

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of:

SAN MATEO UNION HIGH SCHOOL DISTRICT,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,
CHAPTER 156,

Employee Organization,

and

AMERICAN FEDERATION OF STATE, COUNTY, AND
MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 57,
AFL-CIO,

Employee Organization,

and

UNIFIED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, LOCAL 162,

Employee Organization.

Case No. SF-R-113

PERB Decision No. 49

March 22, 1978

Appearances: Garry G. Mathiason and Larry Shapiro, Attorneys (Littler, Mendelson, Fastiff and Tichy) for San Mateo Union High School District; Patrick McGovern, Attorney, and Ann Stones, Deputy Field Director for California School Employees Association, Chapter 156; Peter W. Manion and Michael J. Dunlap, Business Agents for American Federation of State, County and Municipal Employees, District Council 57, AFL-CIO; David A. Rosenfeld and William A. Sokol, Attorneys (Van Bourg, Allen, Weinberg and Roger) for the United Brotherhood of Carpenters and Joiners of America, Local 162.

Before Gonzales and Cossack Twohey, Members.1/¹

¹Deliberations on this matter preceded Chairman Gluck's appointment to the Public Employment Relations Board. Consequently, he is not noted as a participant in this decision.

OPINION

This case is on appeal from a proposed hearing officer's decision holding, in part, that a unit of operations-support services personnel properly included skilled crafts employees. The United Brotherhood of Carpenters and Joiners of America, Local 162 (Carpenters) has taken exception to the inclusion of skilled crafts employees, streaming in particular its history of representation on behalf of the skilled crafts employees in the San Mateo Union High School District (District) and the apparent separate unit status afforded skilled crafts employees in the private sector. Additionally, the Carpenters argue that skilled crafts employees perform distinct work functions as compared to other operations-support services employees.

We have reviewed the record and the attached proposed decision in light of the Carpenters exception. The findings of fact are supported by the record. They unequivocally reflect a strong community of interest between and among all the operations-support services employees of the District including the skilled crafts employees. Further, evidence relating to the history of representation by the Carpenters is not as persuasive as the Carpenters assert. In fact, a comparison of this case and Sacramento City Unified School District² clearly supports the hearing officer's treatment of the facts and ultimate conclusions. In light of the criterion of "established practices, including, among other things, the extent to which such employees belong to the same employee organization. ..." found in Government Code Section 3545(a). We note that in this case (1) skilled crafts employees along with all other classified employees have received across-the-board percentage increases for ten years, (2) skilled crafts employees have remained members of their respective unions, (3) the Carpenters have not exclusively represented the skilled crafts employees under the Winton Act (Ed. Code Sec. 13080, et seq., repealed July 1, 1976),³ (4) to the extent the Carpenters have represented the skilled crafts employees, it has done so on an increased basis,⁴ and (5) the scope of representation within the meet and confer process under the Winton Act has been generally devoted to wages.

²EERB Decision No. 30A (September 20, 1977).

³American Federation of State, County, and Municipal Employees, District Council 57, AFL-CIO, has also represented some skilled crafts employees under the Winton Act.

⁴The carpenters, alone, have been represented as early as 1947 by the Carpenters, but other skilled crafts employees acquired the Carpenters' representation only in subsequent years.

Regarding the Carpenters' reference to the unit designation of skilled crafts employees in the private sector, we note the contrast between the statutory guidelines explicitly provided for by our authorizing legislation and those applied in the private sector. As we stated in Antioch Unified School District:⁵

Examining the portion of the National Labor Relations Act Section 9(b) that is pertinent in this case and comparing that aspect of Section 9(b) with the relevant criteria in the EERA, the differences between the two criteria become readily apparent. The NLRA statutory criteria do not include an efficiency of operations test, a community of interest test or an established practices test. It is true that in respect to community of interest and established practices (to the extent that this means past bargaining history), the NLRB, through its decisions, has fashioned the community of interest standard already noted in this decision as having been relied upon by this Board. The NLRB's Kalamazoo decision also demonstrates that while the National Labor Relations Act is silent on the criterion of past bargaining history, the NLRB considers it a unit criterion. However, in respect to the EERA criterion of efficiency of operations, not only is the National Labor Relations Act silent, but the NLRB does not generally apply that criterion in unit cases. In contrast, the California Legislature has commanded that the EERB use that criterion in all unit cases. The silence of Congress on past bargaining history and community of interest gives the NLRB more leeway to fashion and apply unit criteria than the California Legislature, with mandated unit criteria, has given the EERB.

