

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOINT POWERS BOARD OF DIRECTORS, TULARE)
"COUNTY ORGANIZATION FOR" VOCATIONAL)
EDUCATION, REGIONAL OCCUPATIONAL CENTER)
AND PROGRAM,)
Employer,) Case No. S-R-547
and) PERB Decision No. 57
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,) June 26, 1978
CHAPTER 677,)
Employee Organization.)

Appearances: Larry A. Curtis, Attorney (Musick, Peeler, and Garrett) for Joint Power Board of Directors, Tulare County Organization for Vocational Education, Regional Occupational Center and Program; and Madalyn Frazzini, Attorney for California School Employees Association.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members.

OPINION

On August 1, 1977 Public Employment Relations Board (PERB) hearing officer Jeff Paule issued a proposed decision finding that Joint Power Board of Directors, Tulare County Organization for Vocational Education, Regional Occupational Center and Program (TCOVE) was an employer within the meaning of the Educational Employment Relations Act (EERA).¹ TCOVE filed timely exceptions to the hearing officer's finding that it is an employer within the meaning of the EERA.

On December 15, 1976 California School Employees Association, Chapter 677 (CSEA) requested recognition as the exclusive

¹Gov. Code sec. 3540 et seq. All further statutory references are to the Government Code unless otherwise indicated.

representative of a unit of the 12 classified employees of TCOVE.² TCOVE questioned CSEA's showing of interest, the appropriateness of the unit requested and its own status as an employer under the EERA. Subsequently, the parties stipulated that if TCOVE was found to be an employer under the EERA, the requested unit would be appropriate.

FACTS

TCOVE was established through a joint powers agreement³ between nine school districts in Tulare County to offer a regional occupation center (ROC) and a regional occupation program (ROP).⁴ The purpose of ROC's and ROP's is "...to provide qualified students with the opportunity to attend a technical school or enroll in a vocational or technical training program, regardless of the geographical location of their residence...."⁵ ROC's and ROP's may be offered by

²The unit requested includes the accountant clerk/office supervisor, secretary I, custodian, instructional aide, placement aide and five bus driver/aides.

³Gov. Code sec. 6500 et seq., Ed. Code sec. 52301.

⁴Ed. Code sec. 52300 et seq.

⁵Ed. Code sec. 52300.

individual school districts or, as in the instant case, by several school districts together.⁶

A ROC is a physical facility in which vocational and technical education courses are taught. A ROP is a vocational and technical program meeting the standards and criteria of a ROC, but taught at various sites within each of the member school districts.⁷

TCOVE's governing board is composed of one member from each of the nine contributing school districts. It has the authority to contract for funds, lease or purchase property and hire personnel. It is funded through a number of sources. Each member district contributes a portion of its assessed valuation toward TCOVE administrative and maintenance costs." TCOVE also receives from each

⁶Ed. Code sec. 52301 provides in pertinent part:

The county superintendent of schools of each county, ...may establish and maintain, ...at least one regional occupational center, or regional occupational program, in the county.... The governing boards of any school districts...may, ...cooperate in the establishment and maintenance of a regional occupational center, or regional occupational program,

..., [A] single school district... may. .. establish a regional occupational center or program....

⁷During the 1976-77 school year, TCOVE offered 19 classes through the ROC and 93 through the ROP. ROC classes are taught at the center. ROP classes are taught at member district school sites or other locations secured by the member districts. There are five full-time TCOVE teachers who teach at the ROC and 48 ROP teachers, all of whom are employed by one of the member districts.

district the state average daily attendance (ADA) allotments for attendance at ROC/ROP classes for the number of students from that district who attend. The allotments for attendance at ROP classes are returned to each district in proportion to the number of students attending proffered classes. The ADA allocations are retained by TCOVE for attendance at ROC classes. Further, TCOVE receives funds from the State Department of Vocational Education for special projects.

Member districts, upon proper notice, may withdraw from TCOVE. While TCOVE Board members are not directly elected, each duly elected governing board selects its representative to TCOVE.

