STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LONG BEACH COMMUNITY COLLEGE DISTRICT,	)	
Employer,	)	Case No. LA-R-916
and	)	PERB Decision No. 765
CERTIFICATED HOURLY INSTRUCTORS LONG BEACH CITY COLLEGE, CTA/NEA,	)	September 14, 1989
Employee Organization.	)	

Appearances: O'Melveny & Myers, by Virginia L. Hoyt, Attorney, for Long Beach Community College District; Reich, Adell & Crost, by Glenn Rothner, Attorney, for Certificated Hourly Instructors Long Beach City College, CTA/NEA.

Before Hesse, Chairperson; Porter, Craib and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions, filed by the Long Beach Community College District (District), to the attached proposed decision of a PERB administrative law judge (ALJ). The ALJ found that a separate unit of certificated hourly instructors would be appropriate. The District opposed the request for recognition filed by the Certificated Hourly Instructors Long Beach City College, CTA/NEA, claiming that the only appropriate unit is a comprehensive one which includes all faculty.

The full-time faculty are in an existing bargaining unit represented by the California Teachers Association, Long Beach City College (CTA-LBCC), which was certified as the exclusive representative on May 23, 1978. In 1977, CTA-LBCC sought to

represent a comprehensive unit which included both full-time and part-time faculty,[1] but later agreed to drop the part-time faculty from its request in the face of strong opposition from both the District and a rival employee organization. CTA-LBCC has never filed a unit modification petition nor taken any official position seeking to add the part-time faculty to the existing full-time unit. Efforts by one CTA-LBCC official to add the part-time faculty to the unit have been rebuffed by the organization.

We have reviewed the entire record in this case, including the District's exceptions to the proposed decision and the response thereto and, finding the ALJ's findings of fact and conclusions of law to be free of prejudicial error, we adopt the proposed decision as the decision of the Board itself. In the following discussion, we will address those of the District's exceptions which we believe warrant comment.

DISCUSSION

This case presents the issue of how to resolve disputes over representation petitions filed by residual groups of unrepresented employees who were excluded from existing units via voluntary recognitions or consent election agreements, but would likely have been included in the unit had the issue been before the Board at that time. A dilemma arises when, sometime later, the excluded employees seek bargaining rights through a petition

[1]Throughout these proceedings, the parties have used the term "part-time" faculty as synonymous with certificated hourly instructors. That practice will be repeated here.

for a separate unit. Such petitions are filed because there is no mechanism for being added to the existing unit if the exclusive representative of that unit chooses not to file a unit modification petition.

First, the District excepts to the transfer of the case to a different Board agent for decision subsequent to hearing. PERB Regulation 32168(b)[2] specifically provides for the substitution of Board agents. Moreover, in this case, there was no choice but to reassign the case because the Board agent who conducted the hearing resigned before a decision could be rendered. Consequently, we find no merit in the District's exception to the reassignment of the case subsequent to the hearing.

Several of the District's exceptions involve factual findings. As we believe those findings are amply supported by the record and, even if erroneous, are not prejudicial, we need not address them further. The remaining exceptions may be summarized as taking issue with the ALJ's weighing of relevant factors in determining the appropriateness of a separate part-time unit. Primarily, the District asserts that the ALJ erred by

---

[2]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 32168(b), which has since been amended, provided, at all times relevant to this case, that:

> A Board agent may be substituted for another Board agent at any time during the proceeding at the discretion of the Chief Administrative Law Judge in unfair practice cases or the General Counsel in representation matters. Substitutions of Board agents shall be appealable only in accordance with sections 32200 or 32300.

giving too much weight to the potential of denying bargaining rights to the part-time faculty, while failing to properly give the greatest weight to the existence of a strong community of interest between the two groups of faculty.

First, it is important to note that, while community of interest is undoubtedly a critical factor in unit determinations, it is not the only factor to be considered. Section 3545, subdivision (a) of the Educational Employment Relations Act (EERA)[3] states:

> 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.

The District cites Peralta Community College District (1978) PERB Decision No. 77 and Modesto City Schools (1986) PERB Decision No. 567 for the proposition that community of interest is the paramount factor to be considered and that the lack thereof must be proven in order to establish the appropriateness of a unit that does not include all "classroom teachers" (see EERA section 3545, subdivision (b)(l).) In Peralta Community College District, supra, the Board did focus on the community of interest question, but made a point of commenting that in other

[3]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

cases, particularly where there was an established negotiations history, other factors might be given greater weight.

In Modesto, the Board did state in one passage that "there must be a showing and a finding of lack of community of interest . . ." (in order to establish the appropriateness of a separate unit of substitute teachers). However, when viewed in context, it is clear that the Board fell prey to the common habit of referring to all of the relevant criteria for determining appropriate units as "community of interest." Any confusion created by the passage cited above is eliminated by the concluding paragraph of that opinion, in which the Board remanded the case and expressly directed that all of the criteria listed in EERA section 3545, subdivision (a) be considered.

