 21, 2001, and January 10, 11 and 14 and April 8, 9, 10, 11 and 12, 2002. With the receipt of the final post-hearing briefs on July 8, 2002, the case was submitted for decision.

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[1] The list had 34 items, but one was a duplicate.

[2] From AALA's point of view, the petition was for clarification of the unit rather than for modification of the unit.

During the course of the litigation, the number of classifications in dispute has fluctuated. In its post-hearing brief, AALA ultimately listed 25 disputed classifications. This proposed decision shall deal with those 25 classifications.

FINDINGS OF FACT

LAUSD is a public school employer under the Educational Employment Relations Act (EERA).[3] AALA is an employee organization under EERA and is the exclusive representative of a unit of LAUSD's certificated supervisors. In this case, PERB must decide who is and who is not a "management employee"' of LAUSD, as that term is defined by EERA, among the employees in the disputed classifications. PERB's decision will affect the rights of the employees, of AALA, and of LAUSD itself.

LAUSD is a huge school district with a huge bureaucracy.[4] It has more administrators than most school districts have teachers, and more than some school districts have students. It is one of the few California school districts to have an established unit and a recognized exclusive representative just for its certificated supervisors.

On April 15, 1991, LAUSD voluntarily recognized AALA as the exclusive representative of a certificated supervisory unit. The recognition agreement stated in part:

> The Unit: The Certificated Supervisory Unit shall be as follows:
>
> a. Inclusions: All certificated employees on the Master Salary Schedule, including all school-based administrators and non-school-based administrators except for those positions excluded below.

[3] EERA is codified at Government Code section 3540 and following.

[4] I do not use the word "bureaucracy" in a pejorative sense. The evidence in this case includes 134 pages of selected LAUSD organizational charts, and I think this evidence justifies the use of the word "bureaucracy" in a descriptive sense. From the witnesses who testified at the hearing, it appears that there are many very capable and conscientious employees serving in the LAUSD bureaucracy.

b. Exclusions:

(4) All managerial personnel on the Master Salary Schedule, including those serving in the following positions as of the date of this Agreement:

All Contract Level Administrators

The recognition agreement then went on to list 25 specific classifications excluded from the unit as managerial, plus 13 other specific classifications excluded from the unit as confidential.

Through the succeeding years, LAUSD has regularly provided AALA with copies of its Certificated Management & Confidential Classification Plan (Classification Plan), which specifically lists the classifications and employees that LAUSD deems excluded from the unit as management or confidential. LAUSD sent AALA one such Classification Plan on March 13, 2000, listing 47 classifications and 89 employees as management, plus 14 classifications and 34 employees as confidential.[5] On April 24, 2000, however, LAUSD agreed to place eight of the employees designated as management back in the AALA unit, leaving just 81 employees designated as management.

On September 19, 2000, LAUSD sent AALA another Classification Plan, listing 104 employees as management, plus 37 others as confidential. The increase in the number of employees designated as management was primarily attributable to two classifications that had not appeared on the March 13 Classification Plan: Director, Instructional Support Services, Local District (DISS) and Director, School Services, Local District (DSS). The appearance of these two classifications on the September 19 Classification Plan was in turn attributable to a reorganization of LAUSD that had been effective on July 1, 2000.

[5] I shall refer to this and two later Classification Plans by the dates on which they were sent to AALA, even though they were prepared on earlier dates.

AALA informed LAUSD that it did not accept the designation of several classifications and employees as management, including the DISSs and DSSs. AALA and LAUSD met to discuss the matter, but in a letter dated November 7, 2000, LAUSD informed AALA that it "does not intend to make any adjustments" to the Classification Plan. In fact, another Classification Plan sent to AALA on November 29, 2000, increased the number of employees listed as management to 111, with 38 others listed as confidential.

Between April 24, 2000, and November 29, 2000, the number of employees designated as management by LAUSD thus increased by some 37 percent, from 81 to 111. It was in the light of this development that AALA filed its unfair practice charge on December 6, 2000, and its unit modification petition on July 25, 2001.

To understand this case, one must have some knowledge of LAUSD's organization. At the very top, of course, is the elected Board of Education (Board). As LAUSD emphasizes in its post-hearing brief, "nobody but the [Board] sets policy." LAUSD policy is then often disseminated in one of two forms: yellow policy bulletins and pink policy memos. Yellow policy bulletins remain in effect from year to year until changed, while pink policy memos are redone every year.

Directly below the LAUSD Board, at the first administrative level, is the LAUSD superintendent (currently a former governor of Colorado). Directly below the Superintendent, at the second administrative level, are a number of employees with various titles. Those in LAUSD's central administration who are relevant to this case are two deputy superintendents, the assistant superintendent for the division of adult and career education, the Chief Operating Officer (COO), and the Chief Information Officer (CIO).

The disputes concerning central administrators begin at the third administrative level, with two employees titled assistant superintendent. The disputes continue with several fourth level central administrators, variously titled director, administrator, and administrative coordinator.

Not all of LAUSD's administration is centralized, and the disputed classifications in this case are not limited to its central administration. Indeed, among the most hotly disputed classifications are the previously mentioned DISS and DSS classifications, which are outside the central administration.

Prior to LAUSD's reorganization on July 1, 2000, its schools were organized into 27 clusters, each with a Cluster Administrator. Since the reorganization, the schools have been organized into 11 Local Districts (LDs). These LDs are still very large. If they were school districts in themselves, they would be among the largest in California. Each LD has its own LD superintendent, who reports directly to the LAUSD superintendent. There is no dispute in this case that the LD superintendents are management employees. Directly below the LD superintendents are the disputed DISSs and DSSs.

The LAUSD Superintendent, who assumed his position at the same time the reorganization was implemented, testified he understood the reorganization as "decentralizing responsibility for management." It was not, however, a decentralization in the usual sense, in which centralized authority is broken up and redistributed. As LAUSD states in its post-hearing brief:

> No one can dispute that the [centralized] contract-level administrator group has not changed appreciably, nor that the [centralized] District-wide program administrator group has not changed appreciably. Hence, the only real change in 2000 was an expansion of the group directly responsible for managing the schools.

LAUSD thus recognizes that the reorganization was more an expansion of management than an actual decentralization of management.

Because the correct designation of the employees in each disputed classification as management or not is closely tied to specific facts about each classification, this proposed decision shall have a separate section of specific findings and conclusions as to each classification.

ISSUES

1. As to each disputed classification, was LAUSD's designation of the classification as management correct or incorrect?

2. As to each disputed classification, was the unfair practice charge timely?

3. If the charge was timely, was the designation of the classification as management an unlawful unilateral change?

CONCLUSIONS OF LAW

Management or supervisory status

The major issue in this case is whether each of the disputed classifications is management or supervisory. EERA section 3540.1 states in part:

> (g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.
>
> (m) "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.

Supervisory employees have rights under EERA. In this case, certificated supervisors have the right to be represented by AALA.

Management employees, in contrast, have no rights under EERA. PERB has therefore stated that "great care must be exercised in determining who shall be considered a management employee." (Oakland Unified School District (1977) EERB Decision No. 15 (Oakland I).)[6] The burden of proof rests on the party designating an employee as management. (San Francisco Unified School District (1977) EERB Decision No. 23 (San Francisco).)

PERB's test for management employee status under EERA is well established. In Oakland Unified School District (1981) PERB Decision No. 182 (Oakland II), PERB stated:

> Government Code section 3540.1(g) defines "management employee" as "any employee in a position having significant responsibilities for formulating district policies or administering district programs." The Board has previously held that a management employee must possess significant responsibilities both for the formulation of district policies and the administration of district programs. Lompoc Unified School District (3/17/77) EERB Decision No. 13, at 20-21. The "formulating of district policies" entails the discretionary authority to develop or modify institutional goals and priorities. The "administering of programs" involves the authority to implement district policies through the exercise of independent judgment. Hartnell Community College District (1/2/79) PERB Decision No. 81, at 13.

In a footnote, PERB stated in part:

> The two-prong test was deemed necessary to reconcile the fact that supervisorial employees also have significant responsibility for administering school policy yet are expressly authorized to organize representation units and engage in good-faith

[6] Before July 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

> negotiations, a right denied managerial employees. [Emphasis in the original.]

Thus the key distinction between management and supervisory employees is that management employees have significant responsibilities for the formulation of district policies, including discretionary authority to develop or modify institutional goals and priorities, while supervisory employees do not.

PERB has applied this test in a number of cases. In Oakland II, PERB found an "affirmative action purchasing manager" possessed authority to implement a program through the exercise of independent judgment. PERB then stated:

> However, there is insufficient evidence to establish that the incumbent possesses discretionary authority to develop or formulate District policy. On the contrary, the evidence strongly indicates that the District's affirmative action purchasing policy is set out in an administrative bulletin prepared by the District's board of education that the affirmative action purchasing manager has no authority to modify. Similarly, while the incumbent testified that he "manage[s] and implement[s] a District-wide policy," he stated that he has "never been called upon to develop one." Although the record indicates that the affirmative action purchasing manager was responsible for the drafting of a minority and female subcontracting clause to be included in District purchasing contracts, he testified that the language would have to be approved by four levels of supervisors. When asked whether he had the discretion to deviate from established policy on an individual basis, he responded that he "couldn't see a situation like that right now." Hence, there is no indication that the incumbent has the "discretion in the performance of [his] job beyond that which must conform to [the] employer's established policy." [Citation omitted.]

PERB therefore concluded the employee was not a management employee.

In Berkeley Unified School District (1979) PERB Decision No. 101 (Berkeley), PERB examined the responsibilities of a "Title IX coordinator." PERB summarized the evidence as follows:

> The Title IX coordinator, as noted above, has authority to use independent judgment in identifying sexually discriminatory practices and policies within the District. This authority to identify discriminatory practices is districtwide, and not limited to routine matters. There is also evidence that once a discriminatory practice has been identified the Title IX coordinator has authority to direct a change in that practice.

The Title IX coordinator also participated at times in meetings of the superintendent's administrative cabinet and served as a resource person for the board of education. PERB concluded the employee was a management employee.

PERB reached a similar conclusion with regard to an "affirmative action officer" in Ventura County Community College District (1980) PERB Decision No. 139 (Ventura). The employee who was held to be a management employee in that case had authority to advise, direct and authorize changes in the district's affirmative action plan, and to waive or forego portions of the plan.

It thus appears from Oakland II and Ventura that ability or inability to waive or deviate from established policy may be significant in distinguishing a management employee from a non-management employee.

In Hartnell Community College District (1979) PERB Decision No. 81 (Hartnell), PERB examined the responsibilities of "department chairpersons." PERB stated in part:

> In the instant case, the evidence established that the authority of the chairpersons was either collegial in nature and no greater or lesser than that of other persons serving on various committees, or substantially determined by established District policy.

PERB concluded the employees were not management employees.

In Marin Community College District (1978) PERB Decision No. 64 (Marin), PERB had examined the somewhat similar responsibilities of "college coordinators." PERB stated in part:

> But they have no final authority to approve their own proposals (or those of the committees on which they sit) – most of the proposals which they have drafted are subject to a multi-level review process, and they have no discretion to deviate from the District policies which they are responsible to administer.

PERB concluded the employees were not management employees.

In San Francisco, PERB examined the responsibilities of principals and assistant principals. PERB stated in part:

> The principals at the secondary and elementary school levels in the [district] have no significant responsibilities for formulating district policy. The principals merely make policy recommendations with respect to the transfer and assignment of personnel, staffing of schools and student-teacher ratios. Although principals often serve on various committees which play a role in formulating district policy, the committees include teachers and, moreover, are purely advisory. Finally, the principals did not have any significant input in formulating the school district policies as found in the "Board of Education Policy Manual". [Emphasis in the original; citation omitted.]

PERB concluded the principals were not management employees and "a fortiori" the assistant principals were also not management employees.

It thus appears from Hartnell, Marin and San Francisco that committee service will not ordinarily be enough in itself to justify designating an employee as management.

In Los Rios Community College District (1977) EERB Decision No. 18 (Los Rios), PERB examined the responsibilities of "financial aids coordinators." PERB stated in part:

> While the record establishes that financial aids coordinators participate in discussions where policy alternatives are apparently aired, we do not view such participation as equivalent to possessing "significant responsibilities for

> formulating" that policy. Mere participation, even on a regular basis, does not vest the participant with significant responsibility.

PERB concluded the employees were not management employees.

In Oakland I, PERB examined the responsibilities of psychologists. PERB stated in part:

> They exercise discretion only within their areas of expertise, which is not the same as a manager's authority to formulate district policy. While they have considerable discretion in implementing the district's testing program, this is no more administering policy than teachers administer policy because they have considerable discretion in implementing a teaching program. The psychologists' authority is exercised on a localized basis, not on a district-wide basis. And finally, psychologists are part of a large group [of approximately 40 to 48] having no intimate relationship with high level district officials. [Footnote omitted.]

PERB concluded the employees were not management employees.

It thus appears from Berkeley and Oakland I that the presence or absence of a relatively intimate relationship with a school district's superintendent or governing board may be significant in distinguishing a management employee from a non-management employee.

In Lompoc Unified School District (1977) EERB Decision No. 13 (Lompoc), PERB examined the responsibilities of "subject coordinators." PERB stated in part:

> These employees cannot be said to formulate district policies since their recommendations usually have to be approved on at least two higher levels, usually by the Director of Curriculum and the Superintendent.

PERB concluded the employees acted "basically as experts in their particular field" and not as management employees.

Later in this decision, each disputed classification in the present case shall be examined in the light of this long line of PERB cases interpreting EERA.[7]

Timeliness of unfair practice charge

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024.)

In the present case, AALA filed its unfair practice charge on December 6, 2000. The charge is therefore timely only with respect to those classifications as to which AALA first had notice on or after June 6, 2000, of their designation as management.

Unilateral change

In Regents of the University of California (1989) PERB Decision No. 722-H (Regents), PERB found an unlawful unilateral change where an employer had designated certain positions as excluded from the exclusive representative's bargaining unit without exhausting PERB's unit modification procedures. Although the positions in dispute in Regents were designated as supervisory, there is no apparent reason why the same reasoning should not also apply to the present case, where the positions in dispute were designated as management.

[7] Because other statutes under PERB's jurisdiction define management status somewhat differently, this examination shall rely only on cases interpreting EERA.

In order to understand the PERB's decision in Regents, one must also read the proposed decision that PERB affirmed. That proposed decision defined the issues in part as follows:

> At the outset it is important to note what this case is not about. First, [the exclusive representative] does not contend that the [employer] could not have lawfully created new supervisory job titles outside the bargaining unit and recruited interested candidates for such newly created vacancies, provided the integrity of the bargaining unit was not threatened.