The attached decision of the hearing officer comports with prior Board precedent in applying Section 3545(a) of the Educational Employment Relations Act⁶ and it is therefore affirmed.

By: Raymond J. Gonzales, Member

Jerilou Cossack Twohey, Member

⁵EERB Decision No. 37 at 10-11 (November 7, 1977).

⁶Sacramento City Unified School District, EERB Decision 30A (September 30, 1977); San Diego Unified School District, EERB, Decision No. 8 (February 18, 1977); Fremont Unified School District EERB Decision No. 6 (December 16, 1976); Sweetwater Union High School District, EERB Decision No. 4 (November 23, 1976).

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UNITED BROTHERHOOD OF CARP ~~ENTERS~~ AND JOINERS
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Case No. SF-R-113

PROPOSED DECISION

November 10, 1977

Appearances: Garry G. Mathiason and Larry Schapiro (Littler, Mendelson, Fastiff and Tichy) for San Mateo Union High School District; Patrick McGovern, Attorney, and Ann Stones for California School Employees Association, Chapter 156; Peter W. Manion and Michael J. Dunlap for American Federation of State, County and Municipal Employees, District 57, AFL-CIO; David A. Rosenfeld and William A. Sokol (Van Bourg, Allen, Weinberg and Roger) for United Brotherhood of Carpenters and Joiners of America, Local 162.

Before Sharrel J. Wyatt, Hearing Officer.

PROCEDURAL HISTORY

On April 1, 1976, the American Federation of State, County and Municipal Employees, District Council 57, AFL-CIO (AFSCME) requested recognition from the San Mateo Union High School District¹ (District) for a unit composed of approximately 158 employees in a unit which included some operations-support employees.² On April 1, 1976, California School Employees Association, Chapter 156 (CSEA) requested recognition for a unit of approximately 270 employees in food services, clerical and secretarial and instructional aides (paraprofessional) classifications. On April 1, 1976, the United Brotherhood of Carpenters and Joiners, Local 162 (Carpenters) requested recognition for a unit of approximately 19 employees in the skilled crafts classifications.³ The District filed its responses to these requests for recognition in which it indicated that it doubted the

¹San Mateo Union High School District is located in San Mateo County and has an average enrollment of 10,535 students attending five high schools and a continuation school as well as an enrollment of 6,000 in its adult education program. 1977 California Public Schools Directory at p. 475. The record reflects current enrollment at 11,500.

²AFSCME's request included the following positions: matron, bus driver, school plant maintenance employee, automotive serviceman, stock clerk/deliveryman, maintenance man I, equipment operator, lead bus driver, mechanic's helper, maintenance man II, crew chief, boiler room maintenance man, tool and equipment controlman, district grounds foreman, warehouse supervisor, mechanic, bus dispatcher/instructor, school equipment technician I, lead mechanic, school equipment technician II, glazier, food services substitute, food services - assistant I, production assistant, production baker, cook manager, production supervisor.

³The Carpenters' request included carpenters, painters, electricians, plumbers, glaziers, locksmith, sheet metal workers, hereinafter referred to as "skilled crafts."

appropriateness of the unit sought by AFSCME because the District believed AFSCME's requested unit should include skilled crafts classifications and should not include certain classes of employees including substitute employees; that the small unit sought by the Carpenters would adversely affect the efficient operations of the District; that it doubted the appropriateness of CSEA's requested unit.

On April 11, 1977, CSEA petitioned the EERB to become a party in interest to the hearing for purposes of seeking a separate unit of food services employees.

On May 10, 1977, an informal conference was held and a formal hearing on May 10, May 18, June 28, 29 and 30, 1977. On May 10, 1977, AFSCME deleted the position of "glazier," the only position in their requested unit which overlapped with the unit sought by the Carpenters. Further, by way of settlement, the District affirmed its recognition of CSEA for the instructional aides (paraprofessional) unit and the business support services unit. CSEA withdrew from the hearing on condition that CSEA retained the right to appear on the ballot in the unit in which food services employees are found to be appropriate, provided that the regional director determines that CSEA has demonstrated 30 percent showing of interest in that unit based on dues authorizations in effect on May 10, 1977.

The parties stipulated that the District is an employer within the meaning of the Act and that CSEA, AFSCME and the Carpenters are employee organizations within the meaning of the Act. The stipulations were accepted without inquiry.

