

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

Employer,

and

CLASSIFIED SUPERVISORS ASSOCIATION,

Exclusive Representative.

Case No. SA-UM-704-E

PERB Decision No. 1773

July 15, 2005

Appearances: Ruiz & Sperow by Eduard E. Erslovas, Attorney, for Sacramento City Unified School District; Beeson, Tayer & Bodine by Jason Rabinowitz, Attorney, for Classified Supervisors Association.

Before Duncan, Chairman; Whitehead, Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Classified Supervisors Association (CSA) to a hearing officer's (HO) proposed decision (attached). The unit modification petition alleged that the classifications of other supervisory positions in the Sacramento City Unified School District (District) shared a community of interest with the Manager, Serna Center Restaurant Operations, position created after the District moved to a new headquarters. CSA charged that classifying the new position of Bistro Manager as a management position was a violation of the Educational Employment Relations Act (EERA).¹

The Board has reviewed the entire record in this matter, including the unit modification petition filed by CSA, the response filed by the District, the transcript of the hearing, post-

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

hearing briefs from both parties, the proposed decision, exceptions filed by CSA, and the opposition filed by the District. The Board finds the HO'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, subject to the discussion below.

DISCUSSION

The question in this case is whether the job of Bistro Manager is supervisory with a community of interest that is the same as the school site cafeteria managers in the District or managerial where the person in the job exercises managerial prerogative and independent thinking without communality of interests with supervisors in the District.

The District moved its headquarters from Capitol Mall in downtown Sacramento to the Serna Center on 47th Street in early 2002. The old building had included a cafeteria and the new building also had food facilities. CSA believes the facilities manager of the food part of the new building should be classified in the same manner as the manager of the old facility was. The District responded that the new position is different because the new facility is different.

CSA acknowledges that the new facility is larger and provides a wider range of food choices. It believes, however, that it is still a cafeteria. CSA also acknowledges that the manager of the old facility was transferred to another cafeteria in the District because she did not have the qualifications for the manager position at the new facility.

The District created two new positions for the new facility (named Serna Bistro). The District created two new positions of Serna Center Executive Chef and Serna Center Restaurant Operations Manager. These were identified as classified non-represented supervisor and placed outside the bargaining unit.

The case was held in abeyance until the Serna Bistro became operational in May 2003. After that time the parties continued the informal conference that had resulted in the case being held in abeyance.²

After the food facility became operational the two job descriptions noted above were collapsed into one position -- that of Manager, Serna Center Restaurant Operations. The job description was then revised to reflect the change. The CSA representative toured the facility towards the end of 2003 and then the settlement conference was continued on February 6, 2004, without resolve. The case went to hearing March 30, 2004.

CSA'S POSITION

CSA cites EERA section 3545(b)(2) that states a negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the District. This is the basis for its position that this job at the Serna Center must be in the supervisory employee unit.

It is CSA's position that these jobs are not managerial within the meaning of EERA and therefore must be in the unit.

DISTRICT'S POSITION

The District maintains that the only community of interest among the other cafeteria supervisors and the Serna Operations Manager/Executive Chef is that they all deal with food. The hours of work, levels of supervision and interchange with other employees is all different, according to the District. The District believes that there is no communality on negotiable subjects.

²That informal conference started in June 2002.

The District cites Section 3540.1(g) for its position that this is a managerial job. That code section states that a management employee is any employee in a position having significant responsibilities for formulating District policies or administering District programs.

The new Serna Bistro (which opened in May 2003) is a unique restaurant dining operation not the same as the other District food operations which are school cafeterias. This is, according to the District, a full service catering and restaurant operation.

The District indicated in its opposition to statement of exceptions that CSA has not indicated what community of interest there is with the school site cafeteria managers and the Serna Bistro Manager. The training and requirements of the Bistro Manager are not comparable to the school site cafeteria supervisors and the duties of the Serna Bistro Manager include the catering operation not addressed by CSA. This part of the Bistro Manager's duties is an area where he has developed and modified the goals of the District. The Bistro Manager reports to the Director of Nutritional Services, just like the five area supervisors who are unrepresented and who oversee the school site cafeteria supervisors. He represents management when he negotiates with and selects vendors.

The District maintains that the independent judgment and managerial skills of the Bistro Manager have increased the District's revenue at the Bistro to five times more than what was made at the cafeteria in the old administration building that preceded the Bistro. This is a significant difference from the school site cafeteria supervisors.

HO'S POSITION

CSA claims this is a supervisor position and the District claims this is a manager position, the HO cited the rule that "Since managerial employees are excluded from collective bargaining rights under EERA, 'great care must be exercised in determining who shall be

considered a management employee.’ (Oakland Unified School District (1977) EERB^[3]
Decision No. 15.)”⁴

She also noted that “The facts must establish that the employee is clearly allied with management. (Paramount Unified School District (1977) EERB Dec. No. 33.)” (Ibid.)

She found that evidence established the Bistro Manager has the discretion to “exercise his discretion to develop and implement policies affecting District operations. He also uses his independent judgment in administering Bistro operations and the catering department.” She found the Bistro Manager to be a management employee and excluded from the bargaining unit because of his “significant responsibilities for formulating policies and administering programs.” (HO’s proposed dec. at p. 13.)

CONCLUSION

The evidence that was put before the HO showed that the Bistro Manager, unlike the school site cafeteria supervisors, had autonomy over Bistro operations and catering. He also used his independent judgment to identify issues related to what food was selling well and what needed to be replaced on the menu. He did not have to follow the federal and state nutritional guidelines as the school cafeteria site supervisors did and he was responsible for making a profit and selecting what vendors to use. He also was responsible for developing policies for safety and use of kitchen equipment. He wrote manuals related to policies as diverse as staff training and vendor purchasing. These policy manuals are in use at the Bistro but not at other sites in the District.

³Prior to 1978, PERB was known as the Educational Employment Relations Board (EERB).

⁴HO’s proposed decision at p. 10.

There was also evidence that he interacts with the community and with people in the District directly. This is in relation to use of the catering services and meetings at the facilities for District and outside groups.

The HO found Unit Determination for Employees of the California State University and Colleges (1981) PERB Decision No. 173-H to be on point. There, the Board found the manager of the university educational television station to be a management employee. The station manager was in charge of the overall development and direction of the campus station. He, like the Bistro Manager, was responsible for the financial well-being, effectiveness of operations and supervised staff in the implementation of policy. She also found the Berkeley Unified School District (1979) PERB Decision No. 101 case to be on point with its holding that “[t]he authority to use independent judgment to direct a change in practice and utilizing surveys to identify issues and make resulting changes have been determined to be characteristics of a management employee.”

