



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STANISLAUS COUNTY OFFICE OF)
EDUCATION,)
)
Employer,) Case No. S-UM-522
)
and) PERB Decision No. 1022
)
STANISLAUS ASSOCIATION OF) October 26, 1993
CERTIFICATED PERSONNEL,)
)
Exclusive Representative.)

Appearances: Littler, Mendelson, Fastiff, Tichy & Mathiason by Patricia P. White and Deanna Mouser, Attorneys, for Stanislaus County Office of Education; California Teachers Association by Diane Ross, Attorney, for Stanislaus Association of Certificated Personnel.

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION AND ORDER

HESSE, Member: This case is before the Public Employment Relations Board (Board) based on exceptions filed by the Stanislaus County Office of Education to the proposed decision of a Board agent (attached hereto) granting a unit modification petition filed by the Stanislaus Association of Certificated Personnel (Association.) to add the classification of outdoor education naturalist to the existing bargaining unit of certificated employees.

The Board has reviewed the entire record in this case. Finding the Board agent's proposed decision to be free of prejudicial error, the Board adopts it as the decision of the Board itself and directs that the Association's petition for unit modification be GRANTED.

Chair Blair and Member Caffrey joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



STANISLAUS COUNTY OFFICE OF)
EDUCATION,)
)
Employer,) Representation
) Case No. S-UM-522
and) (R-77A)
)
STANISLAUS ASSOCIATION OF) PROPOSED DECISION
CERTIFICATED PERSONNEL,) (12/24/92)
)
Exclusive Representative.)
_____)

Appearances; Littler, Mendelson, Fastiff & Tichy by Patricia P. White for Stanislaus County Office of Education; Diane Ross, Attorney, for Stanislaus Association of Certificated Personnel.

Before Charles F. McClamma, Hearing Officer.

PROCEDURAL HISTORY

On September 27, 1991, the Stanislaus Association of Certificated Personnel (Association or Petitioner) filed a unit modification petition seeking to add the classification of outdoor education naturalist¹ to the existing unit of certificated employees of the Stanislaus County Office of Education (SCOE). The SCOE opposed the petition. A settlement conference held on December 11, 1991, failed to resolve the dispute.

¹Although the petition described the classification as "outdoor education naturalist," the job titles currently in use by the Stanislaus County Office of Education are "certificated naturalist" and "classified naturalist." These titles will be used in this decision when necessary to distinguish between the two; otherwise the position will simply be called "naturalist." The Petitioner seeks to have only the certificated naturalists added to the certificated unit. Classified naturalists are not currently in a bargaining unit, although four classified bargaining units are in place.

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

A hearing was held on April 7, 1992; a transcript was prepared and briefs were filed. On June 23, 1992, the Association filed a motion to reopen the record. Although opposed by the SCOE, the motion was granted. Additional evidence filed by the Association was admitted, as was rebuttal evidence subsequently filed by the SCOE. Reply briefs were filed, and the case was submitted for decision on August 5, 1992.

FINDINGS OF FACT

The SCOE provides special education and alternative education services for school districts and students throughout Stanislaus County. It operates a school, John F. Kennedy Center, in Modesto, and the Neal Wade Outdoor Education Center (Outdoor Center), located 50 miles west of Modesto in Tuolumne County. The SCOE also owns classrooms at various school district sites, and utilizes facilities belonging to the various school districts and to the Modesto Junior College. The SCOE's funding is provided from the Special Education Local Plan Area (SELPA); school districts may elect to receive funds from the SELPA with which to run their own programs or to contract with the SCOE to run programs. A substantial number of the school districts within Stanislaus County have at least some of their special education services provided by the SCOE.