ISSUES

1. Whether food services substitutes are appropriate to the unit which includes other food services employees.

2. What is the appropriate unit for skilled crafts employees.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Food Services Substitutes

The District seeks to exclude food service substitutes from the unit. AFSCME would include this classification.

Food services substitutes are called in to work by a secretary in the District's office when a regular employee is absent. A list of 8-9 substitutes with frequent turn-over is maintained. Food services substitutes work as long as needed and perform the work of the employee who is absent. On one occasion, a substitute worked for a month but that was unusual. Food services substitutes are paid at a lower hourly rate than regular food services employees and receive no fringe benefits while regular food services employees do receive fringe benefits.

Food services substitutes' pay rates were initially set unilaterally by an administrator and approved by the Board of Trustees and were not arrived at under the meet and confer process of the Winton Act.⁴ Subsequently, increases have been granted to food services substitutes by the Board of Trustees after completion of the meet and confer process for regular employees. Generally, the increase granted to the substitute employees was close to that received by employees in classifications which were represented in the meet and confer process.

⁴Education Code Section 13080 et seq., repealed July 1, 1976.

Based on the foregoing findings of fact, it is found that food services substitutes are not appropriate to the unit which includes regular food services employees. Like substitute employees in other decisions of the Board,⁵ food services substitutes lack the requisite community of interest for inclusion in the unit with regular employees because they enjoy no expectancy of future employment and are employed at different rates of pay and enjoy no fringe benefits.

AFSCME argues that certificated decisions should not govern because Government Code Section 3545(a)(3) provides that classified and certificated employees shall not be included in the same unit. It is found that decisions of the Board which relate to substitute employees in the certificated service are precedential because they set forth criteria for determining community of interest. That criteria is equally applicable to all substitute employees because it goes to community of interest with regular employees in the unit. Employees whose continuing interest in their employment is tenuous in nature and who enjoy separate wages and fringe benefits, be they classified or certificated, lack community of interest with a unit of regular full and part-time employees.

AFSCME also argues that food services substitutes should be included in the unit because they are public school employees within the meaning of Government Code Section 3540.1(j).⁶

⁵See Belmont Elementary School District, EERB Decision No. 7, December 30, 1976; Petaluma Elementary and High School Districts, EERB Decision No. 9, February 22, 1977; Los Rios Community College District, EERB Decision No. 18, June 9, 1977.

⁶"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.

Unlike sections of the Educational Employment Relations Act (EERA) which require that a unit include all supervisory employees of the employer⁷ or all classroom teachers⁸, nothing in the EERA requires that a classified unit include all classified employees of the employer. Only those employees who are found to be appropriate based upon community of interest, efficient operation of the employer and/or established practices are appropriate to the unit. In this case, the parties have addressed their arguments to community of interest criteria. Because it is found that food services substitutes lack a community of interest with regular food services employees, food services substitutes are excluded from the unit.

Skilled Crafts

AFSCME seeks a unit which is composed of operations-support employees except for the skilled trades. The Carpenters seek to represent what is essentially a skilled trades unit. The District's position is that an operations-support services unit including skilled crafts is appropriate.

The District employs six carpenters, of which two are foremen, five painters, of which one is a foreman, three electricians, of which one is a foreman, one *glazier*, two maintenance men, one of whom works with the glazier and one with various crafts employees, and two who do mechanical work, of which one is a foreman. Exhibits also reflect current

⁷ See Government Code Section 3545(a)(2).

⁸ See Government Code Section 3545(a)(1).

classifications of locksmith, metalworker and hardware repairman and maintenance man - heating and ventilating, which may or may not be included with the designations of positions above. These employees perform repair work and new construction of the physical facilities of the District.

Historically, the skilled crafts employees have each generally belonged to their applicable skilled crafts union. In the meet and confer process under the Winton Act, the spokesperson at the table has been the Carpenters with representatives from the electricians and plumbers joining in at some sessions. AFSCME has also represented some skilled crafts employees under the Winton Act.

Since 1947, the Carpenters have represented carpenters at the District. In the early 1950's, the District hired a painter who was represented by Carpenters. Electricians and plumbers were hired in the mid 1950's and the Carpenters represented them. Generally the representative from the Carpenters met with the superintendent or a representative of the Board every year from 1947 to 1975-76, usually regarding wages. On one occasion, he spoke directly with the Board of Trustees.

The record reflects that, under the Winton Act, a letter of recognition would be forwarded to any organization claiming to represent employees of the District after verification.