Thus, in the present case, it appears that LAUSD could have lawfully created and designated new and vacant management positions, for which candidates were recruited, without exhausting PERB's unit modification procedures in advance.[8]

The proposed decision in Regents continued in part:

> Second, in its present procedural posture, this case does not involve the question of whether the employees in question were in fact statutory supervisors. . . . For the purpose of the present proceeding, however, it is assumed that at least some of the employees perform supervisory duties under the Act.

An unlawful unilateral change was found despite this assumption that at least some of the employees could correctly be designated (and excluded) as supervisory. Thus, in the present case, it appears that LAUSD could be guilty of an unlawful unilateral change for failure to exhaust PERB's unit modification procedures, even if LAUSD's unilateral designation of a disputed position as a management position excluded the bargaining unit was substantively correct.

As with any alleged unilateral change, the burden of proof in on the charging party (in this case, AALA).

[8] This would give meaning to the employer's right under EERA section 3540.1(g) to designate management positions, subject to PERB review.

SPECIFIC FINDINGS AND CONCLUSIONS

In this section, each disputed classification shall be examined in order to answer three questions:

1. Is the classification management?
2. Was the unfair practice charge timely?
3. Was there an unlawful unilateral change?

This section shall begin with the disputed positions in LAUSD's central administration, moving from the top down through various lines of authority.

Assistant Superintendent, Extended Day Programs

As previously noted, among the second level central administrators directly below the LAUSD superintendent are two deputy superintendents. There is no dispute in the present case that the deputy superintendents are management employees. Directly below them, at the third level of central administration, are several assistant superintendents and one associate superintendent. There is a dispute as to one of those assistant superintendent positions.

The disputed position is the assistant superintendent for extended day programs, a position held by Jon Liechty (Liechty). On the Classification Plan of March 13, 2000, Liechty was listed as the assistant superintendent for instructional services, which he then was. On the September 19 Classification Plan, he was incorrectly listed as an "administrator" for extended day programs, but on the November 29 Classification Plan he was correctly listed as the assistant superintendent for extended day programs.

Liechty's class description, which he testified is accurate, describes his job purpose as follows:

> Provides leadership, guidance and direction in establishing out-of-school programs in all schools, K-12. Serves as the District's

> spokesperson for out-of-school programs and represents the District in working with community based organizations and city agencies.

The class description describes his first essential function as follows:

> Directs the development, implementation and monitoring of District-wide policies and procedures for out-of-school programs within the Beyond the Bell Branch.

This first essential function is thus specifically described as including the "development . . . of District-wide policies," although the job purpose is not.[9]

Liechty testified he was offered the position in August 2000 by the LAUSD superintendent and his chief of staff. According to Liechty, they asked if he would be "interested in taking on and creating a new branch," and he replied that "if there's support here in the office" he would "give it a shot." Liechty was then promoted to the new position, without having to apply for it.

In October 2000 the LAUSD Board passed a resolution charging Liechty with the responsibility of bringing forward a plan to provide quality out-of-school programs for every elementary and middle school over the next five years. On July 19, 2001, Liechty presented such a plan to the Board. He had been involved in every step of creating the plan. He was the only one to sign it, and he led the discussion of it with the Board.

Liechty reports to a deputy superintendent, but the LAUSD superintendent also evaluates him. If budget cuts are necessary, Liechty believes he has authority to make a

[9] As shall be seen, some LAUSD class descriptions specifically refer to policy development or formulation, while others do not. Testimony shows that the presence or absence of such a specific reference is often (but not always) an accurate indication of the position's policy responsibilities or lack thereof. A class description is therefore entitled to some weight, and is at least a useful place to start examining a position's responsibilities.

decision where to cut. He also feels that in such a situation he may need "to really get to the superintendent, which is part of my role, the impact of this cut." Liechty is a contract level administrator, working under a year-to-year contract.

I conclude that Liechty is a management employee. Consistent with his class description, he has specifically been called upon to develop district-wide policy. While he reports to a deputy superintendent, he also appears to have a relatively intimate relationship with the highest level of LAUSD officials: the Board and the superintendent. (Berkeley; Oakland I.)

I also conclude that AALA's unfair practice charge is untimely as to Liechty, a contract level administrator. AALA has known since the 1991 recognition agreement that LAUSD deems all contract level administrators to be management.

Administrator, Student Auxiliary Services

One of the positions directly below Liechty, at the fourth level of central administration, is the administrator for student auxiliary services, a position held by Carole Takaki (Takaki). On the Classification Plan of March 13, 2000, as well as later Classification Plans, Takaki and her position have been listed as management. Takaki has held the position since February 1999, but she has only been under Liechty's supervision since August 2000.

Takaki's class description describes her job purpose as follows:

> Serves as administrative head of the Student Auxiliary Services Branch; coordinates, develops, and implements District policies, standards, and procedures relating to youth services, emergency services, traffic and safety education, outdoor education and specially funded programs under the jurisdiction of the Branch.

Takaki testified this description is accurate, except for the reference to "emergency services." The class description describes her first two essential functions as follows:

1. Provides administrative direction for and supervision of the organizational units of the Student Auxiliary Services Branch as they relate to the total educational program.
2. Directs the formulation of the philosophy, principles, objectives and procedures of Student Auxiliary Branch programs; communicates and interprets such matters to the Board of Education, other organizational units of the District, the general public and outside agencies.

Takaki testified this description is also accurate. The job purpose is thus specifically described as including policy development, while the second essential function is specifically described as including "the formulation of . . . philosophy, principles [and] objectives." Takaki testified that she had taken the lead in drafting a report to the Board about a contract with the County of Los Angeles and had then appeared before the Board to answer questions. She had updated a policy bulletin with regard to "late children" and had drafted three policy memos. Her drafts had been reviewed by her supervisor. The drafts had also been sent to the LAUSD superintendent's chief of staff and the LD superintendents, but Takaki was unaware of any significant review at those levels.

I conclude that Takaki is a management employee. Consistent with her class description, she has had significant responsibility for formulating district-wide policies. Although she does not appear to have Liechty's direct relationship with the LAUSD superintendent, she has had some direct relationship with the Board, and her work does not appear to be subject to multi-level review. (Cf. Marin.)

I also conclude that AALA's unfair practice charge is untimely as to Takaki, who was listed as a management employee before June 6, 2000.

Director, Elementary/Reading/Standards-Based Promotion Programs

At the same third level of central administration as Liechty, directly below the deputy superintendents, is the assistant superintendent for professional development, elementary

education and language acquisition, a position held by Sue Shannon (Shannon). There is no dispute in the present case that Shannon is a management employee. There are disputes, however, about four administrators directly below her (at the fourth level of central administration).

One of the disputed positions is the director for elementary/reading/standards-based promotion programs, a position recently held by Ronni Ephraim (Ephraim). On the Classification Plan of March 13, 2000, Ephraim's predecessor Jan Pickett (Pickett) was listed as management. Pickett's position was listed as temporary advisor, MST, management, but her actual job title was apparently director, professional development, elementary and reading programs. When Ephraim applied for the position in May 2000, the flyer noted the title change and described the position as follows:

> Assists in the administration and direction of the District's Elementary, Reading, and Standards-based Promotion Programs to ensure that students achieve high academic standards through collaborative efforts with District personnel, parents and students.

Ephraim was hired after an interview with the acting LAUSD superintendent.

On the March 13 Classification Plan, Ephraim had been listed as a management employee in her previous position, although she believed she was actually a confidential employee. On the September 19 and November 29 Classification Plans, she was listed as a management employee in her new position.

Ephraim's class description, which she testified is accurate, describes her job purpose as follows:

> Directs the formulation, implementation, monitoring and evaluation of policies and procedures for the District's Elementary, K-12 Literacy and Standards-Based Promotion Programs to ensure that students achieve high academic standards

> through collaborative efforts with District personnel, parents and students.

This description thus specifically includes policy formulation. The class description describes her essential functions as follows, however:

> 1. Directs the support structure necessary to effectively implement elementary programs and the District's Literacy Plan in all elementary schools.
> 2. Facilitates collaboration with other District central office personnel and works with the community in activities related to reading instruction and elementary programs.
> 3. Directs standard-based curricular programs in language arts by providing direction and guidance to all District K-12 schools.
> 4. Directs the District's professional development efforts by developing a coordinated, focused, integrated professional development plan that addresses the diverse training needs of educators, resulting in improved achievement for all students.
> 5. Directs the development of K-12 language arts curricula and training to support the local district in the successful implementation of elementary programs for students with disabilities at the elementary level.
> 6. Evaluates the performance of subordinate personnel.

Thus, while Ephraim's job purpose is specifically described as including policy formulation, her essential functions are not.

Ephraim testified that, while she was putting together the budget she administers, she met several times with the LAUSD superintendent, who asked her to develop a budget that would "make the program work." She appeared before a Board committee in connection with the budget, although the committee members had no budget questions for her. She also wrote a grant proposal on behalf of the superintendent.

In implementing the Board's elementary reading policy, Ephraim was responsible for creating the professional development course and coordinating its rollout. She also developed a tracking system to make sure that the professional development occurred.

Similarly, in implementing the Board's standards-based promotion policy, Ephraim was responsible for creating the training program, shared responsibility for its rollout, and was responsible for ensuring that the training took place. She worked closely with Shannon on a policy recommendation to the Board concerning eighth grade standards-based promotion, although Shannon ultimately prepared the Board informative and presented the recommendation to a Board committee.

Ephraim personally recommended that a fluency test be added to the second-grade assessment regimen. She will be present when the matter goes before the full Board. If adopted, the recommendation will become part of a yellow policy bulletin.

Although her class description is somewhat ambiguous, I conclude that Ephraim has been a management employee. She has worked closely with the LAUSD superintendent on a budget and a grant and has had some direct contact with Board members. Moreover, she has had significant responsibility in recommending district-wide policies.

I also conclude that AALA's unfair practice charge is untimely as to Ephraim, whose predecessor was listed as a management employee before June 6, 2000.

Director, Professional Development

Another disputed position directly below Shannon is the director for professional development, a position held by Kathy Rattay (Rattay). Shannon was Rattay's immediate predecessor, and on the Classification Plan of March 13, 2000, Shannon was listed as a management employee (specifically, as a temporary adviser, MST, management).

Rattay had been a high school principal for seven years when she applied for the position. The flyer described the position as follows:

> Provides overall direction for the planning, development, implementation, coordination, evaluation and improvement of the

> District's professional development programs, in accordance with federal and state laws.

Rattay was hired for the position after an interview with Shannon.

Rattay actually began working in the position in September 2000. She was not listed on the September 19 Classification Plan, but she was listed as a management employee on the November 29 Classification Plan.

Rattay's class description describes her job purpose in part as follows:

> Directs the planning, development, implementation, coordination, evaluation and improvement of professional development programs . . . .

Rattay testified this description is accurate. The job purpose is not specifically described as including policy development or formulation.

Rattay's class description also describes 15 essential functions, a few of which Rattay no longer performs. She testified she actually spent 80 percent of her time on the first function:

> Directs the planning, development, implementation, coordination, evaluation and improvement of the District's professional development program, pre-K through adult; develops and interprets District policy as it relates to professional development programs.

This function is thus specifically described as including policy development.

Rattay testified, however, she had not actually made any presentations to the Board or prepared any Board agenda items in connection with her essential functions. She had prepared documentation that Shannon had placed before the Board, but this had not occurred very often. There is no evidence that she had direct contact with the LAUSD superintendent (or even the deputy superintendents) or that she was involved in preparing any yellow policy bulletins or pink policy memos.

Rattay testified she had some reservations about how LAUSD's peer assistance and review program adhered to the law, and she had therefore made some recommendations to Shannon and to LAUSD's office of staff relations. These recommendations would have to be negotiated, however, and there is no evidence Rattay would participate in any negotiations.

I conclude that LAUSD has not met its burden of proving that Rattay is a management employee. Although she has a wide range of administrative responsibilities, she does not appear to have significant responsibility for actually formulating district-wide policies. She does not appear to have a close relationship with the highest levels of LAUSD officials, and she apparently lacks the authority to direct policy changes, even when she believes they may be required by law. (Cf. Berkeley.)

I also conclude that AALA's unfair practice charge is untimely as to Rattay, whose predecessor was listed as a management employee before June 6, 2000.

Director, Administrative Academy

Another disputed position directly below Shannon is the director of the administrative academy, a position held by Jean Brown (Brown). On the Classification Plan of March 13, 2000, Brown was not listed as a management employee, but she was so listed on the September 19 and November 29 Classification Plans.

When Brown first took the position in September 1998, she had the director title and reported to a deputy superintendent. From July to October 2000, she was titled a coordinator, and during that same period she reported to Rattay. After October 2000 she was again titled a director, and she reported to Shannon. She testified, however, that neither her salary nor her responsibilities changed.

Brown's class description describes her job purpose as follows:

> Directs the formulation, implementation, monitoring and evaluation of policies and procedures for the professional development programs for District administrators within the framework of the Administrative Academy.

Brown testified, however, that this description is inaccurate, in that she really directs the formulation, implementation, monitoring and evaluation of the programs themselves, as distinct from policies and procedures for those programs. The class description describes her first essential function as follows:

> Directs the planning, development, implementation, coordination, evaluation and improvement of the District's professional development program for administrators; develops and interprets District policy as it relates to these programs.

Brown testified this description is also inaccurate, in that she does not develop LAUSD policy.

When Brown first took the position, her charge was to create a professional development program for new administrators. Based on a needs assessment, she and her staff decided to create two separate programs, with one just for new principals. Based on a suggestion from an administrator working with her, she decided to develop the new administrator program in a way that allowed participants to receive some college credit. She and her staff are now hoping to create a new program for aspiring administrators.

Brown has twice attended meetings of a new Board committee on human resources, but only as an audience member. It is not clear to her what her connection to the committee will be, although she speculates she will eventually be asked to do a presentation to the committee on the aspiring administrator program. There is no evidence she has had direct contact with the LAUSD superintendent.

I conclude that LAUSD has not met its burden of proving that Brown is a management employee. Although she has major programmatic responsibilities, she does not appear to have

significant responsibility for actually formulating LAUSD policies, and her relationship with the highest level of LAUSD officials is speculative.

I also conclude that AALA's unfair practice charge is timely as to Brown, who was listed as a management employee for the first time on the Classification Plan of September 19, 2000. I further conclude that LAUSD's designation of Brown as a management employee was an unlawful unilateral change, because LAUSD simply changed her title and her reporting relationship, without creating a new and vacant position for which candidates were recruited. (Regents.)

Director, Language Acquisition

The fourth and final disputed position directly below Shannon is the director for language acquisition, a position held by Rita Caldera (Caldera). On the Classification Plans of March 13 and September 19, 2000, neither Caldera nor her position was listed, but she was listed as a management employee on the November 28 Classification Plan. There is no evidence that her position existed before the beginning of the 2000-2001 school year, when she obtained it through an application and selection process after seeing a flyer.