DISCUSSION

Section 3540.1(k) of the EERA defines a public school employer as "...the governing board of a school district, a school district, a county board of education, or a county superintendent of schools." TCOVE urges that we apply this section literally in determining that it is not an employer within the meaning of the EERA. We are not persuaded by TCOVE's argument.

The question raised by this case is one of the Board's jurisdiction, since if we were to conclude that TCOVE is not an employer within the meaning of the EERA its employees would have none of the rights set forth in the EERA⁸. Such a result is contrary to

⁸Cf. Turlock School Districts, (10/26/77) PERB Order No Ad-18 [1 PERC 521].

the legislative intent in enacting the EERA. Section 3540 states the basic purpose of the EERA is

...to promote the improvement of personnel management and employer-employee relations within the public school systems...by providing a uniform basis for recognizing the right of public school employees to....(Emphasis added.)

While it is generally true that items not enumerated in a statute are excluded, this general rule is inapplicable where no reason exists why persons or things other than those enumerated should not be included and manifest injustice would result by not including them⁹. Thus, it is a well-understood canon of statutory construction that

...[E]very statute should be construed with reference to the whole system of which it is a part so that all may be harmonized and have effect.... [S]uch purpose will not be sacrificed to a literal construction of any part of the Act. ...¹⁰

In the instant case, TCOVE employees perform the same duties for the same purpose as employees in traditional school districts. Excluding TCOVE's employees from the coverage of the EERA would guarantee that they would be treated differently than employees of traditional school districts. Such disparate treatment of essentially identical employees only undermines the stated legislative purpose of affording a uniform system of managing employer-employee relations in the public school system.

⁹People v. Hacker Emporium, Inc. (1971) 15 Cal.App.3d 474, 477.

¹⁰Select Base Materials v. Board of Equalization (1959) 51 Cal.2d 640, 645.

The ROC and ROP programs offered by TCOVE are educational programs of the public school system. These programs may be offered by a single large district or jointly by several smaller districts. The fact that smaller districts such as those in the instant case are able to effectively implement the legislatively prescribed ROC/ROP programs only by combining their resources in no way removes the programs from the parameters of the public school system. In fact, TCOVE's revenue is inextricably intertwined with that of each of the member districts. Each member district is itself an employer within the meaning of the EERA. TCOVE exists solely at the pleasure of its member districts. It possesses no independent authority, only that which has been delegated to it by the member district. Accordingly, we conclude that TCOVE is an employer within the meaning of the EERA.

ORDER

The Public Employment Relations Board directs that:

(1) TCOVE is an employer within the meaning of the Educational Employment Relations Act.

(2) The regional director shall process the request for recognition filed by California School Employees Association, Chapter 677.

By/ Jerilou Cossack Twohey, Member Harry Gluck Chairperson

Raymond J. Gonzales, dissenting:

I dissent from the conclusion of the majority that TCOVE is an employer within the meaning of section 3540.1(k) which provides:

As used in this chapter:

.....
(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

The substance of the majority's reasoning in reaching this conclusion is as follows. The purpose of the EERA is to provide a uniform basis for public school employees to exercise collective negotiations rights. Since the employees of TCOVE perform the same duties as employees in traditional school districts, they should have collective negotiations rights. Therefore TCOVE must be an employer within the meaning of the EERA.

The majority focuses on the assumption that employees performing similar duties should be covered by the EERA. One could say the same about employees working in private schools or in union apprenticeship programs and the like. Are we to assume that the Legislature in its very clear definition of "public school employer" was motivated by similarities in employees' duties rather than similarities among employers? I would focus on the nature of the public employer in this case rather than the nature of the work done by employees.

