

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DELANO JOINT UNION HIGH SCHOOL
DISTRICT,

Employer,

and

ASSOCIATION OF STUDENT AFFAIRS
SUPPORT SPECIALISTS,

Petitioner,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION AND ITS DELANO HIGH
CHAPTER 79,

Employee Organization.

Case No. LA-RR-1095-E

PERB Decision No. 1678

August 20, 2004

Appearances: Samuel Aaron Resendez, Representative, for Association of Student Affairs Support Specialists; California School Employees Association by Madalyn J. Frazzini, Attorney, for California School Employees Association and its Delano High Chapter 79.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Association of Student Affairs Support Specialists (Association) to a Board agent's proposed decision (attached) finding that the Association's request for recognition was not filed within the proper window period.

The Board has reviewed the entire record in this matter, including the Board agent's proposed decision, the Association's exceptions and the response of the California School

Employees Association and its Delano High Chapter 79 (CSEA). The Board finds the Board agent's proposed decision to be free of prejudicial error and adopts it as the decision of the Board itself, subject to the following discussion.

DISCUSSION

The threshold issue before the Board is whether the Association's request for recognition was filed within the proper window period as provided by PERB Regulation 33020.¹ The Board agent concluded that it was not. The Board agrees.

It is undisputed here that the agreement between CSEA and the Delano Joint High School District intends that the classified bargaining unit include all classified employees, except those designated management, supervisory or confidential. Under PERB precedent, where a unit exists covering all classified employees, and a classified position is newly created, the newly created position is automatically placed in the classified unit. (San Ysidro School District (1997) PERB Decision No. 1198 (San Ysidro); El Monte Union High School District (1980) PERB Decision No. 142 (El Monte)). As the facts here fall within the general rule described above, the Board agent properly found that the classifications at issue here became part of CSEA's unit on August 8, 2003.

The Association's exceptions fail to demonstrate why San Ysidro and El Monte should not control. Instead, the exceptions assert that the employees in the disputed classifications do not wish to be represented by CSEA. The Board is not in a position, however, to address such concerns in this case. Accordingly, the Board agent's proposed decision is adopted.

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

ORDER

It is hereby ORDERED that the request for recognition in Case No. LA-RR-1095-E is hereby DISMISSED.

Chairman Duncan and Member Whitehead joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



DELANO JOINT UNION HIGH SCHOOL
DISTRICT,

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CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION AND ITS DELANO HIGH
CHAPTER 79,

Employee Organization.

REPRESENTATION
CASE NO. LA-RR-1095-E

PROPOSED DECISION
(4/16/2004)

Appearances: Caves & Associates by Kenneth W. Caves, Consultant, for Delano Joint Union High School District; Samuel Aaron Resendez, Representative, for the Association of Student Affairs Support Specialists; and Tim Liermann, Senior Labor Relations Representative, for California School Employees Association and its Delano High Chapter 79.

Before Roger Smith, Labor Relations Specialist.

PROCEDURAL HISTORY

On September 8, 2003,¹ the Association of Student Affairs Support Specialists (Association or Petitioner) filed a Request for Recognition with the Public Employment Relations Board (PERB or Board) pursuant to PERB Regulation 33050.² The Request seeks to establish a unit of approximately 5 employees in the classifications of Student Affairs

¹ All dates referenced hereinafter are in calendar year 2003 unless otherwise noted.

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

Specialist, Student Affairs Community Specialist and SB65 Coordinator at the Delano Joint Union High School District (District).

On October 7, California School Employees Association and its Delano High Chapter 79 (CSEA) Labor Relations Representative Michael Noland (Noland), filed a response to the Request. CSEA contends that the Request was untimely filed due to the fact that CSEA had reached agreement with the District on August 8 as to the addition of the classifications named in the Request to the wall to wall classified unit it represents at the District. Noland further asserted that the unit, as petitioned for, was not an appropriate unit.

On October 9, PERB verified that there was adequate employee support for the petition pursuant to PERB Regulation 33050(b). In its response to the Request the District, through a letter filed on October 28 from Superintendent Sherrill Hufnagel (Hufnagel), indicated that the District did not concur with CSEA's contention that the unit as petitioned for was not an appropriate unit and, furthermore, that no agreement had been reached with CSEA to add the classifications sought in the Request to the unit represented by CSEA. The District continued by indicating that it was requesting PERB conduct an investigation pursuant to Regulation 33220 as to the appropriateness of the proposed unit.