Caldera's class description, which she testified is accurate, describes her job purpose as follows:

> Administers and coordinates the implementation of the District's Master Plan for English Language Learners to ensure that students have equal access to the core curriculum and achieve high academic standards.

Caldera testified that LAUSD's Master Plan for English Language Learners already existed when she took the position. The class description describes Caldera's first essential function as follows:

> Directs the development and implementation of elementary and secondary curricula and provides tactical support to the local districts for the successful implementation of instructional programs for English Language Learners (ELLs).

Although this essential function is specifically described as including curriculum development, neither it nor any other essential function, nor the job purpose, is specifically described as including policy development.

Caldera testified, however, that she has been responsible for proposing a major change of policy concerning structured English immersion. She was responsible for preparing a report on the recommendation, which went to a Board committee with her signature as well as Shannon's. If the Board adopts the recommendation, it will result in a change in LAUSD's Master Plan for English Language Learners and the issuance of either a yellow policy bulletin or a pink policy memo.

Caldera testified that she was responsible for creating many pink policy memos, with the approval of Shannon and Price. She was also responsible for preparing reports to the Board concerning grants. She would make the formal presentation to the Board committee and later would be present for the Board's vote, so she could answer any questions from Board members.

I conclude that Caldera is a management employee. Her actual responsibilities have gone beyond curriculum development to policy formulation, and she has had significant direct contact with Board members.

I also conclude that AALA's unfair practice charge is timely as to Caldera, who was first listed as a management employee on the Classification Plan of November 29, 2000. I further conclude, however, that AALA has not proved that LAUSD's designation of Caldera

was an unlawful unilateral charge, because it appears that LAUSD created a new and vacant position for which Caldera applied and was selected. (Regents.)

Director, High School Programs

At the same third level of central administration as Liechty and Shannon, directly below the deputy superintendents, is the assistant superintendent for secondary education and support services, a position recently held by Sylvia Rousseau (Rousseau). There is no dispute in the present case that Rousseau has been a management employee. There are disputes, however, about two administrators directly below her.

One of the disputed positions is the director for high school programs, a position recently held by Carol Ogawa (Ogawa) and currently held by Bud Jacobs (Jacobs). On the Classification Plans of March 13 and September 19, 2000, neither Ogawa nor her position was listed, but she was listed as a management employee on the November 29 Classification Plan.

It appears that the position was new when Ogawa took it at the beginning of the 2000-2001 school year. In April 2000 there had been a flyer describing the position as follows:

> Provides instructional direction to senior high schools in the development of a standards-based instructional program that meets the unique needs of the high school student. Provides leadership establishing an articulation program with middle and high schools to ensure coherent, coordinated instructional programs, including summer school programs.

There was another flyer in November 2000, describing the position as providing support, leadership and coordination for various programs. Neither flyer specifically described policy formulation as part of the job.

Jacobs's class description, which he testified is accurate, describes his job purpose as follows:

> Provides instructional assistance in the development of a standards-based instructional program that meets the unique needs of the high school student. Provides leadership in establishing an articulation program with middle and high schools to ensure coherent, coordinated instructional programs.

This description does not specifically include policy development or formulation. Jacobs affirmed, consistent with the described job purpose, "Instructional assistance is the core of what I do."

The class description describes Jacobs's essential functions as follows:

> 1. Assist[s] local districts in coordinating curriculum, instruction and assessment between middle schools and high schools.
> 2. Provides instructional direction to implementation of the matriculation guidelines effective with the class of 2003 and as related to Standards Based Promotion guidelines.
> 3. Provides support to local districts to review and implement instructional models used to meet the needs of students in extended learning opportunities and intervention programs.
> 4. Reviews curriculum and instructional programs at the high school level to ensure alignment with current research and practice as well as state and District guidelines.
> 5. Improves articulation between middle school[s] and high schools.
> 6. Develops strategies to increase student access to a challenging curriculum, and the graduation rate from high school.
> 7. Evaluates the performance of subordinate personnel.

None of these essential functions is specifically described as including policy development or formulation.

Jacobs testified that he did develop "guidelines." He had participated in a language arts committee that also included teachers and specialists. By his own account, the committee's decisions were made "in a collaborative manner, by consensus," and he was not the "super editor." There was no evidence as to whether the guidelines thus produced were included in a formal policy bulletin or memo.

Jacobs has also chaired a graduation requirements committee of about 20 people, which has also made decisions by consensus. The committee produced a report to the Board that recommended a strategy for implementing new graduation requirements. Jacobs was listed as the person who prepared the report, but there was no evidence as to whether he would present it to the Board.

Jacobs described his activities in connection with several LAUSD programs. He variously described himself as a "consultant or an advisor" to principals on the accreditation program, as "part of a team" putting together a mathematics program, as a developer of training for algebra teachers, as a "liaison" sharing information with principals, and as a facilitator of professional development. Although he has thus had many roles and responsibilities in his position as director, he believes he actually had more power in his previous position as a high school principal.

I conclude that LAUSD has not met its burden of proving that Jacobs is a management employee. It appears that the class description accurately describes his position as one providing support, leadership and coordination for various LAUSD programs, and not as one with significant responsibility for formulating policy. His committee service, as he described it, would not be enough to make him a management employee. (Hartnell; Marin; San Francisco.)

I also conclude that AALA's unfair practice charge is timely as to Jacobs, whose position was first listed as management on the Classification Plan of November 29, 2000. I further conclude, however, that AALA has not proved an unlawful unilateral change as to Jacobs, whose position was apparently created as a new and vacant position for which candidates were recruited.

Director, Middle School Programs

The other disputed position directly below Rousseau is the director for middle school programs, a position recently held by J. D. Gaydowski (Gaydowski). On the Classification Plan of March 13, 2000, neither Gaydowski nor his position was listed. On the September 19 Classification Plan, Gaydowski was still not listed, but the position of director for middle schools/summer school programs was listed as a vacant management position (class code 0103, base salary schedule 48G). On the November 29 Classification Plan, both Gaydowski and his position were listed as management (class code 0103, base salary schedule 45G).

Gaydowski believed the position had been new in July 2000. There had been job flyers in May 2000 and August 2000, but he actually heard about the position by word of mouth. He filed an application, went through an interview process, and ultimately took the position in October 2000.

Gaydowski's class description describes his job purpose as follows:

> Provides instructional direction to middle schools in the development of a standards-based instructional program that meets the unique needs of the middle school student. Provides leadership in establishing an articulation program with both elementary and senior high schools to ensure coherent, coordinated instructional programs.

Gaydowski testified that this is "not precisely" what he actually did.

The class description describes Gaydowski's essential functions as follows:

> 1. Coordinates articulation between middle schools and high schools and between middle schools and elementary schools with local districts.
> 2. Provides instructional direction to implementation of the matriculation guidelines effective with the class of 2003 and as related to Standards Based Promotion guidelines.
> 3. Provides support to local districts to review and implement instructional models used to meet the needs of students in

extended learning opportunities and Intensive Academic Support classes.

4. Reviews curriculum and instructional programs at the middle school level to be responsive to the recommendations of the Middle Grades Task Force 2000.
5. Develops strategies to increase student access to a challenging curriculum, including Algebra.
6. Develops strategies to improve the matriculation rate to high school.
7. Evaluates the performance of subordinate personnel.

Gaydowski testified that he actually performed essential functions 2, 4, 5, 6 and 7 and part of function 3. (These essential functions are parallel to those of the director for high school programs previously discussed.) None of these essential functions is specifically described as including policy development or formulation.

Rousseau had not yet taken her position when Gaydowski took his, so his responsibilities were explained to him by Shannon, who was then spearheading an effort to redevelop LAUSD's middle school matriculation policy. Gaydowski testified in part:

> And so I was given to understand that I was going to be in charge of that redevelopment, that I should establish a principal task force and that we should establish and recommend policies in that direction, so that she could carry them forth to the Board, first through the committee on instruction, that committee, and then finally, to the Board. And that did actually come to fruition by February, between October and February. So that was one of my main responsibilities.
>
> She also assigned me the secondary summer school piece, because she was, with another person at the coordinator level, was developing the elementary summer school plan. So the secondary summer school was left to me to replace a unit that had already been there in the previous year, but did not exist at this time.

Gaydowski's two main responsibilities, as explained to him by Shannon, thus involved matriculation and summer school.

With regard to matriculation, Gaydowski testified he chaired what he variously referred to as a committee, a task force or a focus group of 9 to 11 principals and directors. The group made decisions by consensus, and Gaydowski was not under the impression that he had veto power. The group ultimately produced a set of recommendations, which Gaydowski presented to Shannon. A committee headed by Shannon and including Gaydowski then reshaped those recommendations, making a significant policy revision. Shannon then presented the revised recommendations to a Board committee, which ultimately referred them to the whole Board for adoption. Although Gaydowski was aware of the documents sent to the Board, it does not appear that he was directly involved in any presentations to Board members. After Board adoption, Gaydowski was responsible for constructing a memo explaining the new policy, which was reviewed and approved by the LD superintendents before it went out. This was apparently not a formal pink policy memo, however. Gaydowski generally described himself as an interpreter or explainer of policy bulletins and memos, not as an author.

With regard to summer school, Gaydowski and a coordinator under Shannon established a summer school intervention committee, with representatives from each of the 11 LDs. The committee decided on a summer school calendar by consensus, although Gaydowski understood it would otherwise have been his call, subject to Shannon's review. Gaydowski was also responsible for readjusting policy bulletins and memos in light of the new LAUSD structure and other changing information. Gaydowski testified in part:

> Those were memoranda based on district policy. The policy wasn't changing, basically, it was the memoranda information [that] needed to change.

Publishing the readjusted documents and distributing them across LAUSD became a major project in itself.

I conclude that LAUSD has not met its burden of proving that Gaydowski was a management employee. Instead, he appears to have had an important intermediary role, providing input and recommendations to the policy-making levels above him (through Shannon and Rousseau) and explaining their policy decisions for LD implementation. It does not appear that he himself had any real discretionary authority over those policy decisions.

I also conclude that AALA's unfair practice charge is timely as to Gaydowski, whose position was first listed as management on the Classification Plans of September 19 and November 29, 2000. I further conclude, however, that AALA has not proved an unlawful unilateral change as to Gaydowski, whose position was apparently created as a new and vacant position for which candidates were recruited.

Administrative Coordinator, Child Development

At the same third level of central administration as Liechty, Shannon and Rousseau, directly below the deputy superintendents, is the assistant superintendent for early childhood education, a position recently held by Sheila Derrig (Derrig) and currently held by Carmen Schroeder (Schroeder). There is no dispute in the present case that Derrig and Schroeder have been management employees.

There is a dispute, however, about the administrative coordinator for child development, a position directly below Derrig and Schroeder, recently held by Cathleen Kibala (Kibala) and currently held by Barbara Gutierrez (Gutierrez). Kibala was appointed to the position (without formally applying) in August 1993 and left the position in July 2000. The Classification Plan of March 13, 2000, listed Kibala as a management employee, and the September 18 and November 29 Classification Plans listed Gutierrez as a management employee.

The class description describes the job purpose as follows:

> Serves as assistant to the administrative head of the Early Childhood Education Division; assumes co-administrative responsibilities of the division as delegated. Responsible for the overall daily operation of the Division.

The job purpose is thus not specifically described as including policy development or formulation. The class description describes the essential functions as follows:

1. Assists the Assistant Superintendent, Early Childhood Education in administering, monitoring, planning, developing, implementing and evaluating the Early Childhood Education Division's policies and programs.
2. Administers implementation of the Early Education Improvement Plan: *Building a Foundation for Academic Success's* goals and recommendations.
3. Supervises, coaches, monitors, and supports Division administrative, instructional, clerical and custodial staffs.
4. Administers and evaluates ongoing, differentiated and special administrators professional development series.
5. Provides technical assistance, guidance and support to all ECE Directors, Office Managers and Division central office staff.
6. Maintains the daily operations of the ECED building.
7. Administers and evaluates various District and community collaboratives and partnerships.
8. Coordinates, monitors and evaluates the performance of external contracted consultants and providers.
9. Supports UTLA's Article XXX Committee activities, as needed.
10. Evaluates the performance of subordinate personnel.

Kibala testified that the class description is accurate, except that during her tenure she had the additional function of overseeing the operation of children's centers.

The first described essential function includes in part a statement that the administrative coordinator "[a]ssists the Assistant Superintendent, Early Childhood Education in . . . developing . . . the Early Childhood Education Division's policies and programs." It is unclear from this description, however, whether the administrative coordinator actually has

some discretionary authority to develop policies, or whether the administrative coordinator assists in policy development in other ways.

When Kibala was asked about her day-to-day responsibilities, she testified as follows:

> Well, it depended on the day. Some -- any questions that the coordinators there may have about programs, or policies, they would come to me, because each person in that office, each administrator had a responsibility of some program directly related to the centers. So if there were some issues that arose, they would come and we would discuss those issues. If it was policy, we would discuss that and then take it to Sheila Derrig.

It thus appears that while Kibala discussed policy issues, Derrig was the one who had authority over those issues.

I conclude that LAUSD has not met its burden of proving that Kibala and Gutierrez have been management employees. I also conclude, however, that AALA's unfair practice charge is untimely as to Kibala and Gutierrez, whose position was listed as management before June 6, 2000.

Director, Mental Health Services

At the same third level of central administration as the assistant superintendents previously mentioned, directly below the deputy superintendents, is the assistant superintendent for student health and human services, a position recently held by Sally Coughlin (Coughlin) and currently held by Maria Reza (Reza). There is no dispute in the present case that Coughlin and Reza have been management employees. There are disputes, however, about four administrators directly below them.

One of the disputed positions is the director for mental health services, a position recently held by Marleen Wong (Wong). On the Classification Plan of March 13, 2000, as

well as later Classification Plans, Wong and her position have been listed as management. Wong held the position from December 1993 to November 2001.

Wong's class description, which she testified is accurate, describes her job purpose as follows:

> Serves as head of the District Mental Health Services Branch within the Student Health and Human Services Division; directs and supervises the planning, development and implementation of mental health crisis teams, suicide prevention and threat management programs in the District; directs the delivery of mental health services to District students.

