

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



OFFICE OF THE SANTA CLARA COUNTY)
SUPERINTENDENT OF SCHOOLS,)
)
Employer,)
)
and)
)
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)
Chapter 519,)
)
Employee Organization,)
)
and)
)
ORGANIZATION OF PROFESSIONAL AND)
TECHNICAL EMPLOYEES,)
)
Employee Organization,)
)
and)
)
SERVICE EMPLOYEES INTERNATIONAL UNION,)
Local 715, AFL-CIO,)
)
Employee Organization.)
)
)

Case No. SF-R-24
PERB Decision No. 59
July 19, 1978

Appearances; Richard J. Loftus, Jr., Attorney (Paterson and Taggart) for the Office of the Santa Clara County Superintendent of Schools; Charles L. Marrone, Attorney, for California School Employees Association, Chapter 519; Antonio Estremera, Attorney (Estremera, Gallardo and Hawes) for Organization of Professional and Technical Employees; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg and Roger) for Service Employees International Union, Local 715, AFL-CIO.

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

OPINION

This case comes before the Public Employment Relations Board (hereafter PERB) on exceptions filed by Service Employees International Union, Local 715, AFL-CIO (hereafter SEIU) and

Organization of Professional and Technical Employees (hereafter OPTE) to the hearing officer's conclusion that the positions of film clerk/packer, film inspector I and film inspector II should be included in the office-technical and business services unit rather than the operations-support services unit. We reverse the hearing officer and find that these positions belong in the operations-support services unit.

On March 8, 1977, pursuant to a consent agreement among the parties, elections were conducted in the following units: office-technical and business services, operations-support services, and aides. The consent agreement provided that employees in the positions of film clerk/packer, film inspector I and film inspector II would vote subject to challenge; if their ballots would affect the outcome of the election in either the office-technical and business services unit or the operations-support services unit, their unit placement would be determined by PERB.

As a result of the election, SEIU was certified as the exclusive representative of the operations-support services unit. In the office-technical and business services unit, the ballots of the film clerk/packers and film inspectors I and II could affect the outcome of the election.¹

¹CSEA received 78 votes, OPTE received 75 votes, and 4 votes were cast for no representation, making a total of 157 valid votes counted. There were 7 challenged ballots. The 7 challenges to the ballots of the film clerk/packers and film inspectors I and II are not sufficient to affect the results of the election in the operations-support services unit in which SEIU was certified as the exclusive representative.

A hearing was held on April 19 and 20, 1977. SEIU and OPTE have appealed the proposed decision, arguing that these positions are more appropriately placed in the operations-support services unit. The Office of the Santa Clara County Superintendent of Schools took no position on the proper placement of these positions.

FACTS

There are three film clerk/packers, seven film inspector I's and one film inspector II, all of whom work in the Educational Media Center. The Media Center contains a film library with approximately 16,500 prints which are distributed to approximately 400 schools in Santa Clara County. The persons employed in the classifications at issue work in an area adjacent to a loading dock where delivery drivers, who distribute the films, load and unload their trucks.

The film clerk/packers are responsible for pulling films from shelves and packing them in sequence for delivery. They receive a list of film orders which they recopy in numerical order. They then pull the films and place them on carts. If a film cannot be located, the film clerk/packer checks the rack where the delivery drivers unload to see if it is there. If it is not, the film clerk/packer contacts the school where the film was last assigned or has the delivery driver contact that school. The film clerk/packer loads the films in boxes in a sequence determined by delivery drivers' routes. After the films are returned and inspected, the film clerk/packer reshelves them. This classification spends at least 20 percent

of each day physically loading, unloading and moving films and boxes of films. The job description indicates that employees may be required to lift heavy cartons.

