

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



VENTURA COUNTY COMMUNITY COLLEGE DISTRICT, )  
 )  
Employer, ) Case No. LA-R-759  
 ) LA-UM-92  
and )  
 ) PERB Decision No. 139  
VENTURA COUNTY FEDERATION OF COLLEGE )  
TEACHERS, AFT Local 1828, AFL-CIO, )  
 ) July 11, 1980  
Employee Organization. )

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Appearances; Larry A. Curtis, Attorney (Musick, Peeler & Garrett) for Ventura County Community College District; Richard Quint, President for Ventura County Federation of College Teachers, AFT Local 1828, AFL-CIO.

Before Gluck, Chairperson; Moore, Member.

DECISION

This case is before the Public Employment Relations Board (hereafter Board) on exceptions taken by the Ventura County Federation of College Teachers (hereafter Federation) to the hearing officer's proposed decision. The Federation objects to the hearing officer's conclusion that the position of Affirmative Action Officer is a management position within the meaning of Government Code section 3540.1(g) and is, therefore, excluded from the certificated unit.<sup>1</sup>

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1 Government Code section 3540.1 (g) reads as follows:

(g) "Management employee" means any employee in a position having significant

The Ventura County Community College District (hereafter District), in turn, objects to the Federation's Statement of Exceptions, contending that the Federation did not comply with the technical requirements of California Administrative Code, title 8, Part III, Section 32300<sup>2</sup> in that the Federation failed to state the grounds for each exception and to

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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.

<sup>2</sup>PERB rules are codified at California Administrative Code, title 8, section 31000.

Section 32300 provides as follows:

Exceptions to Board Agent Decision.

(a) A party may file with the Board itself an original and four copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to section 32215, and supporting brief, within 20 calendar days following the date of service of the decision. The statement of exceptions shall:

(1) State the specific issues of procedure, fact, law or rationale to which each exception is taken;

(2) Identify the page or part of the decision to which each exception is taken;

(3) Where possible designate by page citation or exhibit number the portions of the record relied upon for each exception;

(4) State the grounds for each exception.

"specifically urge" each exception. Thus, the District asserts, the Federation waived its exceptions. The District also asserts that the hearing officer's decision was correct.

California Administrative Code, title 8, Part III, section 32300 requires a party to state its exceptions to a hearing officer's proposed decision with sufficient specificity that the opposing party and the Board are apprised on the contested issues and the reasons for the exceptions.

Here, there is only one issue in dispute, the status of the District Affirmative Action officer, In its statement of exceptions, the Federation lists examples of evidence which purportedly contradict the hearing officer's finding that the Affirmative Action Officer is a management employee. Although the Federation did not specifically state that the hearing officer failed to weigh or incorrectly weighed this evidence, by contending that the hearing officer erred in finding that the incumbent is a management employee, and by listing contrary

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(b) No reference shall be made in the statement of exceptions to any matter not contained in the record of the case.

(c) An exception not specifically urged shall be waived.

(d) The party shall, concurrent with its filing of the statement and supporting brief, serve a copy of the same upon each party to the proceeding. Proof of service shall be filed with the Board itself.

evidence, the Federation has given adequate notice to the Board and to the District of its objections and has therefore substantially complied with section 32300.

The hearing officer's statement of facts and conclusions of law are free from prejudicial error and are adopted by the Board. We therefore affirm the hearing officer's finding that the District's Affirmative Action Officer is a management employee within the meaning of Government Code section 3540.1(g) and is, therefore, excluded from the certificated unit.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The District Affirmative Action Officer is a management employee within the meaning of Government Code section 3540.1(g) and is, therefore, excluded from the certificated unit.

By: Barbara D. Moore, Member

Harry Gluck, Chairperson

PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF CALIFORNIA



VENTURA COUNTY COMMUNITY COLLEGE )  
DISTRICT, )  
 )  
Employer, )  
 )  
and )  
 )  
VENTURA COUNTY FEDERATION OF )  
COLLEGE TEACHERS, AFT LOCAL 1828, )  
AFL-CIO, )  
 )  
Employee Organization. )  
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Representation  
Case No. LA-R-759  
LA-UM-92

PROPOSED DECISION  
(4/14/80)

Appearances; Larry A. Curtis, Attorney (Musick, Peeler & Garrett) for Ventura County Community College District; Richard Quint, President for Ventura County Federation of College Teachers, AFT Local 1828, AFL-CIO.

Before Dee Crippen, Hearing Officer.

INTRODUCTION

The Ventura County Community College District (hereafter District) has a student enrollment of approximately 25,451 at three college campuses, Moorpark, Oxnard and Ventura in the County of Ventura.<sup>1</sup>

On May 29, 1979 the District pursuant to section 3541.3 (e) of the Educational Employment Relations Act (hereafter EERA)<sup>2</sup>

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<sup>1</sup>"California Public School Directory" (1979) State Department of Education, at p. 583.

