

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BURBANK UNIFIED SCHOOL DISTRICT,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION,

Exclusive Representative.

Case No. LA-UM-707-E

PERB Decision No. 1710

November 22, 2004

Appearances: Currier & Hudson by Richard J. Currier, Attorney, for Burbank Unified School District; Jim Walker, Labor Relations Representative, for California School Employees Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Burbank Unified School District (District) to an administrative law judge's (ALJ) proposed decision (attached). The District filed a petition requesting modification of a bargaining unit represented by the California School Employees Association (CSEA). The petition sought to exclude the administrative secretary to the Director of Personnel and the administrative secretary to the Assistant Superintendent of Business Services from the bargaining unit as confidential employees under PERB Regulation 32781(b)(1).¹ Following a hearing and submission of briefs, the ALJ determined that the

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32781(b)(1) provides:

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:

administrative secretary to the Director of Personnel was a confidential employee and excluded her from the bargaining unit but the administrative secretary to the Assistant Superintendent of Business Services did not fall within the definition of confidential employee and should remain in the bargaining unit. The District excepted from this portion of the ALJ's proposed decision.

The Board has reviewed the entire record in this matter, including the District's petition, CSEA's response, the hearing transcript and exhibits, the parties' post-hearing briefs, the ALJ's proposed decision, the District's exceptions and CSEA's response. As a result of our review, the Board adopts the ALJ's proposed decision as a decision of the Board itself.

ORDER

That portion of the petition in Case No. LA-UM-707-E, which seeks to exclude from the bargaining unit represented by the California School Employees Association the administrative secretary to the Director of Personnel as a confidential employee is hereby GRANTED. That portion of the petition which seeks to exclude the administrative secretary to the Assistant Superintendent of Business Services as a confidential employee is hereby DENIED.

Member Neima joined in this Decision.

Chairman Duncan's dissent begins on page 3.

(1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by TEERA, EERA, HEERA or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit;

DUNCAN, Chairman: I dissent. While I agree with the majority that the administrative secretary to the director of personnel position is a confidential employee, I find that the administrative secretary to the Assistant Superintendent of Business Services is also a confidential employee position. My position is based on Public Employment Relations Board (PERB or Board) case law and takes into consideration the January 1, 2004, amendment to the definition of confidential employee.¹

The Burbank Unified School District (District), in its brief in support of its exceptions, states the essence of why this is a confidential position:

Bradley is more than just a 'resource person' in negotiations since (1) he has the lead role in the negotiations over the 'hot issue' of health benefits, (2) he has a role in whether a proposal is turned down or accepted in negotiations, (3) he regularly attends negotiating sessions, (4) he participates in meetings of Petitioner with regard to strategies and positions in negotiations, (5) he attends closed sessions of the School Board with regard to negotiations, and (6) he prepares drafts of proposals and reports covering negotiations which are transmitted to the Superintendent or School Board prior to any release at the negotiating table. The record evidence is strong that Bradley is now an important participant on behalf of Petitioner in the preparation and conduct of negotiations. Mermerian maintains and organizes all of Bradley's files related to negotiations, does research for him related to negotiations, and attended meetings of the 'Joint Benefits Committee.' The research done by Mermerian includes research for confidential memos to the Superintendent and School Board regarding negotiations. She also prepares memos to the School Board regarding District positions on specific items being negotiated.

¹The Educational Employment Relations Act (EERA) defines "confidential employee" to mean (EERA is codified at Gov. Code sec. 3540, et seq.):

any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions. [Gov. Code sec. 3540.1(c).]

In addition to those duties related to employer-employee labor relations both Steve Bradley (Bradley) and Aledia Mermerian (Mermerian) have duties related to other areas of interactions of the employer-employee.

Those additional duties for Bradley include oversight of litigation between the District and employees which gives him direct access to confidential communications that include complaints employees have regarding work. As his secretary, Mermerian does substantial work related to the litigation. This includes research and communication with the attorneys representing the District. Attorney-client information related to the litigation and confidential status reports that assess risks in these cases is in Mermerian's control at times because of her work for Bradley.

The District cited Anaheim City School District (1991) PERB Decision No. HO-R-137 (Case No. LA-UM-512) (Anaheim) and Pajaro Valley Unified School District (1991) PERB Decision No. HO-R-136 (Case No. SF-UM-460) (Pajaro Valley) to support its position that Mermerian's position should be classified as confidential.

