**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| ORCUTT UNION ELEMENTARY SCHOOL DISTRICT,<br><br>Employer,<br><br>and<br><br>ORCUTT EDUCATION ASSOCIATION, CTA/NEA,<br><br>Exclusive Representative. | Case No. LA-UM-829-E<br><br>PERB Decision No. 2183<br><br>June 7, 2011 |

Appearances: Rutan & Tucker by David C. Larsen, Attorney, for Orcutt Union Elementary School District; California Teachers Association by Priscilla S. Winslow, Attorney, for Orcutt Education Association, CTA/NEA.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Orcutt Union Elementary School District (District) to the proposed decision (attached) of a PERB Board agent. The Board agent granted a unit modification petition of the Orcutt Education Association, CTA/NEA (Association) to include "certificated employees and teachers of the Orcutt Academy Charter School" (Academy), excluding supervisors and managers, in the existing District certificated bargaining unit, finding that, because the Academy's teachers share a community of interest with other District teachers, a single bargaining unit of certificated employees is appropriate.

The Board has reviewed the proposed decision and the record in light of the District's exceptions, the Association's response thereto, and the relevant law. Based on this review, we find the proposed decision to be well-reasoned, adequately supported by the record, and in

accordance with applicable law. Accordingly, the Board adopts the proposed decision as the decision of the Board itself, as supplemented by the discussion below.

## DISCUSSION

The District asserts the following arguments in support of its exceptions: (1) by their very nature, charter school employees lack a community of interest with non-charter employees; (2) the doctrine of accretion, as established by law developed under the National Labor Relations Act (NLRA),[1] applies to this case and requires a finding that a lack of employee interchange and lack of common day-to-day supervision preclude finding a community of interest in this case; and (3) a bargaining unit including Academy employees with District employees is not appropriate under the standard set forth in the Educational Employment Relations Act (EERA)[2] section 3545(a).

### Applicability of EERA to Charter School Employees

As set forth in the Board agent's proposed decision, in *Peralta Community College District* (1978) PERB Decision No. 77 (*Peralta*), PERB resolved an apparent conflict between EERA section 3545(a) and section 3545(b)(1) by establishing a presumption that all classroom teachers employed by a public school employer are to be placed into the same bargaining unit, except where the factors listed in section 3545(a) are not met. Those factors include community of interest, the effect of the proposed unit configuration on the efficient operations of the district, and the representation and negotiation history of the employees involved. (*Ibid*; *Long Beach Community College District* (1989) PERB Decision No. 765; *Rio Hondo Community College District* (1979) PERB Decision No. 87.) The burden is on the party

[1] The NLRA is codified at 29 U.S.C. section 151 et seq.

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

opposing the unit to establish that a unit composed of all teachers in the district is inappropriate. (*Peralta.*)

Under PERB Regulation 32781(a)(1),[3] PERB is authorized to add unrepresented classifications or positions to an existing bargaining unit. Pursuant to section 32781(e), the Board must require proof of majority support of persons employed in the classifications or positions to be added if the proposed addition would increase the size of the established unit by ten percent or more. In *Regents of the University of California* (2010) PERB Decision No. 2107-H (*Regents*), the Board construed this language to mean that PERB may not require proof of majority support when a unit modification petition seeks to add unrepresented positions that total less than ten percent of the established unit, since increasing the unit by less than ten percent does not call into question the incumbent union's majority support. (*Ibid.*) Thus, under established PERB law, unrepresented employees may be added to an existing unit where the increase would amount to less than ten percent of the unit. (*Id.* at pp. 23-24 ["the Legislature has subordinated this right of employee free choice to the overriding policy of avoiding proliferation of bargaining units"]; see also *Los Angeles Unified School District* (1998) PERB Decision No. 1267 [rejecting argument that PERB's unit determination procedures undermine employee "free choice" under EERA].)[4]

In addition to the provisions of EERA, the Charter School Act (CSA),[5] governing the establishment and operation of charter schools, contains some provisions addressing employment issues. The CSA was amended in 1999 to provide for collective bargaining

[3] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[4] For the reasons set forth in the Board agent's decision, we reject the District's argument that the doctrine of "accretion" under the NLRA applies to unit determinations by PERB. (*Regents.*)