The Association was certified as exclusive representative on March 10, 1977.² Certificated personnel in the following

²PERB records indicate the Association and the SCOE entered into a Consent Election Agreement on February 9, 1977, in which they agreed to the unit described in the certification. Although

classifications were included in the unit: audiologist, audiometrist, teacher of the communicatively handicapped, certificated developmentally delayed program classroom teacher, certificated infant specialist, learning handicapped classroom teacher, learning disorders classroom teacher, certificated nurse, physically handicapped classroom teacher, remedial physical education classroom teacher, resource specialist classroom teacher, and speech therapist. Employees specifically excluded were management, confidential, and non-certificated employees, day-to-day substitutes, consultants, program specialists, and school psychologists.

The SCOE has approximately 160 certificated employees; their job classifications reflect their diverse duties. These certificated employees also work in a variety of settings. For example, a special education teacher conducts a class for students with severe language disorders in a classroom which is owned by the SCOE, but located at a Modesto City Schools elementary school. Home and hospital teachers visit students who are unable to attend regular classes because they are confined to a hospital or home. Audiologists provide hearing tests for students at the SCOE's administrative offices in Modesto.

there is no mention of naturalists in that agreement, a letter dated February 5, 1977, from the Association's president to PERB indicates the parties agreed to the exclusion of physical therapists, occupational therapists, and naturalists.

Naturalist Job Duties

The SCOE employs four certificated and two classified naturalists, all of whom work at the Outdoor Center. In addition to the primary responsibility of leading students on nature hikes, the naturalists lead students in recreational activities,³ serve as evening naturalist, and serve as health coordinator.⁴ These tasks are rotated on a weekly basis. Naturalists also supervise students at breakfast one day per week, may drive a bus on field trips, and prepare evaluations of high school counselors.⁵

Sixth graders from various school districts, primarily within Stanislaus County,⁶ are brought to the Outdoor Center for a five-day visit, Monday through Friday. They are housed in dormitories at the Outdoor Center. During the day they hike and go on field trips led by the naturalists, who impart information about ecology, geology, native American history, and conservation. Hikes are conducted from 9:00 a.m. until 3:30 p.m., with one half-hour break.

³The recreation program includes square dancing, camp fire, and free play.

⁴As health coordinator they are in charge of health services, which requires reviewing students' health forms, administering medication, and working with students who are ill or injured.

⁵These are high school students who serve as counselors in the dormitories where the student visitors are housed.

⁶Some of the students, but not a majority, are enrolled at the SCOE.

While naturalists are not required to prepare weekly lesson plans, plans are a necessary part of their preparation for the hikes. The students are assigned exercises which usually are to be completed during the hike. They are not graded on their performance by the naturalists. However, the naturalists monitor the students' success in meeting the established goals and objectives of the hikes through observation during the hikes and a review of journals kept by the students.

A naturalist is assigned a group of students from different classes and schools. One classroom teacher generally accompanies the naturalist to provide support, as necessary, and to help with discipline.⁷ These classroom teachers have no responsibility for instruction during the hikes.

The naturalists' work week is 40 hours, and their work year is 165 days. They may receive compensatory time off for work in excess of 40 hours per week. They do not work when the Outdoor Center is closed from the last week of June through July, on holidays, and an additional five weeks during the year. Certificated naturalists are paid monthly on a 12-month contract and contribute to the State Teachers Retirement System.⁸

⁷Certificated naturalists may, and occasionally do, lead hikes without a classroom teacher present; classified naturalists are supposed to be accompanied by a classroom teacher on all hikes. This is the sole distinction between the duties of the certificated and the classified naturalists.

⁸The record does not indicate whether the same applies to classified naturalists.

Naturalists do not serve a probationary period nor do they achieve permanent status.⁹

Job Qualifications

The SCOE required a credential for all naturalists from 1979 until 1986, when it determined that its most highly qualified applicants for the position were its naturalist interns, who usually lacked credentials. Job descriptions prepared in June of 1988 for "Classified Naturalist" and "Certificated Naturalist" reflect that change in policy. Currently, four of the SCOE's six naturalists possess credentials; of those four, two have a multiple subject credential and two have a vocational credential.¹⁰

The job description for the position of classified naturalist requires a B.S. or B.A. degree, while that of the certificated naturalist requires an "appropriate teaching credential." As recently as late 1991 the SCOE promulgated a

