STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SOLANO CHAPTER 1048, Employee Organization, and MUTUAL ORGANIZATION OF SUPERVISORS, Employee Organization.	Case No. SF-R-548X PERB Decision No. 121
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Employee Organization, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 535, Employee Organization.	Case No. S-R-8 PERB Decision No. 122
LOS ANGELES COMMUNITY COLLEGE DISTRICT, Employer, and CLASSIFIED UNION OF SUPERVISORY EMPLOYEES, LOCAL 699, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Employee Organization.	Case No. LA-R-809 PERB Decision No. 123

PERB Order No. JR-8

June 18, 1980

Before: Gluck, Chairperson; Moore and Gonzales, Members.

DECISION AND ORDER JOINING REQUEST FOR JUDICIAL REVIEW

Because the above-captioned cases involve the same issue, they have been consolidated for the purpose of this order.

The Public Employment Relations Board (hereafter Board) finds that these are cases of special importance within the meaning of section 3542(a) of the Educational Employment Relations Act.[1] The cases raise the significant and novel issue of what constitutes the "same employee organization" under section 3545(b)(2), which prohibits a negotiating unit of supervisory employees from being represented by the same employee organization as employees whom the supervisory

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[1]The Educational Employment Relations Act is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references hereafter are to the Government Code.

Section 3542(a) provides:

> (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.
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> Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

employees supervise.[2] This issue, which is primarily one of statutory interpretation, is likely to arise frequently as more supervisory units are organized.

In addition, there is no alternative method by which California School Employees Association can obtain judicial review of the Board's decisions in Fairfield-Suisun Unified School District (3/25/80) PERB Decision No. 121 and Sacramento City Unified School District (3/25/80) PERB Decision No. 122, both of which cases may have a major impact on the Association's ability to organize supervisory units.[3]

ORDER

1. The request of California School Employees Association that the Public Employment Relations Board join California School Employees Association's request for judicial review of Fairfield-Suisun Unified School District (3/25/80) PERB Decision No. 121 and Sacramento City Unified School District (3/25/80) PERB Decision No. 122 is granted.

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[2]Section 3545(b)(2) provides:

> (b) In all cases:
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> . . . . . .
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> (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.

[3]Chairperson Gluck did not participate in PERB Decision No. 121. Because Members Moore and Gonzales disagree on granting the Request for Judicial Review, he has participated in the instant matter.

2. The request of the Los Angeles Community College District that the Public Employment Relations Board join the Los Angeles Community College District's request for judicial review in Los Angeles Community College District (3/25/80) PERB Decision No. 123 is granted.

By: Raymond J. Gonzales, Member Harry Gluck, Chairperson

Member Moore's dissent begins on page 5.

Barbara D. Moore, Member, dissenting:

I would not join in the parties' requests to seek judicial review in these three cases.[1] With reference to section 3542(a) of the Act, my colleagues find that these are cases of special importance because they raise as a "significant and novel issue" the meaning of the phrase "same employee organization" in section 3545(b)(2) of the EERA. They also state that "[t]his issue, which is primarily one of statutory interpretation, is likely to arise frequently as more supervisory units are organized" (Ante, p. 3).

I agree with the majority that these cases primarily involve statutory interpretation. Indeed, PERB is charged with the responsibility of interpreting the EERA when such questions are raised by the facts in any specific case. As discussed more fully infra, however, this Board has completed that task, and I am unable to agree that the likelihood that such cases

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[1]The majority states that CSEA has no way to obtain review in Sacramento City and Fairfield-Suisun and that therefore PERB should join CSEA's requests in those cases as well as Los Angeles. I see no merit to the claim that each case must be reviewed by the courts or the implied assertion that review in the Los Angeles case will not resolve the issues. Whether review is obtained through the unfair practice route or via the majority's decision to join in the request in Los Angeles, the central issue is the standard for determining "sameness." Surely each application of a standard to different factual settings does not constitute a "novel" issue warranting judicial review.

will arise with frequency is a basis for concluding that the instant cases are of "special importance." If, as the majority suggests, more supervisory units are in fact organized, this Board will render further interpretations of the statute as necessitated by the emergence of specific facts not evident in or raised by the underlying cases. Statutory interpretation is an ongoing process. By acquiescing to judicial review, we do not, nor should we, avoid those demands for elucidation and clarification when future cases presenting novel and unique factual circumstances emerge and are brought before the Board.

The judicial review provision of EERA, sec. 3542(a), follows the recommendations of the Aaron Commission (hereafter Commission) (See Final Report of the Assembly Advisory Council on Public Employee Relations (1973) at pp. 55-58.) The Commission noted that "[t]o allow either party in a unit determination dispute the right of immediate court review in any such case would effectively paralyze the work of the Board and frustrate the purposes of the statute." Conversely, it noted that "[u]nit determination frequently decides whether any employee organization, or which of two or more competing employee organizations, will be certified as the exclusive bargaining representative." To resolve these competing concerns, the Commission recommended that the statute provide that PERB "be permitted to associate itself with [appeals] in cases which it feels to be of special importance." This

approach leaves exclusively to the Board the decision of whether a case is of such special importance.

We should exercise our discretion mindful of the Commission's stricture that in the interest of fairness, PERB "ought to welcome judicial review of the most important of such determinations for its own future guidance as well as that of the parties." But we should also be mindful that, in entrusting us with this broad discretion, the Legislature intended a narrow scope of judicial review in unit determination cases.

The parties and my colleagues assert that these cases warrant judicial review because the specific provisions in section 3545(b)(2) are unique to EERA, and therefore PERB has no judicial precedent nor guidance from federal or other state law. There is some merit to their argument. But judicial review must be balanced against the charge of this Board to interpret EERA, and not only those portions where there is precedent, and the delay which will unavoidably result from recourse to the courts. I would strike that balance on the side of not joining the parties' requests. As I noted in Sacramento City Unified School District (3/25/80) PERB Decision No. 122, there are numerous statutes restricting the representation and negotiating rights of supervisors. While the exact language in EERA is not present in any of those statutes, there has been substantial discussion of the issue of

negotiating and representation rights for supervisors both in the public sector and in the private sector.

This Board has set forth a standard for determining when two employee organizations are the same employee organization for purposes of section 3542(b)(2). It is based on the Board's view of the purposes of separating representation of supervisors from rank and file employees which is grounded in the history and nature of labor relations.

PERB is an administrative agency with labor relations expertise. The interpretation of section 3545(b)(2) involves a labor relations issue. This is the Board's field of expertise, and we should closely guard our jurisdiction. These are not cases involving interaction of EERA with other statutes where there might be more of an argument that court review is warranted.

As former member Cossack Twohey stated in Grossmont Union High School District, (7/25/77) EERB Order No. JR-2:

> A primary purpose of administrative agencies is to provide a method for adjudicating and resolving disputes without resort to the already crowded courts. This Board is expected to make difficult and precedential decisions to facilitate an orderly and efficient system of public school employer-employee relations. If every major unit decision is certified for judicial review, we will become merely an additional level of bureaucracy which must be gotten through prior to inevitable resort to the courts.

In this case, the parties had a hearing and a decision. They then had full review by the Board itself. Representation

is now going to be further delayed while these cases work their way through the judicial system. Employees who long ago should have been able to exercise their rights under EERA will be delayed still longer. At some reasonable point the process should end. The parties here have had ample opportunity to argue their points, and they have received a fair hearing—two in fact. I do not believe they need a third. I would deny each of the requests to join in judicial review.

Barbara D. Moore, Member