

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



SCHOOL SUPERVISORS ASSOCIATION, )  
 )  
Employee Organization, )  
 )  
and ) Case No. SF-UM-440  
 )  
 ) Administrative Appeal  
PUBLIC EMPLOYEES UNION, LOCAL )  
ONE, ) PERB Order No. Ad-199  
 )  
Employee Organization, ) November 6, 1989  
 )  
and )  
 )  
RICHMOND UNIFIED SCHOOL DISTRICT, )  
 )  
Employer. )  
 )

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Appearances: William F. Young, Representative, for School Supervisors Association; Michael W. Roman, Attorney, for Public Employees Union, Local One.

Before Craib, Shank and Camilli, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the School Supervisors Association (Association) to the Administrative Determination, attached hereto, of a PERB regional director.

The PERB regional director partially dismissed the unit modification petition because the Association has no standing under PERB Regulation 32781(a)(1), (b)(2) or (3)<sup>1</sup> to petition for

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<sup>1</sup>PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

Regulation 32781(a)(1), (b)(2) and (3) states:

- (a) A recognized or certified employee organization may file with the regional

the requested change.<sup>2</sup> On appeal, the Association asserts that PERB Regulation 32781(a)(1), (b)(2) and (3) frustrates the purposes of section 3545(b)(2) of the Educational Employment Relations Act (EERA)<sup>3</sup> in that the Association is denied its legal

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office a petition for modification of its unit(s):

(1) To add to the unit unrepresented classifications or positions;

.....

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:

.....

(2) To make technical changes to clarify or update the unit description;

(3) To resolve a dispute as to unit placement or designation of a new classification or position.

<sup>2</sup>On October 3, 1989, the Association filed a Request for Recognition under PERB Regulation 33050. This request is currently under review by the PERB Representation Division.

<sup>3</sup>EERA is codified at Government Code section 3540 et seq.

Government Code section 3545 states:

(b) In all cases:

.....

(2) . . . 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.

right to represent "all supervisory employees employed by the district." We find no merit in the Association's argument.

After reviewing the entire record, including the arguments made by the Association on appeal, we find the PERB regional director's discussion and conclusions to be free from prejudicial error, and adopt the Administrative Determination as the decision of the Board itself.

ORDER

Section 11, items 2 through 15 of the petition in Case No. SF-UM-440 are hereby DISMISSED.

Member Shank joined in this Decision.

Member Craib's concurrence begins on page 4.

Member Craib, concurring: I agree with my colleagues that the School Supervisors Association (Association) has no standing to petition for unit modification under Regulation 32781, subdivision (a), to include classifications currently represented by Public Employees Union Local No. One (Local One). I write separately only to explain why section 3545 is not frustrated by the Association's lack of standing. The classifications, which the Association claims to be supervisory, could be deleted from Local One under the provisions of either Regulation 33050, subdivision (d) or Regulation 32781, subdivision (b).

Regulation 33050, subdivision (d) provides for a nonexclusive representative to petition to represent employees already represented by an incumbent exclusive representative.<sup>1</sup> By requiring the nonexclusive representative to file pursuant to Regulation 33050, we protect the incumbent exclusive representative from having its unit disturbed during the contract bar period. (See Department of Personnel Administration (1989) PERB Decision No. 773-S, at p. 14.) Such a requirement also assures that the nonexclusive representative has adequate proof of support among the employees it seeks to represent. The

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<sup>1</sup>Regulation 33050, subdivision (d) provides that:

A request to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative shall be filed pursuant to this Article and in accordance with the provisions of Article 7 [Severance Request]. . . .

current filing under Regulation 32781, subdivision (a) provides no such assurances that the affected employees desire to be represented by the Association.<sup>2</sup>

Regulation 32781, subdivision (b)(4)<sup>3</sup> provides for unit modification petitions to be filed by either the exclusive representative or the employer to exclude classifications which are supervisory. Thus, if the Richmond Unified School District thought that the classifications in question were indeed supervisory, it could petition to modify the unit, currently represented by Local One, to exclude those classifications.

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<sup>2</sup>On October 2, 1989, the Association filed a Request for Recognition pursuant to Regulation 33050. This request is currently pending before the PERB Representation Division.

<sup>3</sup>Regulation 32781, subdivision (b)(4) provides in pertinent part:

(b) A recognized or certified employee organization, an employer, or both jointly may file . . . a petition for unit modification:

. . . . .