The Petitioner filed a response on November 14 which disputed the issue of CSEA representation. Petitioner's representative, Aaron Resendez (Resendez), argued that the classifications sought in the newly proposed unit had been in existence for several years and that CSEA had never attempted to represent the classifications named in the Request. A settlement conference was held telephonically on December 1. Following further unsuccessful informal discussions a hearing was conducted on January 29 and 30, 2004. The parties filed briefs by March 31, 2004, and the case was submitted for decision.

FINDINGS OF FACT

The District is a public school employer within the meaning of Government Code section 3540.1(k). It has approximately 3,800 students enrolled at two comprehensive high schools and a continuation high school along with an independent study program and an adult school. The District has two established bargaining units. The certificated employees are represented by an affiliate of the California Teachers Association. CSEA has been the exclusive representative of the classified employees' unit since November 9, 1976. The Association is an "employee organization" as defined at Government Code section 3540.1(d).

The current agreement between the District and CSEA has effective dates of July 1, 2001 to June 30, 2004. Appendix A to that agreement contains a list of job titles and the corresponding salary range for each. The Student Affairs Specialist, Student Affairs Community Specialist and SB65 Coordinator are not listed in Appendix A. Article II, Recognition, provides at B:

All newly created positions, except those that lawfully are certificated, management, confidential, or supervisory, shall be assigned to the bargaining unit. The determination of management, confidential, or supervisory employees shall be made by the District after consultation with the Association. Disputed cases shall be submitted to PERB for resolution.

The SB65 Coordinator classification was originally adopted by the District's Board of Education on November 9, 1993. This is a one person position that was originally in the certificated unit but due to funding issues was removed from the certificated unit in the early 1990's. The position is responsible for assisting the District and school site staff in identifying at-risk students and providing programs to assist those students in staying in school and completing their education. Superintendent Hufnagel indicated that there was some discussion with CSEA in the early 1990's as to whether the classification should be in the classified unit

but no agreement was reached and the classification has been on a separate salary schedule since 1994.

The Student Affairs Specialist classification was created by the District's Board in May 1997 and the Student Affairs Community Specialist classification in August 2000. The District, relying on a positive recommendation from San Benito Union High School District, created these positions to provide discipline, attendance and intervention services for students of the District. There are currently three persons that are employed as Student Affairs Specialist with the District and one person employed as Student Affairs Community Specialist. The Community Specialist is responsible for interfacing with local government agencies while coordinating truancy prevention programs at the District and visiting student homes to help reduce truancy.

The District, as with the SB65 Coordinator, advertised these positions and placed the classifications on public agendas for the District's Board meetings as action items. Both CSEA and the certificated employees representative are provided copies of all District Board notices. At no time prior to the summer of 2003 has either CSEA or California Teachers Association expressed any desire to meet and negotiate with the District on behalf of these positions.

The District and CSEA met several times during the summer of 2003 to complete negotiations on 2002-2003 reopeners as related to salary and 2003-2004 reopeners regarding health and welfare benefits, salaries and release time for chapter officers. At a negotiations session on July 14, CSEA through its representative Noland informed the District's negotiating team which was composed of Dr. Ken Caves (Caves), consultant, and Gary Smith (Smith), associate superintendent, that CSEA had a desire to add to its unit those classifications that

were listed on what the District entitled its classified support service salary schedule.³ This “matrix” of salaries includes the three positions in dispute as well as two other positions, IT Telecommunications/Network Specialist and IT Network Database Specialist.⁴ There is no dispute that CSEA made clear its intent to represent all of the positions discussed above. Following this meeting, the District was to ascertain its position and be prepared to discuss the possible inclusion of the positions into the unit. CSEA and the District scheduled another meeting for August 8 to conclude the 2002-2003 salary issues and hopefully resolve 2003-2004 matters as well.

At the meeting of August 8, CSEA and the District reached agreement as to the 2002-2003 reopeners. The District indicated that it did not dispute that the Student Affairs Specialist, Student Affairs Community Specialist or SB65 coordinator were classified employees. The District was not prepared to discuss salary, benefits, work year or any other issue relevant to the addition of the classifications to the unit. I credit the testimony of Silvia Jacquez, CSEA chapter vice president, and Noland that Smith commented to the effect that CSEA was fortunate to be getting such a good group of educated and motivated people into their unit. A follow-up meeting was scheduled for September 8 to discuss salary and work schedule issues.