[5] The CSA is codified at Education Code, section 47600 et seq.

for charter school employees. Assembly Bill (AB) 842, introduced by Assembly Member Carole Migden on May 21, 1999, would have imposed a mandatory requirement that charter school employees be automatically placed in existing bargaining units with non-charter employees and subject to existing collective bargaining agreements covering those employees, without regard for the community of interest and other factors set forth in EERA section 3545(a). Thus, AB 842 would have prevented PERB from considering whether such employees had a community of interest with other school district employees, or any of the other factors set forth in section 3545(a), in determining the appropriate bargaining unit for placement of charter school employees. Faced with significant opposition on the ground that the bill would violate established community of interest principles, AB 842 was replaced by amendments to AB 631 that resulted in the amendment of both the CSA and EERA to include charter schools within the scope of EERA. (Stats. 1999, Ch. 828.)

In addition to amending section 3540.1 to expressly include charter schools within coverage under EERA, AB 631 added Education Code section 47611.5 to the CSA. That section provides:

> (a) Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code shall apply to charter schools.
>
> (b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of the Government Code.
>
> (c) If the charter of a charter school does not specify that it shall comply with those statutes and regulations governing public school employers that establish and regulate tenure or a merit or civil service system, the scope of representation for that charter school shall also include discipline and dismissal of charter school employees.

> (d) The Public Employment Relations Board shall take into account the Charter Schools Act of 1992 (Part 26.8 (commencing with Section 47600)) when deciding cases brought before it related to charter schools.
>
> (e) The approval or a denial of a charter petition by a granting agency pursuant to subdivision (b) of Section 47605 shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board.
>
> (f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

On its face, Education Code section 47611.5 contains three provisions relevant to the issues before the Board. First, subdivision (a) expressly mandates that the provisions of EERA apply to charter schools.[6] Second, subdivision (b) requires a charter school charter to declare whether or not the school district where the charter is located shall be deemed the public school employer for purposes of EERA, and subdivision (f) deems the school district to be the public school employer if the charter fails to specify otherwise. Third, subdivision (d) requires PERB to take the CSA into account when deciding cases brought before it related to charter schools. Notably, nothing in the CSA addresses the bargaining unit placement of charter school employees.

Legislative History

Notwithstanding the absence of any language in the CSA pertaining to bargaining units for charter school employees, the District contends that the legislative history surrounding the addition of Education Code section 47611.5 to the CSA requires a departure from PERB's established precedent regarding unit determination and modification, such that PERB's normal unit determination and modification rules do not apply at all to the determination of whether

[6] AB 631 also amended subdivision (k) of section 3540.1 to expressly include charter schools within the definition of "public school employer" or "employer" under EERA.

charter school employees should be included in a larger bargaining unit of employees of a school district.

Having reviewed the legislative history of both AB 842 and AB 631, we find nothing in that history to support the District's position that AB 631 had either the intent or the effect of abrogating PERB's normal unit modification rules. Nothing in the language of the bill itself specifically grants charter school employees the right to choose whether or not to be included within an existing bargaining unit of school district employees. Instead, it is clear from the legislative history that the primary purpose of the bill was to ensure that charter school employees were afforded the same collective bargaining rights that other school employees enjoy under EERA. Thus, in her request that Governor Gray Davis sign AB 631, Assembly Member Migden stated, in part:

> I respectfully request your signature on AB 631 which would give teachers and other school employees at charter schools the same right to collective bargaining that is afforded to all school employees in California under the Educational Employment Relations Act (EERA) and the Higher Education Employer-Employee Relations Act (HEERA).
>
> . . . This bill is not a mandate for charter schools to unionize, but it does ensure the statutory right of charter school employees to organize if they choose to. Furthermore, the EERA and HEERA will give charter school employees the right to appeal to the Public Employment Relations Board (PERB) if there are any disputes or grievances.
>
> Some have argued that charter school employees already have this right. However, because charter schools are exempted from most state laws governing public schools, including collective bargaining, charter school employees do not have statutory protections under state laws that are given to traditional public school employees. . . .

(Emphasis added.)