<sup>2</sup>The EERA is codified at Gov. Code 3540 et. seq. All statutory references are to the Gov. Code unless otherwise noted.

filed a unit modification petition with the Public Employment Relations Board (hereafter PERB) to exclude the position of Affirmative Action Officer from the established certificated unit. On June 19, 1979 the Ventura County Federation of College Teachers (hereafter Federation) filed its response in opposition to the District's petition.

The District contends that the Affirmative Action Officer is a management employee and consequently the position should be excluded from the certificated unit as required by section 3545(b)(1).3

The Federation contends that the position is not a management position as the incumbent does not possess significant responsibilities for formulating district policies and administering district programs and should remain part of the overall certificated negotiating unit.

After an informal conference, at which no resolution was reached, a formal hearing was held on October 29, 1979. Thereafter, simultaneous briefs were filed by the parties on January 28, 1980.

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3Gov. Code section 3545(b)(1) reads as follows:

(b) In all cases:

(1) A negotiating unit that includes classroom teacher's ballot not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

## ISSUE

Whether the position of Affirmative Action Officer is a management employee within the meaning of Government Code section 3540.1(g) and therefore properly excluded from the unit,

## FINDINGS OF FACT

On June 2, 1977 pursuant to a consent election, certification was granted to the Ventura County Federation of Teachers, AFT Local 1828, AFL-CIO for a unit including:

All full-time and part-time certificated employees, except management, supervisory and confidential employees as defined by the Act.

A negotiated agreement was signed between the District and the Federation on March 7, 1978. In this negotiated agreement the title of "Instructor/Affirmative Action Officer" was deleted and replaced with the title of "Affirmative Action Officer". The District requested the exclusion of the Affirmative Action Officer designation, but the Federation did not agree to delete the position as management.

A petition for change in unit determination was filed by the District with the PERB on May 16, 1978. The petition to exclude the Affirmative Action Officer as a management employee was the result of the governing board's action on April 4, 1978 approving the designation of Affirmative Action Officer in concept as a management employee and directing the District Superintendent to file the petition to remove the position from the unit.

The petition for unit determination was dismissed on July 31, 1978 by the PERB as the petition did not meet the criteria for filing under Board Resolution #6.4

On May 29, 1979 the District filed a petition for unit modification pursuant to PERB Rule 33260<sup>5</sup> and section

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4Resolution No. 6 (7/6/76) EERB reads as follows:

Petitions for changes in unit determinations pursuant to Section 3541.3 (e) of the Act will be entertained by the Educational Employment Relations Board under the following circumstances:

1. Where both parties jointly file the petition; or
2. Where there has been a change in the circumstances which existed at the time of the initial unit determination.

5Section 33260 provides as follows:

Policy. It is the policy of the Board to provide a single mechanism which shall be utilized for the modification of all established units. This system is designed to ensure that all parties to a modification are afforded notice and opportunity to express their views with regard to any proposed modification, and to provide assistance in the resolution of questions raised by the parties to a dispute regarding the modification of a unit.

The Board will not allow a unit modification which is based principally on employee dissatisfaction with the results of negotiations or the exclusive representative; nor will the Board permit a unit modification which impinges on the integrity of another established unit in which there is a different recognized or certified organization or which compromises the exclusivity of such certification.

No unit modification may be made by any procedure other than that contained in this Article. (Amended as of 6/14/79)

3541.3(e) of the EERA stating that a change in circumstances had occurred and that the issue of voluntary removal of the Affirmative Action Officer as a management employee could not be effected.

The position of Deputy Affirmative Action Officer was created in 1976 as a 50 percent affirmative action officer, 50 percent instructor, paid on an 11-month contract at an instructor's salary and designated non-management. The incumbent was appointed in the 1976-1977 school year.

In response to increased administrative duties and responsibilities, the word "Deputy" was dropped from the title and the Governing Board of the District took action on June 7, 1977 to increase the position to 60 percent affirmative action and 40 percent teaching and/or inservice training with a 12-month contract.

The position was increased to 80 percent affirmative action, 20 percent as an instructor during the 1977-1978 school year and ultimately raised to its present level of 100 percent in the spring of 1978.

The Affirmative Action Officer is recommended for appointment by the District Superintendent and appointed by the governing board. In this capacity, the Affirmative Action Officer reports directly to the District Superintendent. The Affirmative Action Officer has the primary responsibility for the administration of the District's affirmative action plan and is responsible for assuring compliance of the affirmative action plan on a District-wide basis. No teaching

responsibilities are assigned to the position, as the position of Affirmative Action Officer is a full-time one. The position is compensated on a 12-month contract basis as opposed to all other certificated employees who are compensated on a 10-month contract basis.

The Affirmative Action Officer interprets all federal and state legislation relating to equal employment and affirmative action. She is responsible for preparing and filing any required reports with the appropriate governmental agencies and handles all inquiries from employees and all governmental agencies regarding equal employment opportunities or affirmative action. She acts as chief spokesperson for the District on all affirmative action matters.