⁹As noted previously, the record in this case was reopened following the hearing at the request of the Association and over the objection of the SCOE. The "new" evidence consisted of a declaration from a certificated naturalist and two supporting documents. One of the documents was a form received by the naturalist from the SCOE entitled "Notice of Intention Relating to Employment as a Certificated Naturalist," in which the signer may agree to serve as a certificated employee for the ensuing school year. The other was a memo from the SCOE requesting that the aforementioned form be disregarded. I find this evidence to be cumulative as to the issue of the status of certificated naturalists, and I did not rely on it in reaching the decision in this case.

¹⁰At hearing an issue was raised concerning whether the vocational credential was legally sufficient to permit the certificated naturalist to supervise students in the absence of a classroom teacher. The issue was not resolved, and is not viewed as dispositive of the central issue in the case.

"Position Announcement" which disclosed a job opening for either a certificated or classified naturalist; the announcement indicates the certificated position requires a B.S. or B.A. degree and appropriate credential, while the classified position requires a degree only. Other listed requirements for the two classes, including "knowledge", "ability", and "experience", are similar, but not identical. The announcement also indicates certificated naturalists receive a higher hourly rate of pay.¹¹

Evaluations

Naturalists are evaluated once each year by the Director of Outdoor Education. Following observation of several hikes, the director and naturalist discuss whether goals and objectives have been met. The director also issues a written evaluation utilizing a five page evaluation form which requires an appraisal of a wide variety of performance factors grouped under the following categories: hike management, instructional techniques, interactions with students, personal goals, and overall evaluation.¹²

¹¹The SCOE's July 1, 1991, "Hourly Positions" pay schedule confirms this difference, and also reveals the following "career ladder" for naturalists: Classified Naturalist (Phase I); Classified Naturalist/Bus Driver (Phase II); Certificated Naturalist (Phase III); Certificated Naturalist/Bus Driver (Phase IV); and Head Naturalist.

¹²Specific examples of factors evaluated are whether the naturalist teaches at the students' level, uses interesting and appropriate teaching techniques, and monitors students frequently to ascertain the level of comprehension.

The Existing Certificated Bargaining Unit

Employees in the certificated unit are paid on a 12-month calendar, although individuals may request that the final two salary warrants be issued in June. Most teachers in the unit work a traditional 182 day year; the remainder are primarily those who are assigned to sites with year-round programs. Certificated staff evaluations begin with a meeting between the supervisor to discuss goals and objectives, followed by the supervisor's observation of the employee, an evaluation, and a review thereof.

The SCOE's certificated bargaining unit positions are grouped into four major categories: regular employees, designated instructional services, special education classroom teachers, and special education classroom teachers of the severely handicapped. The four categories are further subdivided into 14 "subgroups." When meetings of certificated staff occur, they are most likely to be with staff "subgroups" rather than with "categories" or with the entire certificated staff.

The "regular employee" subgroups are audiologist, school nurse, resource specialist, and "alternative education programs," which includes juvenile hall teacher, and community classroom teacher.

Audiologists perform student hearing assessments, primarily at the SCOE's administrative office in Modesto. They are required to have a master's degree in audiology and a California State School Audiologist Credential. This credential does not

authorize classroom teaching. They work a "traditional" year of 182 days: September through June with the summer off.

Employees in the classification of school nurse are required to have a registered nurse license and a credential authorizing service as a school nurse. However, this credential does not authorize classroom teaching. The SCOE also employs a non-certificated nurse who is in a classified unit.¹³ Both the certificated and classified nurses work at the JFK School and at district sites, performing similar duties, including treatment of children and in-service training of staff.

The resource specialist generally performs according to one of two alternative models: pull-out or collaborative. Under the former, when special remediation is required the specialist "pulls" a student out of a classroom to a portable classroom assigned to the resource specialist. Under the latter model, the specialist goes into a classroom to provide specialized help or to develop a lesson. Resource specialists generally have a work year which follows that of the site at which they work, e.g., 176 days at a year-round site, and 182 days at a traditional site. Their primary professional interaction is with the certificated staffs of the districts, rather than the staff of the SCOE.