The majority admits that TCOVE is not a traditional school district. In its last paragraph, it also notes that TCOVE "possesses no independent authority, only that which has been delegated to it by the member districts." Then it concludes, "Accordingly, we conclude that the TCOVE is an employer within the meaning of the EERA." There seems to be a great leap in logic or illogic to reach this conclusion. The majority says TCOVE "possesses no independent authority" and then in the next sentence says "TCOVE is an employer within the meaning of the EERA." I find it inconceivable that the

majority could conclude that an entity which does not possess independent authority is a public school employer. The definition of public school employer set forth in section 3540.1(k) includes, "... the governing board of a school district, a school district, a county board of education, or a county superintendent of schools." None of these is a governmental entity that does not possess independent authority of its own. In fact, all are composed of duly elected officials or elected governing bodies authorized to act independently and to exercise independent authority. It is difficult to conclude that the Legislature intended another type of governmental entity that does not exercise independent authority to make such significant decisions as those involved in the signing of binding contracts in the collective negotiations process.

I would refer the reader to my comments in Turlock School District¹ in which the Board was asked to determine whether two districts with common administrations and separate governing boards should be considered a single employer for the purpose of negotiations. The majority of the Board found that the districts could not be considered a single employer. In my separate concurrence in that decision, I indicated that the election of separate governing boards raises some serious questions. I stated:

This situation raises serious questions of the "one man - one vote" concept. Without amplifying on questions of constitutionality, suffice it to say that there may indeed exist some very serious problems in this regard were the EERB to rule in favor of the single employer concept.

¹(10/26/77) EERB Decision No, Ad-18.

Member Cossack, in a separate concurrence in that Turlock decision, indicated:

With regard to the one man-one vote concept discussed by Member Gonzales, I think the voters' decision to retain separate school districts reinforces our finding of separate employers. The EERB, especially in cases such as this one, should take care to avoid depriving governing boards of their vested authority or diluting their responsibility to their constituents.

Member Cossack and the Chairperson, who form the majority in the present case, are doing exactly that - "depriving governing boards of their vested authority or diluting their responsibility to their constituents." It is my contention that sending a single representative of each school board to participate as one vote in a nine member joint powers entity that supposedly would be the employer in the present case is a serious dilution of power and flies in the face of our long established democratic process of electing school boards for the governance of public education in this state.

Although the majority states, "TCOVE exists solely at the pleasure of its member districts," there is nothing in the record to indicate that **any action taken** by TCOVE must be taken back to the nine school boards for **concurrence in** the action. Consequently, to say TCOVE exists solely at the pleasure of its member districts stretches the truth. In fact, a negotiated agreement will not be ratified by the nine governing boards of the nine districts which are the source of the funds which support TCOVE. Should each governing board instruct its representative member of TCOVE regarding whether a tentative negotiated agreement should be ratified, that **individual** vote may be lost among the other eight votes of TCOVE's board.

Thus the intent of sections 3540.1(h)² and 3549,³ that the governing board which funds the negotiated agreement must ratify it, is frustrated.

The majority admits that "regional occupation center" is not expressly included within the definition of public school employer in section 3540.1(k). It correctly states the general rule of statutory construction that:

... where a statute enumerates things on which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned. Capistrano Union High School District v. Capistrano Beach Acreage Co. (1961) 188 Cal.App. 2d 612, 617.

²Section 3540.1 provides:

As used in this chapter:

.....
(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

³Section 3549 provides:

The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public school employees and shall not be construed as prohibiting a public school employer from making the final decision with regard to all matters specified in Section 3543.2....

Then, the majority cites People v. Hacker Emporium, Inc. (1971) 15

Cal.App.3d 474, 477 which states that the general rule:

...gives way where it would operate contrary to the legislative intent to which it is subordinate, or where its application would nullify the essence of the statute....Likewise the rule is inapplicable where no reason exists why persons or things other than those enumerated should not be included, and manifest injustice would follow by not including them.... the rule.... also fails if such interpretation leads to absurd and undesirable consequences.

The "manifest injustice" and "absurd and undesirable consequences" which would occur if the majority did not add "regional occupation center" to the enumeration in section 3540.1(k), in the majority's words, is "disparate treatment of essentially identical employees."