The ALJ correctly found that, given the unwillingness of CTA-LBCC to file a unit modification petition, the failure to establish a separate unit of part-time faculty would effectively deny the part-time faculty their statutory bargaining rights.[4]

---

[4]EERA section 3540 states, in pertinent part:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. . . .

He further found that this factor must be given great weight in determining whether a separate unit of part-time faculty is appropriate. We agree. The District asserts that this factor should be given little weight and, in any event, the Board could sua sponte decide that the existing full-time unit was inappropriate and order the inclusion of the part-time faculty.[5]

There is no established mechanism for forcing upon an existing unit an additional group of employees the unit does not want. Nor do we see how it would effectuate the purposes of the statute to order such a forced expansion of the unit, assuming we have the authority to order such action.[6] We are mindful this

---

[5]The District points out the possibility that another union, more friendly to the inclusion of part-time faculty, could decertify CTA-LBCC and then file a unit modification petition seeking to add the part-time faculty. This scenario, while theoretically possible, is highly unlikely to occur and is, therefore, of little or no relevance to the resolution of this dispute.

[6]We are not necessarily unsympathetic to our concurring colleagues' criticism of the analysis underlying the Board's decision in Peralta Community College District, supra, PERB Decision No. 77. However, the wisdom of overruling that decision at this time, when it has been applied to innumerable unit determinations, is a separate question. We will address that question in full when we are faced with a more appropriate case. For the purposes of this decision, it is sufficient to point out that the proscription of EERA section 3545, subdivision (b)(l) assumes that the placement of all "classroom teachers" in the same unit is an available option. Here, where the approximately 300 full-time faculty are in a unit that was established in 1978 in accordance with existing regulations and case precedent, and are hostile to the inclusion of the some 700 part-time faculty, no such option exists.

To require CTA-LBCC to seek modification of the existing unit to include a large group of teachers it does not want to represent, and who wish to be represented by another employee organization, would foment disruption and disharmony and would interfere with the teachers' paramount right to be represented by

case presents the anomaly of creating a separate unit of employees who likely would be included in the existing unit were the issue before us as part of an initial unit determination. However, we cannot ignore the bargaining history nor the relationship between the two groups that has developed since the unit determination in 1978. In fact, as indicated above, the statute requires that the Board consider such factors. Therefore, we find that the ALJ was correct in giving great weight to the fact that denial of the petition for a separate unit would effectively preclude the part-time faculty from exercising their statutory bargaining rights.

ORDER

Based upon the foregoing Decision and the entire record in this case, it is hereby ORDERED that:

A unit consisting of certificated hourly instructors is appropriate for negotiating in the Long Beach Community College District, provided that an employee organization becomes the exclusive representative of the unit.

---

an exclusive representative of their own choice. (See Peralta Community College District (1987) PERB Decision No. Ad-164, at pp. 8-9.) More importantly, we can find no authority, express or implied, for the Board to force an employee organization to represent employees against its will.

This matter is REMANDED to the Los Angeles Regional Director, who shall take appropriate action consistent with this Decision.

Member Camilli joined in this Decision.

Chairperson Hesse's and Member Porter's concurrence begins on page 9.

Hesse, Chairperson, concurring: Although I agree with the majority's result that, in this case, the unit consisting of certificated hourly instructors in the Long Beach Community College District (District) is appropriate, I disagree with the statutory interpretation of section 3545(a) and (b) of the Educational Employment Relations Act (EERA) in Peralta Community College District (Peralta) (1978) PERB Decision No. 77. I do not concur with the majority opinion relating to the unit determination of residual units.

The relative statutory criteria for appropriate unit determination is included in section 3545 as follows:

> (a) 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.
>
> (b) In all cases:
>
> (1) A negotiating unit that includes classroom teachers shall 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.

In Peralta, the Board found a conflict between the mandatory "[i]n each case" language of section 3545(a) and the mandatory "[i]n all cases" language of section 3545(b). In order to harmonize this conflicting language, the Board established a rebuttable presumption:

> Reading subsection 3545(b) together with its companion subsection (a) gives rise to the presumption that all teachers are to be placed in a single unit save where the criteria of the latter section cannot be met. In this way, the legislative preference, as the Board perceives it, for the largest possible viable unit of teachers can be satisfied. Thus, we would place the burden of proving the inappropriateness of a comprehensive teachers' unit on those opposing it.
> (Peralta, p. 10.)

The Board's statutory interpretation in Peralta ignores the express language of the statute. Specifically, section 3545(b) applies to "all cases" while section 3545(a) applies to "each case where the appropriateness of the unit is an issue." If the appropriateness of a proposed negotiating unit is mandated by section 3545(b), then there is no issue of appropriateness to be determined under section 3545(a). However, if the appropriateness of a proposed negotiating unit is not governed by the proscription and/or mandates of section 3545(b), then the proposed unit's appropriateness is determined under section 3545(a). I reject the rebuttable presumption standard created in Peralta and would apply the plain meaning of the statute to cases, prospectively.

A threshold issue is whether community college teachers are classroom teachers within the meaning of EERA section 3545(b)(l).