In addressing the efficiency of operations criteria under the EERA, the District put in substantial testimony regarding experiences under the Winton Act. It is to be noted that the experiences under the Winton Act involved eight employee organizations including those who are parties to this hearing.

In addressing community of interest, the record reflects that District policies regarding demotion, suspension, evaluation, fringes, grievances and holidays have applied to all classified employees including skilled crafts employees. Policy regarding hours and promotions have varied. Classified employees generally work seven and one-half hours per day. Employees in the skilled crafts work eight hours per day and have every third Friday off, a benefit obtained for them through the meet and confer process. Technical service employees, those who repair audio visual equipment, typewriters and so forth, are off for two and a half hours every Friday. Skilled crafts and most classified employees are covered by a promotion policy based on a series of items, including length of service. The exception to the general promotion policy covers bus drivers, custodian and maintenance employees, where length of service is a primary consideration for promotion.

Skilled crafts employees generally begin their work day at 8:00 a.m., as do custodians. Other classifications begin earlier, such as ground crews; some bus drivers work split shift, and food services employees work a shorter day.

With the exception of bus drivers and food services employees who work school days only, and matrons who work 10.5 months, all employees in both AFSCME's and the Carpenters' proposed unit are employed 12 months per year.

Wage increases for all classified employees have generally been a flat percentage increase. The skilled crafts generally occupy the most highly paid positions within the classified service. Classified employees in both AFSCME's and the Carpenters' proposed unit receive a 10 percent differential if they work one day in a higher classification. All other classified employees receive a 5 percent differential after five days.

Except for part-time bus drivers, all are paid monthly. All receive the same fringe benefits.

One procedure is used for hiring all classified employees. The same procedure and forms are used for evaluation. Journeymen certificates are required for the positions of locksmith, metal worker, carpenter, plumber and electrician.

Glazier, maintenance man - heating and ventilating, and maintenance men in the skilled crafts department do not require journeymen certificates. Outside of the skilled crafts department, the mechanic is required to have a journeymen certificate.

The assistant superintendent - operations is responsible for supervision of the classified employees in question. Under the director of management services, the district manager of food services supervises all food services employees and the district manager of purchasing supervises warehousemen. Under the director of maintenance, operations and engineering, there are four departments or divisions: the district manager of operations and grounds supervises 110-130 custodial and grounds employees; the district manager of transportation supervises 10 full-time and 30 part-time drivers, mechanics, dispatchers, and other transportation employees; the district manager of technical services supervises five technicians who repair and maintain audio visual equipment, typewriters and business machines; the district manager of maintenance supervises the skilled crafts employees.

The transportation garage maintenance building is located on the campus of San Mateo High School. Technical service employees, transportation employees and the skilled crafts employees are all headquartered at that facility. The custodial staff of the high school uses that facility for storage as well. Both a common lunch room and tool room are shared by employees at the facility.

Custodians, grounds and food services employees work at various school sites. Most employees, including skilled crafts, who are headquartered at the transportation garage-maintenance building, perform their work function at various school sites. While on the school site, these employees are subject to the direction of the site administrator.

The record reflects several examples of custodians, grounds personnel, or boiler men working with skilled crafts employees on various projects.

It is clear from the record that the work function of food services, custodial and grounds, transportation, technical services and skilled crafts employees are involved in the maintenance of the physical facilities of the District. It is equally clear that there is overlap in their function. Both food services and custodial employees maintain cleanliness in the kitchen. Custodians often perform some function of nearly all skilled crafts employees, such as painting or repairing light switches.

a. Established Practices

The Carpenters urge that community of interest criteria is not decisive and that this decision should turn on that portion of Government Code Section 3545(a) which reads, "their established practice, including among other things, the extent to which such employees belong to the same employee organization."

They further urge that the decision of the Board in Sacramento City Unified School District⁸ is not decisive because in that case there was no substantial prior bargaining history. In Sacramento City, the Board

⁸ EERB Decision No. 30, September 20, 1977.

found that since 1948 the Building Trades Council has represented maintenance and crafts workers, but that since 1973, they had received the same across-the-board increase granted all other employees. They further found that the separate salary schedule and apprenticeship training of skilled crafts employees were differences in degree rather than kind.