The letter goes on to reference a PERB decision in which PERB determined that it did not have the authority under EERA to address allegations that two charter school employees were fired in discrimination for attempting to organize.[7]

Moreover, the language relied upon by the District does not support its position. Thus, a statement in support of amendments introduced on June 2, 1999, states: "This amendment makes it clear that collective bargaining will be at the choice of charter school employees – consistent with the process for traditional public school employees." (Emphasis added.) AB 631 contains language (codified at Education Code section 47611.5(b) and (f), and EERA section 3540.1(k)) requiring the charters of charter schools to declare whether the charter school is to be designated as the public school employer for purposes of EERA (see *Chula Vista Elementary School District* (2004) PERB Decision No. 1647 (*Chula Vista*)), but nothing in that language or the legislative history requires charter school employees to be given a choice over the designation of the public school employer or to be placed in a separate bargaining unit in the absence of such a designation. In this case, the charter specifically designates the District as the public school employer.[8] Accordingly, we agree with the Board agent that the legislative history does not support the District's position that charter school employees cannot be included in a unit of non-charter employees.

We therefore conclude that PERB's unit modification regulations apply to charter schools, subject to the requirement of Education Code section 47611.5(d) that PERB take the CSA into account when deciding cases involving charter schools. Consistent with EERA

[7] The specific case is not identified. However, in *San Francisco Unified School District* (2001) PERB Decision No. 1438, PERB confirmed that, prior to the 1999 amendments to the CSA, PERB lacked jurisdiction under EERA over charter schools.

[8] In contrast, some charter provisions do provide for employees to vote on whether to amend the charter to designate the charter school as the public school employer. (See, e.g., *Chula Vista*; *Robert L. Mueller Charter School* (2003) PERB Order No. Ad-320.)

section 3545(b), as interpreted by the Board in *Peralta*, we also conclude that charter school classroom teachers may be added to an existing unit of non-charter school teachers unless the factors set forth in EERA section 3545(a) cannot be met. Those factors include community of interest and the effect of the size of the unit on the efficient operation of the school district.[9] We agree with the Board agent that the Academy teachers share a sufficient community of interest with the other teachers in the District to warrant inclusion in the District-wide bargaining unit.

In addition, pursuant to Education Code section 47611.5(d), PERB must take into account the CSA when deciding such cases. The Board agent did so by considering the effect of the proposed unit on the District's operations and the goals of the CSA. We further agree with the Board agent's analysis and conclusions that the District has not demonstrated that the proposed unit would unduly interfere with its ability to achieve the goals set forth in its charter petition or in the CSA. Accordingly, we conclude that the Association has established sufficient grounds to grant the petition for unit modification.

## ORDER

For the above reasons and based upon the entire record in this case, it is hereby ORDERED that Orcutt Education Association, CTA/NEA's unit modification petition to add the Orcutt Academy Charter School certificated employees and teachers, excluding supervisors and managers, to the existing Orcutt Union Elementary School District certificated unit is hereby GRANTED.

Chair Martinez and Member Huguenin joined in this Decision.

[9] In this decision, we do not address the issue of whether charter school teachers may appropriately be included in a bargaining unit of non-charter employees where the charter school, rather than the public school district, is designated as the public school employer pursuant to Education Code section 47611.5(b) and EERA section 3540.1.

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| ORCUTT UNION SCHOOL DISTRICT,<br><br>Employer,<br><br>and<br><br>ORCUTT EDUCATION ASSOCIATION,<br><br>Exclusive Representative. | REPRESENTATION<br>CASE NO. LA-UM-829-E<br><br>PROPOSED DECISION<br>(March 15, 2011) |

Appearances: Rutan & Tucker, LLP by David C. Larson, Attorney for Orcutt Union School District; California Teachers Association by Joseph R. Colton, Attorney for Orcutt Education Association.

Before Eric J. Cu, Hearing Officer.