The class description describes her essential functions as follows:

> 1. Directs the delivery of mental health services to students in general and special education schools, centers and programs, children's centers, adult education schools and centers, and clinics.
> 2. Serves as technical adviser to local districts and central office staff to develop, train and maintain crisis teams and threat management and suicide prevention programs.
> 3. Provides crisis intervention, student support and counseling during emergencies, disasters and other crises.
> 4. Serves as the District's liaison to and administers federal and state programs, including Medi-Cal reimbursement, Special Education Designated Instructional Service Counseling, Federal Emergency Management Agency, U.S. Department of Education, Early Mental Health Initiative and other specially funded grants and programs.
> 5. Oversees ongoing programs and fiscal operations of mental health services related to Medi-Cal services, programs and staff.
> 6. Develops and implements training and supervision of staff to meet federal guidelines and audit mandates; plans and directs District wide training programs related to school mental health education education, crisis intervention and disaster recovery.
> 7. Prepares proposals for specially funded grants in the areas of mental health, disaster recovery and crisis intervention.
> 8. Supervises school-based programs for graduate students, professional mental health volunteers and child psychiatry fellows from local universities.
> 9. Evaluates the performance of subordinate personnel.

Neither the job purpose nor any of these essential functions is specifically described as including policy formulation.

Wong's hearing testimony, however, revealed that she has had significant responsibilities for policy formulation. She was examined and testified in part as follows:

> Q. Now, during this 2000-2001 school year did you have responsibility for formulating policies that would be disseminated among the local districts as to these particular programs?
>
> A. Yes, I did. Probably the ones that I would have more activity around would be, for instance, the clinic programs and how they would operate, because those were services that were provided to students based on referrals from schools, and that would be very technical, it wouldn't be something that my immediate supervisor would -- they would probably depend on the director to do that.
>
> Q. Which would be your area of responsibility?
>
> A. Yes, correct. The District crisis team, certainly, that was an area. The mental health intervention project. The development of the early behavioral programs, certainly that was a big issue. The USC neighborhoods schools program, which is very small, but still I had more direct input into that around policies. And I would say those would be the ones.

Wong thus described a direct and significant policy role.

Wong testified to several other examples of significant responsibilities. After the Northridge earthquake of 1994, she played a large role in developing an earthquake preparedness and recovery program that LAUSD adopted. In 1998 or 1999, she attended a meeting with Coughlin and the LAUSD superintendent, who strongly criticized a proposed early behavior intervention program. The superintendent was impressed by comments Wong made, so Coughlin put her in charge of a group to develop a better proposal, which the Board ultimately adopted. Wong herself did not formally present the proposal to the Board, but she

wrote part of the report and "said a few things" to the Board. After the national tragedies of September 11, 2001, Wong spent two weeks with the LAUSD superintendent, providing technical assistance about things that needed to be done.

I conclude that Wong has been a management employee. Although she freely gave credit to other administrators, it appears that her position has been one of leadership in the formulation of policies on mental health services. I also conclude that AALA's unfair practice charge is untimely as to Wong, who was listed as a management employee before June 6, 2000.

Director, District Nursing Services

Another disputed position directly below Reza is the director for district nursing services, a position held by Karen Maiorka (Maiorka). On the Classification Plan of March 13, 2000, as well as later Classification Plans, Maiorka has been listed as a management employee.

Maiorka's class description describes her job purpose as follows:

> Serves as head of the District Nursing Services Branch within the Student Health and Human Services Division; directs District nursing services in schools; provides leadership to Field Coordinator(s), School Nursing; and collaborates with public and private agencies in providing health services to District students.

Maiorka testified that this description is accurate, except that much of the direction of nursing services in schools is now done in the LDs, with Maiorka providing leadership and technical support.

The class description describes Maiorka's essential functions as follows:

> 1. Directs and supervises District Nursing Services Branch activities.
> 2. Provides administrative leadership for and coordinates District school nursing services, including supplemental school nursing programs supported by special funding.

3. Supervises the implementation, evaluation and improvement of the school nursing program.
4. Cooperates with other organizational units to ensure the integration of the school nursing program with the total educational program of the District.
5. Establishes and evaluates programs of in-service education and staff development.
6. Collaborates with public and private agencies in providing health services to students.
7. Evaluates the performance of subordinate personnel.

Maiorka testified that this description is accurate, except that it omits the additional essential function of recruiting nurses. Neither the job purpose nor the essential functions are specifically described as including policy formulation.

Maiorka testified that although LAUSD has policy bulletins that affect nursing services, those bulletins are usually authored by the director of medical services, and issued by Reza. Maiorka collaborates on those bulletins, but her input generally concerns how programs are going to be put into action, which is her area of responsibility.

Maiorka has made suggestions for improving nursing services, in particular that there be an increase in staffing, but there is no evidence that her suggestions have reached LAUSD's higher levels. As an individual, Maiorka does not have budgetary discretion to decide, for example, to add to the audiometric testing program and to reduce the child development program.

In connection with staff development, Maiorka described her role as one of providing technical support. In connection with a contractual arrangement with a private health services provider, she described her role as one of facilitating the activity but not actually writing the memorandum of understanding.

I conclude that LAUSD has not met its burden of proving that Maiorka is a management employee. Although she has significant responsibility for putting LAUSD

programs into action, she does not appear to have significant discretionary authority in the formulation of LAUSD policies.

I also conclude that AALA's unfair practice charge is untimely as to Maiorka, whose position was listed as management before June 6, 2000.

Director, Integrated Health Partnerships

Another disputed position directly below Reza is the director for integrated health partnerships, a position held by John DiCecco (DiCecco). On the Classification Plan of March 13, 2000, DiCecco was listed as a management employee, and his position was listed as a new management class. On the September 19 and November 29 Classification Plans, DiCecco and his position were again listed as management.

DiCecco's class description, which he testified is accurate, describes his job purpose as follows:

> Develops, facilitates and provides oversight for programs, partnerships, contractual agreements, reimbursement and other activities among outside providers, health and human services agencies, and District schools and offices to deliver an integrated program of health services to District students.

The class description lists ten essential functions, of which the first four are described as follows:

> 1. Administers the operations and finances related to Medicaid, Healthy Families and other health insurance, reimbursement and health demonstration programs.
> 2. Provides technical direction to other Student Health & Human Services (SHHS) Division staff, CHAMP coordinator, Medi-Cal Reimbursement Unit and Student & Family Assistance Centers.
> 3. Formulates, develops and implements policies and procedures to optimize coordination between SHHS units, other District offices and external health services providers.
> 4. Analyzes, interprets and implements state and federal policy; works with state, federal and other public and private entities

> to formulate new or modify existing policies; and reviews, monitors and advises on pending legislation affecting the health services program.

The third and fourth essential functions are thus specifically described as including policy formulation.

DiCecco testified that he had been responsible for developing and revising a yellow policy bulletin establishing the policy framework for volunteer service agreements. His work on the bulletin was reviewed by Reza and others but was not changed. The bulletin was signed by Reza, but DiCecco was listed as the central office contact, and requests for waivers come to him for review. DiCecco is also responsible for creating a policy bulletin on the formation and operation of school-based health clinics.

DiCecco also testified that he had written 10 to 15 Board informatives on integrated health partnerships for the Board to approve. He had recommended four contracts that were in excess of $250,000 each, and in connection with one of them he had appeared before the Board and answered questions, without Reza being present.

DiCecco further testified that he had been involved in drafting two pieces of LAUSD-sponsored legislation. LAUSD's government relations branch had found legislators to introduce the legislation, but it had deferred to DiCecco's expertise on substantive issues. DiCecco himself had testified before legislative committees on four occasions.

I conclude that DiCecco is a management employee. Consistent with his class description, he has had significant responsibility for formulating LAUSD policies as expressed in policy bulletins, Board informatives and LAUSD-sponsored legislation, and he has had direct contact with Board members and legislators on policy issues.

I also conclude that AALA's unfair charge is untimely as to DiCecco, who was listed as a management employee before June 6, 2000.

Director, Pupil Services

The fourth and final disputed position directly below Reza is the director for pupil services, a position held by Hector Madrigal (Madrigal). On the Classification Plan of March 13, 2000, as well as later Classification Plans, Madrigal has been listed as a management employee.

Madrigal's class description, which he testified is accurate, describes his job purpose as follows:

> Directs the planning, organization, development and monitoring of programs and projects pertaining to Pupil Services in the Division of Student Health and Human Services to ensure compliance with state and federal pupil service laws.

The class description lists eight essential functions, of which the first four are described as follows:

> 1. Provides administrative leadership and oversight for the District's Pupil Services and Attendance Branch and the Student Discipline Proceeding, AB 922 and Child Abuse Units.
> 2. Formulates policy and directs the revision of policy bulletins to implement new legislation and Board of Education policies and resolutions; reviews, proposes or drafts legislation pertaining to pupil services.
> 3. Assists in the development, coordination and implementation of projects pertaining to pupil services; prepares and/or responds to inquiries made by Board members and state, county or city officials.
> 4. Assists members of the Board of Education on delicate, sensitive projects or issues pertaining to pupil services; prepares special Board resolutions for individual Board members; composes responses for Board members to media articles/editorials related to pupil services.

The second essential function is thus specifically described as including policy formulation, and the third and fourth essential functions are specifically described as including interaction with Board members.

At the hearing, Madrigal was examined about his and his branch's responsibilities in connection with student discipline proceedings. He testified in response as follows:

> One is that we're responsible for preparing district policy bulletins for the district to adopt regarding the rules and regulations and policies on student discipline, and also for ensuring that the Board of Education follows state law and federal laws when they are disciplining youngsters in matters such as expulsions.
>
> And, as we recommend expulsions to the board on a biweekly or bimonthly basis, we prepare reports to the board for action and serve as the board's advisors on matters regarding disciplinary proceedings.

Madrigal thus confirmed that in this connection he has had both a policy role for LAUSD and an advisory role for the Board.

Madrigal testified that he and his branch routinely revised yellow policy bulletins, totaling 20 to 30 in a peak year. He would present the revised bulletins to his superiors and request their approval for release. About a year before he testified, he had been responsible for preparing an update of a bulletin concerning crime-reporting procedure to reflect the collective thinking of a committee.

On one occasion, the LAUSD superintendent asked Madrigal to chair a task force on behavior intervention policies. Madrigal had exclusive responsibility for drafting the resulting report, and he was the primary spokesperson in presenting it directly to the whole Board. On another occasion, he chaired a task force on expulsion policies. He testified:

> My personal role was, again, to preamble most of the board report itself, and to do most of the board presentation verbally.

On yet another occasion, the Board asked Madrigal and his staff to develop a policy on return after expulsion, to be submitted directly to the Board.

I conclude that Madrigal is a management employee. Consistent with his class description, Madrigal is regularly called upon to formulate policy, sometimes directly for the Board. I also conclude that AALA's unfair practice charge is untimely as to Madrigal, who was listed as a management employee before June 6, 2000.

Director, Psychological Services

At the same third level of central administration as the assistant superintendents previously mentioned, directly below the deputy superintendents, is the assistant superintendent for special education, a position currently held by Donnalyn Jaque-Anton (Jaque-Anton). There is no dispute in the present case that Jaque-Anton is a management employee. There is a dispute, however, about a position directly below her.

The disputed position is the director for psychological services, a position held by Rene Gonzalez (Gonzalez). On the Classification Plan of March 13, 2000, as well as later Classification Plans, Gonzalez has been listed as a management employee.

Gonzalez's class description describes his job purpose as follows:

> Serves as head of Psychological Services within the Student Health and Human Services Division; directs and coordinates the psychological services program of the District in grades K-12; integrates the functions of Psychological Services with the total educational program of the District.

Gonzalez testified that this description is accurate, except that he is now in the special education division. The class description describes his first essential function as follows:

> Develops, implements and monitors the policies and procedures relating to the psychological services provided to the District's

> elementary and secondary schools, conforming to California Education Code and Title V of the Administrative Code.

Gonzalez testified that this description, with its specific inclusion of policy development, is accurate.

Gonzalez gave some specific examples of his policy role. He testified in part:

> For example, just recently the District issued to all schools and offices a compliance handbook that laid out some very specific policies and procedures related to special education eligibility, related to transportation as a related service, DIS [Designated Instructional Services] counseling, and several other -- there were several other sections in that handbook. I had the responsibility for developing the section on counseling for special education youngsters.

Gonzalez testified that the District "really had not established that type of policy" on counseling before. Jaque-Anton reviewed and approved the handbook before its release, but she did not make any changes in the section prepared by Gonzalez.

Gonzalez further testified:

> Another example is that there is a -- nationally and statewide there's a real controversy about who should be in special education, and why they're there, particularly in the area of learning disabilities, that's the largest percentage of youngsters that we have identified in the District. And yet they're -- national and statewide there's inconsistency in how youngsters are identified as learning disabled. One of the major projects that we're working on right now, in our District, is to better define the process by which we identify youngsters as learning disabled, and so that's going to have a major impact not only in our District, but statewide, in terms of redefining that category and the process by which we do that. And that's -- I have a major responsibility to make sure that happens.

Gonzales also testified he had a role and responsibility to see that standards are developed to increase the amount of time school psychologists can spend on assessment.

I conclude that Gonzales is a management employee. Consistent with his class description, he has had significant responsibility for developing LAUSD policies on psychological services. I also conclude that AALA's unfair practice charge is untimely as to Gonzalez, who was listed as a management employee before June 6, 2000.

Director, Specially Funded Programs, Compliance and Technical Support

At the same third level of central administration as the assistant superintendents previously mentioned, directly under the deputy superintendents, is the associate superintendent for specially funded and parent/community services programs, a position held by Theodore Alexander, Jr. (Alexander). There is no dispute in the present case that Alexander is a management employee. There are disputes, however, about two administrators directly below him.

One of the disputed positions is the director for specially funded programs, compliance and technical support, a position held by Margaret Jones (Jones). On the Classification Plans of March 13, September 19 and November 29, 2000, Jones was listed as a management employee with the title of temporary advisor, MST, management (class code 0512, base salary schedule 45G). She was listed as a management employee with the director title (class code 0537, base salary schedule 47G) for the first time on a Classification Plan prepared on March 15, 2001. She testified that she had actually had the director title since 1998 and had received the salary upgrade in 2000.

Jones's class description, which she testified is accurate, describes her job purpose as follows:

> Directs the District's Specially Funded Programs, Compliance and Technical Support Branch with specific responsibility for assisting schools and other District offices in developing and implementing programs, grades pre-K through 12, that are

> consistent with state and federal specially funded program laws. Monitors specially funded schools and offices for program quality and fiscal compliance.

The class description lists eleven essential functions, of which the first four are described as follows:

> 1. Directs the planning, organization, development and monitoring of specially funded programs and budgets, including Title I; School Improvement; and Economic Impact Aide (EIA)/State Compensatory Education.
> 2. Provides guidance and technical support in areas related to specially funded programs; provides for the dissemination of clear and consistent information regarding these specially funded programs.
> 3. Coordinates the development and submission of the Consolidated Local Educational Agency Plan, the Coordinated Compliance Review, and other instructional compliance documents necessary to maintain funding and to certify compliance for Title I, School Improvement and EIA compensatory education programs.
> 4. Directs implementation of procedures for monitoring and approving school plans and budgets for compliance with state and federal regulations and develops and implements procedures for yearly and long-term planning to support student achievement; develops and interprets District policy as it relates to state and federal laws affecting specially funded programs.