It is found that Sacramento City is binding precedent in this case. Here, the evidence does not support a finding that the skilled crafts have received anything other than an across-the-board percentage increase during the last ten years. Membership for carpenters, painters, electricians and plumbers has been in their respective unions with the Carpenters as spokesmen. Several positions within the skilled crafts pay scale including glazier, locksmith, metalworker and hardware repairmen and maintenance man - heating and ventilating have never been represented by Carpenters and at least some of these have been represented by AFSCME. Based on the record, it cannot be found that "established practices" and/or membership in the same organization form the basis for an appropriate unit in this case.

b. Efficiency of Operation

The efficiency of operations evidence which the District argues in favor of an operations-support services unit is not persuasive. Experience under the Winton Act dealing with eight recognized employee organizations without criteria for appropriate units may very well be more cumbersome than dealing with a limited number of exclusive representatives in regard to appropriate units.

c. Community of Interest

The presumption raised in Sweetwater Union High School District⁹

⁹Sweetwater UHSD, EERB Decision No. 4, November 23, 1976.

is that an operations-support services unit including all skilled trades employees is appropriate based on community of interest. That presumption has not been overcome in this case. The unit urged by the District, a Sweetwater operations-support services unit, is composed of classifications that share a basic community of interest based on work function. All are engaged in maintaining the physical facilities of the District and providing support service. At least one organization, AFSCME, has expressed willingness to represent such a unit.

In addition to work function, these classifications share other common characteristics. Terms and conditions of employment, including such things as hiring procedure, evaluation and grievances are identical; fringe benefits are similar, including the differential for working out of classification which distinguishes operations-support services employees from the units of business support services and instructional aides for which CSEA was granted recognition.

All are under the direction of the assistant superintendent of operations. Most are supervised by the director of maintenance, operations and engineering. While on school sites, all are subject to direction from the site administrator.

Based on the foregoing, it is found that an operations-support services unit is appropriate.

The District, by way of brief, argues that the carpenter foremen, electrician foreman, painter foreman and mechanical maintenance foreman are not supervisory employees under the Act. No party has urged that these positions be found supervisory. Further, nothing in the record indicates that these classifications possess any of the supervisory functions set forth

in Government Code Section 3540.1(m). Based on the record, it is found that the carpenter foremen, electrician foreman, painter foreman and mechanical maintenance foreman are not supervisory employees within the meaning of the EERA, and should be included in the operations-support services unit.

PROPOSED DECISION

It is the Proposed Decision that:

1. The following unit is appropriate for meeting and negotiating, providing an employee organization becomes the exclusive representative: all operations-support services employees including matron, bus driver, school plant maintenance employee, automotive serviceman, stock clerk/deliveryman, maintenance man I, equipment operator, lead bus driver, mechanic's helper, maintenance man II, crew chief, boiler room maintenance man, tool and equipment controlman, district grounds foreman, warehouse supervisor, mechanic, bus dispatcher/instructor, school equipment technician I, lead mechanic, school equipment technician II, *glazier*, food services - assistant I, production assistant, production baker, cook manager, production supervisor, carpenters, painters, electricians, plumbers, glaziers, sheet metal workers, refrigerator and appliance repairman, locksmith, metal worker and hardware repairman, carpenter leaderman, carpenter foreman, painter leaderman, painter foreman, maintenance man - heating and ventilating, electrician foreman, mechanical maintenance foreman, and excluding all other employees including management, confidential and supervisory.

2. The positions of carpenter foremen, electrician foreman, painter foreman and mechanical maintenance foreman are not supervisory employees within the meaning of the EERA.

The parties have seven (7) calendar days from receipt of this Proposed Decision in which to file exceptions in accordance with California Administrative Code Section 33380, the EERB's Rules and Regulations. If no party files timely exceptions, this Proposed Decision will become final on November 22, 1977 and a Notice of Decision will issue from the Board.

Within 10 workdays after the employer posts the Notice of Decision, the employee organizations shall demonstrate to the Regional Director at least 30 percent support in the above unit, provided however, that CSEA shall have the right to appear on the ballot if they demonstrate to the Regional Director that they have 30 percent support in the above unit based on dues authorizations on May 10, 1977. The Regional Director shall conduct an election at the end of the posting period if: (1) more than one employee organization qualifies for the ballot. If only one employee organization qualifies for the ballot, then the employer shall grant voluntary recognition.*

Except as noted above, the date used to establish the number of employees in the above units shall be the date of this decision unless another date is deemed appropriate by the Regional Director and noticed to the parties. In the event another date is selected, the Regional Director may extend the time for employee organizations to demonstrate at least 30 percent support in the units.

Dated: December 10, 1977

Sharrel J. Wyatt
Hearing Officer

*Based on stipulation in the record.