Previously, the Board construed classroom teachers to include full-time classroom teachers. (Belmont Elementary School District (1976) EERB Decision No. 7.) In response to the

District's argument that the Legislature did not intend section 3545(b)(l) to apply to community college teachers, the Board indicated the terminology applied to community college faculty was confusing and overlapping. (Los Rios Community College District (1977) EERB Decision No. 18.) Later, the Peralta Board rejected the Belmont definition and held that classroom teachers simply referred to all employees who teach in a classroom for any period of time.

However, the legislative references to classroom teachers are not overlapping with classroom instructors or faculty members.[1] For example, where the Education Code refers to permanent classifications and positions requiring certification qualifications, certificated employees of primary and secondary schools are referred to as classroom teachers (Ed. Code secs.

---

[1]At the time EERA was enacted in 1975, the Education Code of 1959, as amended, was in effect. In 1976, the Education Code of 1959 was reorganized. Unlike the Education Code of 1959, which referred to elementary and secondary schools and junior or community colleges in the same sections using the same terms, the Education Code of 1976 differentiates between the employees of elementary and secondary schools and community colleges (as well as California State University and Colleges, University of California, and private Postsecondary and higher education institutions).

While an intention to change the law is usually inferred from a change in the language of the statute, I believe that a consideration of the inherent differences between the elementary and secondary schools and community colleges indicate that the reorganization of the Education Code was the result of a legislative attempt to clarify the true meaning of the Education Code of 1959. (See Balen v. Peralta Junior College District (1974) 11 Cal.3d 821, 828; Martin v. California Mutual Building and Loan Association (1941) 18 Cal.2d 478, 484.) Therefore, references to the Education Code of 1976, as amended and supplemented, are applicable to attempt to define the term "classroom teachers."

44897, 44898, 44854), and certificated employees of community colleges are referred to as classroom instructors or faculty members (Ed. Code secs. 87458 and 87459). Furthermore, a distinction is made in the reference to the accounting of salaries of classroom teachers (Ed. Code sec. 41011) and classroom instructors (Ed. Code sec. 84031). The term "classroom teachers" is not synonymous with classroom instructors or faculty members. Based on the foregoing, I conclude that certificated employees employed by community college districts are not within the definition of EERA section 3545(b)(l). To the extent Peralta holds that community college certificated employees are also classroom teachers, I would overrule Peralta and its progeny.

The issue here is whether approximately 500 to 700 part-time faculty employees alone constitute an appropriate unit.[2] This case is distinguishable from Los Rios Community College District, supra, EERB Decision No. 18, Rio Hondo Community College District (1979) PERB Decision No. 87, and Hartnell Community College District (1979) PERB Decision No. 81, in that there is already an established unit of full-time faculty members in place. As I do not find that EERA section 3545(b)(l) is applicable to the employees of the proposed negotiating unit, I would apply the unit criteria of EERA section 3545(a). However, I disagree with

[2]Although the District opposes the request for recognition claiming that the appropriate unit is a comprehensive unit of all faculty, at the time of CTA-LBCC's original request for recognition, the District vehemently opposed the inclusion of part-time faculty in the unit. Thus, CTA-LBCC changed its position and agreed to exclude part-time faculty from its request for recognition,

the administrative law judge's application of section 3545(a) using the Peralta rebuttable presumption standard. While I find that there is a community of interest between the full-time and part-time faculty, I also find a community of interest among the part-time faculty. Under the unit criteria of section 3545(a), the community of interest among the part-time faculty, the fact that the part-time faculty do not belong to other employee organizations, and the lack of any credible evidence that a separate part-time unit would have a negative effect on the efficiency of the District's operations (see proposed decision, p. 20), supports the appropriateness of a part-time faculty unit. For the foregoing reasons, I find that the proposed part-time faculty unit is an appropriate unit.

I disagree with the majority's discussion of unit determination for residual groups of unrepresented employees because this Board has an overriding duty to determine, in each instance, which unit is appropriate. (EERA secs. 3541.3, 3544.5.) Any arrangement requiring the Board's automatic deference to established exclusion of a residual group of employees would impermissibly permit employees and employee organizations to substitute their preferred unit configurations for those which are appropriate under the statutory criteria. (Centinela Valley Union High School District (1978) PERB Decision No. 62.)

In making unit determinations, the Board must consider the general statutory intent of promoting stable, harmonious

employer-employee relations (EERA sec. 3540), the exclusive right of employees to select one employee organization as the exclusive representative of an appropriate unit (EERA secs. 3540, 3543), and, more importantly, the statutory criteria for unit determination (EERA sec. 3545). The fact that the exclusive representative has not intervened or has declined to represent a group of residual employees does not, by itself, warrant a separate unit. The desires of the employees and other parties, while relevant, are not paramount. Where the proposed negotiating unit of residual employees is found to be inappropriate by the Board, residual employees are entitled to vote as to whether they desire to be included in the appropriate bargaining unit that is already in place. (See, e.g., Camden Board of Education (1986) 12 NJPER para. 17326; Eaton Rapids Public Schools (Child Care Program) (1988) MERC Lab.Op. 511.)