This fourth essential function is thus specifically described as including policy development.

At the hearing, when Jones was questioned as to her duties and responsibilities, she began her answer as follows:

> Well, we develop policy related to Title I -- let me say this another way. We develop guidelines for policy for Title I programs, state compensatory education programs, school improvement programs.

She explained later that the applicable state and federal laws are sometimes quite unspecific (requiring, for example, that monies be used in a manner that is “supplemental”), so LAUSD

must create its own more specific policies (defining, for example, what a "supplemental" counselor can and cannot do).

Jones also described her role in developing and issuing policy bulletins and memos. Some of these require Board adoption, while others can be approved pursuant to authority delegated by the Board. Policy bulletins must be approved by Alexander, but policy memos have been approved by Jones herself.

Jones and a classified administrator annually produce a lengthy Board report concerning a Title I consolidated application. Higher-level administrators approve the report, but they have not changed it, and Jones and the classified administrator actually take it to the Board. Also, on at least one occasion, Jones has sent a recommendation directly to the LAUSD superintendent on a redirection of Title I monies.

I conclude that Jones is a management employee. Consistent with her class description, Jones has had significant responsibility for formulating LAUSD policies, particularly in the Title I area. I also conclude that AALA's unfair practice charge is untimely as to Jones, who was listed as a management employee before June 6, 2000.

Director, SB1X Programs

The other disputed position directly below Alexander is the director for SB1X programs, a position held by Harry Gerst (Gerst). On the Classification Plans of March 13 and September 19, 2000, neither Gerst nor his position was listed. On the November 29 Classification Plan, the position was listed as a vacant management position. Gerst testified he applied for the position in response to a flyer dated November 17, 2000. He then went through an interview process and eventually assumed the position in March 2001.

Gerst's class description describes his job purpose as follows:

> Administers the implementation of the Public Schools Accountability Act (SB1X) as delineated in the District Plan for School Performance Accountability.

Gerst testified that this description is accurate. The class description describes his essential functions as follows:

> 1. Provides tactical support to Local District Superintendents in the implementation of the Public Schools Accountability Act (SB1X) as delineated in the District Plan for School Performance Accountability.
> 2. Provides central coordination, monitoring and evaluation of the Comprehensive School Reform Demonstration (CSRD) Program, Immediate Intervention/Underperforming Schools Program (II/USP), Program Improvement Schools (in conjunction with the Specially Funded Programs Office), and other District Prevention/Early Intervention Programs.
> 3. Provides central coordination and tactical support for the Governors Performance Award Program, AB1114 Certificated Employee Reward Program, and other award programs.
> 4. Provides central coordination and tactical support for selection of state approved external evaluators, as required by SB1X.
> 5. Serves as liaison to federal, state and local agencies regarding implementation of District accountability programs.
> 6. Evaluates the performance of subordinate personnel.

Gerst testified that this description is accurate, except that he does not perform the third listed function, and that he performs functions related not only to SB1X but also to AB961, another recent piece of legislation. Neither the job purpose nor any of the listed functions is specifically described as including policy formulation.

At the hearing, however, Gerst described his position in part as follows:

> [M]y position is to take what the law states and give direction on how the district is going to take that and work that into the programs for schools that are under that, because there was basically no direction from the state on what to do for plans and how to get them in.

In the absence of state regulations, Gerst himself has had to interpret the recent legislation, and then to see that it is implemented throughout LAUSD.

At the time he testified, Gerst had met one-on-one with the LAUSD superintendent three times, explaining the recent legislation and updating the superintendent on its implementation. He had also met with the LAUSD and LD superintendents six to eight times, offering explanations on how to proceed. Gerst and his staff were working on a Board report with recommendations on what to do with underachieving schools. The report would be presented to the Board by Alexander, with Gerst "standing right in back of him." With Board action, the recommendations would become LAUSD policy.

I conclude that Gerst is a management employee. Although he does not make the laws, it is his responsibility to translate the laws into policy recommendations that can be adopted and implemented by the LAUSD superintendent, the LD superintendents and the Board.

I also conclude that AALA's unfair practice charge is timely as to Gerst, whose position was first listed as management on the Classification Plan of November 29, 2000. I further conclude, however, that AALA has not proved an unlawful unilateral change as to Gerst, whose position was apparently created as a new and vacant position for which candidates were recruited.

Administrator, Adult and Occupational Education Division

As previously noted, at the same second level of central administration as the deputy superintendents is the assistant superintendent for adult and career education, a position held by Santiago Jackson (Jackson). There is no dispute in the present case that Jackson is a management employee. There are disputes, however, about two administrative positions directly below him.

One disputed position is the administrator for the adult and occupational education division, a position recently held by Loretta Walker (Walker). On the Classification Plan of March 13, 2000, as well as later Classification Plans, Walker was listed as a management employee. Walker testified that she had held the same position under various titles since 1985.

Walker's class description, which she testified is accurate, describes her job purpose as follows:

> Directs the planning, organization, development and monitoring of adult, occupational and vocational education programs and projects in the Division of Adult and Career Education to ensure compliance with state and federal adult education program laws.

The class description lists ten essential functions, the first two of which are described as follows:

> 1. Serves as a resource and liaison to the District and local, county, state and federal agencies by providing leadership and guidance in the analysis, interpretation and development of policy and compliance strategies pertaining to adult and career education/programs.
> 2. Directs the design, development and implementation of policies and procedures pertaining to Division of Adult and Career Education (DACE) programs to meet the needs of the community.

These two essential functions are thus specifically described as including policy development.

At the hearing, Walker gave examples of her policy role. She testified in part:

> Well, what happened, periodically there would be some changes in adult laws, or adult ed. guidelines as to how a program should operate, and then we -- within the division our schools are mini -- semi-autonomous, I guess you would say, the principals have the authority to select their staff and establish their programs. So my responsibility was to -- if we added new guidelines, new regulations, or anything that would come from the State to us, was to interpret that as it relates to working with the principals, so that we would see that the program was implemented throughout the District in a uniform manner.

Sometimes this interpretative process would result in policy bulletins. Jackson would sign the bulletins, but Walker herself would prepare them or oversee their preparation.

I conclude that Walker has been a management employee. Consistent with her class description, she has been responsible for developing adult and career education policies, some of which have been formalized in policy bulletins. I also conclude that AALA's unfair practice charge is untimely as to Walker, who was listed as a management employee before June 6, 2000.

These conclusions also apply to Lupe Reyes, who has had the same class description as Walker and who has also been listed as a management employee.

Administrative Coordinator, Legislation and Program Planning

The other disputed position directly below Jackson is the administrative coordinator for legislation and program planning, a position recently held by Trusse Norris (Norris). On the Classification Plan of March 13, 2000, as well as later Classification Plans, Norris was listed as a management employee. Norris testified he assumed the position in 1996 or 1997.

Norris's class description, which he testified is accurate, describes his job purpose as follows:

> Serves as assistant to the administrative head of the Division of Adult and Career Education; responsible for the overall daily operation of the Division of Adult and Career Education. Advises the District's Office of Government Relations on legislative matters affecting the Division of Adult and Career Education. Oversees the operation of the community adult schools and employment preparation centers.

The class description lists thirteen essential functions, of which the first four are described as follows:

> 1. Assists in the planning, developing, administering and directing of the instructional and vocational training programs

at the District's community adult schools and employment preparation centers.

2. Participates in establishing and implementing policies relating to the technical and operational aspects of community adult schools and employment preparation centers.
3. Oversees all legislation pertaining to Adult and Career Education and serves as liaison to the District's Office of Government Relations.
4. Assists the Assistant Superintendent, Adult and Career Education with the development and implementation of policies and procedures to ensure compliance with new legislation pertaining to adult education.

The second and fourth of these functions are thus specifically described as including policy development and establishment.

Norris testified in particular about his role in developing LAUSD's legislative packages. He worked with others in writing legislative proposals, with the agreement of Jackson and LAUSD's office of government relations. Norris would then act as an advocate for those proposals.

I conclude that Norris has been a management employee. Consistent with his class description, he has had responsibility to develop adult and career education policies, especially as expressed in LAUSD's legislative packages. I also conclude that AALA's unfair practice charge is untimely as to Norris, who was listed as a management employee before June 6, 2000.

Director, School Management Services

As previously noted, at the same second level of central administration as the deputy superintendents and Jackson is the COO. Directly below the COO is the assistant superintendent for planning, assessment and research, a position held by Esther Wong (Wong). There is no dispute in the present case that Wong is a management employee. There is a dispute, however, about an administrator directly below her.

The disputed position is the director for school management services, a position held by Dale Braun (Braun). On the Classification Plan of March 13, 2000, as well as later Classification Plans, Braun has been listed as a management employee. She testified she assumed the position in 1996.

Braun's class description describes her job purpose as follows:

> Directs the Office of School Management to relieve school overcrowding by monitoring student enrollment, modifying school schedules and utilizing available District resources.

Braun testified this description is accurate. The class description lists fourteen essential functions, of which the first eight are described as follows:

1. Supervises the Office of School Management Services to administer the programs related to pupil enrollment, academic scheduling and placing various programs in available classrooms, subject to Board Rules and integration guidelines.
2. Oversees and administers plans to relieve school overcrowding, including the Capacity Adjustment Program.
3. Supervises the location of available classroom and office space for special education and other specially funded programs at schools within the District.
4. Directs the development, organization and circulation of the academic calendars for all District school schedules upon completion of negotiations with concerned stakeholders.
5. Coordinates the reconfiguration of District elementary, middle and senior high schools.
6. Manages program integration with other District offices and support services for organizing the opening of new schools and other programs.
7. Directs and monitors the implementation of policies outlined in the scope of the Rodriguez Consent Decree.
8. Presents reports to the Board of Education.

Braun testified this description of her functions is accurate.

Although none of these functions is specifically described as including policy formulation, the eighth is described as including reports to the Board. Braun testified specifically about this function. At the time she testified, she had recently been involved with

three Board reports on the same agenda. One report included a recommendation she had developed concerning placement of portable classrooms. She signed the report as the preparer, although Wong approved and presented it. A second report concerned 2002-2003 school calendars. Braun and her staff had drafted the calendars, although for technical reasons the report was presented by the budget services office. When a Board member raised a question, it was up to Braun to respond, which she did in a memo addressed to the whole Board and the LAUSD superintendent.

The third Board report concerned calendar changes at three specific schools. In 1998, Braun and her staff had recommended criteria for such changes, which the Board had adopted. Two of the three schools in the report met those criteria, but one did not. Braun was nonetheless recommending to the Board that all three schools be allowed to change their calendars. Braun was responsible for reporting to the Board annually on such calendar changes, as well as on school openings and grade-level reconfigurations.

Braun serves as a staff member to the Board's facilities committee. At the time Braun testified, the committee had put her in charge of a working group to generate options for relieving high school overcrowding. It would be Braun's primary responsibility to report back to the Board committee.

Braun is responsible for recommending school boundary changes and calendar changes to the LD superintendents. She is also part of a group that reviews proposed school sites and makes recommendations as to the best ones.

Braun's office issues both yellow policy bulletins and pink policy memos. For example, there is a yellow bulletin on an open enrollment policy that the office developed and the Board approved. There are pink memos on calendar change and school capping.

I conclude that Braun is a management employee. Although her class description only hints at it (in the eighth listed function), she has significant policy interactions with the Board and the LD superintendents, and her office issues policy bulletins and memos to the schools. I also conclude that AALA's unfair practice charge is untimely as to Braun, who was listed as a management employee before June 6, 2000.

Administrator, Certificated Employment Operations

At the same third level of central administration as Wong, under the COO, is the associate superintendent for human resources, a position currently held by Irene Yamahara (Yamahara). There is no dispute in the present case that Yamahara is a management employee. There are disputes, however, about two positions below her.

One disputed position is the administrator for certificated employment operations, a position recently held by Michael Acosta (Acosta). On the Classification Plan of March 13, 2000, as well as later Classification Plans, Acosta was listed as a management employee. Acosta testified he assumed the position in about 1987.

Acosta's class description, which he testified is generally accurate, describes his job purpose as follows:

> Serves as the administrator of the Certificated Employment Operations Branch of the Personnel Division; provides leadership and direction and formulates policy for the operation of the Branch; participates in Personnel Division and District policy development and review; represents the Personnel Division in issues related to recruitment, contracting and assignment. Performs administrative functions with broad latitude for independent action affecting Branch and Division activities.

The class description lists twelve essential functions, of which the first six are described as follows:

1. Administers and directs the staff of the Certificated Employment Operations Branch, formulates and develops operational policies and procedures for the Branch's activities.
2. Supervises the work of the Branch directors; monitors Branch activities to assure compliance.
3. Administers and directs the operation of the District intern Program.
4. Serves as a technical adviser, resource or liaison between the Personnel Division and other school districts, universities, the State Department of Education, Commission on Teacher Credentialing, Office for Civil Rights, and other organizations in personnel matters dealing with the interpretation of operating policies, rules and procedures for certificated employees.
5. Supervises the District's Teacher Integration Program to insure that policies and procedures related to the program are in accord with the mandates of the Office for Civil Rights.
6. Recommends and/or assists in the formulation and development of District policies and practices relating to the recruitment, selection, and assignment of certificated personnel.

The job purpose and the first and sixth essential functions are thus specifically described as including policy development and formulation.

When Acosta's successor was being recruited, the flyer stated in part:

> This key position offers an opportunity to influence public education policy not only within the school district, but at the State level as well.

Acosta testified this statement was accurate also.

At the hearing, Acosta gave several examples of his policy role. In the recruitment area, he formulated what qualifications were needed to apply for employment with LAUSD. In the area of teacher integration, he established a new formula for integration guidelines that were adopted district-wide. Acosta presented the guidelines to LAUSD's legal counsel, and they were ultimately distributed in pink policy memos signed by Yamahara. By his account, Acosta was also "very involved" in the establishment of LAUSD's intern program.

Acosta directed LAUSD's recruitment of teachers from outside the United States. The Board instructed him to complete a collaborative recruitment program with Mexico, which he did, meeting with Mexico's Ministry of Education. On his own initiative, he made a decision to recruit teachers from Canada as well.

Acosta's activities extended outside LAUSD in other ways too. He testified in part:

> I appeared, I have spoken at the State Board of Education for the district on behalf of the district, to seek district waivers. I've spoken to senators and congress field reps, and also at hearings, I spoke often at hearings, legislative hearings, representing the district there. I pretty much on a monthly basis talked to people in Sacramento on the Commission of Teaching Credentialing.

Acosta cited this as another example of his policymaking role.