Both juvenile hall and community classroom teachers have a rapid turnover in their students. Juvenile hall teachers oversee

¹³The record does not contain a job description for the non-certificated nurse. The current classified collective bargaining agreement (Employer Exhibit H) lists "Clinical Nurse" and "Nurse" in the paraprofessional unit.

the educational programs for students in the juvenile hall facility. The community classroom teacher teaches four hours per day in a self-contained class of students who have disciplinary problems but are not in the juvenile hall facility.

The second major category of certificated staff is that of "designated instructional services," which includes the following subgroups: adapted physical education, home and hospital, speech therapist, and visually and mobility impaired. The adapted physical education teachers travel from site to site working with physically handicapped students and using the pull-out or collaborative models utilized by resource specialists.

Home and hospital teachers are assigned to students who are hospitalized or confined at home because of medical conditions. They follow the curriculum of the school which the student would otherwise attend.

Speech therapists work at a site like the JFK School or travel from site to site. They teach language skills, and use either the pull-out or collaborative model. Most of their interaction is with district teachers, and they do not assign grades.

The remaining two categories of certificated staff include special education classroom teachers. They have a fairly constant group of students for the school year, and in that respect, are more like traditional classroom teachers than the SCOE certificated staff discussed above. They have a variety of student populations, such as students with severe learning

disabilities, students with severe behavioral problems, and students with multiple handicaps.

ISSUE

Should the certificated naturalists be included in the certificated unit?

POSITIONS OF THE PARTIES

The SCOE objects to the inclusion of naturalists in the certificated bargaining unit, noting especially that a teaching credential is not required for employment as a naturalist. It asserts that naturalists are part of the classified service, and that they share a greater community of interest with classified employees. Finally, the SCOE argues that the efficiency of its operations would be disrupted if naturalists were to be divided between the certificated unit and a classified unit or unrepresented group.

The Association emphasizes that it seeks to represent only certificated naturalists, which, it argues, are required to hold a credential pursuant to Education Code sections 44065 and 44066. It further argues that certificated naturalists share a substantial community of interest with other classifications in the certificated bargaining unit which warrants their placement in that unit. Because of this community of interest, rebuttal of the Peralta¹⁴ presumption is not possible. Therefore,

¹⁴Peralta Community College District (1978) PERB Decision No. 77, is generally cited for the proposition that a single unit of certificated personnel should be established unless community of interest factors compel establishment of additional certificated units.

certificated naturalists must be included in the certificated unit.

DISCUSSION

Certificated Naturalist as a Distinct Classification

Analysis of this case must begin with the resolution of whether "certificated naturalist" is a distinct classification. The essence of the SCOE's argument concerning this question is that there is only one classification, naturalist, and the fact that some incumbents in the class possess credentials is incidental and basically irrelevant. The SCOE asserts and places considerable reliance on two facts: that neither the Education Code nor the SCOE requires a naturalist to possess a certificate or credential. It is perhaps more accurate to say that a credential is not required of all naturalists.

In Alum Rock Union Elementary School District (1983) PERB Decision No. 322, the Board defined "position" as "a group of duties and responsibilities which are intended to be performed by one employee." A "classification" was defined as

any number of positions which are sufficiently similar in duties and responsibilities that the same job title, minimum qualifications, qualifying tests, and salary range are appropriate for all positions in the class.

Those criteria and the evidence support the conclusion that the certificated naturalist exists as a distinct classification at the SCOE. The most persuasive evidence consists of the specific references to such a class in a job description and in job announcements, which identify the position as "certificated

naturalist" and specify that a credential is required. Additional support is provided by the existence of a job description and announcement for "classified naturalist," which differ from those of certificated naturalists in key respects. Finally, the classification appears as a distinct "title" on the SCOE's "Hourly Positions" pay schedule.