Member Porter joined in this Concurrence.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CERTIFICATED HOURLY INSTRUCTORS LONG BEACH CITY COLLEGE, CTA/NEA, Petitioner, and LONG BEACH COMMUNITY COLLEGE DISTRICT, Employer.	Representation Case No. LA-R-916 PROPOSED DECISION (7/15/87)

Appearances; Reich, Adell & Crost, by Glenn Rothner for Certificated Hourly Instructors Long Beach City College, CTA/NEA; O'Melveny & Myers by Virginia L. Hoyt for Long Beach Community College District.

Before James W. Tamm, Administrative Law Judge.

PROCEDURAL HISTORY

On July 17, 1986, the Certificated Hourly Instructors Long Beach City College, CTA/NEA (hereafter CHI or Petitioner) filed a request for recognition for a unit of certificated hourly instructors[1] at the Long Beach Community College District (hereafter District). The District has opposed the request,

[1]Throughout the hearing, the parties used the term part-time faculty as synonymous with the term certificated hourly instructors.

arguing that a unit comprised solely of hourly faculty is inappropriate. According to the District, the only appropriate unit consists of a comprehensive unit including all full-time and hourly faculty in the District. The full-time faculty are currently represented by the California Teachers Association, Long Beach City College (hereafter CTA-LBCC).)

A unit determination hearing was held before a hearing officer of the Public Employment Relations Board (hereafter PERB or Board) on January 27 and 28, 1987. Although CTA-LBCC was aware of the hearing, it chose not to participate. A transcript was prepared, briefs were filed, and the case was transferred to the undersigned for a decision on May 13, 1987.[2]

FINDINGS OF FACT

Representation History

The District is comprised of two campuses and numerous off-campus teaching sites. The District employs approximately 300 full-time instructors and 700 part-time hourly faculty.

---

[2]The hearing was held with Ronald Hoh presiding. Mr. Hoh has since resigned from PERB and the case was reassigned for a decision.

In 1977, CTA-LBCC[3] sought recognition of a comprehensive bargaining unit, including both full-time and part-time faculty. The District's administration strenuously opposed the inclusion of part-time faculty in the unit at that time.

At the time the original request for recognition was filed, the personnel director was furious about inclusion of part-timers in the request. He responded to the issue saying "I will hang up your request for the next century" if part-timers continued to be included in the request. He also responded that the administration would fight the request with all the resources available to it because they would never permit a comprehensive unit.

At that same time the Faculty Association of the California Community Colleges (FACCC), a rival organization, intervened and sought a unit limited to full-time faculty. Faced with vehement opposition from the District and pressure from full-time faculty members, CTA-LBCC changed its position and agreed to exclude part-time faculty from its request in order to get to a representation election. A consent election was held and on May 23, 1978, CTA-LBCC was certified as the exclusive representative of a unit excluding part-time

[3]Originally, the organization was known as Associated Teachers Long Beach City College, CTA/NEA.

faculty.[4]

Eric David, the chief negotiator for CTA-LBCC, testified that at the time of the initial organizing drive an internal CTA-LBCC election was held resulting in the exclusion of part-time faculty.[5]

Lowell Johnson, president of CTA-LBCC during the original organizing drive and holder of several other offices within CTA-LBCC since then, testified that at the time of the organizing drive it became clear that the full-time faculty did not want part-timers in the unit. That was, according to Johnson, one of the reasons CTA-LBCC decided to amend its request for recognition to exclude part-time employees.

In approximately 1982 to 1984, Johnson also made efforts to include part-time faculty in the established unit but his efforts were once again rebuffed. According to Johnson, neither CTA-LBCC's executive board nor the representative council favored including part-timers in the unit. On that issue, Johnson was a minority of one.

---

[4]Consent elections are entered into by voluntary agreement regarding the unit configuration. The unit question was therefore never litigated before the Public Employment Relations Board.

[5]It is unclear from the record whether this was a vote of the membership or the governing board.

The current CTA-LBCC president supported the testimony that most full-time faculty opposed inclusion of part-timers in the unit. This opposition is based upon a belief that such a move might increase competition for the District's shrinking resources and anxiety that, because of their numerical superiority, part-time faculty would be able to dominate the organization.

Since the time of its certification as exclusive representative of the full-time unit, CTA-LBCC has never filed any unit modification petition nor taken any position seeking to include part-time faculty in the unit it represents.[6] At one time, the CTA-LBCC executive board allowed a part-time faculty member to sit in on its meetings as a liaison, however, that is no longer the case.

While the evidence relating to organization membership was vague and confusing, it appears that only a small handful of part-timers have ever belonged to CTA-LBCC.

There was one instance where CTA-LBCC filed an unfair practice charge on behalf of faculty members who were thought to be full-time employees. When the District pointed out that the individuals in question were part-time faculty, and therefore not part of the bargaining unit, CTA-LBCC withdrew its charge and did not represent the employees before PERB.

---

[6]CTA-LBCC also did not intervene on CHI's request for recognition.