The film inspector I is responsible for inspecting films after use and repairing defects. S/he operates a film inspection machine which runs film at 600 to 1400 feet per minute, stopping automatically at defects. The film inspector I then repairs the defect, using some judgment to determine what repairs to make. S/he also visually inspects the film lead, exercising judgment as to whether to repair or replace the lead. Most film inspectors unload and load films from carts; two are disabled and require assistance from other film inspectors. Film inspectors wear casual clothes and the employer provides safety glasses because film chips sometimes fly off. Film inspectors can perform their work after two or three hours of training; however, it may take from three weeks to three months to become proficient. In the opinion of the supervisor, the work of the film inspector I is more technical than physical. The job description states that employees may be required to lift heavy cartons.

The film inspector II performs the work of the film inspector I and, in addition, is responsible for making minor repairs and adjustments to the film inspection equipment, evaluating film damage, and recommending the replacement of footage or an entire film.

The classifications in question are supervised by the distribution supervisor of the Educational Media Center. This

person also supervises eight delivery drivers, who were stipulated to be in the operations-support services unit and one film distribution clerk, who was stipulated to be in the office-technical and business services unit.

The job descriptions for film clerk/packers and film inspectors require that they have the appropriate licenses to substitute as delivery drivers. In practice, film clerk/packers only occasionally substitute for drivers; film inspectors usually replace absent delivery drivers. Four or five of the seven inspectors act as substitute drivers. Film inspectors also substitute for film clerk/packers when necessary. The job description of the film clerk/packer position indicates that these employees should be able to substitute for film inspectors although the record indicates that no such substitutions have taken place for some time.

There is an informal promotional link between the disputed positions and the position of delivery driver. Out of the eight delivery drivers employed at the time of the hearing, six had been film inspectors or film clerk/packers. One current film inspector had started employment as a film inspector, had become a delivery driver, and had, at his own request, been returned to his film inspector position.

DISCUSSION

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In ~~Sweetwater Union High School District~~, the Board

²(11/23/76) EERB Decision No. 4. See also Fremont Unified School District (12/16/76) EERB Decision No. 6; San Diego Unified School District (2/18/77) EERB Decision No. 8; and Norwalk-LaMirada Unified School District (9/16/77) EERB Decision No. 29.

divided classified employees into three presumptively appropriate units based on community of interest criteria, pursuant to Government Code section 3545(a).³ In this case, the parties have consented to these units; the only issue is the placement of three disputed classifications. In deciding where to place these positions, the Board will consider their community of interest with employees in both the operations-support services unit and the office-technical and business services unit.⁴

In determining whether a community of interest exists among employees, the PERB considers the following criteria: method of compensation, wages, hours, employment benefits, supervision, qualifications, training and skills, work functions, contact with other employees, integration with work functions of other employees, and interchange with other employees.⁵ In

³GOV. Code sec. 3545 (a) provides:

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

⁴We do not consider the other unit determination criteria in this case because no evidence was presented or argument made about either efficiency of operations or extent of membership in the same employee organization.

⁵These criteria were used by the National Labor Relations Board (hereafter NLRB) in Kalamazoo Paper Box Corp. (1962) 136 NLRB 134 [49 LRRM 1715]. While the PERB is not bound by NLRB decisions, it will take cognizance of federal interpretations of Labor Management Relations Act, 29 U.S.C, sec. 151 et seq., provisions that are identical or similar to provisions in the Educational Employment Relations Act, Gov. Code sec. 3540 et seq. Sweetwater, supra, EERB Decision No. 4, and see Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608. In Antioch Unified School District (11/7/77) EERB Decision No. 37, the PERB stated that it follows the NLRB's definition of community of interest as set forth in Kalamazoo.

specific cases, these elements may conflict with some pointing to one unit and some to another. The PERB balances these factors to determine in which unit a position appropriately fits

In this case, we find that the positions in question have a greater community of interest with classifications included in the operations-support services unit than they do with those in the office-technical and business services unit. We base this decision particularly on the relationship between the disputed positions and the position of delivery driver, which is stipulated to be in the operations-support services unit.

The work of the film clerk/packers and film inspectors is functionally integrated with that of the delivery drivers. The films must be distributed to schools and returned to the film library in good repair. The film clerk/packers pack the films for distribution, the delivery drivers distribute and return them to the loading dock, the inspectors clean, inspect and repair the films, and the film clerk/packers reshelve them. The employees work together and have regular contact with each other. To place these employees in separate units would artificially divide what is essentially a single work operation between two units.

