STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FONTANA UNIFIED SCHOOL DISTRICT, Employer, and UNITED STEELWORKERS OF AMERICA, Exclusive Representative.	Case No. LA-UM-683-E PERB Decision No. 1623 April 28, 2004

Appearances: Atkinson, Andelson, Loya, Ruud, & Romo by John W. Dietrich, Attorney, for Fontana Unified School District; Gilbert & Sackman by Jay Smith, Attorney, for United Steelworkers of America.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to a Board agent's proposed decision (attached) filed by the Fontana Unified School District (District). United Steelworkers of America (USWA) filed a unit modification petition pursuant to PERB Regulation 32781(a)[1] seeking to add all breakfast/noon/afternoon/yard duty aides (duty aides) to the wall-to-wall classified unit it currently represents in the District. USWA had submitted proof of majority support with its petition which the Board found to be adequate in a determination issued on October 30, 2001.

[1]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32781(a) provides, in pertinent part:

> (a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:
>
> (1) To add to the unit unrepresented classifications or positions;

The District opposed the petition and after attempts at settlement, a formal hearing was conducted in February 2002.

In the proposed decision, the Board agent determined that the duty aides shared a sufficient community of interest with other employees in the classified unit to warrant their inclusion in the unit and granted the petition.

The Board has reviewed the entire record in this case, including the proposed decision, the District's exceptions, and USWA's response to the District's exceptions. The Board finds the Board agent's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, the petition for unit modification by the United Steelworkers of America in Case No. LA-UM-683-E is hereby GRANTED.

Pursuant to Educational Employment Relations Act (EERA) section 3545(a)[2] and PERB Regulations, the Board adds the following job classifications to the existing classified employees bargaining unit represented by the United Steelworkers of America: All breakfast/noon/afternoon/yard duty aides.

Chairman Duncan and Member Neima joined in this Decision.

[2]EERA is codified at Government Code section 3540, et seq.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

FONTANA UNIFIED SCHOOL DISTRICT, Employer, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC, Exclusive Representative.	REPRESENTATION CASE NO. LA-UM-683-E PROPOSED DECISION August 15, 2002

Appearances: Atkinson, Andelson, Loya, Ruud & Romo by Sherry G. Gordon, Attorney, for Fontana Unified School District; Gilbert & Sackman by Jay Smith, Attorney, for United Steelworkers of America, AFL-CIO, CLC.

Before , Hearing Officer.

PROCEDURAL HISTORY

On October 12, 2001, the United Steelworkers of America, AFL-CIO, CLC (USWA or Union) filed a unit modification petition pursuant to PERB Regulation 32781(a)[1] with the Public Employment Relations Board (PERB or Board) to add all breakfast/noon/afternoon/yard duty aides (noon duty aides) to the wall-to-wall classified unit it currently represents in the

[1] PERB Regulation 32781(a) provides, in pertinent part:

> (a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:
>
> > (1) To add to the unit unrepresented classifications or positions. . .

Fontana Unified School District (District).[2] The Union submitted proof of majority support with its petition, which PERB found to be adequate in a determination issued on October 30, 2001.[3]

The District filed its opposition to the petition on November 16, 2001. The District asserted that noon duty aides are not classified employees under the Education Code, that they lack a community of interest with the employees in the unit, and that they have a casual employment relationship with the District.[4] A settlement conference held on December 20, 2001, failed to resolve the matter, and a formal hearing was conducted on February 13, 2002. Briefs were filed and the case was submitted on April 5, 2002.

FINDINGS OF FACT

There are 36 schools in the District. Noon duty aides work at the 7 middle schools and 24 elementary schools. At the time of the hearing, there were approximately 208 noon duty

---

[2] The unit is comprised of all regularly assigned full-time, probationary and permanent classified employees and all regularly assigned part-time, probationary and permanent classified employees occupying positions scheduled for eight hours a week or more. Noon duty aides are specifically excluded from the unit.

[3] PERB Regulation 32781(e) provides, in pertinent part:

> (e) If the petition requests the addition of classifications or positions to an established unit, the Board may require proof of majority support of persons employed in the classifications or positions to be added. . . .

PERB typically requires proof of support when the number of employees proposed to be added constitutes 10 percent or more of the established unit.

[4] In its post-hearing brief, the District did not address the casual employment issue, but did argue that the proposed unit modification would negatively impact its efficiency of operations.

aides and approximately 1134 employees in the classified bargaining unit in the District.

The primary responsibility of noon duty aides is to provide supervision for students in the cafeteria during breakfast and lunch and on the playground during recess when a teacher is not present. In inclement weather, they may supervise the students in the classroom during recess while the teacher takes a break. In all locations, the noon duty aides monitor the behavior of the children, attempting to prevent misconduct when possible. They regularly issue "citations" to students who misbehave using a District checklist of inappropriate behavior. The citation is then given to the teacher or the administrator for any follow-up action with the student. The noon duty aide may also communicate the problem verbally.

In the cafeteria, noon duty aides help keep the area clean, asking for the assistance of a custodian when necessary. They may assist cafeteria aides in collecting payment from the students, setting up equipment for lunches and serving food to the students. On the playground, the noon duty aide supervises up to 70 students. If fights occur, they typically call for campus security to intervene.

Noon duty aides all work less than 4 hours per day and are paid $6.75 per hour. Their hours may change due to inclement weather. They are eligible for participation in APPLE (Accumulation Program for Part-time and Limited-service Employees) and are covered by Medicare, unemployment insurance, and workers compensation. When a noon duty aide works 1000 hours in a calendar year, s/he becomes eligible for retirement benefits under the Public Employees Retirement System.