I conclude that Acosta has been a management employee. Consistent with his class description, he has played a leading role in formulating LAUSD policies relating to the recruitment, selection and assignment of certificated personnel. I also conclude that AALA's unfair practice charge is untimely as to Acosta, who was listed as a management employee before June 6, 2000.

Administrative Coordinator, Special Education Employment Operations

The other disputed position below Yamahara is the administrative coordinator for special education employment operations, a position held by Carolina Pavia (Pavia). On the Classification Plans of March 13, September 19 and November 29, 2000, neither Pavia nor her position was listed. They were listed as a management for the first on a Classification Plan prepared on March 15, 2001.

Pavia testified she assumed the position in February 2001. She had actually applied to be Acosta's successor (as administrator for certificated employment operations), but someone

else was selected for that job, and Pavia was offered the administrative coordinator job instead. It does not appear that LAUSD had actually recruited candidates specifically for the administrative coordinator position.

The position had appeared as vacant on an organizational chart dated November 9, 2000. In its post-hearing brief, LAUSD states in part:

> The District hired Carolina Pavia into a vacant position in February 2001, . . . and then classified the position created for her as management at Pay Grade 48G.

The evidence supports this statement.

Pavia testified she reports directly to Yamahara on policy issues, although she deals with Acosta's successor on day-to-day matters, such as routine procedural issues. Pavia and Acosta's successor are both on the same base salary schedule that Acosta was.

Pavia's class description describes her job purpose as follows:

> Assists the Administrator, Certificated Employment Operations with the administration and overall coordination of Branch programs and activities; administers the Division's Chanda Smith [Consent Decree] Special Education Certificated Employment Operations Section programs and activities.

Pavia testified this description is accurate. The class description lists twelve essential functions, of which the first six are described as follows:

> 1. Serves as a liaison between Human Resources Division and Chanda Smith Consent Decree administrators and attorneys, the Special Education Division, the Board of Education and universities in personnel matters relative to special teachers.
> 2. Provides staff assistance and counsel to the Administrator, Certificated Employment Operations in the administration of Branch programs and activities; may act in the absence of the Administrator, Certificated Employment Operations.
> 3. Assists in the formulation of new policies and procedures or the modification of existing policies and procedures relative to personnel practices in response to new developments and trends.

4. Directs a program of personnel services for the recruitment, selection, examination, contracting, processing, placement and assignment of special education teachers.
5. Directs services which assist special education teacher applicants in obtaining, renewing or registering credential documents or other authorization; monitors teachers with emergency permits.
6. Recommends or assists in the formulation of District policies and practices related to the recruitment, selection, contracting, placement and assignment of special education teachers; provides advisory and technical assistance in these areas.

The third and sixth essential functions are thus specifically described as including policy formulation and modification. Pavia testified that this description is accurate, and that she spent about 30 percent of her time on policy issues.

Pavia testified she was spending a lot of time working on a "possible revamping" of LAUSD's special education intern program, which would necessitate "some major procedural and policy changes" and even some legislative changes. She was working with other administrators and specialists to achieve the consensus she thought was necessary. Once a consensus was reached, she would go ahead with drafting some legislative language. She was discussing the feasibility of the changes with Yamahara, who she understood was "the definitive person who would say yea or nay to that kind of a recommendation."

Pavia had previously recommended changes in the special education session at LAUSD's teacher training academy. She testified in part:

> I met with a committee, I pulled them together, I got their input, and I recommended that we pull speech and language out and it was accepted.

It was Yamahara who accepted Pavia's recommendation, and the change was made.

Pavia had also made recommendations concerning where LAUSD would go or not go to recruit special education teachers. At least one such recommendation had been approved by

Yamahara, who Pavia understood "was the final say." Pavia would be making other such recommendations to consent decree administrators.

Pavia had also worked with a California State University professor to "draw up some agreements" concerning a pre-intern program. It is unclear who at LAUSD had final approval of those arrangements. Pavia had also had to recommend cuts in the budget she administers, working on the cuts with Yamahara and fellow administrators.

I conclude that Pavia is a management employee. In Pavia's specialized area of responsibility, it appears that considerable policymaking authority has been delegated to Yamahara, and it further appears that Pavia has significant discretion in formulating and recommending policies for Yamahara's approval.

I also conclude that AALA's unfair practice charge is timely as to Pavia, who was listed as a management employee for the first time on a Classification Plan prepared on March 15, 2001. I further conclude that LAUSD's designation of Pavia as a management employee was an unlawful unilateral change, because her position was not a new position for which candidates were recruited. (Regents.)

Assistant Superintendent, Instructional Technology

As previously noted, at the same second level of central administration as the deputy superintendents, Jackson, and the COO is the CIO. There is a dispute about a position directly below the CIO.

The disputed position is the assistant superintendent for instructional technology, a position held by James Konantz (Konantz). On the Classification Plans of March 13 and September 19, 2000, Konantz was listed as a management employee with the title of temporary adviser, MST, management (class code 0512, base salary schedule 48G). He testified that his

actual title had been director for instructional technology. On the November 29 Classification Plan, he was listed as a management employee with the assistant superintendent title (class code 0024, base salary schedule 50G). He testified that in November 2000 he had been promoted to the assistant superintendent position, where he is a contract level administrator with a year-to-year contract.

Konantz's class description, which he testified is accurate, describes his job purpose as follows:

> Serves as head of the Instructional Technology Division; provides direction and administrative leadership for organizing, planning, and implementing District-wide instructional technology, administrative training and support, data processing, information systems, and systems software and security administration.

The class description lists eleven essential functions, of which the first six are described as follows:

> 1. Administers the activities of the Information Technology Division including directing the development, implementation, maintenance, control, and modification of the District's computerized and automated systems.
> 2. Coordinates the service to users and directs the review and evaluation of existing and newly developed data and word processing systems, hardware equipment, and software development; recommends the acquisition of hardware systems and the development and/or purchase of software packages.
> 3. Directs the design, programming, and implementation of school operational management information systems.
> 4. Directs the planning and development of in-service activities designed to train teachers, counselors, and school administrators in the use of data handling techniques which apply to their subject field instructional programs, counseling and guidance programs, and school administration, respectively; directs the establishment of computerized instructional modules in schools.
> 5. Provides consultative services for the preparation and distribution of instructional materials and media related to computer literacy programs and other instructional areas.

> 6. Directs and coordinates the development and recommendation of policies, procedures, and programs for the Information Technology Division.

The sixth function is thus specifically described as including policy development.

Konantz testified that he had been involved in policy development and recommendation even before his promotion, when he was still the director for instructional technology. He specifically testified about his role in textbook selection policies, textbook loss policies, instructional technology planning policies, and internet usage policies. With regard to these last policies, he described his role as follows:

> The role that I played would be putting together the committees that worked on the policy statements, to be able to make sure that the policy statements that we were -- that were under consideration or [sic] compliance with the law, and that also to be able to communicate those policies, or anticipated policies, to the user community, get input, formulate District policy, recommend District policy to the Board of Education for adoption.

The Board adopted the policy he recommended, and a policy bulletin was issued. He testified he played a similar role with regard to textbook selection policies, while meeting frequently with the LAUSD superintendent.

When Konantz was promoted, his previous duties continued and expanded in scope. He gained responsibility for data processing operations, among other things, and he and the CIO now develop data processing policies. On some Board agenda items, both he and the CIO sign off, but on others he signs alone, and he has issued various policy bulletins and memos on instructional technology issues.

I conclude that Konantz is and has been a management employee, both as an assistant superintendent and as a director, listed as a temporary adviser, MST, management. Even

before his promotion, he was working with the LAUSD superintendent and the Board to formulate LAUSD's instructional technology policies.

I also conclude that AALA's unfair practice charge is untimely as to Konantz, for two reasons. First, Konantz was listed as a management employee before June 6, 2000. Second, Konantz is now a contract level administrator, and AALA has known since the 1991 recognition agreement that LAUSD deems all such administrators to be management employees.

Director, Instructional Support Services, Local District (DISS)

In general, each LD has one DISS, for a total of eleven district-wide.[10] They report directly to the LD superintendents, who in turn report directly to the LAUSD superintendent. As previously noted, there is no dispute in the present case that the LD superintendents are management employees, but there is a dispute about the DISSs.

As previously noted, the DISSs were not listed on the Classification Plan of March 13, 2000, but were listed as management employees for the first time on the September 19 and November 29 Classification Plans. The DISS positions were created as part of the LAUSD reorganization on July 1, 2000.

A flyer dated May 10, 2000, described the DISS position as follows:

> Assists the Local District Superintendent in the administration of instructional support services within a designated administrative district; assists in the development and implementation of strategic plans ensuring that students achieve high academic standards in accordance with applicable laws, Board Rules, consent decrees and administrative regulations and procedures.

The flyer thus did not specifically describe policy formulation as part of the job.

[10] Actually, one LD has eliminated the position, while another has two DISSs.

The DISS class description describes the job purpose as follows:

> Assists the Local District Superintendent in the administration of the program of instructional support services within a designated local district; assists in the development and implementation of policies and strategic plans for the program to ensure that students achieve high academic standards in accordance with applicable laws, Board rules, consent decrees and administrative regulations and procedures.

The job purpose is thus specifically described as including policy development at the LD level. The two DISSs at the hearing who were asked about this description testified that it is accurate.

The class description lists seven essential functions, of which the first four are described as follows:

> 1. Assists the Local District Superintendent in planning, implementing, evaluating and improving the instructional support services program in each pre[-]K-12 feeder pattern of a local district; assists in developing goals, plans and commitments for the program that ensure that students achieve high academic standards; and ensures articulation of the instructional program.
> 2. Directs the formulation of policies and procedures for the following programs and staff within the local district: (1) curriculum/instruction/assessment; (2) language acquisition; (3) professional development; (4) categorical programs; (5) gifted/talented and (6) summer school, intersession and intervention.
> 3. Directs the formulation of policies and procedures for the programs and staff providing services in the areas of (1) early childhood education; (2) parent/community outreach; (3) instructional technology; (4) special education; and (5) student health and human services.
> 4. Interprets and implements policies from the Office of the General Superintendent and the Board of Education.

The second and third functions are thus specifically described as including policy formulation at the LD level. The two DISSs who were asked testified that this description is accurate except in a few details.

I readily conclude that, consistent with their class description, DISSs have significant responsibilities for formulating LD policies. It is less clear, however, whether DISSs have significant responsibilities for formulating LAUSD policies. This makes it necessary to answer a legal question: Must an employee have significant responsibilities for district-wide policy formulation in order to be a management employee?

EERA section 3540.1(g) specifically refers to "formulating district policies" (emphasis added). In its post-hearing brief, LAUSD points out:

> The reference is to "district," not to the "public school employer."

This distinction is unpersuasive, however. Under EERA section 3540.1(k), "public school employer" means the school district.

In Berkeley, PERB concluded that the Title IX coordinator was a management employee in part because her authority to identify discriminatory practices was "district-wide." In Oakland I, PERB concluded that psychologists were not management employees in part because their authority was exercised "on a localized basis, not on a district-wide basis." It thus appears that, for PERB's purposes, "district" really does mean "district," and in this case "district policies" means LAUSD policies.

As indicated above, it is not clear whether DISSs have significant responsibilities for formulating LAUSD policies. The class description describes their job purpose as acting "in accordance with . . . Board rules . . . and administrative regulations and procedures," not as formulating those rules, regulations and procedures. Similarly, the class description describes their fourth essential function as interpreting and implementing policies of the LAUSD superintendent and the Board, not as formulating those policies.

Four DISSs testified at the hearing. The first (J. D. Gaydowski, the former director for middle school programs) testified he understood he had no influence on district-wide policy. At the time of the hearing, he had been a DISS for only four weeks, but his responsibilities had been explained to him by a deputy superintendent and his LD superintendent.

The second DISS to testify (Kevin Baker) described his responsibilities as organizing programs and personnel and facilitating communication. He did not mention LAUSD policy formulation as part of his responsibilities. At the time he testified, his LD superintendent had eliminated his DISS position and transferred him laterally to a DSS position. It is not apparent why LAUSD would allow the LD superintendent to eliminate the DISS position if it had significant district-wide policy responsibilities.

The third DISS to testify (Maynae Lew) testified in part that the "big District [LAUSD] sets the policies" but quite often asks the DISSs for "input." The requested input might concern the best ways to communicate and implement policies and the respective roles of LAUSD and the LDs. Giving input on how to communicate and implement policies would not appear to be the same as actually formulating policies.[11]

The fourth DISS to testify, and the only one called as a witness by LAUSD, was Lois Bloch (Bloch). LAUSD relies heavily on Bloch's testimony in arguing that DISSs do have significant responsibilities for formulating LAUSD policies.

As Bloch described it, her job has several responsibilities. One is to improve the leadership of principals through professional development. A second is to oversee and coordinate the various areas of instructional services in her LD, interacting with central

[11] The distinction between formulating policy and giving input will be discussed at greater length with regard to the DSSs.

LAUSD administrators and ensuring "full implementation and roll out of whatever board policy comes in each one of those areas." A third responsibility is to "raise issues at the director of instruction meeting that I think are relevant to probe what's on the table in terms of the conversation regarding instruction." A fourth responsibility is to design professional development for teachers.

With regard to the third responsibility, Bloch testified in part:

> Every other week we meet with Sue Shannon, who's the Assistant Superintendent for elementary instruction, one of the two assistant superintendents, and the eleven directors of instruction. We meet every Friday in the morning. And we deal with a multitude of instructional issues.

She shared the agenda of a recent DISS meeting, at which 25 minutes were to be spent on "Summer School/Intersession Standards-Based Promotion," plus 30 minutes on "Mathematics Plan," 15 minutes on "Graduation Requirements," 15 minutes on "Achieve Reading Program" and 30 minutes on "Professional Development Evaluation."

With regard to the summer school issue, Bloch testified in part:

> So we were making some suggestions, input, recommendations of how best -- if the budget had to change the way the model was set up, how best still to maintain the instructional piece.

Bloch agreed with a characterization of the process as "brainstorming." She testified that the effort was to find a "district-wide resolution," but she did not testify how or by whom the results of the brainstorming would be fashioned into a district-wide resolution.

Bloch testified she had been more actively involved with the graduation requirements issue. It had become apparent to her, working with schools in her LD, that there was "a lack of clarity on a lot of issues" in LAUSD's graduation requirements. She found, however, that

there was "no established process in terms of these things [that] were festering out there." She therefore created a process, putting together a focus group in her LD and inviting both a deputy superintendent and an assistant superintendent to attend the meetings. After three meetings, the deputy superintendent and the assistant superintendent agreed that policy changes were necessary.