There is regular interchange among the positions. Film clerk/packers and film inspectors substitute for delivery drivers. Film inspectors also substitute for film clerk/packers. There is also an informal promotional link. Five out of the eight delivery drivers employed at the time of

the hearing had been film inspectors; one driver had been a film clerk/packer.

The integration and interchange among the film clerk/packers, film inspectors and delivery drivers lead us to find that they have common interests which would be best served by placing all three positions in the same unit. An examination of other community of interest factors does not indicate any greater community of interest existing between the disputed positions and positions in the office-technical and business services unit.

In past decisions, the PERB has found work function to be an important factor in unit determination. In this case, the film clerk/packers and film inspectors perform both clerical and physical work. We find it fruitless to closely analyze exactly what work each disputed position performs and compare it to the work of other positions in each unit. In a situation such as this, where the the work functions of the classifications in question defy easy categorization, other criteria included in the concept of community of interest become more significant. In particular, the integration of work functions and the interchange among the positions of film clerk/packer, film inspector and delivery driver outweigh the fact that their job functions are different.

According to the stipulations of the parties, the supervisor of the film clerk/packers and film inspectors also supervises one member of the office-technical and business services unit and eight members of the operations-support services unit. Therefore the criterion of common supervision is not present in this case.

We note, however, that the film clerk/packers and film inspectors are commonly supervised with the delivery drivers. Also, by placing the disputed positions in the operations-support services unit, 19 out of the 20 employees supervised by the distribution supervisor will be in the same unit.

In this case, we do not have enough information to determine whether the compensation and benefits of the positions at issue differ in any significant way from the compensation and benefits of employees in either the operations-support services unit or the office-technical and business services unit. Nor do we have enough information to find major differences in hours. It is not significant that two delivery drivers choose to begin work one-half hour earlier than other workers. Presumably many employees in the operations-support services unit and almost all employees in the office-technical and business services unit work regular hours from 8:00 to 4:30. We also have no information on the qualifications, training, and skills required of employees in the office-technical and business services unit. We note, however, that the positions in question have no specific educational requirements and do not require the ability to type or use other office equipment.⁶ Rather, most of the holders of these positions are required to be able to drive trucks and lift 70 pounds.

⁶In Sweetwater, supra, EERB Decision No. 4, the fact that office-technical and business services employees were required to type, operate business machines, maintain files and keep records was a significant factor in placing these employees in a separate unit.

Thus, looking at wages, benefits, hours, qualifications, and training skills, we find that there is no information preventing us from placing film clerk/packers and film inspectors in the operations-support services unit, nor are there any significant similarities causing us to find that these positions have a greater community of interest with employees in the office-technical and business services unit. Therefore, because of the integration of work function and interchange among the positions of film clerk/packer, film inspector and delivery driver, we place the film clerk/packers and film inspectors in the operations-support services unit.

Since neither CSEA nor OPTE received a majority of the ballots cast in the office-technical and business services unit, a runoff election is necessary in that unit.

ORDER

The operations-support services unit of classified employees of the Office of the Santa Clara County Superintendent of Schools is hereby amended to include the positions of film clerk/packer, film inspector I and film inspector II.

The Regional Director is directed to proceed with a runoff election between California School Employees Association, Chapter 519 and Organization of Professional and Technical Employees in the office-technical and business services unit.

By / Raymond J. Gonzales, Member

/ **Harry Gluck, Chairman**

~~Ter~~ / **Terillou Cossack Twohey, Member** ✓

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of;

OFFICE OF THE SANTA CLARA COUNTY
SUPERINTENDENT OF SCHOOLS,

Employer,

Case No, SF-R-24

CHALLENGED BALLOTS AND
UNIT CLARIFICATION

and
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,
Chapter 519,

Employee Organization,

and

ORGANIZATION OF PROFESSIONAL AND TECHNICAL
EMPLOYEES,

Employee Organization,

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
Local 715, AFL-CIO,

Employee Organization

~~App~~Appearances; Richard J. Loftus, Jr. Attorney (Paterson and Taggart) for
~~the~~ Office of the Santa Clara County Superintendent of Schools; Charles
L. Maroney, Attorney, for California School Employees Association,
Chapter 519; Antonia Estremera, Attorney, for Organization of Professional
and Technical Employees; Robert Bezemek, Attorney (Van Bourg, Allen,
Weinberg, and Roger) for Service Employees International Union, Local 715,
AFL-CIO.