The fact that not all naturalists are required to have credentials is more supportive of a conclusion that the classification of "classified naturalist" exists as a separate class than of the SCOE's position that "certificated naturalist" does not exist. Notwithstanding its right to have established only a non-credentialed naturalist class, the SCOE in fact established¹⁵ and filled a classification expressly requiring credentials, and called it "certificated naturalist."

Status of Classification

The SCOE argues that naturalists are not required to have certification qualifications, therefore, naturalists are part of the classified service. In support of this argument the SCOE cites Modesto City School District (1991) PERB Decision No. 884, where the Board considered a unit modification petition in which the employer sought removal of a position from a certificated bargaining unit. The position, high school auditoriums manager, had been newly created by the employer as a classified position,

¹⁵As noted previously, the SCOE's early practice was to require credentials for all naturalists. It was not until 1986 that the District also began hiring naturalists without credentials.

but because the incumbent in the position held a teaching credential and had been employed as a certificated employee for a number of years, both the status and the unit placement of the position were in dispute. The Board held it was necessary initially "to determine the status of the classification or position (and therefore the duties) under the Education Code." The Board agreed with the finding of the Board agent that the duties of the position did not require certification under Education Code section 44065,¹⁶ and was thus a part of the classified service.

The facts in this case distinguish it from Modesto in significant respects. The Board in Modesto expressly found there was no evidence that the duties of the auditoriums manager included, or were an outgrowth of, instructional program activities. This is in marked contrast to the evidence in the instant case, which discloses that much of the naturalists' work

"Section 44065 provides, in pertinent part, that any person employed by a county superintendent of schools in a position in which 50 percent or more of the employee's duties performed during the school year consist of directing, coordinating, supervising or administering any or all of the following functions shall hold a valid teaching or service credential:

(1) The work of instructors and the instructional program for pupils.

.....

(3) School extracurricular activities related to, and an outgrowth of, the instructional and guidance program of the school.

involves giving students special knowledge or information concerning ecology, geology, history and conservation.¹⁷

That these duties are instructional is corroborated by two additional facts. Even if accompanied on a hike by a classroom teacher, the classroom teacher is responsible only for assisting with discipline, leaving the naturalist as the only person responsible for making the hike an educational experience. Secondly, the naturalist job evaluation form requires an appraisal of the naturalist's instructional and teaching techniques.

In support of its position that naturalists are not performing instruction, the SCOE notes that naturalists are not required to assign grades or to leave lesson plans for substitutes. While these are tasks associated with traditional teaching duties, their absence does not detract from the instructional nature of the naturalists' primary duties.

The SCOE asserts that Education Code section 8760 (b)¹⁸

¹⁷To "instruct" is "to give special knowledge or information to." Webster's Third New International Dictionary (1976) page 1172.

¹⁸Section 8760 provides, in part, as follows:

(a) The governing board of any school district may do the following:

(1) Conduct programs and classes in outdoor science education and conservation education within or without the boundaries of the district and for that purpose employ instructors, supervisors, and other personnel and provide necessary equipment and supplies.

.....

"makes it clear that naturalists are classified employees" by requiring that they be supervised by a certificated teacher. Section 8760(b) authorizes the governing board of a school district or a county superintendent of schools¹⁹ to contract with an outside provider for the services of naturalists, and requires such naturalists to be supervised by a certificated employee. However, the SCOE has not contracted with an "outside provider" for the services of naturalists;²⁰ rather, it has, pursuant to section 8760(a), conducted programs in outdoor science education "and for that purpose employ[ed] instructors." To impose the requirements of section 8760(b) on the SCOE's naturalists requires an unreasonable statutory interpretation.²¹ Further,

(b) The governing board of any school district may contract with an outside provider for the services of naturalists. . . . Any naturalist under contract with the governing board of a school district pursuant to this section and all services provided by a naturalist shall be under the supervision of a certificated employee of the school district. . . .

¹⁹Education Code section 8765 makes section 8760 also applicable to county superintendents.