In Anaheim, an insurance technician was determined to be a confidential employee since she researched various health care plans and was informed of proposals before they were presented for bargaining. In Pajaro Valley, a secretary to the assistant superintendent of business involved as part of the confidential communications link was found to be a confidential employee.

The District also cited the decision in Mendocino County Office of Education (2002) PERB Decision No. 1505 (Mendocino). There, the Board found that a confidential employee, under EERA is any employee who "in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations." PERB

found the positions in that case were not confidential because the employees did not have access to or possess information concerning the county's employer-employee relations in the regular course of their normal duties. Here, the testimony shows that Mermerian does have access to and possession of information concerning the District's employer-employee relations in the regular course of her duties.

The Board in Mendocino cited Calexico Unified School District (1990) PERB Decision No. 800 (Calexico). There, the district had created a new position of assistant personnel clerk (APC). The APC was supervised by a confidential employee. The APC was not actually involved in grievances or bargaining but she maintained the employee confidential files and those contained information necessary for formulation of bargaining unit proposals. She also was involved in the gathering and investigating of information related to employee grievances. Some of her duties were shared with her supervisor. Because of the interchangeability of duties the Board found her position was confidential.

The Board also cited Hemet Unified School District (1990) PERB Decision No. 820 (Hemet). The position at issue there was secretary to the director of special education. She maintained grievance files, took correspondence related to grievances, gathered information relating to grievances and typed grievance responses. The Board noted,

She is also required to handle, as part of her routine duties, confidential administrative materials that pertain to collective bargaining, including reports and memos about bargaining proposals. She has not performed these duties during her tenure, only because there have been no grievances and because her supervisor's medical problems preclude him from participating in the District's bargaining team during his regular rotation. The Board found the secretary to be confidential because she and her supervisor were the only employees with access to confidential files, it was the secretary's exclusive duty to gather information relating to grievances, her supervisor was routinely rotated onto

the bargaining team and she had prepared salary comparisons for her supervisor for bargaining purposes. [Mendocino at p. 6.]

Based on these cases, the Board found that the employee positions at issue in Mendocino were not confidential. There, the employee category at issue did not have the same access and place in the flow of information as Mermerian does here. Calexico and Hemet, provide a further basis to show the position here as confidential.

The administrative law judge (ALJ) here noted that Bradley's (Mermerian's supervisor) participation in negotiations had been limited to financial issues and in the most recent round he had only attended about half the meetings. In Hemet, the supervisor of the position at issue had not been to any negotiations but had the potential for being in them in the future. Bradley "prepares financial bargaining proposals for approval by the superintendent or the Board." The ALJ noted there was no evidence as to how much time he or Mermerian spent on those. The amount of time spent is the wrong question. It was part of the routine duties and that makes the position confidential.

Additionally, Bradley's position is confidential and Mermerian did sit in on relevant meetings for him making that aspect interchangeable with his duties. While Mermerian "merely" types the proposals, according to the ALJ, that gives her access to the information which she then maintains in the files. The evidence shows that the time spent on confidential areas is "more than a fraction". (Los Rios Community College District (1977) EERB² Decision No. 18; see also, Unit Determination for Professional Librarians of the University of California (1983) PERB Decision No. 247b-H ("regular course of duties" means more than a fraction of the employee's time is spent on confidential matters).)

²Prior to 1978, PERB was known as the Educational Employment Relations Board (EERB).

In Centinela Valley Union High School District (1978) PERB Decision No. 62 (Centinela), the Board found that the frequency of an employee's confidential work is not controlling, the confidential work must be more than happenstance and involve more than a fraction of the employee's time to be considered "in the regular course of an employee's duties." The Board has further indicated that "involvement in the stream of communications on negotiation subjects 'is a factor supporting the confidential status of an employee'." (Marin Community College District (1978) PERB Decision No. 55.)

There are a number of other cases that set out what is not considered to be considered indicators of a confidential employee. Those duties include merely opening the confidential mail (Centinela Valley), access to personnel records which do not directly relate to collective bargaining negotiations or grievance processing (Dinuba Public Schools (1979) PERB Decision No. 91 (Dinuba)), and "[m]ere processing of personnel records and evaluations" is not enough to confer confidential status (Chowchilla Union High School District (1994) PERB Decision No. 1040).