We agree with the HO that Franklin-McKinley School District (1979) PERB Decision No. 108 is not on point. There, the manger of maintenance and operations for custodial services, maintenance and grounds operations, transportation and warehousing, was found to be in a non-managerial position. But in that case, he did not have final say over changes, they were reviewed by a committee and adopted by the school board. He also did not have authority related to accepting or rejecting bids.

In this case, contrary to the position of CSA, the Bistro Manager does have autonomy over institutional policies related to the Bistro. These are different and apart from those of the school cafeteria site supervisors.

The Director of Nutrition, Marc Lemieux (Lemieux), testified that in terms of the concept of operating a profitable restaurant and operation of the school site cafeterias there was no comparison between them. He said:

[m]ost of the fiscal considerations that are done in the cafeteria program are centralized in my office. And those decisions are made in my office.

At the Bistro because it is so different from the cafeteria programs, I wanted to hire a manager who had experience in the fiscal -- not only fiscal effectiveness of a restaurant operation, but be able to cost, analyze costs, spec products, establish and generate bids. Everything that would ensure the profitability of that -- operation. [R.T., p. 102.]

When asked about the terms of development of safety programs, how much independence the Serna Bistro Manager had, the response from Lemieux was, "He has complete autonomy." (R.T., p. 109.)

In its exceptions, CSA argues that the analogies drawn in the above cases are not close enough. We disagree. We also note that there is no argument from CSA related to the community of interests of the school cafeteria site supervisors and the Bistro Manager. Lemieux's testimony was un rebutted.

We find the District has met its burden in establishing this as a management job without the community of interest with the cafeteria site supervisors that would be necessary to put this position in that classification. We adopt the HO's proposed decision as the decision of the Board itself.

ORDER

Based upon the foregoing findings of fact, conclusions of law and the entire record in this matter, the unit modification petition in Case No. SA-UM-704-E, Classified Supervisors Association and Sacramento City Unified School District, to modify the bargaining unit to

include the Manager, Serna Center Restaurant Operations, classification to the Operational Support Supervisors unit is hereby DENIED.

Member McKeag joined in this Decision.

Member Whitehead's concurrence begins on page 9.

Member Shek's dissent begins on page 10.

WHITEHEAD, Member, concurring: Without further comment, I concur with the result but not the rationale of the plurality opinion.

SHEK, Member, dissenting: I respectfully dissent from the majority opinion. I adopt the Findings of Facts in the proposed decision insofar as it is consistent with the following.

FINDINGS OF FACT

This case involves the unit modification petition filed by the Classified Supervisors Association (CSA) with the Public Employment Relations Board (PERB or Board) on April 9, 2002, to add two new and unrepresented classifications: Serna Center Food Production Specialists and Serna Center Restaurant Operations Manager; to the Operational Support Supervisors bargaining unit (OSS unit) within the Sacramento City Unified School District (District). CSA amended its petition during the hearing on March 30, 2004, to substitute the new and unrepresented classification of manager, Serna Center Restaurant Operations (the manager), which is a consolidation of the two above-stated classifications.

In 2002, the District relocated its administration headquarters from the Capitol Mall location to the newly constructed Serna Center, which was intended to be used not only as the hub for school management, but also as a “community services” center. The District planned to develop a full-scope restaurant dining operation at the Serna Center, commonly referred to as the Bistro (Bistro), to provide dining services for the staff, community and public.

It was estimated that 600 employees would occupy the Serna Center during the day, and many community-related events would be held in the evening. Subsequently, only 450 employees occupy the Serna Center; and all the meeting rooms have to be reserved for staff personnel due to budget restraints. The District director, Nutrition Service (director) designed the Bistro in a cafeteria format that offers very inexpensive meals. With the exception of hot entrees and espresso, all food items such as the typical breakfast pastries, cold cuts for sandwiches, and pizza, are laid out in servers, and on shelves, stands or counters for self-service.

The Bistro began operating in May 2003. According to the District personnel officer, the manager is responsible for looking at policy, working with the director, setting procedures in place and managing the Bistro. The manager's basic function, as stated in the District position description, is to "manage, plan, direct, organize, and control the overall operation and administration of the Serna Center Restaurant and Catering Department." His representative duties are specific to the Bistro, and does not include any reference to the formulation of district policy, or administration of a District program.

The director testified that the manager has yet to "develop or administer sound business policies that continually enhance program profitability." They "discuss guidelines to deal with potential customers," but they do not set policies.

The director wants in a manager someone with expertise, experience and knowledge, who can make independent sound judgments on food production and food production quality, be held "highly accountable" professionally and financially, and be subject to review. In exercising independent judgment and discretion in the operation of the Bistro, the manager merely provides services to the superintendent, community groups, companies, and advocacy groups that visit the Serna Center. The manager has surveyed the Bistro customers, consisting of the 450 administrative employees who work at the Serna Center concerning their menu preferences, and introduced "a take-home dinner program." He has also promoted catering to all school sites which are not mandated to use the Bistro for catering, and to some outside organizations. Revenues from the catering services have been inconsistent, and generate an average of one-third of the overall Bistro income.

Fiscal responsibility for the Bistro's profitability is one of the manager's duties, but both the director and the manager are responsible for the Bistro's business development. As a stipulation for spending \$250,000 of the District's nutrition budget on constructing the Bistro,

the director expects the Bistro to be operated profitably. To the director's disappointment, the Bistro income is insufficient to cover the expenses, and there remains a daily deficit of \$150.

The manager submits weekly financial reports on the total income of the Bistro and catering services for the director's review, however, the manager does not have any discretionary control over the Bistro budget. He has limited power in structuring the Bistro as a community restaurant. He cannot set prices, open the Bistro to the public, put a sign in front of the cafeteria, or advertise, because "several superiors" are opposed to letting the general public into the building due to security risks. As a result, the walk-in traffic is "scant". After obtaining the District officials' approval, the manager decided to close the Bistro at 4:00 p.m..

The manager has "complete autonomy" in the development of the menu and safety programs. In addition to the standard cafeteria food, including breakfast pastries, cold cut sandwiches and drinks, the Bistro offers four or five categories of food selections such as a healthy category, a "Quick pick," special of the day, grill items and a large variety of coffees. The 150-page food safety training manual he prepared based on a National Aeronautics and Space Administration (NASA) system is not unique to the Bistro as it can be applicable to other operations outside of the District. In developing the "commercial foods handling hygiene manual," the manager conforms with the county code, state and federal guidelines, by which the District operates its nutrition program. Neither manual has been adopted as a District policy.

The District nutrition service, including the Bistro, follows the state guidelines in developing its own policies on purchasing and selection of vendors. The manager has some "latitude" in choosing "exclusive" vendors; but still has to follow the District and nutrition service policies on purchasing and selection of vendors. His recommendation for a coffee vendor, for instance, was subject to the director's approval and "ultimate decision."