At the recent DISS meeting, the assistant superintendent had shared an informative being sent to the LAUSD superintendent and the Board, listing four clarifications and three modifications of LAUSD graduation requirements policy. At the meeting, the assistant superintendent acknowledged that Bloch's LD had "created the dialogue that raised these issues," but in the informative she only stated that a "graduation committee has continued to meet" to address changes in graduation requirements policy. Bloch testified that every item in the informative had been "discussed fully" in her LD focus group, but she did not testify that she or the focus group itself had produced any kind of policy document.

Bloch also testified about her ongoing involvement with a secondary literacy issue. Testing in her LD had unearthed "major problems" with LAUSD's secondary literacy plan. She testified she was unsure how or by whom the problems could be addressed:

> It might come in an informative to the board. I'm not sure who down there, you know, whether an assistant superintendent can issue a statement that would rectify the problem or if it needs to go to be board policy. It just depends if there needs to be a statement that is consistent that stops this thing that is not good for kids.

Bloch testified she had been discussing the issue with an assistant superintendent and was putting it on the agenda for a future DISS meeting.

Bloch testified that her LD superintendent routinely gives her draft policy bulletins that are distributed in advance of the LD superintendents' weekly meetings with the LAUSD

superintendent. Bloch and her team review the drafts and write suggestions and recommendations on them for the LD superintendent to take to the meetings.

In one instance, Bloch's review of a draft bulletin caused her to get very involved with a policy issue. She found there was an ambiguity in a draft bulletin on schools for advanced studies, and she felt strongly that the ambiguity should be resolved in a particular way. The topic was placed on the agenda for a DISS meeting, which Associate Superintendent Alexander also attended. Alexander invited Bloch to a meeting in his office, where she debated the issue with an LD superintendent who had an opposing view. Alexander then invited Bloch and the LD superintendent to speak at a meeting of the LAUSD superintendent and all the LD superintendents. The consensus of that meeting and the subsequent final bulletin favored Bloch's position. Bloch acknowledged, however, that she did not know "how it comes out that the bulletin occurs;" she was "not privy" to "what happens in that other space."

Bloch testified that "nobody but the board sets policy" and that "impacting policy is the only thing we are able to do in a significant way by bringing these issues." There can be no doubt that Bloch has indeed had an impact on LAUSD policy.

I nonetheless conclude that LAUSD has not met its burden of proving that Bloch and the other DISSs are management employees "in a position having significant responsibilities for formulating [LAUSD] policies." As noted above, the DISS class description does not indicate that DISSs have significant responsibilities for LAUSD policy formulation. Of the eleven DISSs, four testified at the hearing, and of them only Bloch described a significant LAUSD policy role. It appears that Bloch's role was exceptional rather than normal for someone in the DISS position.

Bloch's own testimony indicates that her LAUSD policy role was out of the ordinary. When she found there were problems with LAUSD's graduation requirements policy, she also found there was no established process to address the problems, and she had to create a process. When she found there were problems with LAUSD's secondary literacy plan, she was unsure how or by whom the problems could be addressed. Even when she successfully advocated for a clarification of LAUSD's policy on schools for advanced studies, she still did not know by what process the revised policy bulletin was produced. While she is clearly an effective policy advocate, Bloch is apparently outside the actual process of LAUSD policy formulation, which takes place in "that other space" to which she is "not privy."

It is apparently true that the DISSs as a group discuss LAUSD policy issues at their regular meetings. It does not appear, however, that any actual policy formulation occurs at these meetings, where discussion of any one issue is apparently limited to 30 minutes or less. At the recent meeting, the DISSs had seen an informative on graduation requirements, but it had apparently been formulated at the assistant superintendent level. After the issue concerning schools for advanced studies had been discussed at an earlier DISS meeting, the policy debate actually occurred at the deputy superintendent level and then at the LAUSD and LD superintendent level. There is thus no apparent reason to distinguish the present case from Los Rios, in which financial aids coordinators were held not to be management employees even though they participated on a regular basis in discussions where policy alternatives were aired.

The DISSs obviously do have some opportunity to have an impact on LAUSD policy, and Bloch has obviously made the most of that opportunity. I would hope that all LAUSD employees who see a problem have some opportunity to have an impact on LAUSD policy.

That does not mean, however, that all such employees are management employees whose positions have significant responsibilities for LAUSD policy formulation.

I also conclude that AALA's unfair practice charge is timely as to the DISSs, who were listed as management employees for the first time on the Classification Plan of September 19, 2000. I further conclude, however, that AALA has not proved an unlawful unilateral change as to the DISSs, whose positions were apparently created as new and vacant positions for which candidates were recruited.

Director, School Services, Local District (DSS)

There is also a dispute about the DSSs, who also report directly to the LD superintendents. On average, each LD has 4 DSSs, for a district-wide total of 44. Like the DISS positions, the DSS positions were created as part of the reorganization of July 1, 2000, and were listed as management employees for the first time on the Classification Plans of September 19 and November 29, 2000.

A flyer dated May 10, 2000, described the DSS position as follows:

> Assists the Local District Superintendent in the operation of a designated administrative district and in developing and implementing strategic plans and direct support for ensuring that students achieve high academic standards in all pre K-12 schools within such a district in accordance with applicable laws, Board Rules, consent decrees and administrative regulations and procedures. Evaluates school site principals.

The flyer thus did not specifically describe policy formulation as part of the job.

The DISS class description describes the job purpose as follows:

> Assists the Local District Superintendent in the operation of a designated local district and in developing and implementing policies, strategic plans, support and programs for ensuring that students achieve high academic standards in all pre K-12 schools within such a district in accordance with applicable laws, Board

> Rules, consent decrees and administrative regulations and procedures. Evaluates school site principals.

The job purpose is thus specifically described as including policy development at the LD level.

The class description describes seven essential functions:

> 1. Assists the Local District Superintendent in overseeing and directing the activities of principals, ensuring compliance with Board policies and the General Superintendent's directives; advises principals regarding implementation of programs and day-to-day personnel and operational concerns.
> 2. Assists in formulating policies and directing plans for implementing, evaluating and improving the local district's instructional program; develops goals, plans and commitments for the instructional program that ensure that students achieve high academic standards.
> 3. Assists in the administration of a program of personnel services for local district employees; in the determination of personnel needs collaboratively with principals; in disciplinary and grievance resolutions; and in ensuring compliance with all applicable policies and directives.
> 4. Assists in resolving complaints and concerns of teachers, students and parents.
> 5. Establishes and administers a program of communication with parents and the community regarding school operations; promotes collaboration among stakeholders and increased accountability for results; interacts effectively with advisory councils; and ensures that all parent education involvement activities promote and are aligned with district student achievement goals.
> 6. Interprets and implements policies from the Office of the General Superintendent and the Board of Education.
> 7. Evaluates the performance of subordinate personnel.

The second function is thus specifically described as including policy formulation at the LD level. The two DSSs at the hearing who were asked testified that this description is accurate.

As with the DISSs, I readily conclude that, consistent with their class description, the DSSs have significant responsibilities for formulating LD policies. As previously indicated, however, the real question is whether they have significant responsibilities for formulating LAUSD policies.

Like the DISS class description, the DSS class description does not clearly indicate significant responsibilities for formulating LAUSD policies. The class description describes the job purpose as acting "in accordance with . . . Board rules . . . and administrative regulations and procedures," not as formulating those rules, regulations and procedures. Similarly, the class description describes the sixth essential function as interpreting and implementing policies of the LAUSD superintendent and the Board, not as formulating those policies.

Six DSSs testified at the hearing. The first (Bud Jacobs, the current director for high school programs), who was a DSS for six months, described his responsibilities as follows:

> I was working at that time with five high schools in the Harbor area. I would meet with the principals, and did their Stulls [Stull evaluations]. In other words, the Stull planning sheet. And I would visit the schools to look at their programs. I would make every effort to attend the athletic events, which were very prominent in the Harbor area. It was the longest football season I've ever endured. And we would collaborate as a secondary unit back at the office on professional development. And my job was to support the superintendent and his plan for improving instruction in all of those -- in all the schools. But my specific responsibilities were at the secondary, with the high schools.

He did not mention LAUSD policy formulation as part of his responsibilities.

The second DSS to testify (Kevin Baker, who had been laterally transferred from a DISS position four-and-a-half months earlier) described his responsibilities as follows:

> I provide support for the 11 principals that I supervise, supporting them in the implementation of their instructional program, working with their staffs, working with their stakeholders, implementing the superintendent's strategic plan of implementing the literacy program, math program, raising student test scores, providing professional development for teachers.

He also did not mention LAUSD policy formulation as part of his responsibilities.

The third DSS to testify (Irma Good) described her responsibilities as follows:

> The majority of the time was helping the schools implement and monitor their instructional program to ensure student achievement. That kind of to me summarizes what we do all day every day, in different aspects of it. So a lot of it had to do with operations, to make sure that the school had the resources that they needed, and that's just following up to see if what they're requesting was one, something they really did need, and two, once that's established, you know, how to make sure that they were getting those resources delivered to them, whether it was training or orders, monitoring, you know. If they had a problem with something they had ordered through Fiscal Services or whatever, we'd have to follow up on that.
>
> Dealing with parent complaints, if there were teacher complaints. Doing step two's; when a teacher files a grievance against a principal, then we were the next level of appeal for the teacher with UTLA. Going to a lot of meetings to make sure that we had the information as to what the District policies were and what our role would be in implementing them and facilitating.

She did not mention policy formulation as part of her responsibilities. She did mention monthly meetings with an assistant superintendent that all 44 DSSs could attend, but she described the meetings as informational and non-mandatory. (If all DSSs had significant responsibilities for LAUSD policy formulation, and if these meetings were for the purpose of policy formulation, one might expect the meetings to be mandatory.)

The fourth DSS to testify, Larry Rubin (Rubin), described his responsibilities as follows:

> The day-to-day support as far as the instructional program at the schools. I supervise the 11 principals that I have responsibility for. If there are areas as far as dealing with parent concerns, student concerns, community concerns, and we're the first line of support for that school. We identify additional resources that may help the school in their professional development, in their efforts to improve student achievement.

Like the three previous DSSs called to testify by AALA, he did not mention LAUSD policy formulation as part of his responsibilities. Because of scheduling conflicts, he had attended

only one monthly DSS meeting. He recalled that the LAUSD superintendent had spoken at the beginning of that meeting; he did not recall getting a chance to give input.

Rubin did mention occasions when he has given input on LAUSD policies. He described DSSs as "fairly vocal, complaining about things that are just not working for our schools." (The DSSs' "complaining" would seem to suggest that someone other than the DSSs had formulated the policies in question.) On one occasion, an LAUSD policy on purchasing textbooks had been changed after complaints to an assistant superintendent. On another occasion, complaints about graduation requirements prompted a response from a deputy superintendent, which Rubin described as follows:

> He said we brought up some very good points, he was going to go back and look at it and see if we can prepare something for the Board to see if they would have another look at it.

Rubin did not know exactly what would happen next, but it did not appear that DSSs would be involved in preparing "something for the Board."

Rubin also gives input on LAUSD policies at weekly meetings with his LD superintendent. He testified in part:

> There are several times where we have made recommendations or suggestions to the [LD] superintendent and she has taken it back to Personnel downtown, assistant superintendents, associate superintendents. And we think things have changed and they go back and forth.

Rubin could not recall specific examples of his suggestions at the LD level affecting LAUSD policy.

The fifth DSS to testify, and the first to be called as a witness by LAUSD, was Lurline Hemphill (Hemphill). She described her duties as follows:

> My duties would be working with principals and schools. I supervise for the principals. I advise them. I inform them about local district and large district policies, practices. We work together to interpret state rules and regulations that might apply to difficulties that problems that they're having with their schools. I work with [LD superintendent] Dr. Castillo to formulate policies that affect our district. I work with a group of local district directors from all of the districts to get input to the larger district policies, to hear what's going on in the bigger picture.

Hemphill was thus the first DSS (and ultimately the only one) to testify specifically that an LAUSD policy role is part of her responsibilities.

Hemphill regularly attends the monthly DSS meetings with the assistant superintendent. By her account, the LAUSD superintendent often attends also, and a deputy superintendent is almost always there. At these meetings, the DSSs may be asked for input on LAUSD policies. As Hemphill testified in part:

> They may say that they're developing a policy on intervention. We will talk about how we think intervention should look, then maybe the next meeting we'll see a draft bulletin and we'll give input into that bulletin.

Hemphill explained the purpose of the DSSs' input as follows:

> Well, I think a lot of times when we're at the meeting, I mean, it's because we're such a large district, that we bring forward information that maybe at the central level that they don't have.

She further explained:

> I would say if there's a policy that's already come out from the District, I think the effort is to see how that policy is really working when it goes down to the local districts.

At a recent meeting, the effort had been to "get a handle on our [the DSSs'] estimate" of the feasibility of having literacy coaches at the middle and high school levels.

According to Hemphill, draft LAUSD policies are quite often presented and discussed at the DSS meetings. For example, the DSSs "had spent a long time talking about [a draft policy on] how textbooks were going to be ordered." Hemphill explained:

> Yeah, because the prior year a policy had just been given from the big District. And the policy was that all textbook orders were going to be inputted at the local district level rather than from the school's. And after that experience, at many of the directors' meetings which were held with the directors from the 11 local districts, we very vocally said that did not work, that we wanted a change in the policy for the coming year, that the school had to be the one to put in their textbook orders.

The change desired by the DSSs was ultimately made.[12]

Like Rubin, Hemphill also gives input on LAUSD policies at weekly meetings with her LD superintendent. She testified in part:

> Many times during the Monday meetings with Dr. Castillo, she will come back with a draft or she will discuss a concept that's being put forward from [LAUSD superintendent] Governor Romer or from the Office of Instruction, from the deputy superintendents, and she will ask us for input.

Recently, Hemphill's LD superintendent had asked for input on "prioritizing what [LAUSD] Central Office [budget] cuts would be made." Hemphill understands that the LD superintendent then takes such input back to meetings with the LAUSD superintendent.

On at least one occasion, Hemphill has had an unexpected LAUSD policy role. For her own LD she developed a school budget template, to align school resources with specific actions and research-based outcomes. She had not intended to share the template with other LDs. While Hemphill was on vacation, however, her LD superintendent and fellow DSSs made a formal presentation to the LAUSD and LD superintendents that included the template.

[12] This appears to be the same policy change Rubin mentioned in his testimony.

When Hemphill returned from vacation, she understood that her template was going to be used district-wide.

In her testimony, Hemphill mentioned one additional policy role. As a matter of LAUSD policy, every elementary school is required to use one of three specified reading programs. High-achieving schools, however, may ask for a waiver from this requirement, and Hemphill is "the person who approves whether or not they get a waiver." She believes her decisions can be appealed, but she does not know how. No other DSS testified to having this role, which is not specifically mentioned in the DSS class description.