Before Sharrel J. Wyatt, Hearing Officer.

OPINION

PROCEDURAL HISTORY

After filing requests for recognition and interventions, the
parties entered into consent agreements and elections were conducted

in three units on March 8, 1977: (1) office technical and business services unit, (2) operations support services unit, (3) aides, There is no issue relative to the aides unit.

A special provision in the consent agreement relative to the office technical and business services unit and the operations support services unit provided:

"The positions of Film Clerk/Packer, Film Inspector I and Film Inspector II shall vote subject to a challenged ballot. If they are determinative, they will be determined by a hearing under EERB regulations."

The tally of ballots in the office technical and business services unit reflects:

Void Ballots	0
Votes cast for California School Employees Association and its CSEA Chapter 519	78
Votes cast for Organization of Professional and Technical Employees	75
Votes cast for No Representation	4
Valid votes counted	157
Challenged ballots	7
Valid votes counted plus challenged ballots	164

The challenges are sufficient to affect the results of the election.

The seven challenged ballots are those of persons occupying the positions of film clerk/packer, film inspector I and film inspector II.

Based on the election results SEIU Local 715 was certified as the exclusive representative for employees in the operations-support services unit.

By joint petition dated April 7, 1977, the parties requested a hearing to resolve the seven challenged ballots in the office technical and business services unit.

By way of that same petition, the parties jointly requested a unit clarification hearing to determine if the position of staff administrator/research psychologist should be properly included in the office technical and business services unit or had been properly designated as management under the Act.

A hearing was held on April 19th and 20th, 1977, and the parties submitted the matter following oral argument.

ISSUES

1. Whether the positions of film clerk/packer, film inspector I and film inspector II are appropriate in the office technical and business services unit.

2. Whether the position of staff administrator/research psychologist is management or supervisory.

DISCUSSION

The Challenged Ballots

The Office of the Santa Clara County Superintendent of Schools (School District) took no position on the proper placement of the challenged ballots. Service Employees International Union, Local 715, AFL-CIO (SEIU) and the Organization of Professional and Technical Employees (OPTE) took the position that the positions of film clerk/packer, film inspector I and film inspector II are appropriate to the operations support services unit. California School Employees Association, Chapter 519 (CSEA) took the position that these positions are appropriate to the office technical and business services unit.

The Educational Media Center handles distribution of inter-office mail and maintains and repairs film for distribution to approximately 400 schools in Santa Clara County. The film library contains approximately 4500 titles and 16,500 prints.

All of these classifications are physically located in the Media Center.

Delivery drivers for the Media Center follow the same route each day. The film clerk/packer is responsible for pulling films for the following day's delivery and packing them in the proper sequence for delivery. In doing this, the film clerk/packer transcribes numbers from one list to another. If a film cannot be located, its number is circled and the film clerk/packer goes to the rack where drivers unload to see if it is there.

Packing begins with large films and works to small and with the last school on the route and works to the first. Each copy letter is recorded for tracing and filed on a clip board for the route.

Film clerk/packers occasionally substitute for film inspectors. Three out of seven film inspectors substitute for delivery drivers. It has been a long time since a film clerk/packer has substituted for a delivery driver. If either a film inspector or film clerk/packer substitute for a delivery driving, they would be working out of their class and paid at a different rate if they do so for over two days.

The film inspector I loads and unloads film he checks from a cart and operates an automatic film inspection machine which detects any defects in the film. The machine stops for a defect and the film inspector I repairs the defect using marking pens and splicer and then continues running the film. The film lead and number are checked visually by the film inspector I who maintains an adequate amount of lead and tail on the film. Seven to seven and 1/4 hours of an eight hour day are spent at the machine inspecting film.