## PROCEDURAL HISTORY

On January 20, 2010, the Orcutt Education Association (Union) filed a petition with the Public Employment Relations Board (PERB or Board) seeking to modify the existing certificated bargaining unit at the Orcutt Union School District (District) to include the "certificated employees and teachers at the Orcutt Academy Charter School (Academy) excluding supervisors and managers." On January 21, 2010, the Union filed an amended petition, specifying that its unit modification request was filed pursuant to PERB Regulation 32781(a)(1) and PERB Regulation 32781(b)(2).[1] At the time, the existing certificated bargaining unit had approximately 185 members and the Academy had approximately 14 teachers.

[1] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

On February 10, 2010, the District filed a statement opposing the Union's petition. The District asserted that the proposed unit would not be an appropriate bargaining unit under Educational Employment Relations Act (EERA) section 3545(a).[2]

An informal settlement conference was held on April 27, 2010, but the matter was not resolved. Thereafter, the matter was scheduled for a formal hearing.

On December 1-2, 2010, the Union and the District appeared before PERB to conduct the formal hearing. On February 28, 2011, the parties submitted simultaneous post-hearing briefs. At that point, the record was closed and the matter was submitted for decision.

## FINDINGS OF FACT[3]

### I. The Traditional Education Program

The District's traditional education program is one of eight school districts serving the Santa Maria Valley. The District's traditional education program provides education to kindergarten through eighth grade students. The District operates six traditional elementary schools: Alice Shaw, Joe Nightingale, May Grisham, Patterson Road, Pine Grove, and Ralph Dunlap. The District also operates two junior high schools: Lakeview Junior High School and Orcutt Junior High School.

In addition, prior to the 2008-2009 school term, the District's traditional education program operated an independent study component. During that time, the independent study program was based at the Orcutt Junior High School campus and unit member Bridgette DePalma-Steed was the coordinator of the program.

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

[3] In this case, one of the primary issues is the degree to which teacher working conditions in the District's charter school education program are similar to or different from the conditions in its other education programs. For ease of discussion, this decision will refer to conditions at the charter school as either the "Charter School program" or the "Academy program." This decision will refer to the District's other education programs as the "traditional education program."

The governing body of the District is a Board of Trustees consisting of five publicly elected members. The District's Board of Trustees holds regular public meetings to address issues affecting the District's operations. The District handles personnel matters through its Human Resources office. The District administrator in charge of Human Resources is the Assistant Superintendent of Human Resources. At all relevant times, Jan Yanagisako held the position of Assistant Superintendent of Human Resources.

II. Teachers in the Traditional Education Program

The primary job function for teachers in the District's traditional education program is to deliver State-standardized curriculum to the District's students. Teachers are expected to produce lesson plans, provide instruction in the classroom, give assignments, and administer examinations. Teachers are also expected to participate in in-service training. One example of in-service training was a training for Gifted and Talented Education (GATE) held during the 2009-2010 school term.[4] In addition, some teachers participate in the District's Curriculum Council. The purpose of the Curriculum Council is to discuss District-wide curriculum issues.

Teachers in the traditional education program also participate in Professional Learning Communities (PLCs). PLCs are meetings between the teachers of the same grade level. PLC meetings give teachers the opportunity to share their experiences during a school year about the effectiveness of materials and strategies and how to improve the delivery of the curriculum. The District also holds a District-wide PLC annually.

[4] There was conflicting evidence presented regarding whether the District held a GATE training in the 2009-2010 school term. District witness Kenneth Parker testified that the last GATE training he recalled occurred prior to the 2008-2009 school term. Union witness Monique Segura testified that she attended a GATE training in the 2009-2010 school term. I credit the Union's evidence as it purports to be a first-hand account and because the District did not provide an adequate foundation regarding Parker's awareness of all of the District's in-service programs.

Teachers in the traditional education program are hired through an interview process. Typically, one or two principals, a few teachers, and the District Assistant Superintendent of Human Resources attends an interview for a new teacher position. To qualify for a District teaching position, an applicant must hold a State teaching credential. Once hired, the District provides teachers with an annual employment contract. Newly credentialed teachers may participate in a Beginning Teacher Assistance and Support (BTSA) program to be mentored by a more experienced District teacher.

Generally speaking, teachers receive permanency after teaching at the District for three consecutive years. A permanent teacher receives some expectation of continued employment at the District and is also entitled to certain due process protections in the event of termination or other discipline.