Yet, TCOVE is an employer with different characteristics in its formation, funding and authority, which the Board can only suppose the Legislature reasonably determined should not be defined as a "public school employer" within the meaning of section 3540.1(k) . Words may not be inserted into a statute under the guise of statutory interpretation. Kirkwood v. Bank of America (1954) 43 Cal.2d 333, 341. It is the function of the Board to construe and apply the EERA as enacted, and not to add thereto or detract therefrom. People v. Moore (1964) 229 Cal.App.2d 221, 228. The Board should not sit as a super-legislature to determine the wisdom, desirability or propriety of statutes enacted by the Legislature. Horman Estate (1971) 5 Cal.3d 62, 77. I do not think the Board can say that failure to find TCOVE an employer will "nullify the essence of the statute."

This case simply demonstrates the majority's underlying assumption that every person who collects a check from a school district or anything that resembles a school district should be guaranteed rights under the EERA. Thus far, there appears to be not the slightest hint in any Board decision

that the majority will ever exclude any employee connected with a school from coverage under the EERA. See Pittsburg Unified School District⁴, wherein the majority included noon-duty supervisors in a unit of all classified employees excluding various paraprofessional aides. Noon-duty supervisors are individuals who spend an hour-and-a-half at most on the school grounds doing school-yard and restroom patrol and who are generally hired from the student body of neighboring colleges or neighborhood parents. Pittsburg demonstrates the majority's penchant for blindly assuming that everybody who sets foot on a school ground is somehow covered by the EERA. In the present case, the majority again extends the coverage of the EERA in an unwarranted fashion by finding TCOVE to be an employer because it wants to give TCOVE employees the rights that other public school employees have.

Perhaps the majority may be right in wanting the employees of TCOVE to exercise rights similar to those of employees of the duly established school districts under the definition provided in the EERA. Perhaps it would be advisable for the Legislature to review of the exclusion of ROC and ROP programs and include them in the definition of employer under the EERA. But all of these elements are speculative. We are given here a law that is written in clear and precise language. Section 3540.1(k) simply does not include regional occupational centers composed of any number of school districts. For this Board to take the simple language of that definition and expand upon it to meet its own obvious preference of including all employees under the EERA, is an extreme abuse of discretion. I, too, would have the world of education fulfill my own desires, but I am given a statute that on its face is clear in this regard and I cannot, by the furthest stretches of

⁴(10/14/76) EERB Decision No. 3.

the imagination, expand upon the very simple and clear definition of public school employer given to this Board by the California Legislature.

Raymond J. Gonzales,

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the matter of:)
)
JOINT POWERS BOARD OF DIRECTORS,) Case No. S-R-547
TULARE COUNTY ORGANIZATION FOR)
VOCATIONAL EDUCATION, REGIONAL)
OCCUPATIONAL CENTER AND PROGRAM,)
)
Employer,)
)
and)
)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION, CHAPTER 677)
)
Employee Organization.)

Appearances: Larry A. Curtis, Attorney (Musick, Peeler & Garrett) for Joint Powers Board of Directors, Tulare County Organization for Vocational Education, Regional Occupational Center and Program; Madalyn Frazzini, Attorney, for California School Employees Association.

Jeff Paule, Hearing Officer.

STATEMENT OF THE CASE

On May 11, 1976, California School Employees Association, Chapter No. 677 (hereafter CSEA) requested recognition as the exclusive representative of a unit of classified employees¹ of the Joint Powers Board of Directors, Tulare County Organization for Vocational Education, Regional Occupational Center and Program (hereafter TCOVE).

On June 14, 1976, the director of TCOVE issued an employer's decision pursuant to Section 30022 of the Rules and Regulations of the Educational Employment Relations Board (hereafter EERB). In this decision, TCOVE doubted the

¹The requested unit included the following job groups: clerical and secretarial, transportation (bus drivers), and consultants' aides. The requested unit excluded noon duty supervisors and management, confidential, and supervisory positions.

appropriateness of the requested unit, questioned the CSEA's showing of support, and questioned TCOVE's status as a "public school employer" within the meaning of Government Code Section 3540.1(k).