In this situation, the administrative secretary to the assistant superintendent of business services is in the "stream of communications" and not merely opening mail. Her supervisor is involved in the District negotiations related to the financial information and health benefits. That clearly is related to wages and potentially a lot more. As in Hemet and Calexico, the fact that he has not been involved in all of the negotiation sessions is not the test. He has been involved as a regular part of his job and her preparation of his materials is a regular part of her job. The ALJ notes Bradley only participated in a little more than half of the negotiation sessions. But, as noted above it would not matter if he had not yet attended any.

The key is that he is involved in that area when appropriate and there is the potential for more involvement in future negotiations. Important factors related to this are that Bradley

has the lead role in the negotiations over . . . health benefits, . . . has a role in whether a proposal is turned down or accepted in negotiations, . . . regularly attends negotiating sessions, . . . participates in meetings [with CSEA] with regard to strategies and positions in negotiations, . . . and prepares drafts of proposals and reports covering negotiations which are transmitted to the Superintendent or School Board prior to any release at the negotiating table. . . . Mermerian maintains and organizes all of Bradley's files related to negotiations, does research for him related to negotiations, and attended meetings of the 'Joint Benefits Committee.' The research done by Mermerian includes research for confidential memos to the Superintendent and School Board regarding negotiations. She also prepares memos to the School Board regarding District positions on specific items being negotiated. [Petitioners Brief in Support of Exceptions to the Proposed Decision, pp. 6-7.]

Finally, the Board has said "The determination of confidentiality does not rest on whether employees would be better utilized if their duties were reassigned, but depends solely on what an individual's work actually entails." (San Rafael City High School District (1977) EERB Decision No. 32.)

"The scope of the Board's jurisdiction does not extend to suggesting or directing the manner in which employers and employee organizations maintain the confidentiality of negotiations. The formulation of such strategies is within the sole discretion of the employers and the organizations . . ." (Dinuba at p. 2) and it will not tell an employer how it should set up its work force or assign duties.

Since Bradley is, in fact significantly involved in health benefit negotiations and financial negotiations as a member of the negotiating team and Mermerian does research for his documents, attends meetings in his place and in other ways is in the stream of communications, to find other than that this is a confidential position would, in essence, be

telling the employer to reorganize how confidential information is handled and that is outside the jurisdiction of the Board. After review of the case law and the total facts in this case, the position that Mermerian holds, in my opinion, should be classified as confidential.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



BURBANK UNIFIED SCHOOL DISTRICT,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION,

Exclusive Representative.

REPRESENTATION
CASE NO. LA-UM-707-E

PROPOSED DECISION
(10/9/03)

Appearances: Currier & Hudson by Richard J. Currier, Attorney, for Burbank Unified School District; Dvora Mayer, Labor Relations Representative, for California School Employees Association.

Before Ann L. Weinman, Administrative Law Judge.

PROCEDURAL HISTORY

On December 17, 2002, Burbank Unified School District (District) filed a petition with the Public Employment Relations Board (PERB or Board) for modification of the bargaining unit represented by California School Employees Association (CSEA). The petition claims that two positions, Administrative Secretary to the Director of Personnel and Administrative Secretary to the Assistant Superintendent of Business Services, are confidential and seeks to exclude them from the unit under PERB Regulation 32781(b)(1).¹ The District contends that

¹ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Section 32781(b)(1) provides in part:

(b) A[n] employer ... may file with the regional office a petition for unit modification:

(1) To delete classifications or positions which by virtue of changed circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are ... confidential, not covered by EERA ...

the two secretaries recently became confidential employees when the two administrators whom they serve became more involved in the negotiating process with CSEA. CSEA contends that neither the administrators' duties nor the secretaries' duties have changed substantially and that the secretaries are not confidential employees.

A settlement conference was held on May 15, 2003, but the matter was not resolved. A formal hearing was held before the undersigned at the Los Angeles office of PERB on July 29, 2003. After the submission of post-hearing briefs, the matter was submitted for decision on September 29, 2003.