The sixth and final DSS to testify (the second and last DSS to be called as a witness by LAUSD) was Corby Alsbrook (Alsbrook). Unlike the other five DSSs, Alsbrook did not give a general description of his duties, but he did describe what his LD superintendent told him when she offered him the position:

> But, basically, as far as the responsibilities, she said that I would be responsible for the achievement of [a group of] schools, the operation, the running of, facilitating whatever it took to make the schools run smoothly and be successful.

LAUSD policy formulation was not mentioned.

Alsbrook regularly attends the monthly DSS meetings with the assistant superintendent, and he remembered the LAUSD superintendent attending three of eight such meetings. At the most recent meeting, also attended by the COO, the LAUSD superintendent had asked the DSSs for input on budget cuts and different uses for resources. Alsbrook further testified:

> So he [the LAUSD superintendent] was explaining some items to the local district directors. And other times when I've been at the meetings, when he's been there, sometimes he will say things like I want to pick your brain, and get into issues, and ask us for our input on whatever, and then --

Alsbrook did not elaborate or provide other examples from DSS meetings. He did testify, however, that sometimes his LD superintendent would request input on LAUSD policy issues (including central administration budget cuts) for her to take back to meetings with the LAUSD superintendent.

Alsbrook himself had attended three meetings with the LAUSD superintendent, as an acting LD superintendent when his own LD superintendent was unavailable. At one such meeting, he expressed his opinion on a textbook issue, and the LD superintendents agreed with him. Alsbrook did not know whether the decision was actually implemented.

Alsbrook had also attended a meeting at which he and other DSSs were told that the school budget template should be used district-wide. He understood that the template was a suggested tool but was not required. In his own LD, the template was "tweaked" to include an additional column and to reflect the LD's own priorities for research-based outcomes.

LAUSD also called three LD superintendents to testify. The first, Richard Vladovic (Vladovic), described the functions of DSSs as follows:

> They provide the instructional and administrative leadership for that family of schools that report to them. They interface with the various city councils because each of those cities have special and unique needs.
>
> So within district policy, they're allowed to deal with some of the special needs such as at Carson has some unique needs relative to safety and to the city's engagement and how we use the schools and they use the schools. And some of their needs.
>
> So each one literally has this overall leadership responsibility and -- to address the unique needs and also the general needs that all of us have relative to student achievement and where the superintendent of the present district wants us to place our emphasis.

He did not mention LAUSD policy formulation as a function of DSSs.

Vladovic also testified that he and his fellow LD superintendents meet weekly with the LAUSD superintendent and that "we literally formulate policy within those meetings." He will then "go back to my directors and get their input and I carry their preferences" back to the LAUSD superintendent. Vladovic is sure that the LAUSD superintendent has considered such input.

Vladovic testified that he receives draft bulletins from LAUSD's central administration. He further testified:

> So what I do is I run them off and give them to each director, and say, hey, read them. If you see any changes that need to be done, send them in.

The comments are sent directly to the appropriate central administrator.

With regard to the school budget template, Vladovic testified that "all of the directors" met with the LAUSD superintendent and gave him input verbally, with the result that the template was modified. Vladovic later heard three Board members say that "the template's a good idea" that "needs to be modified ever so slightly."

The second LD superintendent to testify was Richard Alonzo (Alonzo). With regard to secondary literacy policy, he testified in part as follows:

> This program has taken some time to be developed with input from different focus groups, from teachers, from principals, from district directors, and the information then goes back to central. Central then develops a policy which is approved by the Board and adopted by the Board, and then it's presented to us.

With regard to the school budget template, he testified in part:

> I believe that central made one. And we took it, and we said, this we could really do a better job. And so working with our own fiscal folks and working with the director, we simplified it so that it would be more understandable and customized it to Local District F.

Alonzo thus attributed the development of both the secondary literacy policy and the school budget template to LAUSD's central administration, with DSSs (and others) giving input on the former and adapting the latter.

The third and final LD superintendent to testify was Deborah Leidner (Leidner). She testified that she and other LD superintendents had provided input to the LAUSD superintendent on whether to mandate eighth grade algebra. When asked if she had relied on her DSSs, she testified in part:

> Absolutely. Because many of the decisions that are made are made over a period of time, when I go back to my local district, my Monday agendas, those issues are on my agenda. And we talk about it. And I get input from my staff in order to take back.

Leidner and her DSSs felt that eighth grade algebra should be mandated. She took that recommendation to the LAUSD superintendent, and ultimately the Board agreed. When asked how the decision was made, however, Leidner said it happened through a series of meetings between LD superintendents and central LAUSD administrators over the course of many months. She similarly testified that secondary literacy policy had been developed by "the superintendents, along with central staff."

LAUSD also called the LAUSD superintendent to testify. With regard to secondary literacy policy, he testified in part:

> Everyone who has a director title at the local district level, we called together and said, look, this is something that you have an obligation to manage at the local level. We want you to be a part of this policy formation.
>
> And I remember that meeting very specifically. And we would -- we would sit at tables and divide up in groups based around districts, and say what is the learning that you would bring to the whole group about what has occurred in your district.

He later described this as calling on the DSSs "to give us advice."

The LAUSD superintendent also testified about a meeting on budget strategy that he and the DSSs (among others) attended. He testified in part:

> The assignments to the directors were help us think this one through and make it work. We were using draft materials that day. Subsequent, there was a compilation of these -- of the product of that day. It was a workshop-type meeting. And they were put into another format and reviewed by local district sup[erintendent]s and my staff and came back.
>
> Now, that particular day if -- there may have been assignments by the local district superintendents to directors, but I would not have expected an assignment to come from me to directors. That's not the chain of command. The chain of command is the local district superintendents are the ones that manage and relate to the directors under their organization.

He later testified it would have been "improper" for him to meet with DSSs individually on budget strategy. He further testified:

> I do not often meet with the directors. I rely on the district sup[erintendent]s as my conduit.

He most often meets the DSSs in "a professional development session where we are all together learning on a new subject."

I conclude that LAUSD has not met its burden of proving that the DSSs are management employees "in a position having significant responsibilities for formulating district policies." As noted above, the DSS class description does not indicate that DSSs have significant responsibilities for LAUSD policy formulation. Of the 44 DSSs, six testified at the hearing, and of them only Hemphill specifically testified that policy formulation and input are among her responsibilities. Furthermore, even Hemphill testified that she works "to formulate policies" for her LD, but that she works "to get input" into LAUSD policies.

It seems appropriate in this instance to give particular weight to the DSS class description. That description purports to cover all 44 DSSs, while the testimony in this case focuses on relatively few of them.[13] When LAUSD wrote the class description, it made it explicitly clear that it expected the DSSs to participate in policy development and formulation at the LD level. If LAUSD also expected DSSs to participate in policy development and formulation at the LAUSD level, I would expect LAUSD to make that explicitly clear in the class description. It did not.

I would also expect the DSSs and their immediate supervisors, the LD superintendents, to recognize that the DSSs had significant responsibilities for LAUSD policy, if indeed they did. Four of the five DSSs who gave a general description of their duties, however, did not mention LAUSD policy at all. The one LD superintendent (Vladovic) who described the functions of DSSs also did not mention LAUSD policy.

Moreover, Hemphill's distinction between formulating LD policies and giving "input" into LAUSD policies cuts through virtually all the evidence on the role of DSSs in LAUSD policy. Vladovic made the same distinction, testifying that he and his fellow LD superintendents "literally formulate policy" in their meetings with the LAUSD superintendent, while his DSSs only have "input" through him. Alonzo similarly testified that "Central" developed secondary literacy policy with "input" from DSSs and others. Leidner testified that the decision to mandate eighth grade algebra happened through a series of meetings between LD superintendents and central LAUSD administrators, with DSS "input" through the LD superintendents.

[13] Even the testimony of the three LD superintendents would cover only about 12 of the 44 DSSs.

The distinction between formulating policies and giving "input" is a crucial one. Policy formulation takes place inside the policymaking process, while "input" would seem to come from outside of the process. Moreover, PERB has held that policy formulation "entails the discretionary authority to develop or modify institutional goals and priorities." (Oakland II.) PERB has made it clear that merely giving advice or making recommendations to those with such authority is not policy formulation. (San Francisco; Lompoc.)

On some occasions, it appears that DSSs were able to give input only after the fact. Both Rubin and Hemphill testified about DSSs complaining (successfully) about an LAUSD policy on purchasing textbooks that did not work in the schools. Rubin also testified that he complained to a deputy superintendent about an LAUSD graduation requirements policy. It is unclear in that instance exactly what effect the complaint would have. It is clear in both instances, however, that the DSSs did not have discretionary authority to modify or deviate from the policies in question. (Oakland II; Ventura.)[14]

It appears that the real role of the DSSs in LAUSD policy is to provide expert advice on what policies will work or do work in the schools. As Hemphill explained, the DSSs "bring forward information that maybe at the central level that they don't have." As she further explained, "the effort is to see how [a] policy is really working when it goes down to the local districts." Recently the effort had been to "get a handle on [the DSSs'] estimate" of the feasibility of having literacy coaches at the middle and high school levels." Even the LAUSD superintendent, who said he wanted DSSs to be a part of "policy formation" on secondary literacy, actually asked the DSSs to "say what is the learning that you would bring to the whole

[14] Hemphill did testify that she approves waivers from the LAUSD policy requiring elementary schools to use one of three specified reading programs. The extent of her authority in this area is unclear, however, as is the extent to which other DSSs may have such authority.

group about what has occurred in your district." He later described this as calling on the DSSs "to give us advice." Neither the DSSs' expertise nor their advice would be enough to make them management employees within the meaning of EERA section 3540.1(g). (San Francisco; Lompoc.)

Hemphill's role in developing the school budget template, while remarkable, does not change this analysis. First of all, her role (like Bloch's role as a DISS) appears to have been exceptional rather than normal. Second, it appears that the template was more of a suggested tool (as Alsbrook testified) than an actual district-wide policy. Finally, Hemphill herself was clearly surprised that LAUSD had picked up on the template, which she had developed only for her own LD. It therefore does not appear that Hemphill and the other DSSs are truly "in a position having significant responsibilities for formulating district policies."

I also conclude that AALA's unfair practice is timely as to the DSSs, who were listed as management employees on the Classification Plan of September 19, 2000. I further conclude, however, that AALA has not proved an unlawful unilateral change as to the DSSs, whose positions were apparently created as new and vacant positions for which candidates were recruited.

REMEDY

EERA section 3541.5(c) gives PERB:

> . . . the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter [EERA].

In the present case, LAUSD has been found to have violated EERA section 3543.5(a), (b), and (c) by unilaterally designating employees in two disputed classifications (director of the

administrative academy and administrative coordinator for special education employment operations) as management employees excluded from the certificated supervisors unit, without exhausting PERB's unit modification procedures. It is therefore appropriate to direct LAUSD to cease and desist from such conduct.

In California State Employees' Association v. Public Employment Relations Bd. (1996) 51 Cal.App.4th 923, 946 [50 Cal.Rptr.2d 488], the court stated in part:

> Restoration of the status quo is the normal remedy for a unilateral change in working conditions or terms of employment without permitting bargaining members' exclusive representative an opportunity to meet and confer over the decision and its effects. (See, e.g. Oakland Unified School Dist. v. Public Employment Relations Bd. (1981) 120 Cal.App.3d 1007, 1014-1015, 175 Cal.Rptr. 1051.) This is usually accomplished by requiring the employer to rescind the unilateral change and to make employees "whole" from losses suffered as a result of the unlawful unilateral change.

Such a remedy is neither necessary nor appropriate in the present case, however. The parties have now exhausted (or will exhaust) PERB's unit modification procedures, and there is no evidence that any employees have suffered losses in the meantime.

It is appropriate however, to direct LAUSD to post a notice incorporating the terms of the order in this case. Posting of such a notice, signed by an authorized agent of LAUSD, will provide employees with notice that LAUSD has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with the order. It effectuates the purposes of EERA that employees be informed both of the resolution of this controversy and of LAUSD's readiness to comply with the ordered remedy. (Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER IN REPRESENTATION CASE NO. LA-UM-679-E

Based on the foregoing findings of fact and conclusions of law, and the entire record in this case, it is hereby ordered that employees in the following disputed classifications are management employees within the meaning of Government Code section 3540.1(g) and are therefore excluded from the certificated supervisors unit:

Assistant Superintendent, Extended Day Programs
Administrator, Student Auxiliary Services
Director, Elementary/Reading/Standards-Based Promotion Programs
Director, Language Acquisition
Director, Mental Health Services
Director, Integrated Health Partnerships
Director, Pupil Services
Director, Psychological Services
Director, Specially Funded Programs, Compliance and Technical Support
Director, SB1X Programs
Administrator, Adult and Occupational Education Division
Administrative Coordinator, Legislation and Program Planning
Director, School Management Services
Administrator, Certificated Employment Operations
Administrative Coordinator, Special Education Employment Operations
Assistant Superintendent, Instructional Technology[15]

It is further ordered that employees in the following disputed classifications are not management employees within the meaning of Government Code section 3540.1(g) and are therefore not excluded from the certificated supervisors unit:

Director, Professional Development
Director, Administrative Academy
Director, High School Programs
Director, Middle School Programs
Administrative Coordinator, Child Development
Director, Nursing Services
Director, Instructional Support Services, Local District
Director, School Services, Local District

[15] As previously noted, this conclusion applies to the current assistant superintendent even when he was listed as a temporary adviser, MST, management.

PROPOSED ORDER IN UNFAIR PRACTICE CASE NO. LA-CE-4248-E

Based on the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA or Act), Government Code section 3543.5(a), (b) and (c), by unilaterally designating employees in the following disputed classifications as management employees excluded from the certificated supervisors unit:

Director, Administrative Academy
Administrative Coordinator, Special Education Employment Operations

All other unfair practice allegations are hereby dismissed.

Pursuant to EERA section 3541.5(c), it is hereby ordered that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally designating employees as management employees excluded from the certificated supervisors unit.

2. Denying the Associated Administrators of Los Angeles (AALA) its right to represent employees in the certificated supervisors unit.

3. Interfering with the right of employees in the certificated supervisors unit to be represented by AALA.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Within ten (10) workdays of the service of a final decision in this matter, post copies of the Notice attached hereto as an Appendix at all work locations where notices to unit employees are customarily posted. The Notice must be signed by an authorized agent of the District, indicating the District will comply with the terms of this Order. Such posting shall

be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure the Notice is not reduced in size, altered, defaced or covered with any other material.

2. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the San Francisco Regional Director of the Public Employment Relations Board, in accord with the regional director's instruction.

RIGHT TO APPEAL

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and these Proposed Orders shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or 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, 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).)

_____
THOMAS J. ALLEN
Administrative Law Judge