On December 15, 1976, CSEA notified TCOVE that it was withdrawing its request for recognition, and was simultaneously filing a new request for recognition as the exclusive representative of a unit of approximately 12 classified employees with the same inclusions and exclusions as set forth in its earlier request for recognition (see footnote 1).

On December 23, 1976, and again on January 17, 1977, the director of TCOVE notified the EERB that TCOVE's doubts regarding the second request for recognition were the same as set forth in the June 14, 1976 letter.

On January 25, 1977, the Sacramento Regional Director informed the parties that TCOVE's standing as a public school employer was under consideration. The Regional Director also apprised the parties that the question of the showing of support would be resolved at a later date if TCOVE was determined to be a public school employer.

A formal hearing was held on April 6, 1977 in Visalia, California, before a hearing officer of the EERB. The issue before the hearing officer is whether TCOVE is a public school employer under the Educational Employment Relations Act (hereafter EERA). The parties offered a stipulation as to the appropriate negotiating unit, which was received at the hearing, should TCOVE be found to be a public school employer.²

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The appropriate unit was stipulated to be a single unit of all classified employees, but with the following exclusions: director; career guidance consultant, and teachers (all certificated positions); secretary to the director (confidential); building maintenance and groundsman supervisor (supervisor); transportation supervisor (supervisor); maintenance assistant (high school student employed part-time under a Work Experience Program); all casual, temporary, substitute, and student employees; and all employees defined as management, supervisory, or confidential within the meaning of the EERA.

BACKGROUND

Section 52300 et seq. of the reorganized Education Code provides for the establishment of regional occupational programs (hereafter R.O.P.) and centers (hereafter R.O.C.) in California. Education Code Section 52303 defines a regional occupational program as:

...a vocational or technical training program which meets the criteria and standards of instructional programs in regional occupational centers and which is conducted in a variety of physical facilities which are not necessarily situated in one single plant or site.

Education Code Section 52300 states that the purpose of R.O.P.'s and R.O.C.'s is to provide "vocational and technical education to prepare students for an increasingly technological society" and to ensure their preparedness for "gainful employment in the area for which training was provided." In order to achieve the necessary flexibility, programs may be conducted in various physical facilities including business and commercial locations.

Education Code Section 52301 details procedures for establishing R.O.P.'s and R.O.C.'s. Basically, there are three methods to establish a R.O.P.; either by a county superintendent of schools, by an individual school district, or by multiple school districts.

A county superintendent of schools may establish and maintain at least one R.O.P. or R.O.C. alone or with one or more counties. The consent of the State Board of Education is required in either case. Even if a school district establishes a R.O.P. or R.O.C. in a particular county, the county superintendent of schools may establish a separate R.O.C. or R.O.P.

Three types of individual school districts may establish an R.O.P. or R.O.C. These types are: (1) a single school district with an average daily attendance of at least 100,000 students in a county with an average daily attendance of between 140,000 and 750,000 students; (2) a single school district

with an average daily attendance of at least 50,000 students in a county with an average daily attendance of more than 750,000 students; and (3) a single school district with more than 500 schools. The third type of school district requires no consent from the county superintendent of schools or the State Board of Education to establish a R.O.P. or R.O.C. The first two types of districts may apply to the State Board of Education through the county superintendent of schools for permission to establish a R.O.P. or R.O.C. The State Board of Education then prescribes procedures for the district's establishment of a R.O.P. or R.O.C. in compliance with the provisions of the State Plan for Vocational Education.

Multiple school districts in the same county may cooperate in establishing and maintaining a R.O.P. or R.O.C. This method of establishing a R.O.P., multiple school districts, is the procedure used in the instant case. Joint establishment of R.O.P.'s and R.O.C.'s may be undertaken pursuant to Government Code Section 6500 et seq., which provides for establishing joint powers agencies.