Many of the terms and conditions of teachers' employment are outlined in the Collective Bargaining Agreement (CBA) in place between the Union and the District. The Union has represented certificated personnel in the District's traditional education program since 1976. For example, the CBA sets forth teachers' salary scale, benefits, and leave. Under the CBA, a teacher may request to transfer to a different District teaching position. The CBA also includes a provision that permits a teacher to displace another teacher with lower seniority in the event that the senior teacher's position is eliminated.

The District expressed a goal of assigning each teacher a class of approximately 25-28 students, depending on grade-level. Actual enrollment numbers have varied. Some teachers teach combination classes, meaning the teacher is assigned groups of students from two different grade levels. Under the CBA, teachers assigned to combination classes are entitled to a stipend used to purchase supplies and other materials for the classroom. Teachers assigned to combination classes deliver a separate curriculum to each group of students.

Principals are the primary supervisor for teachers at each school site in the District's traditional education program. As such, principals conduct teacher performance evaluations for teachers after conducting in-class observations.

III. Formation of the Charter School

During the 2007-2008 school term, the District began exploring the possibility of opening a charter school. District representative Kenneth Parker played a significant role in the development of the District's charter school plans including preparation of the charter petition. At the time, Parker was the Associate Superintendent of Instruction at the District. Element 15 of the charter petition included the following declaration: "For the purpose of the Educational Employment Relations Act (EERA) the Orcutt Union School District will be the exclusive employer of the employees at Orcutt Academy."

During the charter school formation process, District teachers were informed that it was necessary for teachers to sign their names to a petition supporting the formation of a charter school. Seven District teachers signed the petition on September 27, 2007. Afterwards, the signatories to the petition attended a series of meetings regarding the progress of the charter school's development.

On November 7, 2007, the State Board of Education approved the District's petition to create the Orcutt Academy charter school. The operational agreement in the charter petition was first approved for the period of July 2008 until June 30, 2009. The operational agreement has since been renewed annually until the present time. Orcutt Academy began operations in August 2008, for the 2008-2009 school term.

IV. The Orcutt Academy Charter School

The Orcutt Academy currently provides instruction for approximately 430 students, breaking down to roughly 80 kindergarten through eighth grade students and roughly 350 high school level students. As explained above, no other school site in the District provides education to students at the high school level.

The Academy's K-8 grade program operates out of the District's Casmalia location. The District is forbidden by State law to build more than three classrooms at this location. For this reason, the Academy has no expectation to expand this aspect of the Academy's program at this location. Accordingly, this aspect of the Academy has three classes: one kindergarten through second grade class, one third through fifth grade class, and one sixth through eighth grade class. The Academy has one teacher for each of these classes for a total of three.

The Academy's high school program operates out of vacant classroom space at the Orcutt Junior High School site. All high school classrooms and offices are separated from the junior high school by a fence. As a result, the classrooms, restrooms, employee lounge, and other facilities are not shared with the junior high school. Unlike the K-8 program, the Academy does plan on expanding its high school program. The program does not currently provide instruction for all four high school grades (ninth through twelfth) but plans on doing so as its existing students advance into higher grade levels.

In addition, the Academy modified and took over operations of the independent study program previously run by the District's traditional education program.[5] As part of the new program, students were required to attend a limited number of classes in District classrooms. The classroom component was fulfilled in vacant classrooms at the Pine Grove Elementary School.

[5] During the 2008-2009 year, the independent study program included students assigned to both the District and to the Academy.

The Academy's operations are governed by a Board of Directors who are the same individuals as the District's Board of Trustees. These individuals hold separate meetings when acting in the capacity as the Academy's Board of Directors. The Academy does not have an office to address personnel matters. Instead, the Academy has a contract with the District to use the District's Human Resources office for this purpose.

V. Teachers at the Academy

As in the District's traditional education program, applicants for teacher positions at the Academy are required to hold a State teaching credential. Teachers at the Academy are also hired through an interview process. Under the Academy's hiring process, Academy faculty, parents, community members, and alumni all participate on interview panels. The Academy employs what it refers to as "a two-team approach." One panel of interviewers questions the applicant about curriculum and core understanding of relevant subject-matter. The other panel focuses on the applicant's ability to develop lifelong learning skills. Applicants for Academy teaching positions are also expected to present a sample lesson to interviewers. As under the District's education program, teachers hired for the Academy are given an annual employment contract. Teachers from the District's traditional education program can and have accepted positions at the Academy after going through the Academy's interview process.