The manager supervises four full-time and four part-time employees, all of whom are employed with the District, and have prior work experience at school sites. He is responsible for setting their work schedules, implementing and applying collective bargaining provisions, handling disputes, taking corrective action when employee performance is below standard, including counseling, reprimand and/or disciplinary action.

The CSA introduced evidence on the actual duties and functions of a Site Supervisor I (SSI) and a Site Supervisor III (SSIII), which classifications are included in the OSS unit. The incumbent SSI was in charge of the Nutri Café (Café), formerly located in the District administration headquarters on Capitol Mall. The SSIII is responsible for providing lunches for a small program known as New Dimensions at the Sacramento High School (High School) and four elementary school sites. During their twenty plus years of work experience in food service, both the SSI and SSIII have operated the District catering services, prepared meals from fresh ingredients, and cooked raw meat roasts in the school kitchens. The occurrence of an unidentified “incident” caused the District to modify the cooking method from “scratch” cooking and baking to more “heat and serve.” They both have responsibilities for planning menus, selecting vendors and placing purchasing orders with some “leeway,” preparing daily reports on the cash collected, food items used, purchases ordered, payroll and the quantity of meals qualified for the government reimbursable programs. They have also supervised employees that constitute the kitchen staff.

ISSUES

The issue in this case is whether or not the manager is a “management employee” or a “supervisory employee” as defined under Section 3540.1(g) and (m) of the Education

Employment Relations Act (EERA);¹ and whether or not the OSS' petition for unit modification should be granted or denied.

The CSA contends that the manager is not a managerial employee within the meaning of EERA, because he does not have significant responsibilities for formulating District policy and administering District programs. His job duties involve essentially the operation of a cafeteria. The petition for unit modification should therefore be granted.

The District argues that the manager is a management position that falls outside the ambit of CSA. The manager's duties are to manage, plan, direct, organize and control the operation and administration of the Bistro and catering department. The manager is directly responsible for the fiscal profitability of the operation; formulation of policies and the training of employees in purchasing procedures, safety, development of menus; and development of policies that are consistent with customer desires. The manager is therefore a management employee, and the petition should be denied.

CONCLUSION OF LAW

Supervisors may be included in units consisting of all supervisory employees, but excluded from any units of employees whom the supervisory employees supervise.

EERA section 3540.1(m) states:

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

¹EERA is codified at Government Code section 3540, et seq. All statutory references herein are to the Government Code unless otherwise noted.

Section 3545(b)(2) states:

Except as provided in subdivision (c), a negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

Management employees are not employees within the meaning of the EERA, and may not be included in any negotiating unit.

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.

(j) ‘Public School employee’ or ‘employee’ means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

Since management employees are not considered public school employees for purposes of EERA and have no negotiating rights, “the definition of a ‘management employee’ should be interpreted narrowly,” (San Francisco Unified School District (1977) EERB² Decision No. 23, (San Francisco), at p. 8) and “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), at p. 7.)

Accordingly, the Board has construed Section 3540.1(g) narrowly by ascribing “no controlling significance” to the Legislature’s use of the disjunctive in that section. The reference to “significant responsibilities” in that section is made to both the “formulating [of]

²Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

district policies” and the “administering [of] district programs.”³ (Lompoc Unified School District (1977) EERB Decision No. 13 (Lompoc), at p. 20; Oakland I, at pp. 6-7; San Francisco, at p. 8.)

The party arguing for exclusion of employees from inclusion in a supervisory employees unit by designating them as management employees has the burden of proving by a preponderance of evidence that such employees are managerial. (San Francisco, at p. 9.)

The Board has developed the criteria for “managerial employee” in a series of cases involving the appropriateness of bargaining units. In Hartnell Community College District (1979) PERB Decision No. 81 (Hartnell), the Board concluded that department chairpersons were not managerial employees based on the following rationale.

The Board has previously concluded that a ‘management employee’ within the meaning of section 3540.1(g) of the EERA must possess significant responsibilities both for the formulation of district policy and the administration of district programs. [Fn. omitted.] The formulation of policy contemplates the exercise of discretionary authority to develop and modify institutional goals and priorities. The administration of programs contemplates effective implementation of the policy through the exercise of independent judgment. Thus, managerial status contemplates those persons who have discretion in the performance of their jobs beyond that which must conform to an employer's established

³As stated in Member Gonzales’ concurring opinion in Lompoc, which was concurred by Member Cossack, the rationale for reading Section 3540.1(g) in the conjunctive was:

Clearly, a person who has supervisory status has significant responsibility for administering a school district's personnel program. [Fn. omitted.] Yet, nowhere in the definition of ‘supervisory employee’ as found in Government Code section 3540.1(m) is there any indication that such a person also has significant responsibility for formulating a school district's personnel policy. Therefore, to read Section 3540.1(g) in the disjunctive would qualify even supervisors as management employees, which, in turn, would be inconsistent with the legislative grant of negotiating rights to supervisors.

Applying the foregoing to the facts of this case, I find that none of the subject coordinators are management employees. (Lompoc, at pp. 20-21.)

policy. The question as to whether particular employees are managerial must be answered in terms of the employees' actual job responsibilities, authority and relationship to the employer. Managerial status is not necessarily conferred upon employees because they possess some limited authority to determine, within established limits, curriculum, course content or budgetary allocations. (Hartnell, at p. 13.)

In Berkeley Unified School District (1979) PERB Decision No. 101 (Berkeley), and Ventura County Community College District (1980) PERB Decision No. 139 (Ventura), the Board determined that the woman studies director/Title IX coordinator and the affirmative action officer, respectively, were managerial employees.

In Berkeley, the district designated the woman studies director/Title IX coordinator to gather information requested by the Department of Health, Education and Welfare, and to insure the district's compliance with Title IX. She had the authority to use independent judgment to investigate and identify various district-wide sexually discriminatory practices and policies, and to implement changes to eradicate gender bias. She had discretionary control over a \$5,000 budget to effectuate her responsibilities relating to Title IX. The Board found the woman studies director/Title IX coordinator to be a management employee since the record demonstrated significant responsibilities for formulating and administering district policy with respect to the equal treatment of the sexes. (Berkeley, at p. 10.)

Relying on Berkeley, the Board decided that the position of affirmative action officer in Ventura was similar to that of the woman studies director/Title IX coordinator. The affirmative action officer was primarily responsible for administering the district's affirmative action plan and authorized to waive portions of the plan in order to achieve affirmative action. She formulated and conducted district-wide surveys to determine the utilization, underutilization, ethnicity and sex distribution of positions. She could direct the district superintendent to implement changes in the district's affirmative action plan to meet legislative requirements. She handled all inquiries from the district employees with regard to affirmative action and was the

district's chief spokesperson with the governmental agencies dealing with affirmative action. She had discretionary control over the entire affirmative action budget, excluding salaries. As the facts in the Ventura case are analogous to those in Berkeley, the Board concluded that the position of the affirmative action officer is a management employee. (Ventura, at pp. 9-10.)