The supervisor was of the opinion that the film inspector I was more of a technical than a physical job. Ability in reading, writing, speaking and manual dexterity is required for the position.

The film inspector II performs the work of the film inspector I and, in addition, has responsibility for minor repairs and adjustments to the film inspection equipment and for evaluating damage and is responsible for recommending replacement of footage or of an entire film.

While no uniform is required, employees in the department generally dress casually; the employer does provide safety glasses for film inspectors and requests their use.

Delivery drivers work staggered shifts from 6:00 a.m. to 2:30 p.m. and from 9:00 a.m. to 5:00 p.m. Other employees in the department work from 8:00 a.m. to 4:30 p.m.

Ability to lift up to 70 pounds is a requirement for the delivery drivers. Film clerk/packers must be able to push a cart when fully loaded with film; the record reflects that the cart is easy to push. While they prepare lists of film by number in the pulling process, there is no requirement that they have typing skills.

While it takes from 3-4 weeks to 2-3 months to become proficient as a film inspector, the work can be performed after a couple of hours of training.

In the last ten years, six employees have gone from the classification of film inspector to delivery driver and one has returned to the classification of film inspector from delivery driver.

The film clerk/packer job description provides that this classification "performs routine clerical duties related to the preparation of film packing" and gives examples such as "puts delivery sheets into route order...verifies count of films going to each school; adds and records monthly totals by schools and routes; sorts and shelves by number," The job also requires the employee "to act as a relief driver when needed" and thus requires the appropriate licenses and it indicates ability to do heavy lifting may be required.

The film inspector I job description requires specific clerical tasks such as "records film content card, remarks", but also requires appropriate licenses to substitute as a delivery driver and may require ability to do heavy lifting.

The film inspector II job description does not require that this classification be able to do heavy lifting or be qualified to substitute for delivery drivers. It does require technical skills to repair and maintain equipment and maintain inventory of required supplies and equipment.

Within the Educational Media Center, the film clerk/packers and film inspectors work with the film libraries, film distribution clerk, and film router and checker, all of whom are within the office technical and business services unit. The film librarian maintains the records of film and arranges the preview and purchase of film. The film distribution clerk performs clerical duties involved in the preparation and shipping of media materials. The film router and checker performs clerical duties in preparation, checking, and follow-up of film orders.

In Sweetwater,¹ the Board outlined the presumptively appropriate units among classified employees based on community of interest criteria, pursuant to Government Code Section 3545 (a). There, as here, the extent to which such employees belong to the same employee organization and the effect of the size of the unit on the efficient operation of the school district were not an issue in arriving at a determination as to appropriate units.

¹EERB Decision No. 4, November 23, 1976.

The office technical and business services unit and the operations-support services unit in which consent elections were held in this case are presumptively appropriate units under Sweetwater. To determine in which unit or units the film clerk/packer, film inspector I and film inspector II are appropriate, it is necessary to look to the criteria used by the Board in Sweetwater. The presumptive community of interest for office technical and business services classifications and for operational-support classifications was based on work function, educational requirement, compensation, work hours and supervision.

The film clerk/packer, film inspector I and film inspector II are supervised by the Educational Media Center distribution supervisor. He supervises the delivery drivers who are in the operations-support services unit and the film distribution clerk who is in the office technical and business services unit. Thus, supervision is clearly not a determinative factor.

Compensation is not reflected in the record and thus does not form the basis for this decision.

In so far as work hours are a factor, it provides support for finding that these employees are appropriate to the office technical and business services unit. The film clerk/packer and film inspector I and film inspector II all work regular hours from 8:00 a.m. to 4:30 p.m. as opposed to delivery drivers who work staggered shifts. Each position in question reports to a site and remains there throughout the work day. This, too, is more akin to the office technical and business services unit than to operations-support services who move about the grounds or District.