Not all Academy teachers are hired through this interview process. For example, when the Academy took over operations of the District's independent study program in 2008-2009, DePalma-Steed continued to act as coordinator of the program. DePalma-Steed was not informed that she had become an employee of the Academy until she requested an employment contract after the 2008-2009 term began. In addition, Jean Byrne, Brenda Hascall, and Laura Knowlton all provide instruction on a part-time basis at the Academy but were not required to

apply or interview for their positions. Byrne, Hascall, and Knowlton are also teachers in the District's traditional education program.

The terms and conditions of employment for teachers at the Academy are not governed by the CBA. Nevertheless, salary, benefits, and leave for Academy and other District teachers are identical. In addition, Academy teachers are eligible to participate in the same retirement program as other District teachers.

Like other District teachers, Academy teachers are considered "permanent" after teaching at the Academy for three years. "Permanent" status at the Academy entitles the teacher to continued employment at the Academy and, although not yet fully defined, some due process protection in the event of discipline.

Teachers at the Academy have the same basic job function as other District teachers, i.e., delivering State-determined curriculum to students. Both the Academy teachers that testified at the hearing were previously teachers in the District's traditional education program and stated that the two programs use similar techniques and materials. However, Academy teachers provide more instructional hours per school term than other District teachers. Teachers at the Academy also employ themes as a means of performing their job function. For example, one Academy teacher encourages students to consider their lives as a journey as a means of relating to the journeys of literary figures. Teachers at the high school level also help students develop career-based skills. Academy teachers are also expected to serve a counselor/mentor role to students and must give presentations to parents about the Academy's programs.

Unlike in the District's traditional education program, all of the Academy's K-8 classes are combination classes consisting of three grades each. Under the Academy's teaching model, teachers focus less on a grade-level specific curriculum and more on assuring that each

student is educated in State required standards at the end of his or her elementary school career. With this in mind, the three elementary school teachers at the Academy meet regularly during the school year to discuss curriculum. Academy teachers also participate in the District-wide Curriculum Council and the District-wide PLCs. In addition, Academy teachers occasionally attend District in-service trainings. For example, Shannon Brinsfield attended the GATE training held during the 2009-2010 school term.

As with the rest of the District, each of the schools at the Academy has a principal as its primary administrator. The principal is responsible for evaluating Academy teachers and does so by performing multiple classroom observations each year.

## ISSUE

The issue in this case is whether a bargaining unit consisting of all the District certificated personnel, including those employed at the Academy, is an appropriate bargaining unit. EERA section 3541.3(a) authorizes PERB to make unit determinations in disputed cases.

The District asserts that because of the unique structure of charter schools and the Academy in particular, it would be inappropriate to include the Academy's teachers in this bargaining unit. Rather, the District contends that a separate unit of Academy teachers is appropriate.[6]

The Union contends that the community of interest factors and other unit determination criteria favor a finding that the Academy's teachers should be included in the existing certificated unit.

[6] In fact, the District questioned in its post-hearing brief whether a single unit of charter school and traditional teachers could ever be appropriate.

## CONCLUSIONS OF LAW

I. Unit Determination Criteria

The EERA specifies the factors to consider when making unit determinations. EERA section 3545(a) 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.

EERA section 3545(b)(1) states:

> 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.