In determining the issue of “management employee,” the majority of the PERB decisions have found the employees to be non-managerial based on the following criteria.

Employees whose recommendations are subject to approval on at least two higher levels cannot be said to formulate district policies. Employees may demonstrate a substantial managerial discretion in the administration of their respective programs by not only exercising independent judgment in the performance of their duties, but also having discretion or authority that goes beyond the district’s established policy. (Lompoc, at p. 14.)

Mere participation in regular discussions where policy alternatives are aired, does not vest the employees with significant responsibilities for formulating district policies. Administrative duties that are performed for the primary purpose of assuring compliance with established district policy with no discretionary deviation, and are subject to regular and rigorous review, do not suffice as significant responsibilities in administering district programs. (Los Rios Community College District (1977) EERB Decision No. 18 (Los Rios), at p. 19.)

The exercise of discretion within the employees’ areas of expertise, does not equate the authority to formulate district policy. Employees who exercise their authority on a localized basis, rather than a district-wide basis, and who have no “intimate relationship with high level district officials” are not management employees. (Oakland I, at p. 7.)

Employees who merely make policy recommendations by serving on advisory committees that play a role in formulating district policy, do not have any significant input in formulating the school district’s policies. Although they may be responsible for the general management of a district program, such as a school, they are not management employees if

their exercise of authority in managing is limited to complying with or effectuating established school district policies, which have been formulated by higher level district employees at the board of education level. (San Francisco, at p. 9 of the adopted proposed dec.)

The facts must clearly establish that the employees are clearly “allied with management,” and that their decisions are made independent of, rather than “under the direction and control of” the management team. (Paramount Unified School District (1977) EERB Decision No. 33 (Paramount), at pp. 4 and 7.)

The Board has found that “management employees” do not encompass those who have no discretion to deviate with the district policies which they are responsible to administer, no final authority to approve their own proposals or those of the committees on which they serve, and which proposals are subject to a multi-level review process. (Marin Community College District (1978) PERB Decision No. 64 (Marin).) In Marin, the subject employees were college coordinators who had participated in management group meetings concerning collective bargaining, drafted district policies, approved requisitions for college expenditures, worked with the president and superintendent on matters related to facilities planning, had preliminary responsibilities with respect to developing the budgets of their colleges, and were responsible for presenting recommendations and proposals of the college committees to the college council. In addition, college coordinators made faculty assignments, evaluated certificated employees, allocated teaching units, recommended disciplinary action, interviewed teaching candidates and made recommendations as to whether they should be hired. Notwithstanding such extensive administrative duties, the Board found that the record did not support the exclusion of college coordinators from the negotiating unit on the basis of management status. (Marin, at pp. 21-22 of the adopted proposed dec.)

A manager of maintenance & operations was found not to be a management employee, because he did not effectively recommend or develop policy, had no authority to bind the

district with outside contractors, or to reject or accept a bid on behalf of the district. A draft of the transportation handbook developed by a committee under him was subject to approval by at least two levels of management, the superintendent and the school board, before it became final. (Franklin-McKinley School District (1979) PERB Decision No. 108 (Franklin-McKinley), at pp. 7-10.)

The management status of an employee is not determined based on the competency of work performance. In Holtville Unified School District (1981) PERB Decision No. 180 (Holtville), the Board found the incumbent not being responsible for the budget development necessary to run her programs, because the district superintendent had the authority to approve or disapprove all requests for appropriations. Training and supervision of an aide did not make an employee management, if the final authority for hiring and firing lied with the superintendent. (Holtville, at p. 8 of the adopted proposed dec.)

The Board has distinguished between managing and implementing a district-wide policy and developing one. An employee who has no authority to modify and deviate from established policy cannot be considered as a management employee. (Oakland Unified School District (1981) PERB Decision No. 182 (Oakland II), at pp. 3-4.)

The Bistro manager does not have any significant responsibilities in formulating District policies. The District's description of the manager's function and duties does not withstand the test set forth in Hartnell, that "the formulation of policy contemplates the exercise of discretionary authority to develop and modify institutional goals and priorities." (Hartnell, at p. 13.) Nowhere in the District position description of the manager's representative duties is the function "formulating of district policy" stated explicitly or implicitly.

The personnel officer's testimony states that the manager is responsible for looking at policy, working with the director, setting procedures in place and managing the Bistro, which is different from formulating District policy. "Looking at" can be defined as "examining," or

“directing one’s attention towards something,” but not developing or modifying. “Setting procedures” does not imply setting policies. “Procedures” can be defined as “ a particular way of doing or of going about accomplishment of something,” “a particular course of action,” or “an established way of conducting business.” Institutional goals and priorities may be achieved through procedures, but procedures are not the institutional goals and priorities themselves. To manage can be defined as to “control,” “direct,” or “carry on business,”⁴ which is distinguishable from formulating policies.

The director and the manager “discuss guidelines to deal with potential customers,” but the manager has yet to “develop or administer sound business policies that continually enhance program profitability.” A manager of maintenance and operations who was found by the Board not to be a managerial employee testified that he did not “effectively recommend or develop policy, and in fact could not recall recommending any specific policy.” (Franklin-McKinley), at p. 7.) An affirmative action purchasing manager who testified that he had “never been called upon to develop” a district-wide policy was likewise found by the Board to be other than a management employee. (Oakland II, at p. 4.)

In accordance with Hartnell, the question as to whether the manager is managerial will also be addressed in terms of the his actual job responsibilities, authority and relationship to the employer. (Hartnell, at p. 13.)

During the planning phase for the Serna Center, the District envisioned the new administration headquarters not only as the hub for school management, but also as a “community services” center. The District planned to develop a full-scope restaurant dining operation at the Serna Center, to provide dining services for the staff, community and public. It was anticipated that the Serna Center would be occupied by 600 employees during the day,

⁴All definitions are extracted from Webster’s Third New International Dictionary.

and open to the public for events after hours. Due to unanticipated financial constraints and lower staffing level, the District officials asked the director to re-design the restaurant operation into a self-service cafeteria that serves “very inexpensive” meals. The manager was originally hired as the executive chef, and later promoted to the manager position as the two positions were merged into one. He neither participated in developing the vision of a full-scope dining operation, nor was he involved in modifying the restaurant into a cafeteria. (See Oakland II, at pp. 3-4.) He was put in charge of the Bistro after the director and higher District officials had decided on the configuration of the Bistro. He did not have the authority to deviate from the District’s decision. (See Marin, at p. 21.) He cannot advertise the Bistro, or change the District security policy and make the Bistro more accessible to “walk-in traffic.” His primary duties of managing the Bistro are performed for the purpose of complying with the director’s decision to operate the Bistro as a cafeteria. He therefore does not have any significant responsibilities in developing or modifying institutional goals and priorities. (See San Francisco, at p. 9 of the adopted proposed dec.)