There was also some testimony about an attempt several years ago by the Academic Senate to meet informally with the employer on behalf of part-time faculty. It is unclear from the record if anything resulted from that attempt.

The full-time faculty and the District are in the middle of a multi-year collective bargaining agreement which expires June 30, 1988.

Current Working Conditions

Regarding actual teaching duties, part-timers are identical to full-time faculty. Both are expected to prepare and present courses, develop and conduct tests, assess student competence and issue grades, and provide a good environment for educating students.

Part-time faculty possess the same teaching credentials as do their full-time counterparts. Although part-timers are often assigned less desirable subjects to teach,[1] they do often teach the same classes, utilize the same textbooks, grade students in the same manner, and follow the same reporting procedures, such as for attendance, as full-timers. Both part-time and full-time faculty are supervised by the department chairpersons. They also share the same District facilities such as classrooms, cafeterias, and the library.

[1]Full-time faculty are generally given priority over part-timers in selecting course assignments.

The work week for full-time faculty is considered 40 hours. Approximately 15 hours comprises their classroom teaching assignment. Five hours is for college service such as involvement with various college committees and five hours is reserved for office hours. The remainder is for preparation time for their teaching assignments.

Approximately two-thirds or 200 of the full-time instructors also teach on an hourly basis as an overload- Full-time faculty are limited to teaching no more than six hours of overload above and beyond their regular full-time course load. Full-time faculty are generally given the option of first priority over part-time teachers in assigning extra hours. When full-time faculty are assigned classes on an hourly basis, they receive the same rate of pay as part-time faculty and sign the same contract as part-time faculty.

Because full-time faculty are usually given some say in their assignment to various classes, full-time faculty generally teach during the day. Part-time faculty generally teach night classes, however, this is by no means consistent. There exist numerous examples of part-time faculty teaching during the day and full-time faculty teaching at night. Full-time faculty are also usually given preference regarding work location, however, there was ample evidence of both full-time and part-time faculty teaching at the campus sites, as well as at the less desirable offsite locations.

The salaries of full-time faculty, for time spent in their full-time assignment, is negotiated between the District and the exclusive representative. The lower hourly rate for part-time faculty is set unilaterally by the District. Part-timers and full-time teachers on an overload basis are paid only for their actual teaching time. Part-timers are therefore not paid for any office hours or committee work. There was evidence, however, that part-timers sometimes counsel students before and after class or during breaks, even though they receive no extra pay. The same holds true for participation in committee work. While part-timers are not assigned to committees and are not paid for such involvement, they do on occasion take part in committee activities such as curriculum development.

There are substantial differences between the benefits received by part-time and full-time faculty. Part-time faculty do not receive medical, dental, vision, or life insurance benefits as do full-time faculty. Full-timers are eligible for numerous types of paid leaves which are not available or only partially available to part-timers. Part-timers also do not receive reimbursement for costs in connection with professional development which is available to full-time faculty.

Part-time faculty enjoy no job security within the District. Their classes may be dropped without notice if enrollment is insufficient. Part-timers may also be bumped out of an assignment if any full-timer needs additional classes to

meet their full-time teaching load. Full-timers have job security from year to year based upon seniority and may be dismissed only for cause or layoffs pursuant to the Education Code and contract provisions.

Both full-time and part-time faculty receive performance evaluations, although the procedures differ greatly for each group. Full-timers are evaluated pursuant to Education Code provisions calling for peer review every two years. Part-timers are evaluated by the department chairs on a less formal basis. The District's policy calls for an evaluation during the first year of employment of a part-time teacher and every three years thereafter.

Unlike the full-time faculty, part-timers most often hold other full-time or part-time jobs outside the District. There was testimony that most part-timers had no desire for full-time employment within the District. That testimony was speculative at best and is not given any weight. In fact, during the past five years, approximately 55% of the 46 new full-time faculty hires have come from the part-time faculty ranks.

There is evidence of conflicting practices regarding attendance at department meetings. It appears that in some departments, part-timers are invited and are expected to attend department meetings; in others, meetings are held without any expectation of part-timer's involvement.

Full-timers are assigned offices and telephones. Part-timers are not assigned offices or telephones, although there was testimony that if it were necessary, a part-timer could arrange access to an office or a telephone.

Full-time faculty are eligible for membership in the Academic Senate. Part-time faculty are not eligible for regular Senate membership but are instead limited to representation by two nonvoting part-timers appointed by the Academic Senate. Other part-time faculty are allowed to attend Senate meetings and may be heard on various issues but have no official status as part-time representatives. Three or four years ago there was an attempt to allow part-time faculty to become eligible for full Senate membership. That attempt was not successful.

Department chairpersons are selected pursuant to a negotiated provision in the collective bargaining agreement between full-timers and the District. The provision calls for an election process among full-time faculty. Thus, part-timers play no role in the selection of department chairs. Part-time faculty also have no access to the contractual grievance procedure.

ISSUE

Is a separate unit comprised of certificated hourly employees of the Long Beach Community College District appropriate?