(4) To delete classification(s) . . . which are not appropriate to the unit because said classification(s) . . . are . . . supervisory . . . provided that:

(A) The petition is filed jointly by the employer and the recognized or certified employee organization, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful written agreement or memorandum of understanding . . . .

By pursuing either of these avenues, the alleged supervisory classifications may be removed from Local One. Therefore, the mandate of section 3545 is not frustrated by the Association's lack of standing under Regulation 32781.



STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

RICHMOND UNIFIED SCHOOL DISTRICT,	)	
	)	
Employer,	)	Case No. SF-UM-440 (R-558A)
	)	
and	)	ADMINISTRATIVE
	)	DETERMINATION
SCHOOL SUPERVISORS ASSOCIATION,	)	
	)	August 24, 1989
Exclusive Representative.)	)	

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BACKGROUND

On April 11, 1989, the School Supervisors Association (Association) filed the instant unit modification petition pursuant to PERB regulation 32781(a)(1), (b)(2) and (3)<sup>1</sup> seeking

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<sup>1</sup> Regulation 32781(a)(1), (b)(2) and (b)(3) provide:

(a) A recognized or certified employee organization may file with the regional office a petition for modification of its unit(s):

(1) To add to the unit unrepresented classifications or positions;

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:

(2) To make technical changes to clarify or update the unit description;

(3) To resolve a dispute as to unit placement or designation of a new classification or position;

to add classifications to the supervisory unit it represents in the Richmond Unified School District (District).<sup>2</sup> In Section 11 of the petition form, the Association described the modification requested as follows:

1. Add Substitute, Temporary and Limited Term Supervisor
2. Add Cook/Manager I, School Lunch
3. Add Food Production Leadworker
4. Add Gardener Leadworker
5. Add Gardener Operator Leadworker
6. Add Head Custodian I (Elementary)
7. Add Painter Leadworker
8. Add Senior Locksmiths
9. Add Senior Warehouseworker
10. Add Field Maintenance Groundskeeper Leadworker
11. Add Instructional Materials Technician
12. Add Senior Buyer
13. Add Senior Computer Operator
14. Add Senior Irrigation Equipment Technician
15. Add Senior Office Machine Repairworker

In their responses to the petition, the District and Public Employees Union, Local One (Local One)<sup>3</sup> both stated that the classifications listed in Section 11, Items 2-15 of the petition are currently included in the classified units Local One represents in the District.<sup>4</sup>

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<sup>2</sup> The description of the supervisory unit in the most recent collective bargaining agreement (1987-1989) between the Association and the District indicates that it includes "[a]ll permanent classified employees" in the supervisory positions listed, and "[a]ll other employees are excluded."

<sup>3</sup> The Association listed Local One on the petition form as an organization known to have an interest in representing employees covered by the petition.

<sup>4</sup> This information is confirmed by the collective bargaining agreement between the District and Local One on file with this office.

An Informal Settlement Conference/Investigation was held on July 11, 1989. At that time, the Association did not dispute that the classifications listed in Section 11, Items 2-15 were currently in bargaining units represented by Local One.

#### DISCUSSION

It is undisputed that the classifications listed in Section 11, Items 2-15 of the unit modification petition are currently in bargaining units represented by an employee organization other than the Association, i.e., Local One. Since these positions are clearly neither unrepresented nor new classifications, and since their addition to the supervisory unit would not qualify as a mere technical change to clarify or update the unit description, the Association has no standing under regulation 32781(a)(1), (b)(2) or (3) to petition to add them to their unit. Therefore, the petition as it regards the addition of the classifications in Section 11, Items 2-15 is dismissed.

As noted above, substitute, temporary and limited term supervisors are currently excluded from the supervisory unit pursuant to the unit description contained in the collective bargaining agreement between the Association and the District. Therefore, the Association's petition to add these positions to their unit under PERB regulation 32781(a)(1) is an appropriate filing. Since this issue was not resolved at the Informal Settlement Conference/Investigation, it will be decided in a formal hearing before PERB.

## CONCLUSION

For the reasons stated above, Section 11, Items 2-15 of the unit modification petition are DISMISSED.

### Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision (PERB regulation 32360). To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Members, Public Employment Relations Board  
1031 Eighteenth Street, Suite 200  
Sacramento, CA 95814-4174

A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing,

" . . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (regulation 32135). Code of Civil Procedure section 1013 shall apply.

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (regulation 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justification for the request (regulation 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (regulation 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the San Francisco regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see regulation 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

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Jerilyn Gelt  
Regional Director