The director holds the manager accountable professionally and financially, and expects him to exercise independent sound judgments for food production and food production quality. The manager has complete autonomy in menu development, however, he cannot go beyond the District’s established policy of operating a self-service cafeteria. All menu choices such as the “healthy category,” “quick pick,” grill items, hot and cold sandwiches, pizza and the large variety of coffees are all planned for a cafeteria-style food service. There may be more kitchen equipment and menu choices provided by the Bistro than by the Café or the school site cafeterias, however, the nature of meal preparation is generally the same. Fresh ingredients have to be cleaned, cut and sliced, and certain meat entrees have to be cooked. The rest of the menu consists of ready to serve items. Since the manager operates the Bistro within a cafeteria format predetermined by the District, beyond which he does not have the discretion or

authority to modify or change, he cannot be considered to have the authority to formulate District policies. (See Lompoc, at p. 14.)

The manager has complete autonomy in the development of the safety programs, which lies within his area of expertise. The 150-page food safety training manual which is based on a NASA system, and the “commercial foods handling hygiene manual” which is a guideline applicable only to the Bistro, have not been adopted as District policies. The manager’s authority in developing food safety and handling programs that are unique to the Bistro kitchen, is exercised on a localized basis, rather than a District-wide basis. The fact that the Bistro clientele consists of District administrative employees, does not make the Bistro or the catering service a District program. There are 450 employees, but most school sites have at least that amount of students and teachers, if not more. The manager provides only services to the superintendent, community groups, companies, advocacy groups, and public education related organizations that are in the District office. He does not have an “intimate relationship with high level district officials.” (See Oakland I, at p. 7.)

The manager and the director have weekly report and discussion sessions concerning the income totals for the Bistro and catering service. They then have a discussion about the reports and any unmet goals. The director would give the manager “insight” that the Bistro was moving in the right direction, however, the director was initially “disappointed” by the manager’s fiscal reports. The manager’s participation in regular discussions with the director does not vest the manager with any significant responsibilities for formulating District policies. In being accountable to the director, the manager’s performance of his duties are subject to the director’s regular and rigorous review. Although the contents of the reports prepared by the SSI and SSIII differ from those prepared by the manager, they have similar reporting

obligations to their supervisors⁵. The manager is therefore not a management employee. (See Los Rios, at p. 19.)

The manager has direct responsibility for the Bistro's fiscal profitability, but the evidence shows that the manager has no discretionary control over the Bistro's fiscal budget, which is a part of the District's nutrition budget. The manager has no authority to hire the employees who work at the Bistro under his supervision, or determine their wages or benefits. The manager does not set the prices of the menu items. The detailed weekly financial reports prepared by the manager is subject to the director's review and scrutiny. The manager's fiscal responsibility is minor as compared to that of the woman studies director/Title IX coordinator in Berkeley, and the affirmative action officer in Ventura. The employees in both cited cases had discretionary control over their entire budgets. The manager's authority is limited to monitoring the Bistro's income to prevent deficit spending. There is no evidence that the manager is ultimately responsible for the budget development necessary to operate the Bistro, and that he does not require the director's approval for all appropriations. (See Holtville, at p. 8 of the adopted proposed dec.)

The manager's implementation of the District and food service purchasing and vendor selection policies show that he cannot bind the District without prior approval. While the manager has some "latitude" in choosing "exclusive" vendors; just as the SSI has some "leeway" in choosing certain vendors, he still has to follow the policies on purchasing and selection of vendors established by the District and the food service. When the Bistro customers expressed a preference for expanded coffee offerings, the director introduced the

⁵The SSI kept written record of the food items used, ordering forms, daily attendance and payroll reports; and prepared an analysis on the cost per serving for the specials upon the director's request. The SSII generates daily reports on the computer for the High School and the other four school sites. The daily reports include records of the quantity of breakfast, lunches and snacks that are qualified for the free reimbursable program and the "grandparent programs," and the amount of cash collected.

coffee sales representatives to the manager, who interviewed the coffee vendors and selected a vendor for the director's approval and "ultimate decision." (See Paramount, at pp. 4 and 7.) The manager has no more authority than the manager of maintenance and operations in Franklin-McKinley, who checked out the reliability of particular outside contractors, but had no authority to reject or accept a bid on behalf of the District, or bind the District in any other way. (Franklin-McKinley, at pp. 8 and 10.)

The director stated that the manager surveyed his customers as a means to "develop and administer sound business policies." He made menu changes based on the survey results. The surveyed customers consisted of only the Bistro customers. In Ventura, the affirmative action officer conducted district-wide surveys to investigate possible violations of the district affirmative action plan, and if violations were found, she could direct the district superintendent to implement changes in the district policy on affirmative action. In the present case, the survey was conducted to determine the culinary pleasures of a localized group of customers. The survey results had no impact or effect on any District policy.

The manager has used fresh ingredients in preparing meals, initiated a number of promotional programs, and promoted the catering program within the school district and to outside organizations. However, the management status of an employee is not determined based on work performance or competency. (See Holtville, at p. 8 of the adopted proposed dec.) The catering program is not a new District program that the manager has initiated or developed. It was formerly operated out of the Café and the High School. The record shows that notwithstanding the manager's effort, the catering program does not impact the entire District, because school sites are not required to use the Bistro for catering. Catering revenues are inconsistent and consist of only one-third of the entire Bistro income. There is little evidence to show that the off-site catering is significant enough to be considered a District program.

The cooking method cannot be used as a yardstick in determining the management status of an employee. The District-wide cooking methods have evolved throughout the years. Preparing meals with fresh ingredients was the norm until the occurrence of an unidentified “incident.” In comparison, most of the food items at the Bistro are self-serve, except for the hot entrees. The question is therefore not how the meals are prepared, but whether or not the manager has the discretion to go beyond the cafeteria format. (See Oakland II, at pp. 3-4.) In the present case, the facts show that the manager lacks such an authority.

In sum, the District has not sustained its burden of proving by a preponderance of the evidence that the manager has significant responsibilities in formulating District policy and administrating District programs. The position of manager is not “management employee” within the meaning of Section 3540.1(g) of EERA.