While most unit employees work more than five hours per day, there are some, bilingual aides and tutor monitors, for example, who work as few as three hours per day. Changes in unit employee hours are subject to the negotiations process. The lowest paid

classified employee is paid $10.16 per hour, although the lowest step on the classified salary schedule is $7.47 per hour. Unit employees receive health and welfare benefits as provided in the collective bargaining agreement.

Vacancies for noon duty aides are typically advertised in school newsletters and by word of mouth. Job vacancies for unit positions are posted in the District. Applicants for noon duty aide and unit positions must fill out application forms and sign an oath of allegiance. Noon duty aides are usually hired by the principal or secretary. New unit employees are subject to a formal hiring process which includes screening, testing, interviewing and reference checking. This process may take up to six weeks or more.

Noon duty aides report to the principal or vice principal at the school site. Unit employees report to various supervisors, depending upon their department. Unlike unit employees, noon duty aides are not evaluated and may be terminated by notice from a site administrator. There was credible testimony that noon duty aides have a higher turnover rate than unit employees, although there were no figures to back this up. However, there was also credible testimony that some aides stay with the District for years.

When noon duty aides are absent, substitutes may be called or other noon duty aides may fill in. Principals and vice-principals may also fill in if no one else is available.

ISSUE

Should noon duty aides be added to the established classified unit?

DISCUSSION

Section 3545(a) of the Educational Employment Relations Act (EERA or Act)[5] provides:

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

In determining community of interest, PERB considers the extent to which employees have similar qualifications, training and skills; job duties; salary and benefits; hours of work, supervision; interaction with other employees, interchange of job functions, and other relevant factors.[6] The point in comparing these factors "is to reveal the interests of employees and [to] ascertain whether they share substantial mutual interests in matters subject to meeting and negotiating." (Monterey Peninsula Community College District (1978) PERB Decision No. 76.)

It is undisputed that noon duty aides are excluded from the classified service under Education Code section 45103 (previously 13561). In one of its earliest cases, the Board held that this exclusion does not preclude these employees from the exercise of rights under the Act. (Pittsburg Unified School District (1976) EERB Decision No. 3.) Finding that noon duty aides were regularly scheduled part-time employees who worked on a regular basis, that they

---

[5] EERA is codified at Government Code section 3540 et seq. All references herein are to the Government Code unless otherwise noted.

[6] See Los Angeles Unified School District (1998) PERB Decision No. 1267; San Francisco Community College District (1994) PERB Decision No. 1068; Marin Community College District (1978) PERB Decision No. 55; Los Angeles Unified School District (1977) EERB Decision No. 5.

performed duties similar to those of other unit positions, were paid at the same rate and selected in the same manner as other unit employees, the Board placed them in a parprofessional unit. The Board noted that the fact that noon duty aides were excluded from fringe benefit coverage, like other employees who did not work a sufficient number of hours to qualify, was not sufficient to warrant their exclusion from the unit.

In this case, noon duty aides are regularly scheduled part-time employees who work on a regular basis. There was evidence presented as to the high turnover rate of these employees. However, there was also testimony that many noon duty aides work for the District in that capacity for many years. It is undisputed that, as a class, noon duty aides have a continued expectation of employment with the District.[7]

Unlike bargaining unit employees, noon duty aides have no job descriptions, are paid at a rate lower than the classified salary schedule, and receive limited benefits. These differences are not controlling, however, since they are all subjects currently wholly in the control of the District which would be negotiable if the unit modification petition is granted. (Redwood City Unified School District (1979) PERB Decision No. 107.)

The duties of noon duty aides differ from unit employees, just as the duties of custodians differ from food service employees and security aides. However, the noon duty aides interact with these unit employees in the cafeteria and on the playground. While performing different duties, they are all charged with providing a safe environment for the

[7] See Dixie Unified School District (1981) PERB Decision No. 171, where PERB found substitute teachers who taught as little as one or two days per year were properly included in a unit with full-time teachers.

students in the schools. As the Board has held, not all duties or concerns need to be identical to establish a community of interest.[8]

The District argues that adding noon duty aides to the classified unit would negatively impact its efficiency of operations. It points out that 17 of the 45 articles in the contract "have no application to" noon duty aides, and argues that "[j]oint negotiation with these two separate and dissimilar groups would waste time and divert focus from relevant issues." It also argues that its ability to hire noon duty aides quickly would be impaired if they were unit employees.

In balancing the impact on the efficient operations of an employer with the employees' right to effective representation in appropriate units, the Board has never found the efficiency factor to outweigh representation rights.[9] In this case, where the established unit contains positions which range from senior computer operator to maintenance glazier to instructional aide, it is likely that the parties have already developed means for dealing with many different concerns in the negotiations process. Any difficulty negotiating over contract provisions applicable to noon duty aides does not outweigh their right to representation. Furthermore, the District made no showing that negotiating over issues applicable to noon duty aides would be any more complex or time-consuming if they are placed in the classified unit than if they are placed in a separate unit.

The District's argument regarding the negative impact on its hiring procedures is speculative and, even if it proves accurate, does not outweigh the rights of the employees to representation.

---

[8] State of California (1990) PERB Decision No. 794-S; Palo Alto Unified School District (1983) PERB Decision No. 352.

[9] See, for example, Los Angeles Unified School District, supra, PERB Decision No. 1267.

CONCLUSION

Based on the record in this case and the discussion above, it is determined that noon duty aides share a sufficient community of interest with other employees in the classified bargaining unit to warrant their inclusion in the unit. The unit modification petition filed by the United Steelworkers of America, AFL-CIO, CLC, is hereby 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 Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover

Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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 Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

_____

Jerilyn Gelt
Labor Relations Specialist