Finally, in terms of work function, the film clerk/packer, film inspector I and film inspector II are appropriate to the office technical and business services unit. In determining whether these employees perform functions which involve "providing a proper physical environment and support services for students" or "generally...perform clerical and record-keeping work...[and] are required to type, operate business

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machines, maintain files and keep records," ' other employees included in each unit must be considered. The operations-support services unit includes: bus driver, bus driver/custodian, bus driver mini, bus driver-ROP, bus driver/trainer, children's center assistant cook, children's center cook, communications dispatcher I, communications dispatcher II, cook, custodian, custodian/night, custodial aide, delivery driver, food service worker, gardener, head bus driver, head cook, head custodian/utility and maintenance man, storekeeper, storekeeper's assistant, transportation driver, vehicle service worker, head custodian.

Within this unit, only the communications dispatcher I and II and storekeeper and storekeeper's assistant perform job functions which have any similarity to those performed by the film clerk/packer and film inspector I and II. The dispatcher classifications receive and transmit radio communications for all vehicles operated by the school district and maintain complete radio logs, maintain and update vehicle status and student emergency card files and other clerical functions. The distinguishing characteristics of these positions is that they are part of a team which provides direct support to students. They receive dispatches from bus drivers relating to student problems such as seizures, convulsions and hyperactive students, and dispatch drivers

²Fremont unified School District, EERB Decision No. 6, December 16, 1976.

to residences where no one is there to receive students or to locations of bus break down or accidents to pick up students.

The film clerk/packer and film inspector I and II fill orders or inspect and repair film on behalf of teachers and provide no direct contact or support for students.

The storekeeper and storekeeper's assistant check goods received against invoices or purchase orders, unpack, sort and store and withdraw items to fill orders. By way of recordkeeping, they take inventory and maintain perpetual inventory records. To distinguish these positions from that of film clerk/packer, they make pick-ups and deliveries by hand or motorized vehicles, they set up the conference rooms as required and move equipment from one department to another or one school to another and maintain the storage areas in a neat and clean condition, load and unload trucks, and operate forklifts and related equipment.

The office technical and business services unit includes the following classifications: account clerk I, account clerk II, account clerk III, bookkeeping machine operator, budget technician, buyer, children's center clerk, clerical supervisor, clerk stenographer, computer operator I, computer operator II, computer operator III, computer operator trainee, computer terminal operator, conference center manager, credentials technician I, credentials technician II, customer service representative, data processing control clerk I, data processing control clerk II, data processing equipment operator, data processing production coordinator, development manager, duplicating services machine operator, field counselor-child care pilot study, file clerk,

film booking clerk I, film booking clerk II, film distribution clerk, film librarian, film router and checker, fiscal secretary, graphic arts specialist, graphic arts technician, job developer-VOICE, lead computer terminal operator, learning assessment technician, library technical assistant, mail clerk, office assistant-special schools, office assistant-VOICE, orthopedic artisan, payroll services advisor, personnel clerk, personnel technician, position referral interviewer, production operator, production specialist, program assistant/special schools, programmer analyst I, programmer analyst II, programmer analyst III, publications/conference center clerk, receptionist/superintendent's aide, receptionist/superintendent's aide assistant, records clerk, regional clerk, reproduction services operator, research assistant I, research assistant II, resource field leader, resource specialist (compensatory education), retirement clerk, school attendance accounting technician, school supply clerk, secretary I, secretary II, secretary III, secretary/attendance accounting clerk, secretary/bilingual I, secretary/bilingual II, senior programming analyst, statistical liaison, supervising account clerk I, supervising account clerk II, supervising/recording secretary, systems programmer, tape librarian, television station operator, television station technician, testing proctor, traffic specialist, typist clerk I, typist clerk II, typist clerk III, typist clerk I/bilingual, unemployment insurance clerk, vocational services counselor, xerox operator.

Several positions within the office technical and business services unit perform work functions which are similar to those of the film inspector I and II including the duplicating services machine operator

who operates offset duplicating machines by making adjustment to paper feed and guides, mixing and matching inks and regulating ink flow, and making minor repair and adjustments, and the xerox operator who operates, cleans and maintains the xerox machine and collator.