In Sweetwater Union High School District (1976) EERB Decision No. 4, the Board held that the performance of any one of the enumeration factors in Section 3540.1(m) is sufficient to establish a supervisory employee within the meaning of EERA. The manager is responsible for implementing and applying collective bargaining provisions, handling disputes, taking corrective action when employee performance is below standard, including counseling, reprimand and/or disciplinary action. He supervises about eight employees, all of whom are District employees. The manager should therefore be included in the OSS unit.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

Employer,

and

CLASSIFIED SUPERVISORS ASSOCIATION,

Exclusive Representative.

REPRESENTATION
CASE NO. SA-UM-704-E

PROPOSED DECISION
(12/13/04)

Appearances: Martin Fine, General Counsel, for Sacramento City Unified School District; Beeson, Tayer & Bodine by Jason Rabinowitz, Attorney, for Classified Supervisors Association.

Before Robin W. Wesley, Hearing Officer.

PROCEDURAL HISTORY

On April 9, 2002, the Classified Supervisors Association (CSA or Petitioner) filed a unit modification petition with the Public Employment Relations Board (PERB or Board). The petition sought to modify the bargaining unit represented by CSA by adding two classifications: Serna Center Food Production Specialist and Serna Center Restaurant Operations Manager. These positions were established to operate the Serna Center Bistro (Bistro) located within the new Sacramento City Unified School District (District) administrative office building.

A settlement conference was held on June 21, 2002, during which the parties agreed to place the petition in abeyance because the Bistro was not yet in operation. The Bistro opened in May 2003. CSA Representative Ruth Holbrook toured the Bistro in November or early December 2003. Thereafter, she requested that the unit modification petition be processed.

A second settlement conference was held on February 6, 2004, but the matter was not resolved. A formal hearing was held on March 30, 2004.¹ After receipt of post-hearing briefs, the matter was submitted for decision on June 8, 2004.

FINDINGS OF FACT

The District is a public employer within the meaning of Educational Employment Relations Act (EERA or Act)² section 3540.1(k). CSA is an exclusive representative within the meaning of EERA section 3540.1(e). CSA represents three types of supervisors in the Operational Support Supervisors (OSS) bargaining unit: maintenance, transportation and cafeteria supervisors.

The District's previous administrative office included a cafeteria for building staff and visitors. The Nutri Cafe was supervised by Sue Ellen Garcia (Garcia), Site Supervisor I, a classification included in the OSS bargaining unit.

The Nutri Cafe provided breakfast, lunch and snacks, and some catering services for meetings held in the building. Breakfast foods included pastries, muffins, toast, croissants, cereal, yogurt, coffee and juice. Lunch consisted of a salad bar, soup, sandwiches and a daily special, typically a hot entrée. The daily special was prepared elsewhere and was heated in the cafe. Snacks included potato chips, candy and pastries. Catering was limited to pastries, coffee, sandwiches and salad. The Nutri Cafe had a microwave, soup pots and a counter warmer, but did not include a stove, vents, oven or a deep fryer. Cafe receipts averaged \$300 per day.

¹As plans for the Bistro continued to evolve, the new job classifications were also modified. On February 5, 2004, the District adopted a revised classification of Manager, Serna Center Restaurant Operations, after consolidating the duties of the two classifications at issue in the unit modification petition. At the commencement of the hearing, the Petitioner moved to amend the petition to substitute the classification of Manager, Serna Center Restaurant Operations, for the two classifications identified in the petition. The motion was granted.

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

The daily menus were developed jointly by Garcia, Marc Lemieux (Lemieux), Director of Nutrition Services, and the area supervisor.³ The Nutri Cafe supervisor had a little more latitude in selecting food vendors than school cafeteria supervisors. Lemieux and the area supervisor assisted Garcia in choosing food product vendors. Most vendors were selected from those used by the District to provide food products to the school cafeterias. Garcia had no independent authority to select a vendor. No formal staff training was performed in the Nutri Cafe. At one time, Garcia supervised three classified employees, but Nutri Cafe staff was reduced to two employees.

Before the new District office building was completed, Garcia was told that she would transfer to the new facility. Later, Garcia was informed that the District planned to operate a restaurant facility and would need a chef and operations manager.

Garcia currently works as the cafeteria site supervisor at Father Keith B. Kenny Elementary School (Kenny Elementary School). She is also responsible for preparing the paperwork and cafeteria cash deposits for three other elementary schools and five pre-school/childcare sites. The daily report tracks student meals in the reimbursable meal program. Other paperwork includes reports on production, inventory and temperature logs. Meals and snacks for the pre-school/childcare sites are delivered by van from Kenny Elementary School. The cafeterias at the other elementary schools prepare student meals at those sites.

Strict federal and state guidelines govern nutritional requirements. School menus are determined by nutritionists in the Nutrition Services office. Most of the food is delivered to the school sites frozen where it is heated and served. Other food items are packaged ready to serve. The cafeteria kitchen includes an oven, stove, walk-in refrigerator and walk-in freezer.

³There are five area supervisors who report directly to Mr. Lemieux. They are unrepresented and supervise the school cafeteria site supervisors.

The elementary school cafeteria is open twice a day for breakfast and lunch. For breakfast, Kenny Elementary School serves cereal, yogurt and a hot item, either pancakes, french toast sticks or sausage on a stick. Lunch choices may include macaroni and cheese, hot dogs, chicken nuggets, teriyaki beef dunkers, deli sandwiches, salad bar, fruit and vegetables. Some of the vegetables arrive precut, while other vegetables, such as cucumbers, must be peeled and sliced.

Garcia supervises five employees at Kenny Elementary School, including the person who drives the van and delivers food to the preschool/child care sites. Garcia counsels employees if there is a problem, but employee discipline is handled by the area supervisor. Garcia writes evaluations and provides input to the area supervisor in hiring decisions.

Deanna Mitchell (Mitchell) is employed by the District as a Site Supervisor III at Sacramento High School. This classification is also included in the OSS bargaining unit. Mitchell is responsible for meals at the high school and lunches for a small program known as New Dimensions. She also prepares the paperwork and deposits for four elementary schools.

There are more food choices for students at the high school, but menus must still meet federal and state guidelines. The high school cafeteria is also open twice a day. The breakfast menu consists of heat and serve items including breakfast burritos, french toast, waffles, as well as cereal, yogurt and bagels. Lunch choices include three hot entrées each day, such as rice bowls, wraps, turkey and gravy, meatloaf, burgers, french dip and Philly steak sandwiches. Deli sandwiches are assembled by cafeteria staff. At each station where meals are assembled there are posted directions and lists of ingredients. Cafeteria staff must strictly adhere to the posted directions when assembling meals.