Government Code Section 6508 gives the public agency created by the joint powers agreement the power:

...to make and enter contracts, or to employ agents and employees, or to acquire, construct, manage, maintain or operate any building, works or improvements, or to acquire, hold or dispose of property or to incur debts, liabilities or obligations, said agency shall have the power to sue and be sued in its own name.

The joint powers agreement may have a termination date or remain operative until rescinded or terminated.

ISSUE

The sole issue is whether TCOVE (a joint powers agency established by nine school districts and administering a R.O.P. and R.O.C.) is a public school

employer within the meaning of Section 3540.1(k) of the EERA.

FINDINGS OF FACT

The Tulare County Organization for Vocational Education is a joint powers regional occupational program established pursuant to Education Code Section 52301 and Government Code Section 6500 et seq. TCOVE operates a regional occupational center at a location between the cities of Tulare and Visalia. Approximately 1400 students enrolled in TCOVE classes during the 1976-77 school year.

Nine high school districts in Tulare County entered into a joint powers agreement for the establishment and maintenance of TCOVE. According to the joint powers agreement, the TCOVE is under the direction of a board of directors. This board consists of one designated school district board member from each participating school district. The TCOVE board is empowered to enact and adopt rules or by-laws consistent with the joint powers agreement for the orderly transaction of TCOVE business. The TCOVE board also has the power to contract for funds, to lease or purchase property, and to hire personnel.

As of April 4, 1977, the TCOVE staff consisted of 28 persons, 11 of whom occupied the certificated positions of director, career guidance consultant, and teacher. The rest of the employees occupy the classified positions of secretary to the director, account clerk/office supervisor, secretary/receptionist, secretary I, building maintenance and groundsman supervisor, custodian, transportation supervisor, bus driver/aide, placement counselor, placement aide, and maintenance assistant.

Government Code Section 3540.1(k) defines public school employer as:

...the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

CONCLUSIONS OF LAW

R.O.P. Employees under the Winton Act

The Winton Act⁴ defined a public school employer in Education Code Section 13081(b) as:

...the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a personnel commission of a school district which has a merit system as provided in Chapter 3 of this division.

Former Education Code Section 13081(c) defined a public school employee as:

...any person employed by any public school employer excepting those persons elected by popular vote or appointed by the Governor of this state.

Former Education Code Section 13580 applied a chapter of that code relating generally to the rights and obligations of all classified employees (commencing with Section 12901) to the classified employees of joint powers R.O.P.'s and R.O.C.'s.⁵ The last article of that chapter is the Winton Act. Because the classified employees were guaranteed Winton Act rights, joint powers R.O.P.'s and R.O.C.'s were treated as public school employers under that Act for purposes

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Education Code Section 13080 ~~et seq.~~, ~~repealed~~ July 1, 1976, covered employer-employee relations in California public schools until superseded by the EERA on July 1, 1976.

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Former Education Code Section 13580 provided:

Articles 1 through 4, inclusive, of this chapter, and the applicable provisions of Chapter 1 (commencing with Section 12901) of this division shall apply to all classified employees of a school district . . . These provisions shall also apply to all persons who are part of the classified service who are employed by the county superintendent of schools, or any division thereof, and whose salaries are paid out of the county school service fund regardless of the origin of such fund moneys, and to all persons employed by any entity, including a regional occupational center or program, created or established by any two or more school districts pursuant to statute, including Chapter 14 (commencing with Section 7450) of Division 6, exercising any joint power pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, or as otherwise conferred by law upon such districts.
(Emphasis added.)

of employer-employee relations. Therefore, a joint powers public agency administering a R.O.P. or R.O.C. (TCOVE herein) had the duty under the Winton Act to meet and confer with its classified employees pursuant to former Education Code Section 13085.