Other positions in the unit perform work functions similar to the film clerk/packer including aspects of the work function of the computer terminal operator (receives requests for information, check files and records to obtain and transmits). While this job is apparently more complex, it clearly involves a similar work function.

Unlike custodians, bus drivers, gardeners and food service employees who provide a proper physical environment and direct support services for students, these positions file orders, maintain records and repair film to fill requests by teachers for films. The work functions are more clerical and technical in nature.

The proposed decision is that the office technical and business services unit should be amended to include the positions of film clerk/packer, film inspector I and film inspector II. This proposed decision turns on community of interest including the regular hours of these employees, their fixed work location and work function.

Staff Administrator/Research Psychologists

Initially, the school district and CSEA took the position that the position of the staff administrator/research psychologist was a management position.³ It was so designated by the school district. SEIU and OPTE took the position that the position was not managerial. After one day of hearing, the school district, SEIU and OPTE stipulated that this

³ If the position is not management, it would be appropriate to the office technical and business services in that it does not require certification; the record reflects it is a classified position.

position was neither management nor supervisory. CSEA continued to maintain that the position was management.

The job requirements for the staff administrator/research psychologists require a "Ph.D., Research Design, Statistics, Computing, Learning and Behavior." The position is responsible for:

Research development, assessment, planning, management information systems, program evaluation, master plan coordinator, curriculum instruction as related to program objectives, and experimental programs.

Only items (15) and (16) of the job description could describe management or supervisory tasks:

(15) Serves as member of assistant superintendent's cabinet providing input in the decision-making model.

(16) Performs other duties as assigned periodically by the assistant superintendent of special schools and services.

The record reflects that the school district had designated approximately one in six or seven positions as management. SEIU Exhibit No. 2 reflects that the assistant superintendent special schools and services division did not consider the staff administrator/research psychologist to be management.

The person in the position of staff administrator/research psychologist is responsible for a proposed budget and may make capital expenditures if it is within the budget and approved by the assistant superintendent for special schools and services, his supervisor. The size of the budget is based on the number of children in the program.

On Friday mornings, the superintendent's cabinet meets. This body consists of assistant superintendents, associate superintendents and directors. It is referred to as the "mini cabinet" and is concerned

primarily with line management functions and policy functions. The staff administrator/research psychologist is not a member of the mini cabinet and not required to attend its regularly scheduled meetings.

The "maxi cabinet" is composed of all employees designated as management and is concerned with research and evaluation such as kinds of testing instruments and evaluation design. The staff administration/research psychologist stopped attending "maxi cabinet" meetings and has not been reprimanded for his failure to do so. He stated he stopped attending because problems were discussed but never resolved.

The staff administrator/research psychologist is concerned with problems relative to how to evaluate learning. The decision on whether to evaluate is made at the assistant superintendent's level.

The position does not play any role in labor relations or the processing of grievances on behalf of the school district.

The staff administrator/research psychologist works with a team of three other employees. He is responsible for overseeing programs and looks to the staff administrator/research psychologist regarding theory and technical data. The assistant superintendent for special schools and services supervises the employees on the team in that he would approve items like sick leave or vacations. The staff administrator/research psychologist has been told he has no authority to approve leaves. Work is assigned within the team by mutual agreement. If no mutual agreement could be reached, the staff administrator/research psychologist would be responsible for assigning work within the program as he is responsible for development of programs. Were it necessary to assign, the assignment would be routine in nature based upon the technical ability of each team member. Once work is assigned, each team member works independently.

The staff administrator/research psychologist indicated he is supposed to evaluate employees on the team but does not do so. He has not been reprimanded for failure to do so. On one occasion when he complained to the assistant superintendent about random computer errors by an employee or the team, the assistant superintendent took no action. Members of his team belong to the same employee organization as the staff administrator/research psychologist. He has represented members of his team and others as a representative of the employee organization in requesting that the school district reclassify them or make pay adjustments.