²⁰The fact that school districts within Stanislaus County have contracted with the SCOE to furnish naturalists does not convert the SCOE employees into employees of an outside provider.

²¹The requirement of section 8760 (b) relied upon by the SCOE actually provides support for a contrary conclusion, i.e., that the SCOE's naturalists are certificated. The requirement in section (b) that naturalists "under contract" be supervised by certificated employees appears to relate to "outside providers" only. No similar requirement is present in section (a), which pertains to instructors who are employed rather than under contract. One reasonable interpretation of the legislative intent is that "employed" naturalist instructors should be certificated, and, therefore, do not require certificated supervision.

even assuming that both "employed" and "contracted" naturalists must be supervised by a certificated employee, it does not necessarily follow that the supervised employee is classified.

Accordingly, at least half of the duties of certificated naturalists are concluded to be instructional services. Therefore, pursuant to Education Code section 44065, they are in a position requiring certification credentials and are certificated employees.²²

Unit Placement

The unit modification petition, filed pursuant to PERB Regulation 32781 (a) (I),²³ seeks to add certificated naturalists to the existing unit. A determination of the appropriateness of

²²Although the issue need not be decided in this case, it would appear that even if certificated naturalists were deemed not to require certification qualifications pursuant to Ed. Code section 44065, because the SCOE designated the position as certificated, persons in such positions would be deemed to be certificated pursuant to section 44066. Section 44066 provides, in pertinent part, that any person who had served in a position for which certification not necessitated by statute had been required and which was designated by the governing board as a position requiring certification qualifications

shall be deemed to be an employee in a position requiring certification qualifications for as long as he or she holds such position

²³That regulation provides as follows:

(a) A recognized or certified employee organization may file with the regional office a petition for modification of its unit(s):

(1) To add to the unit unrepresented classifications or positions;

a unit is made based upon criteria set forth in the Educational Employment Relations Act (EERA) section 3545(a):

. . . 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.

Community of interest is not the only factor to be considered, but it is an important one. The certificated naturalists share a community of interest with unit members which is derived fundamentally from the fact that both groups are credentialed, deal directly with children, and share a common goal of providing services to the school districts in Stanislaus County.²⁴ While certificated naturalists differ in significant respects from some classifications in the certificated unit, emphasis on those differences is unwarranted in light of the great diversity of the existing unit, which includes a variety of instructional personnel working in different settings ranging from classrooms to hospital rooms, and which also includes such non-instructional personnel as audiologists and nurses.²⁵

²⁴In Kings County Office of Education (1990) PERB Decision No. 801, the Board approved a unit modification which sought to add nurses to an existing certificated unit, finding their common goal to be "providing service to . . . school districts which lack the resources to provide such services on their own."

²⁵The diversity of the existing unit is the primary reason for the failure of the SCOE to rebut the Peralta presumption. Several of the "decisive distinctions" in Peralta between certificated Skills Center employees and the other college faculty which were found to rebut the presumption in that case are absent here. For example, in Peralta the Board identified two of these "distinctions" to be "differing instructional

Further, differences in wages, hours, and other terms and conditions of employment are subject to collective bargaining. Disparities frequently exist between represented and unrepresented classifications largely as a result of collective bargaining. (Los Rios Community College District (1977) EERB Decision No. 18.)²⁶ Moreover, even if such differences were to continue, they are not sufficient to disrupt the fundamental community of interest which exists.

The SCOE argues that the certificated naturalists do not share a community of interest with employees in the existing unit. In support of this conclusion, the SCOE asserts a number of differences exist between naturalists and certificated unit employees, including the source of salary monies, the right to earn tenure, the extent of interaction between the two groups, and the need to possess a credential. For reasons previously stated, this last asserted fact is rejected as not supported by the record; the SCOE does require its certificated naturalists to have a credential. The remaining differences either are unsupported by record evidence or unpersuasive.