Pizza is made in the District's central kitchen and arrives frozen or refrigerated. Cafeteria staff heat and slice the pizza before it is served. Cafeteria workers steam rice and

cook some of the meat for the hot entrées such as turkey roasts and roast beef. The high school kitchen has several ovens, a stovetop, warmers, walk-in freezers and walk-in refrigerators.

Mitchell supervises five employees who assemble the food, set up for breakfast and lunch, serve and cleanup. Mitchell can counsel employees, but does not have the authority to impose discipline. She does not conduct training for the staff.

When the District designed the new administrative office building it envisioned that the Serna Center would also serve as a community center at night. It planned to replace the Nutri Cafe with a restaurant that would serve employees, visitors and the general public. The District estimated that the new office building would contain 600 employees during the day and facilitate many community events at night.

The Serna Center Bistro was expected to make a profit. While school cafeteria fiscal decisions were made in the Nutrition Services office, the District sought a Bistro manager experienced in restaurant operations who could analyze costs, spec products, develop and generate bids, and ensure the profitability of a restaurant and catering department.

On September 10, 2001, the District School Board adopted two classifications to be assigned to the Bistro: Serna Center Restaurant Operations Manager and Serna Center Food Production Specialist. Before the Serna Center was completed, and as plans for the Bistro continued to evolve, these positions were modified. On May 20, 2002, the duties of the Food Production Specialist were revised and the position was re-titled Executive Chef. In addition, the operations manager classification was revised and re-titled Manager, Serna Center Restaurant Operations.

In June 2003, shortly after the Bistro opened, the manager suffered a heart attack and was out on extended medical leave. The Executive Chef, Andrew Morris (Morris), stepped in

as acting manager. Several months later, the manager informed the District that he did not intend to return to work.

At this time, the District was facing some budget constraints and the Serna Center did not have the staff as originally projected. Rather than 600 employees in the building, approximately 450 employees staffed the administrative office. In addition, as a result of increased security requirements following September 11, the plans to advertise the Bistro to the general public were not being pursued.

Morris, operating the Bistro as both executive chef and acting manager, recommended that the positions be combined to facilitate the profitability of the restaurant. The District agreed and on February 5, 2004, the School Board adopted the final revision to the Manager, Serna Center Restaurant Operations classification. As previously stated, this is the classification at issue in the unit modification petition.

Originally hired as the executive chef, Morris was appointed manager in August 2003. He was educated in Australia in culinary and hospitality fields. Before he was hired by the District, Morris worked as an executive chef in restaurants and hotels in Australia, England and California.

The Bistro is open continuously throughout the day and operates as a cafeteria style restaurant. Customers pick up a tray and select food items from different stations. Menu items are cooked from scratch and some items are cooked to order per customer requests. Cafeteria workers serve the hot food entrées. The hot breakfast choices may include scrambled eggs, blueberry pancakes, french toast, ham and cheese frittata, quiche, biscuits and gravy, sausages, bacon and a daily selection of potatoes served as hash brown potatoes, crispy potatoes with onions and peppers or scalloped potatoes. Customers may also select muffins, pastries, bagels, toast, juices and hot beverages.

An extensive lunch menu offers a salad bar with two soup options and a sandwich bar. Hamburgers, garden burgers, turkey burgers, hot dogs, chicken sandwiches, french dip and grilled cheese sandwiches are made to order. A healthy choice selection is available daily, as are two rice bowl options. The chef's feature is prepared fresh daily and has included roast beef, chicken chow mein, barbecue spare ribs, chicken and mushroom pot pie, roast turkey, baked cod, Thai chicken and coconut curry, roast tri tip and chicken fried steak. Other items may be selected from self-serve stations such as deli sandwiches, chips, pastries, desserts and drinks.

Morris is responsible for the profitability of the Bistro. He tracks purchases and prepares a monthly inventory so he can determine food costs. He developed fiscal reporting forms and graphs from which he determines his business projections. Morris negotiates with vendors on a daily basis, pushing them to provide quality products at the best price. Bistro receipts have continually increased and the Bistro currently takes in approximately \$1500 per day.

The Bistro's menus are not limited by federal and state guidelines as are those in the school cafeterias. Morris develops his menu selections based on sales. If an item is popular and provides a value for the money, it stays on the menu. Morris has surveyed his customers and based on the results made changes in menu selections and Bistro operations.

Morris follows some of the District's purchasing procedures and policies, but he has been given the authority to interview and select any vendor. He developed his own vendor purchasing guidelines which emphasize price, quality and quantity. When Bistro customers expressed a preference for expanded coffee offerings, Morris interviewed coffee vendors and selected a vendor to provide coffee for an espresso island. Morris' recommendation was

approved by Lemieux and the Bistro now offers customers approximately 20 different types of coffee.

Morris works at least 60 hours per week and represents the Bistro in the District and the community. He deals with everyone from the superintendent on down, including companies, community and advocacy groups, and educational organizations. Lemieux testified that Morris performs the same functions in operating the Bistro that he does in overseeing Nutrition Services, but "in microcosm."

Morris has implemented a number of programs in Bistro operations and catering. He initiated a take-home dinner service to rival grocery store takeout, but determined that the service was not meeting expectations. Originally open until 5:30 p.m., Morris decided based on sales to close the Bistro at 4:00 p.m.

School sites are not required to use the Bistro for their catering needs. Morris began promoting catering to the school sites and the community. Morris deals with community and advocacy groups on a daily basis and oversees the use of one meeting room. Catering services have continued to grow and now Morris caters events for groups outside the building.

Nutrition Services has a written safety policy and administers a training program for cafeteria workers covering safety, sanitation and food-borne illnesses. These policies are not applied to Bistro employees. Lemieux testified that Morris has "complete autonomy" in operating the Bistro. Morris is responsible for training Bistro employees. After he was hired, Morris wrote and copyrighted a 150-page food safety training manual based on a system developed by NASA for the space program. The manual covers food handling, preparation, storage and serving; personal hygiene standards; food contamination; and cleaning and sanitation. While Lemieux is responsible for health inspection issues in school cafeterias, Morris is personally responsible for compliance with local health department regulations.

Morris also wrote a kitchen equipment training manual to train staff on effective and safe procedures for assembling, operating and cleaning all of the equipment in the Bistro. The equipment manual was developed after researching manufacturer's equipment specification manuals and based on Morris' own experience in using commercial kitchen equipment. The equipment in the Bistro kitchen includes a rotisserie, Hobart mixer/doughpress, meat slicer, deep-fry unit, braising charbroiler, full burner range, flat-top grill, cheese melter, ovens, combination steamer, braising unit, food holding warmer units, walk-in refrigerator and walk-in freezer. Morris determines whether Bistro employees have satisfactorily completed training under both his food safety and equipment training policies.