DISCUSSION

The relevant statutory criteria for appropriate unit determination is included in section 3545 of the Educational Employment Relations Act (EERA) (Government Code section 3540, et seq.), as follows:

> (a) 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.
>
> (b) In all cases:
>
> (1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, ...

Interpreting the above statutory language in Peralta Community College District (1978) PERB Decision No. 77, the Board found a conflict between the mandatory "In each case" language of section 3545(a) and the mandatory "In all cases" of section 3545(b). In harmonizing the conflicting language, the Board found that the Legislature meant to minimize the dispersion of school district faculty into unnecessary negotiating units, while at the same time recognizing the possibility that critical negotiations related differences between groups of teachers might compel unit separation.

In order to satisfy the legislative preference for the largest possible viable unit of teachers, the Board established a rebuttable presumption that all teachers were to be placed, prospectively, in a single unit. The burden of rebutting the presumption and proving the inappropriateness of a comprehensive unit would be upon the party opposing it. Peralta Community College District (1978) Board Decision No. 77 (pp. 9-10).

While the Board went on to decide Peralta almost exclusively upon a lack of community of interest between the groups of teachers involved, the Board specifically cautioned that other criteria contained in section 3545(a) should not be disregarded. This may include factors such as the extent to which employees belong to the same employee organization, the effect upon the efficient operations of the school district, the negotiating history and impact upon established negotiating relationships, and the harm caused by potential loss of collective bargaining rights if the petition is denied.

In Peralta, the Board gave little weight to established past practices or negotiating history prior to the enactment of the EERA. Since the EERA had been in effect for less than two full years when the Peralta hearing was held, history after the enactment of the EERA was also of limited value. In the case at hand, the record establishes over ten years of labor relations history within the District. This evidence must

therefore be taken into consideration and balanced along with traditional community of interest criteria in determining the appropriate unit.

Community of Interest

By all traditional community of interest standards, the part-time hourly employees should be included within a unit of full-time employees. Part-time and full-time faculty are equally responsible for course preparation, presentation, and evaluation of students' progress. Even though the hiring procedures are less formal for part-timers, both are required to possess the same teaching credential. Over the past five years, the majority of new full-time hires have come from the part-time ranks.

Although full-time faculty are given a scheduling priority over part-time faculty, both teach the same type of courses; both teach night as well as day courses, and both teach on campus as well as at off-campus locations.

Two-thirds of the full-time faculty have taught on an hourly overload basis. When they do so, they are paid at the same rate and work under the same employment contracts as part-time employees.

Both full-time and part-time faculty are supervised by department chairpersons and both receive evaluations. Although the evaluation process is different, that difference does not seem to impact the employment relationship of each group.

While part-timers are not assigned offices or telephones, access to them is available if needed. There were also examples of part-timers participating in committee work, attending academic senate meetings, and counseling students even though they received no such specific assignment or compensation for such activities.

Most of the major differences between the groups, such as salary, fringe benefits, seniority and layoff protection, and access to grievance procedures, occur in areas which are legitimately the subject of negotiations and are therefore not controlling as to unit placement. The Board has held that terms and conditions of employment for a nonorganized work force which are wholly within the control of the District are not enough to establish a lack of community of interest. Los Rios Community College District (1977) EERB No. 18;[8] Redwood City Elementary School District (1979) PERB Decision No. 107.

Where the Board has been faced with similar, if not identical, full-time versus part-time disputes, and has had the unit placement of both groups to decide, the Board has found a strong community of interest and placed both groups in one comprehensive unit. Los Rios Community College District,

[8]Prior to January 1978, PERB was known as the Educational Employment Relations Board (EERB).

supra; Hartnell Community College District (1979) PERB Decision No. 81; Rio Hondo Community College District (1979) PERB Decision No. 87. Thus, as a single factor which must be balanced with other criteria, community of interest is balanced strongly in favor of the District's position that one comprehensive faculty unit is appropriate and a part-time unit inappropriate.

The District relies upon Modesto City Schools (1986) PERB Decision No. 567 for the proposition that the Petitioner, in order to rebut the Peralta presumption, must prove a lack of community of interest between full-time and part-time faculty. Such reliance is misplaced, however, for Modesto is distinguishable from the case at hand. The Modesto Teachers Association (MTA) was the exclusive representative of a certificated unit excluding substitute teachers. MTA had filed two conflicting representational petitions for substitutes: One to modify the existing unit by including substitutes and one to create a separate unit of substitutes. Prior to a unit determination hearing, MTA decided to withdraw the unit modification petition and pursue a separate unit of substitutes. Thus, the same employee organization was seeking to represent teachers in two separate units. The MTA was on notice that the Peralta presumption applied and it could have, instead, pursued the unit modification. The Peralta presumption would then have led to the inclusion of substitutes in the existing unit.

The option of filing a unit modification petition to include part-timers into the existing full-time unit is not, however, available to CHI. As will be discussed more fully in the following section, because the CHI is not the exclusive representative for the existing unit, PERB regulations do not give it standing to seek inclusion of part-time teachers in the full-time unit. If CHI were the exclusive representative of full-timers, then, pursuant to Modesto, CHI would have to prove a lack of community of interest between the two groups in order to establish a separate unit.