When the research assistant was hired, 113 persons applied and the staff administrator/research psychologist reviewed their technical qualifications and narrowed the list to 13. The eligibility commission narrowed the list to three. The assistant superintendent for special schools and services questioned the qualifications of the three and recommended that one be hired.

The staff administrator/research psychologist has the same hours and benefits as other members of the unit. He is not authorized to assign overtime, schedule work hours, discipline, suspend or terminate. Ninety-five to ninety-eight percent of his time is spent working with the computer and other equipment.

Like T.V. technicians, he has a key to the building. He requested it so he would be able to protect equipment in an emergency.

Government Code Section 3540.1(g) defines "management employee":

"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 Educational Employment Relations Board.

Here, the school district has withdrawn its designation of the staff administrator/research psychologist as management. Whether or not we can find an employee management where the public school employer has not designated him as management need not be addressed because the evidence would not support such a finding in any event. The record reflects that the "mini cabinet" formulates district policies. The staff administrator/research psychologist is not a participant in that body. Like psychologists in the Oakland⁴ decision, the staff administrator/research psychologist exercises discretion only in his area of expertise, testing and evaluation. Nor can it be said that this position has significant responsibility for administering programs. The record reflects that the position determines how to evaluate but has no authority to determine whether or not to evaluate.

Based on the foregoing, the proposed decision is that the position of staff administrator/research psychologist is not a management position.

Supervisory employee is defined by Section 3540.1(m) of the

"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 such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

³Government Code Section 3543.4.

⁴Oakland Unified School District, EERB Decision No. 15, March 28, 1977.

Clearly, the assistant superintendent for special schools and services has retained the right to hire, approve vacations and leaves, and the staff administrator/research psychologist has no authority to assign overtime, schedule work hours, discipline, suspend or terminate. While he has input as to technical qualifications in the hiring process, the ultimate decision is reserved to the assistant superintendent for special schools and services.

The role and responsibility of the staff administrator/research psychologist is similar to that of department heads in the New Haven⁵ decision. He has the greater experience and expertise, but does not exercise any real authority.

Like the older, more experienced employee who functions as a leadman, this position is one of technical expertise. The position is responsible for the program, but 95 to 98 percent of the time of the staff administrator/research psychologist is spent actually working with the computer and other equipment. He does not evaluate other employees in the unit and the school district does not reprimand him for failure to do so. He does not assign work within the unit, but is responsible for the work performed. "Having authority in the interest of the employer" to perform specific tasks or effectively recommend specific actions relative to other employees must at least involve that the employer expect or require such responsibility and that the employee in fact assume the authority. Where, as here, the school district has

⁵New Haven Unified School District, EERB Decision No. 14, March 22, 1977.

not assigned the authority, included it in the job description, reprimanded the employee for failing to exercise the authority, or inquired and sought input from the employee relative to hire, transfer, suspension, layoff, recall, promotion, discharge, assignment, reward or discipline, it cannot be said that the employee has the authority.

Each member of the team works independently of one another, with the staff administrator/research psychologists possessing the greatest technical expertise and acting as a crew leader. All of the team share common hours and benefits and all look to the assistant superintendent for special schools and services to hire, approve leave and vacations.

For the foregoing reasons, it is the proposed decision that the position of staff administrator/research psychologist is not supervisory.

PROPOSED DECISION

It is the proposed decision that:

1. The office technical and business services unit shall be amended to include film clerk/packers, film inspector I and film inspector II.

2. The staff administrator/research psychologist is not a management or supervisory employee within the meaning of Government Code Section 3540.1(g) or Section 3540.1(m).

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 Rules and Regulations. If no party files timely exceptions, this proposed decision will become a final order of the Board on June 10, 1977, and a notice of decision will issue from the Board. At that time the regional director is instructed to open each of the challenged ballots determined to be valid herein, to file a revised tally of ballots consistent with this decision, and to certify an exclusive representative of the employees in the office-technical and business services unit or to conduct a runoff election as appropriate.

Dated: May 27, 1977

Sharrel Wyatt
Hearing Officer