She reviews all job announcements for certificated and classified employees for compliance with the District's affirmative action plan and has the authority to require changes or insertions in the content on all publications to achieve compliance. She has the authority to direct the superintendent to change resolutions of the District if the resolution is in violation of the affirmative action plan. She has the authority to waive or forego portions of the affirmative action plan in order to achieve compliance.

She establishes screening committees to interview job applicants and has the authority to modify or restructure the

committee if it is not sufficiently representative in terms of ethnicity or sex.

She conducts surveys to insure that the distribution of positions within the District are in compliance with the District's affirmative action goals and has the authority to establish a calendar for inservice training of District personnel and students.

She has discretionary control over the entire affirmative action budget, excluding the salaries of herself and her secretary.

#### CONCLUSIONS OF LAW

Government Code section 3540.1(g) defines a "management employee" as "any employee in a position having significant responsibilities for formulating district policies or administering district programs."

The PERB has previously concluded that a management employee must possess significant responsibilities for both formulating district policies and administering district programs.<sup>6</sup> The EERA's requirement that a management employee "formulate district policies" requires that an employee possess discretionary authority to develop or modify institutional

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<sup>6</sup>Lompoc Unified School District (March 17, 1977) EERB Decision No. 13, at 20-21.

goals and priorities. "Administering district programs" requires authority to implement district programs through the exercise of independent judgment.<sup>7</sup>

This case is similar to that addressed by the PERB in Berkeley Unified School District.<sup>8</sup> in Berkeley the PERB was asked to determine whether the Title IX Coordinator<sup>9</sup> was a management employee. The PERB ruled that the position was management because the coordinator insures the District's compliance with Title IX by preparing and submitting various reports to the Department of Health, Education and Welfare. The Title IX Coordinator has the authority to investigate practices and policies of the District where sex bias is found to exist and direct that the practice be changed. Her authority is not limited to routine matters, but she can investigate in great depth. She conducts surveys to identify discriminatory practices within the District and handles grievances relating to sex discrimination. She interprets Title IX policy for the District and may serve as the

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<sup>7</sup>Hartnell Community College District (January 2, 1979) EERB Decision No. 81, at 13.

<sup>8</sup>Berkeley Unified School District (August 28, 1979) PERB Decision No. 101, at 9-10.

<sup>9</sup>Title IX of the Education Amendments of 1972, P.L. 92-318 (1972), as amended by P.L. 93-568 (1974) and P.L. 94-482 (1976) prohibits sex discrimination in federally assisted education programs.

District's spokesperson on Title IX matters. She has discretionary control over a \$5,000 budget to carry out her responsibilities relating to Title IX.

The PERB concluded that the Title IX coordinator has authority to use independent judgment in identifying discriminatory practices within the District, that this authority was District-wide and not limited to routine matters. She has authority to direct a change in a discriminatory practice. She has significant responsibilities for formulating and administering District policy with respect to equal treatment of the sexes. Therefore, the PERB concluded that the Title IX Coordinator was found to be a management employee.

The position of Affirmative Action Officer in Ventura is similar to the Title IX Coordinator in Berkeley as the Affirmative Action Officer has the primary responsibility for the administration of the District's affirmative action plan and, if necessary, has authority to waive or forego portions of the plan in order to achieve affirmative action.

She formulates surveys to be conducted on a district-wide basis to determine the utilization, underutilization, ethnicity and sex distribution of positions and can direct changes to be made in the District's affirmative action plan to meet legislative requirements.

She handles all inquiries from the District employees with regard to affirmative action and is the District's chief

spokesperson with the governmental agencies dealing with affirmative action. In this context, she prepares and files all appropriate reports with these governmental agencies.

She has discretionary control over the entire affirmative action budget, excluding salaries.

She can advise a change in the affirmative action plan if any discriminatory practice is found on a district-wide basis. She may authorize the District Superintendent to implement these changes and has the responsibility for the total administration of the affirmative action plan for the District.

As this case shows similar facts to the Berkeley case, it is concluded that the position of Affirmative Action Officer is a management employee and therefore is properly excluded from the unit.

#### PROPOSED DECISION

Based on the foregoing findings of fact, conclusions of law and the entire record in this matter, it is the proposed decision and order that:

The position of Affirmative Action Officer is a management position within the meaning of Government Code section 3540.1(g) and is, therefore, excluded from the certificated unit.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall

become final on May 5, 1980 unless a party files a timely statement of exceptions and supporting brief within twenty (20) calendar days following the date of service of this decision. Such statement of exceptions and supporting brief must be actually received by the Executive Assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on May 5, 1980 in order to be timely filed. (See California Administrative Code, title 8, part III, section 32135.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. (See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.).

DATED: April 14, 1980

Dee Crippen  
Hearing Officer