Disenfranchisement of Bargaining Rights

The EERA explicitly guarantees in section 3540:

> . . . the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, . . .

To exercise these rights, the part-time faculty must either be granted a separate unit or CTA-LBCC must seek a modification of its existing unit. Absent one of these two actions the part-time faculty will remain excluded from a bargaining unit and be denied bargaining rights.

Neither the employer nor CHI has standing to modify the existing unit by adding part-time faculty. PERB regulations provide that only the exclusive representative of a unit may file a unit modification petition seeking to add employees to

the unit. The Board has held that changing unit composition only upon a petition by the exclusive representatives is consistent with the statutory scheme and serves the purpose of protecting the stability of the bargaining relationship.[10]

No unit modification petition has been filed by CTA-LBCC, nor did it intervene in CHI's request for recognition. Both CTA-LBCC's executive board and representative council have rejected proposals to include part-timers in the unit. Given CTA-LBCC's history of unwillingness to include part-timers in the established unit, it is unlikely CTA-LBCC will seek to represent part-timers in the future. Therefore, absent a separate unit of part-time faculty, those employees will be denied collective bargaining rights. That result is abhorrent to the very purposes of the EERA and must be weighed heavily in deciding whether the Peralta presumption has been rebutted. Pleasanton Joint School District (1981) PERB Decision No. 169.

[9]California Administrative Code, title 8, section 32781 provides in pertinent part:

> (a) A recognized or certified employee organization may file with the regional office a petition for unit modification:
>
> (1) To add to the unit unrepresented classifications or positions which existed prior to the recognition or certification of the current exclusive representative of the unit.

[10]Riverside Unified School District (1985) PERB Decision No. 512; Riverside Unified School District (1985) PERB Order No. Ad-148a; Mt. San Antonio Community College District (1983) PERB Decision No. 334.

Impact of Established Practices

Several factors should be examined to determine the impact of established practices. With approximately 700 employees comprising the petitioned-for unit, it is large enough to be a viable unit. However, because of the substantial number of part-timers, limiting their representation to a single comprehensive faculty unit could have a negative impact upon the established unit. In forcing 700 part-timers upon a 300-member full-time unit which does not want them, the stable 10-year old bargaining relationship between CTA-L3CC and the District would be disrupted. Mendocino Community College District (1980) PERB Decision No. 144.[11]

The Petitioner argues a comprehensive unit would also be unworkable because of the divergent negotiations priorities between full-timers and part-timers. Very little weight should be given to this argument. There always exists naturally competing interests between various employees in any given unit. As long as there is a strong community of interest, as has been demonstrated here, any divergent priorities should be manageable.

[11]In Mendocino, the Board found that it would be too disruptive to the existing bargaining relationship to merge 130 part-timers into a 31-member full-time faculty unit.

The District argues a separate unit of part-timers would damage the efficiency of the District's operations by requiring additional bargaining with yet another union and more time at the bargaining table. However, regardless of where part-timers are placed, if they exercise bargaining rights the District would have to negotiate part-time issues. Therefore, the issues of concern to part-timers will no doubt prolong bargaining whether they are included with full-timers or are placed in a separate unit.

As the Board noted in Antelope Valley Community College District (1981) PERB Decision No. 168, and Pleasanton Joint School District, supra, the potential loss of time which must necessarily be spent in negotiations was a burden considered by the Legislature but found not to outweigh the benefits of an overall scheme of collective bargaining.

Another District argument is that a separate part-time unit would create a great potential for "whipsawing". Because full-time faculty also perform work as hourly employees on an overload basis, the District would have to manage two groups of employees doing the same work under different sets of personnel policies. This would, according to the District, "place an unacceptable burden upon school district management." Moreover, the District argues that in attempting to avoid a "whipsaw" by seeking a single set of policies for both groups, the District could be subject to the filing of unfair practice charges.

While this may be a persuasive argument in some cases,[12] it is flawed under the circumstances present in this case. The District has for the past 10 years managed two groups of employees under two sets of personnel policies without any great burden upon school district management. The only difference if a part-time unit is granted would be that the District would have to bargain over part-time issues rather than unilaterally implementing new part-time policies. The requirement that the District must first bargain over changes to matters within the scope of negotiations has never been found to be an "unacceptable burden" to District management.

The District's arguments are also seriously undercut by its earlier vehement opposition to a comprehensive unit. At that time, the District saw no potential "unacceptable burden" upon the District, or problems with being "whipsawed," which would require a wall-to-wall unit. Quite the contrary was true. There is nothing in the record demonstrating major changes in circumstances since the initial organizing drive. Yet the District now argues that the only way to avoid this burden and the potential of being "whipsawed" is to establish the very unit it so adamantly opposed in the past. On this issue, the District's credibility suffers from unexplained inconsistency.

---

[12]See San Diego Unified School District (1981) PERB Decision No. 170 where the Board denied a petition for a separate unit of hourly bus drivers in part because of the potential "whipsawing" effect upon the employer.