R.O.P. Employees under the EERA

Government Code Section 3540.1(k) defines a public school employer as:

...the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

Because the EERB and the courts have not previously interpreted this section of the EERA, there is presently no case law upon which to rely. It is therefore necessary to interpret the language of this section to resolve the disputed issue in this case.

The paramount goal in interpreting statutes is to ascertain the Legislature's intent. The initial step in determining that intent is to examine the words themselves according to the usual, ordinary import of the language. People ex. rel. Younger v. Superior Court, 16 Cal. 3d 30 (1976); Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222 (1973). While "[a] statute enumerating things on which it is to operate is to be construed as excluding from its effect all those not expressly mentioned," (Expressio Unius Est Exclusio Alterius), (People v. Mancha, 39 Cal. App. 3d 703 [1974]; Capistrano Union High School District v. Capistrano Beach Acreage Co., 188 Cal. App. 2d 612 [1961]), the rule is inapplicable where contrary to the legislative intent to which it is subordinate. People v. Barksdale, 8 Cal 3d 320 (1972); People v. Hacker Emporium, Inc., 15 Cal. App. 3d 474 (1971). The Court in Hacker went on to say that, "likewise the rule is inapplicable where no reason exists why persons or things other than those enumerated should not be included, and manifest injustice would follow by not including them." 15 Cal. App. 3d at 477.

Joint powers R.O.P.'s are not listed in the specific definition of a public school employer under Government Code Section 3540.1(k). Further, reorganized Education Code Section 45100 (former Education Code Section 13580) makes no reference to Government Code Section 3540 et seq., as the previous Education Code Section 13580 did in applying the Winton Act to the classified employees of joint powers R.O.P.'s and R.O.C.'s.

Regardless, it seems clear that the Legislature intended that the EERA cover employer-employee relations between joint powers R.O.P.'s and R.O.C.'s and their classified employees. The definitions of public school employer under the two acts (the Winton Act and the EERA) are essentially identical.⁶ The definition of public school employee under the EERA⁷ simply takes the Winton Act's definition and adds two exceptions that are irrelevant to the facts of this case. Because of these congruencies, the legislature obviously intended to extend the rights and obligations of the EERA to the same parties covered by the Winton Act. Employees previously enjoying the representation rights of the Winton Act may now exercise EERA rights. Therefore, in the identical manner that joint powers R.O.P.'s and R.O.C.'s were treated as public school employers under the Winton Act, they are to be treated as public school employers under the EERA.

To exclude a group of employees covered by the guarantees of the Winton Act from the magnified rights of the EERA would be patently unjust without an explicit legislative intent to alter that previous protection. Nowhere is such

⁶ The only difference is that the Winton Act included "personnel commissions" in the definition of public school employer. This difference is irrelevant under the facts in this case.

⁷ Government Code Section 3540.1(j) provides:

"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.

an intent manifested. Therefore, classified employees covered by the Winton Act and not specifically excluded from coverage by the EERA are within the jurisdiction of the EERB.

The parties' joint stipulation of the appropriate unit in this case is accepted by the hearing officer without inquiry.

PROPOSED DECISION

It is the proposed decision that:

1. TCOVE is a public school employer within the meaning of Section 3540.1(k) of the EERA.
2. The unit of classified employees stipulated to be the appropriate unit is accepted without inquiry. That unit is: All classified employees, but with the following exclusions: secretary to the director (confidential); building maintenance and groundsman supervisor (supervisor); transportation supervisor (supervisor); maintenance assistant (high school student employed part-time under a Work Experience Program); all casual, temporary, substitute, and student employees; and all employees defined as management, supervisory, or confidential 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 Section 33380 of the Board's Rules and Regulations. If no party files timely exceptions, this proposed decision will become a final order on August 12, 1977, and a Notice of Decision will issue from the Board.

If the Regional Director determines that the showing of support as required by 8 Cal. Admin. Code Section 33030 is sufficient, then within ten (10) workdays following such determination, the Regional Director shall

conduct an election at the end of the posting period if the employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Dated: August 1, 1977

Jeff Paule
Hearing Officer