It is uncontroverted that CSEA did not contact any of the incumbents in the positions to ascertain their level of support or interest in being represented by CSEA. On September 3 the Request was signed and placed in the mail to CSEA and PERB. On September 8, when

³ There is contested testimony as to whether the principal of Cesar Chavez High School, Saul Gonzalez, was present at the July 14 or subsequent August 8 meeting between CSEA and the District. I find that it is not critical to the conclusion reached in this case and therefore do not rule on the credibility of Mr. Gonzalez’ testimony.

⁴ Neither classification is subject to this proceeding, but I note that as of the date of the hearing, CSEA and the District had not come to any agreement on the salary schedule placement of those positions.

CSEA's negotiating team arrived for its meeting with the District, it was still unaware of the instant petition. CSEA presented a salary proposal for all of the classifications on the matrix to the District. The District asked to caucus and upon returning informed CSEA that the instant petition had been filed with PERB and that rather than discuss that subject further on September 8 another meeting on September 29 would be more appropriate. CSEA representative Noland followed up with a demand in writing that same day that the District recognize CSEA as the exclusive representative of the classifications on the classified support services salary matrix. The District refused to comply with Noland's demand.

ISSUE

1. Were the classifications of Student Affairs Specialist, Student Affairs Community Specialist and SB65 Coordinator in the classified unit at the time the Association filed its Request?

2. Assuming the classifications were not included in CSEA's unit, is the petitioned for unit an appropriate one?

CONCLUSIONS OF LAW

In San Ysidro School District (1997) PERB Decision No. 1198 (San Ysidro), the Board upheld the hearing officer's findings that despite the fact a position was not specifically enumerated in the recognition clause of the parties agreement, it must be assumed that if the position was not specifically excluded then the position must be considered as in the bargaining unit. (Citing El Monte Union High School District (1980) PERB Decision No. 142 (El Monte)). The facts in San Ysidro were that the employer reduced the hours of two health aides without affording the exclusive representative an opportunity to negotiate the decision. The employer argued that the health aide position was not listed in the recognition article and

therefore it owed no duty to negotiate with the exclusive representative regarding the reduction in hours. (Ibid.)

The Board held that it was the parties' intent to include all classified employees in a single unit as evidenced by the recognition of a unit that included all of the employer's classified employees but for expressly excluded management, supervisory and confidential positions. The Board pointed out that recognition of the exclusive representative was granted in 1976 and the health clerk classification was not created until 1992. The hearing officer noted that despite the fact the health clerk title was not specifically in the unit, the employees in that classification were paid off of the classified salary schedule and received pay increases at the same time as other classified employees. In addition he noted that the employees in the health clerk classification could have dues deducted for payment to the exclusive representative. (San Ysidro.)

In this case, the extensive testimony regarding whether the positions were "newly created" as expressed in the recognition clause of the written agreement between CSEA and the District was not helpful in determining whether the classifications in question are in the unit. It is clear that prior to July 2003 CSEA had expressed no interest in representing any of the classifications sought in the Association's Request. However, it is also apparent that as of July 14 CSEA did notify the District it had interest in these classifications.

PERB provides a mechanism for resolving disputes as to unit placement of classifications. PERB Regulation 32781 provides in relevant part that:

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section.

Neither CSEA nor the District filed a unit modification request with PERB following CSEA's notice of July 14 that it was interested in representing the Student Affairs classifications.

The dispute in this case narrows to whether there is a reason the classifications of Student Affairs Specialist, Student Affairs Community Specialist and SB65 Coordinator should not be considered as in the classified unit at the time the District acknowledged that the employees were not certificated, management, supervisory or confidential employees.

Based on the holdings of the Board in San Ysidro and El Monte, and the language of the recognition article, I determine that at the point the District did not dispute the employees were classified, they were properly assigned to the unit represented by CSEA, despite the fact no agreement had been reached as to salary, work year, overtime, vacation or any other term or condition of employment for the new unit members. The District's position that there was no agreement that the classifications were in the unit at the time the Request was filed is untenable in light of the cases cited above. The fact that CSEA had prepared to discuss its salary proposal for the Student Affairs classifications at the next scheduled negotiations meeting of September 8 provides additional evidence that there was an understanding that the classifications were in the unit, as did the comments of Associate Superintendent Smith that CSEA was picking up some quality people.

Therefore, as of August 8 the classifications sought by the Petitioner through its Request were in the unit represented by CSEA. The petition was not timely filed as this was not a petition to sever nor was it filed during a window period as defined by PERB Regulation 33020.

The appropriateness of the proposed unit does not need to be dealt with here as the petition was untimely filed.

PROPOSED ORDER

Based on the evidence presented and relevant case law the Request for Recognition is hereby DISMISSED.

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

Roger Smith
Labor Relations Specialist