Therefore, while the District's efficiency of operation would not be improved by creation of a part-time faculty unit, the record indicates that any resulting harm to it would be slight.

The District argues that no disruption would occur if the petition was denied and part-timers were put into the full-time unit. It points out that at one time CTA-LBCC had actually considered representing a comprehensive unit; that part-timers are currently members of CTA-LBCC and had been in the past; and that there is no history of unwillingness of CTA-LBCC to cooperate with part-time faculty. According to the District, that is further evidenced by the academic senate's informal attempts to represent part-time faculty.

This argument is not persuasive. Because there is no authority for placing part-timers into the established unit, it is not relevant whether CTA-LBCC has been cooperative with part-timers. Even if it were relevant, the District's assessment of CTA-LBCC's relationship is incorrect. CTA-LBCC has almost no part-time members[13] and has decided against pursuing part-time representation every time the issue has arisen.[14]

---

[13]Since there is little evidence of membership by full-time and part-time faculty in a common organization, this factor also balances in favor of a separate part-time unit.

[14]The only evidence of part-timers receiving representation from CTA-LBCC was when the organization filed an unfair practice charge on behalf of employees it mistakenly believed were in the full-time unit. When the District argued that the individuals in question were part-time employees, CTA-LBCC dropped the unfair practice charge.

The informal attempt to represent part-timers by the academic senate is also meaningless. The academic senate is not the bargaining agent for the full-time employees and is not synonymous with CTA-LBCC. Even if it were, its attitude toward part-time faculty is not much different than CTA-LBCCs. It has denied membership to part-time faculty and has limited representation of all 700 part-timers to two nonvoting part-time representatives selected unilaterally by the academic senate. This hardly evidences a willingness to carry the part-time banner.

The District also argues that since the current bargaining agreement is expiring in June of 1988, now is an ideal time to place part-timers into the established full-time unit. Because the part-timers cannot be added to the existing unit via this decision, the current stage of negotiations in that unit is irrelevant.

Since the Peralta decision, the Board has dealt with the placement of residual groups of employees on a case-by-case basis[15] with occasional conflicting results. The District cites San Diego Unified School District, supra, for support that the petition should be dismissed.

---

[15]Pleasanton Joint School District, supra.

There are several similarities between San Diego and the case at hand. There was a community of interest between the hourly bus drivers and the regular bus drivers included in the established unit. There also existed a potential for "whipsawing" the employer by competing organizations representing employees performing the same work. The Board additionally noted concern that attempts to manage employees doing the same work under different sets of personnel procedures presented a burden upon the employer.

Mendocino Community College District, supra, is, however, more closely on point to the facts at hand than is San Diego. There the Board had before it a petition for a unit of part-time faculty who were excluded from a unit of full-time faculty granted voluntary recognition by the District. In applying the Peralta presumption regarding the appropriateness of a comprehensive teacher unit, the Board presumed a community of interest between full-time and part-time faculty. Despite that community of interest, the Board found facts sufficient to refute the presumption of appropriateness of a single faculty unit.

Attempts by part-time faculty to be included in the full-time unit had been rebuffed. There was a very small number of part-time faculty who had ever held membership in the full-time organization. Including a large number of part-time faculty into a significantly smaller full-time unit was likely

to create severe disruption of the existing negotiating relationship. In finding no adverse effect on the efficiency of District operations, the Board noted that while the District may now have wanted to deal with a single comprehensive faculty unit, it was the District which voluntarily recognized a full-time faculty unit earlier. At the time it granted recognition, the District raised no objection to the division of its teaching staff for purposes of dealing with personnel relations.

All of the above factors are present in the case at hand. CTA-LBCC has declined to include part-time faculty into its unit, and has a limited part-time membership. Even if it were possible to order part-timers into the existing unit, it could severely disrupt the stable bargaining relationship between CTA-LBCC and the District. No overriding potential for adverse effect on the efficiency of District operations exists, particularly in light of the District's failure to raise any such objections at the time it staunchly insisted upon excluding part-time faculty from the original certificated unit.

Those factors, combined with the disenfranchisement of bargaining rights of part-timers if the petition is dismissed, outweigh the community of interest between full and part-time faculty and are sufficient to rebut the presumption that only one faculty unit is appropriate.

PROPOSED ORDER

Based upon the foregoing Decision and the entire record in this case, it is hereby ORDERED that:

A unit consisting of certificated hourly instructors is appropriate for negotiating in the Long Beach Community College District, provided that an employee organization becomes the exclusive representative of the unit.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final unless a party files a timely statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code title 8, part III, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." See California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of

service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300, 32305, and 32140.

Pursuant to California Administrative Code, title 8, part III, section 33450, the Employer shall post a copy of the Notice of Decision no later than 10 days following service of the final decision in this case. The Notice shall remain posted for a minimum of 15 workdays.

Pursuant to section 33480, the Employer may grant voluntary recognition to CHI. The Regional Director shall conduct an election if the Employer does not grant voluntary recognition.

Dated: July 15, 1987

JAMES W. TAMM
Administrative Law Judge