The Board interpreted these sections of EERA in *Peralta Community College District* (1978) PERB Decision No. 77 (*Peralta*). In that case, the Board recognized what could be interpreted as conflicting statements in EERA section 3545(a), which requires that disputed unit determinations be made according to the factors specified therein, and EERA section 3545(b)(1), which states that a unit including classroom teachers must include all classroom teachers. The Board resolved this apparent conflict by holding "reading subsection 3545(b) together with companion subsection 3545(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." (*Ibid.*) In doing so, the Board recognized that the Legislature intended to minimize the dispersion of bargaining units in school districts while understanding that critical negotiation-related differences between certain teacher classifications may compel separate units. (*Ibid.*) Accordingly, the Board found that the burden of challenging a comprehensive teachers' unit falls upon the party opposing that unit. (*Ibid.*) This interpretation has been upheld by the

Board in subsequent decisions. (See e.g., *Salinas Union High School District* (2002) PERB Order No. Ad-315.)[7]

Although the Board decided the issue in *Peralta, supra,* PERB Decision No. 77 based almost entirely on community of interest factors, the Board recognized the importance of all the factors listed in EERA section 3545(a). For this reason, in deciding whether the *Peralta* presumption has been rebutted, the Board also considers the effect of the proposed unit configuration on the efficient operations of the school district, and the representation and negotiation history for the group of teachers involved. (*Long Beach Community College District* (1989) PERB Decision No. 765 (*Long Beach*); *Rio Hondo Community College District* (1979) PERB Decision No. 87; *Peralta, supra*, PERB Decision No. 77.) PERB will consider all of these factors in the instant case.

A. Reliance on the Charter Schools Act

The District argues that an understanding of the unique framework created by the Charter Schools Act of 1992 (CSA) and its legislative history is necessary in resolving the unit dispute raised in this case.[8] The District asserts that the CSA was designed to provide operational independence from existing rules governing school districts. The CSA includes the following declaration:

> It is the intent of the Legislature, in enacting this part, to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure, as a method to accomplish all of the following:
>
> (a) Improve pupil learning.

[7] Further reference to this analysis shall be made as the "*Peralta* presumption."

[8] The CSA is codified at Education Code section 47600 et seq.

(b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.

(c) Encourage the use of different and innovative teaching methods.

(d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

(e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

(f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.

(g) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools.

In accomplishing these goals, the CSA exempts charter schools from many sections of the Education Code. (Ed. Code, § 47610; *Wilson v. State Board of Education* (1999) 75 Cal.App.4th 1125, 1145 [holding CSA provides a "broad exemption from most education laws governing school districts"].) Notably absent from this section of the CSA is any mention of the intent to approach labor relations, collective bargaining, or unit determinations differently in the case of a charter school. Also absent from the CSA is any provision that would exempt a charter school from the unit determination criteria set forth in EERA section 3545.

CSA section 47611.5 does specify that PERB should "take into account the Charter Schools Act of 1992 when deciding cases brought before it related to charter schools." The District urges PERB to consider the legislative history of this section which includes two related bills, Assembly Bill 613 (AB613) and Assembly Bill 842 (AB842). PERB has previously recognized the relevance of legislative history in statutory interpretation. (*California Statewide Law Enforcement Association (Morgan)* (2009) PERB Decision

No. 2089-S.) Indeed, the Board has previously examined the Legislative history of AB613. (See e.g., *Chula Vista Elementary School District* (2004) PERB Decision No. 1647.) Thus, it is appropriate to review the legislative history.

AB842 was introduced by Assembly Member Carole Midgen and would have required school districts that formed charter schools to include the charter school employees in existing certificated or classified bargaining units. This bill was debated in the Assembly Appropriations Committee but ultimately did not reach a vote before the full Assembly chamber. As the District points out, this bill was opposed by multiple sources, including then-Oakland Mayor Jerry Brown who argued that the bill "completely ignores 'community of interest' as the basis for unit determination."

AB613, also primarily sponsored by Midgen, appears to have been an attempt to address some of the opposition to AB842. AB613 amended the CSA to include the language of section 47611.5 as it exists today and also required charter petitions to identify either the charter school or the supervising school district as the public school employer for purposes of EERA. AB613 further proposed to amend EERA section 3540.1(k) to include charter schools that have made such a declaration in the definition of a public school employer. Both of these proposals were also adopted into the CSA. (Ed. Code, §§ 47605(b)(5)(O), 47605.6(b)(5)(M).)

The District notes that, on June 2, 1999, Midgen described AB613 as "mak[ing] it clear that collective bargaining will be at the choice of charter school employees[.]" From this and similar language, the District argues that PERB's unit determination process, including EERA section 3545, the *Peralta* presumption, and PERB Regulations concerning unit modification petitions should not apply to charter schools. Rather, the District appears to contend that the Legislature intended to give charter school teachers the ability to determine their own bargaining units and that charter school employees must support the formation of a unit.