The SCOE asserts that the source of the funding for naturalists is the fee paid by students attending the Outdoor Center. The SCOE states that this funding is dependent upon the

practices and working conditions" and "differences in curriculum and educational purpose." Such distinctions already exist among the classifications in the SCOE's established certificated unit.

²⁶Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

continued willingness of students' families to pay the fee, and thus, the viability of the program is outside the control of the SCOE.²⁷ However, the record evidence for this assertion is insubstantial. There was no testimony on this issue; documentary evidence exists in the form of a sample of the "Agreement for Outdoor Education" entered into by the SCOE and school districts (Employer Exhibit A), which lists the costs for the five-day visit to the Outdoor Center and provides for a transfer of funds from a district to the SCOE upon completion of the attendance of the district's students. Section D.2 of this agreement provides that "[r]efunds shall not be granted to any pupil sent home for disciplinary reasons." This is insufficient upon which to base a finding that funding for naturalists is dependant upon student fees. Perhaps more important, even if funding for the naturalists were dependent on student fees, this appears to be scarcely more uncertain a funding source than that of the other SCOE programs, which are dependent upon districts choosing to utilize the SCOE rather than providing special education programs themselves.

The record does support the SCOE's assertion that naturalists have not been extended tenure. However, this fact does not provide meaningful evidence of a difference in the absence of evidence of the extent to which tenure has been

²⁷This, according to the SCOE, is analogous to the facts in Peralta where the Skills Center teachers were federally funded.

extended to all other classifications within the certificated unit.

The record also supports the SCOE's assertion that the naturalists have minimal contact with other certificated SCOE employees. The limited interaction which does occur is primarily a result of SCOE teachers bringing SCOE students to the Outdoor Center. I conclude, however, that this is entitled to little weight here because it is also characteristic of other unit employees who work at sites such as hospitals, student homes, and the SCOE administrative offices.

Another factor which is often considered in evaluating unit modification requests is the effect the modification will have on the collective bargaining process. The SCOE contends bargaining will be impeded if naturalists were in the certificated unit. This argument is supported only by the bare assertion of the SCOE's Assistant Superintendent for Human Resources that

it would impede the efficiency of the operation of this office to have two groups represented by two different units when they essentially -- they do exactly the same work.

(Hearing transcript, p. 117)

This conclusion lacks sufficient detail to be persuasive. Further, the certificated and classified units both currently include nurses, yet no evidence was presented indicating bargaining has been impeded as a result of this splitting of similar classifications between two units.

There is no evidence indicating certificated naturalists have interests so separate from current certificated unit

employees that bargaining would be adversely affected by their addition to the unit. To the extent that their interests are different, these differences are insufficient to negate the community of interest and do not require excluding them from the unit. (See Santa Clara County Office of Education (1990) PERB Decision No. 839.)

Finally, the remaining factor which is relevant to this unit determination is what likely effect the decision will have upon employee bargaining rights. In this case, the certificated naturalists may not be placed in one of the existing classified units. Not only is there a statutory proscription against including classified and certificated employees in the same unit,²⁸ PERB also lacks the authority "to force an employee organization to represent employees against its will." (Long Beach Community College District (1989) PERB Decision No. 765.) Further, there is only one existing certificated bargaining unit, and excluding the certificated naturalists from that unit would leave them unrepresented.²⁹ Granting the unit modification not

²⁸Government code section 3545 (b) states in pertinent part:

In all cases:

.....

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

²⁹The possibility of a second certificated unit consisting solely of certificated naturalists presents a more serious threat to the SCOE's efficient operation than does the instant unit modification. In Gilroy Unified School District (1979) PERB Decision No. 98, the Board observed that placing six pre-school

only is consistent with other unit appropriateness criteria, it preserves the certificated naturalists' collective bargaining rights.

CONCLUSION

Based on the findings of fact, conclusions of law, and the entire record, the Association's unit modification petition is GRANTED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a 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 Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding.

and permit teachers in a separate unit "would not be appropriate, in that it would fragment the bargaining unit and impair the efficiency of the [employer's] operations."

Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

(
Charles F. McClamma
Hearing Officer