FINDINGS OF FACT

The District is a public employer within the meaning of Educational Employment Relations Act (EERA)² section 3540.1(k). CSEA is an exclusive representative within the meaning of EERA section 3540.1(e), representing a unit of approximately 650³ non-certificated employees in several classifications. CSEA and the District have been parties to a succession of several collective bargaining agreements covering the unit, which has included the two secretaries at issue. The only secretarial positions currently excluded from the unit as confidential are Secretary to the Superintendent (two positions), Senior Administrative Secretary to the Facilities Superintendent, and Senior Administrative Secretary to the Superintendent of Instructional Services. The other confidential employees are Assistant to the Superintendent, two Technology Operations Specialists, Superintendent's Office Assistant, and Employee Injury and Illness Prevention Technician.

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

³ Layoffs in 2002 reduced the unit from approximately 750 employees.

District Bargaining Team

Superintendent David Aponik was lead negotiator for the District⁴ until he left in March 2002.⁵ Dr. Gregory Bowman (Bowman) succeeded him as Superintendent, and he, along with Director of Personnel Nancy Gascich (Gascich) and Facilities Planning Director Dr. Ali Kaifer (Kaifer), became the District's negotiating committee as of April. Negotiations for a new collective bargaining agreement began in July. Kaifer attended only the first few sessions. By the August 8 session, the District had added labor attorney Steve Andelson to its team, in order to have a trained negotiator. Also on the District's team, appearing at many of the sessions, were Goldie Bemel, Rick Jameson, and Assistant Superintendent of Business Services Steve Bradley (Bradley).⁶

Director of Personnel

Gascich testified that, although she had been involved in negotiations when Aponik was Superintendent, she has taken a much more active role since he resigned. She claims that since April 2002, she has been the District's chief negotiator. However, CSEA vice president and negotiator Terry Marenghi (Marenghi) testified without contradiction that agendas of bargaining sessions have listed Bowman as chief negotiator. I find therefore that Bowman is the District's official chief negotiator. Nevertheless, Gascich attends virtually all negotiating sessions; she meets approximately once a week with BTA and approximately once every two weeks with CSEA, either formally or informally. She formulates bargaining tactics and strategies, drafts initial proposals for approval by the Superintendent and by the District's

⁴ The District is a party to two bargaining agreements, one with CSEA and one with Burbank Teachers Association (BTA).

⁵ All dates refer to the year 2002 unless otherwise specified.

⁶ Bradley's involvement in negotiations is discussed fully below.

Board of Trustees in closed session, and receives confidential communications from them as well as from the District's attorneys regarding negotiations. Further, as Marengi conceded, all District proposals are presented at the bargaining table by either Gascich or labor attorney Andelson.

Gascich also investigates potential disciplinary actions and grievances and maintains confidential pre-discipline files and pending grievance files, and has confidential communications with the District's attorneys in this regard. She has had these responsibilities during her entire tenure as Director of Personnel.

Administrative Secretary to the Director of Personnel

For some time Gascich felt she needed an administrative secretary, and in May, the position was created. It was filled by Cindy Quitero (Quitero), who had previously been 50 percent Personnel Technician and 50 percent Senior Secretary in the Personnel Department. Gascich claims that Quitero helps her "prepare" drafts of bargaining proposals. However, there is no evidence that Quitero's involvement goes beyond typing, and occasionally formatting, the draft proposals. She also gathers data for bargaining proposals, e.g., salary and benefit surveys of other school districts; however, this can be done by any non-confidential secretary. She has attended caucuses with the District negotiating team. Quitero types Gascich's investigation reports and other documents related to employee discipline and grievances. She has access to Gascich's computer password as well as to all her files, which Quitero is responsible for maintaining, and sees Gascich's written correspondence, including confidential memos between Gascich and the Superintendent, the Board of Trustees, and labor counsel regarding negotiations and disciplinary actions. She testified that she has worked with an estimated fifteen-plus pending discipline files in the six months prior to the hearing. Attorney billings in connection with negotiations and disciplines come across Quitero's desk

before being forwarded to the Superintendent.⁷ Quitero testified that she speaks with labor counsel regarding, e.g., negotiation dates and release of unit employees to participate on the CSEA bargaining team, and sets appointments with witnesses to discuss discipline matters with Gascich and/or counsel. In Gascich's absence, Quitero has discussed pending grievances and potential disciplinary actions with counsel, giving them status reports and getting from them advice regarding further investigations and possible outcomes.