Morris supervises nine classified employees, including at least one cook/baker. He handles disputes and takes corrective action including counseling, reprimand and disciplinary action. Morris prepares a staff schedule each week primarily in response to catering demands. He has often adjusted shift start and end times and has added hours to part-time employees and authorized overtime. Morris recently changed the shift start time for a full-time employee by using the procedures set out in the classified collective bargaining agreement.

POSITIONS OF THE PARTIES

Petitioner asserts that the Bistro manager classification is a supervisor, not a manager, and should be included in the OSS bargaining unit. CSA contends that like other school cafeteria supervisors this position operates a cafeteria. This classification does not have the authority to formulate policies and administer programs. Rather, the duties of the position involve the application of professional skills and training in accordance with established policies of the District and standard practice.

The District asserts that the position meets the definition of a management employee under EERA. The District contends that the Bistro manager's duties are fundamentally

different than those of school cafeteria supervisors who follow proscribed menus and serve pre-packaged, pre-cooked and frozen entrées. Further, school cafeteria supervisors have no catering responsibilities. The Serna Center Bistro manager is completely responsible for the success of the Bistro and has complete autonomy in operating the restaurant. This extends to formulating policies and administering programs such as developing and implementing training programs, designing business and fiscal reports, generating menus, creating and expanding a catering department and developing vendor purchasing guidelines.⁴

CONCLUSIONS OF LAW

EERA section 3540.1(g) defines a management employee for purposes of the Act as "any employee in a position having significant responsibilities for formulating district policies or administering district programs." Since managerial employees are excluded from collective bargaining rights under EERA, "great care must be exercised in determining who shall be considered a management employee." (Oakland Unified School District (1977) EERB Decision No. 15.)⁵ The facts must establish that the employee is clearly allied with management. (Paramount Unified School District (1977) EERB Decision No. 33.)

⁴At the commencement of the hearing, the District moved to dismiss the unit modification petition on the grounds that the petition had not been timely pursued; CSA had not amended the petition prior to the hearing to identify the proper classification; and Petitioner did not provide proof of majority support. The motion to dismiss, taken under submission at the hearing, is denied. The parties agreed to place the petition in abeyance until the Bistro began to operate and the incumbent actually performed the prescribed duties. Further, the District did not show that the substitution of classifications at the hearing prejudiced the District. Finally, the Board has the discretion to determine whether proof of majority support is required under PERB Regulation 32781(e). (PERB regulations are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.) The Board typically requires such a showing when a unit modification petition seeks to add a substantial number of employees to an established bargaining unit. (State of California, Department of Personnel Administration (1989) PERB Decision No. 776-S.) In the present case, the Board did not require Petitioner to provide proof of majority support.

⁵Prior to 1978, PERB was known as the Educational Employment Relations Board (EERB).

Consequently, although EERA's definition of a manager is written in the disjunctive, the Board determined that an employee must both formulate district policies and administer district programs to be excluded as a manager. (Lompoc Unified School District (1977) EERB Decision No. 13; Hartnell Community College District (1979) PERB Decision No. 81 (Hartnell CCD).) In Hartnell CCD, the Board held:

The formulation of policy contemplates the exercise of discretionary authority to develop and modify institutional goals and priorities. The administration of programs contemplates effective implementation of the policy through the exercise of independent judgment.

In Unit Determination for Employees of the California State University and Colleges (1981) PERB Decision No. 173-H, the Board found the university's education television station manager to be a management employee. The station manager was responsible for the overall development and direction of a campus public television station. The manager coordinated and supervised the financial affairs of the station; recommended station policies and procedures; evaluated the effectiveness of the station operations in light of university policy; supervised staff in the technical aspects of programming; and developed policies and procedures to ensure satisfactory student access to the station.

Similarly, the Bistro manager has autonomy over Bistro operations and the catering department. Morris has altered the Bistro's hours of operations and implemented a take-out dinner service. He has expanded catering services within the District and extended catering to private events offsite.

The authority to use independent judgment to direct a change in practice and utilizing surveys to identify issues and make resulting changes have been determined to be characteristics of a management employee. (Berkeley Unified School District (1979) PERB

Decision No. 101 (Berkeley USD); Ventura County Community College District (1980) PERB Decision No. 139 (Ventura Co. CCD.)

Morris is responsible for the profitability of the Bistro and fiscal considerations influence many of the decisions he makes in Bistro operations and catering services. Morris negotiates with vendors on a daily basis following his own vendor purchasing guidelines to ensure the best price, quality and quantity. He uses his independent judgment to develop menus based on sales and popularity of a particular food selection. He has also surveyed his customers and based on the results made changes in menu selections and Bistro operations. The Bistro now operates an espresso island in response to customer interest.

Petitioner likened the Bistro manager to the manager of maintenance and operations in Franklin-McKinley School District (1979) PERB Decision No. 108. Despite responsibility for custodial services, maintenance and grounds operations, the transportation department and warehousing operations, the Board found this classification was not a management employee. Although the manager assisted in the preparation of the transportation handbook and drafted a walking distance policy, these policies were reviewed by committee and adopted by the school board. Further, the manager had no authority to accept or reject a bid. His relationship with outside contractors was limited to providing them access to school facilities and obtaining information on a contractor's reliability in the community and providing the information to his supervisors.

In contrast, Morris has independently developed and implemented policies concerning safety and use of kitchen equipment. He uses these policy manuals to train Bistro staff and ensures they have satisfactorily completed training. Morris also wrote and utilizes his own vendor purchasing guidelines.

Furthermore, Morris has the authority to discipline employees, change employee schedules in response to workload demand, authorize overtime, and apply the provisions of the classified collective bargaining agreement to alter a full-time employee's hours of work.

Evidence that an employee serves as a spokesperson also demonstrates qualities of a management employee. (Berkeley USD; Ventura Co. CCD.) Morris represents the Bistro in the District and the community. He deals directly with individuals from the superintendent on down. He meets with representatives from companies, community and advocacy groups, and educational representatives on a daily basis. He is also responsible for coordinating community use of a meeting room and any requested catering services.

The evidence demonstrates that the Bistro manager has the authority to exercise his discretion to develop and implement policies affecting District operations. He also uses his independent judgment in administering Bistro operations and the catering department. As the Bistro manager has significant responsibilities for formulating policies and administering programs, the position is found to be a management employee and is excluded from the bargaining unit.

PROPOSED ORDER

Based on the foregoing findings of fact, conclusions of law and the entire record in this matter, the unit modification petition in Case No. SA-UM-704-E, Classified Supervisors Association and Sacramento City Unified School District, to modify the bargaining unit to include the Manager, Serna Center Restaurant Operations classification in the Operational Support Supervisors unit is hereby DENIED.

Right of Appeal

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

Robin W. Wesley
Hearing Officer