According to both Gascich and Quitero, Quitero performed all of the above tasks, except for data-gathering and discussions with labor counsel, while in her former position; however, since her promotion to Administrative Secretary, she spends more time on these tasks. In this regard, all of the non-confidential unit secretaries have access to Gascich's negotiation and grievance files; however, there is no evidence that they deal with these files or have any responsibility in that regard.

Personnel Supervisor Leticia Castillo (Castillo) also has access to Gascich's discipline files, and Gascich keeps her informed of the status of pending disciplines, as Castillo would be responsible for implementing any layoff or discharge. However, Castillo does not work with the investigative files nor does she speak with counsel on matters of discipline.

Assistant Superintendent of Business Services

The Business Services Division contains six departments: Accounting, Budget, Payroll Benefits, Purchasing, Food Services, and Duplicating. Bradley came to the District in November 2001 as Assistant Superintendent of Business Services, responsible for all six

⁷ Quitero testified that she may approve attorney billings in Gascich's absence. However, Adele Coy (Coy), a non-confidential unit employee in the Accounting Department, testified that attorney billings come directly to her after approval by the Superintendent; she has never seen an invoice signed by Gascich or Quitero. I credit Coy in this regard, as she is a disinterested witness.

departments.⁸ Gascich testified that since April 2002, Bradley has played an active and integral role in the District's bargaining team. According to Gascich, Bradley has attended negotiation strategy meetings and closed sessions of the Board of Trustees, and has prepared confidential negotiation documents. However, Marenghi testified that Bradley only attends negotiations when they deal with wages, benefits and other financial matters. As the principal issues during the most recent round of negotiations were financial, Bradley attended at least half of the sessions. According to Marenghi, he acts as a resource person, providing data gathered by his department as well as advice on financial matters. However, he does not present proposals, as all proposals are presented by Gascich or Andelson.

Bradley also acts as the District's "risk manager," responsible for overseeing litigation involving District employees and students regarding, e.g., workers compensation, employment discrimination, sexual harassment, vehicle accidents and other personal and property damage issues.

Administrative Secretary to the Assistant Superintendent of Business Services

Bradley's secretary since November 2001 has been Aledia Mermerian (Mermerian). Mermerian testified that she maintains Bradley's litigation files, negotiation notes, and data prepared for negotiations. She also types drafts of financial proposals, e.g., health and welfare benefits, which Bradley prepares for review by the Board of Trustees prior to presentation at negotiations, and communicates between Bradley and the District's attorneys regarding pending litigation.

Mermerian contends that since April 2002, Bradley has taken a more active role in negotiations, and that she has spent more time preparing reports and memos to the Board of Trustees regarding proposals. However, she did not provide any estimate as to how much time

⁸ Bradley himself did not appear as a witness.

either she or Bradley spent on negotiation matters, or how much of her duties normally require access to confidential information affecting employer-employee relations. Nor is there any evidence that she participates in developing or presenting management proposals. She attended a meeting of the Joint Benefits Committee on his behalf. However, the Committee, which discusses matters subject to negotiations, is an open forum.

ISSUE

Are the two disputed positions confidential and thereby excluded from the unit?

CONCLUSIONS OF LAW

In drafting the EERA, the Legislature denied confidential employees rights under the Act for the purpose of guaranteeing the orderly and equitable development of employer-employee relations. (Sierra Sands Unified School District (1976) EERB Decision No. 2 (Sierra Sands.)⁹ EERA section 3543.4. provides, in pertinent part:

A person serving in a ... confidential position may not be represented by an exclusive representative. ... A representative may not be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a ... confidential position.

EERA section 3540.1(c) has defined a “confidential employee” as:

... any employee who, in the regular course of his of her duties, has access to, or possesses information relating to, his or her employer’s employer-employee relations. [¹⁰]

⁹ Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

¹⁰ Senate Bill No. 253, signed into law on August 3, 2003, to take effect January 1, 2004, modifies section 3540.1(c) to read:

“Confidential employee” means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions. [Quotation marks in original.]

In interpreting section 3540.1(c), the Board has stated its assumption that the employer should be allowed a “small nucleus” of loyal individuals to assist the employer in developing the employer’s positions in matters of employer-employee relations; that nucleus of individuals must maintain the confidentiality of those matters because if they are made public, it would jeopardize the employer’s ability to negotiate from an equivalent position. (Sierra Sands.)

However, the designation of an employee as confidential is not done lightly, and because of the serious impact of such a determination, an exclusion from a broad grant of rights under EERA must be strictly construed. (Los Rios Community College District (1977) PERB Decision No. 18 (Los Rios).) In Fremont Unified School District (1976) EERB Decision No. 6, the Board established a standard requiring that confidential employees have access to and possess information about the employer’s employer-employee relations, which includes, inter alia, negotiations and the processing of employee grievances. Further clarifying this standard, the Board in San Rafael City Schools (1977) EERB Decision No. 32, required the employee to have access to or possess confidential information in the regular course of duties performed. Although the frequency of these duties is not controlling, the access or possession must occur within the regular course of the employee’s duties and be more than a happenstance. (Id.) More than a fraction of the employee’s time must be spent on confidential matters. (Campbell Union High School District (1978) PERB Decision No. 66, citing Los Rios.)

Administrative Secretary to the Director of Personnel

Although I do not find Gascich to be the District’s chief negotiator, there is no dispute that she is a principal member of the negotiating team, that she drafts District strategy and proposals for approval by the Superintendent and the Board of Trustees in closed session, and that either she or the District’s labor counsel present the District’s proposals at the bargaining

table. It is also undisputed that Gascich processes grievances, investigates potential disciplines, and prepares documents relating thereto.

As for Quitero, her merely having access to Gascich's computer, to her files, or to attorney invoices would not be determinative of her confidential status. However, it is undisputed that these files contain confidential information which "contribute(s) significantly to the development of management positions." And a regular and substantial part of Quitero's duties requires working with and maintaining these files. Quitero types, files, and otherwise handles Gascich's bargaining proposal drafts and confidential strategy memos, disciplinary investigations, grievances, and confidential attorney-client documents, and occasionally speaks with attorneys regarding the status and merits of a potential discipline. It is also undisputed that since May 2002, her involvement with confidential negotiation documents as a regular part of her duties has substantially increased.

Thus, I find Quitero's duties are unlike those involved in the recent case, Mendocino County Office of Education (2002) PERB Decision No. 1505, where "the supervisors of the employees in disputed positions deliberately prevented their secretaries from performing confidential duties," and where the supervisors themselves were "infrequently involved in confidential duties." Rather, I find Quitero's duties analogous to those of the confidential secretary in Hemet Unified School District (1990) PERB Decision No. 820, and even greater than those of the receptionist/clerk in Imperial Unified School District (1987) PERB Decision No. 647.

Accordingly, I conclude that Quitero is a confidential employee within the meaning of EERA section 3540.1(c).

Administrative Secretary to the Assistant Superintendent of Business Services

I do not agree with the District, however, that Mermerian is a confidential secretary. I first note that Bradley's duties have not appreciably changed since May 2002. Further, his participation in negotiations has been limited to financial issues, and even when those were discussed at the table in the recent round of negotiations, he attended only slightly more than half of the sessions. When financial issues are not being discussed, he attends rarely, if at all. He prepares financial bargaining proposals for approval by the Superintendent or by the Board, but there is no evidence as to how much time either he or Mermerian spend dealing with these proposals, and there is no evidence that she does anything other than type them. As risk manager, Bradley deals with material which is "confidential" in the general sense, but there is no evidence as to how much of it relates to employer-employee labor relations. Thus, I do not find sufficient evidence that Mermerian's duties normally require access to confidential employee-employer information or, even under the new legislation, which contribute significantly to the development of management positions..

Accordingly, I conclude that Mermerian is not a confidential employee within the meaning of EERA section 3540.1(c).

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, that portion of the petition in Case No. LA-UM-707-E, Burbank Unified School District and California School Employees Association, which seeks to exclude from the bargaining unit represented by the California School Employees Association (CSEA) the Administrative Secretary to the Director of Personnel as a confidential employee is hereby GRANTED. That portion of the petition which seeks to exclude the Administrative Secretary

to the Assistant Superintendent of Business Services as a confidential employee is hereby DENIED.

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).)

Ann L. Weinman
Administrative Law Judge