I find insufficient information in either the CSA or its legislative history to support such an inference. In the same June 2, 1999 meeting referenced by the District, Midgen explained that collective bargaining for charter school employees should be "consistent with the process for traditional public school employees." In addition, Midgen consistently stated that she "amended this bill to give charter school employees the same right to organize as traditional public school employees." (See, e.g., statements made: (1) at an August 23, 1999 Senate Appropriation Committee meeting; (2) at a July 19, 1999 Senate Education Committee meeting; and (3) at an Assembly floor meeting dated August 23, 1999.) Reading all of this documentation together, I find that nothing in either the CSA or its legislative history requires that PERB include or exclude charter school teachers from an existing certificated bargaining unit without conducting a unit determination analysis. Moreover, PERB has specifically rejected the notion that employees' preferences may usurp the Board's authority under EERA section 3541.3(a) to make unit determinations in disputed cases. (*Los Angeles Unified School District* (1998) PERB Decision No. 1267 (*Los Angeles*).) Rather, "the Board should be empowered and directed in the statute to find the largest reasonable unit to be the appropriate one for the purposes of collective bargaining." (*Ibid.*, quoting California Assembly Advisory Council, Final Report, pg. 85 (March 15, 1973)[9]; emphasis in original.)

Accordingly, I believe that the Legislature intended precisely what it said, that charter schools are subject to the provisions of EERA, including section 3545, but that PERB should consider the structure designed in the CSA when resolving disputes concerning charter schools. (Ed. Code, §§ 47605(b)(5)(O), 47605.6(b)(5)(M), 47611.5(d).) Therefore, in the unit determination in this case, PERB will apply the *Peralta* presumption but will consider the

[9] This report is sometimes referred to as the "Aaron Report" named for Benjamin Aaron. The Aaron Report has been cited as evidence of the Legislature's intent in passing EERA. (See *San Diego Teachers Assn. v. Superior Court* (1979) 24 Cal.3d 1, 11.)

effect of its decision on the Academy's ability to carry out its educational model and to achieve the goals of the CSA as specified in Education Code section 47610.

B. Reliance on Federal Unit Determination Criteria

The District urges PERB to adopt unit determination criteria and procedures used by the National Labor Relations Board (NLRB) in this case. PERB may take cognizance of NLRB precedent in order to interpret analogous provisions of PERB statutes. (*Carlsbad Unified School District* (1979) PERB Decision No. 89.) However, in *Regents of the University of California* (2010) PERB Decision No. 2107-H, the Board expressly rejected the argument that NLRB processes should apply to PERB's unit modification process, particularly where there are dissimilar provisions.[10] In that case, an employer requested that PERB require the petitioner in a unit modification case to submit proof of employee support for the petition even though the petition would not increase the overall size of the unit by more than 10 percent. A similar petition filed under NLRB procedures would have required a showing of support. The Board recognized the differences between its own process and the process in the NLRB but nevertheless declined to adopt the NLRB's process. The Board specifically found that "PERB may not require a showing of support when a unit modification petition seeks to add unrepresented positions that total less than ten percent of the established unit." (*Ibid.*)[11]

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[10] *Regents of the University of California, supra*, PERB Decision No. 2107-H was decided under the Higher Education Employer-Employee Relations Act (HEERA). Unit modifications under both EERA and HEERA are governed by the same PERB Regulations. (See PERB Regulation 32781 et seq.)

[11] The District suggests that even under PERB Regulation 37281, the Union should be required to submit proof of support for this petition because, at the time of the hearing, the bargaining unit consisted of 180 members and the Academy had 20 teachers. However, it is undisputed in this case that, at the time the petition was filed, the bargaining unit consisted of 185 members and the Academy had 15 teachers. PERB has previously found that determinations regarding proof of support are appropriately made at the time the petition is filed. (*Kings County Office of Education* (1990) PERB Decision No. 801.)

PERB has also rejected the argument that a unit determination under the NLRB's accretion doctrine could rebut a PERB-determined, presumptively appropriate bargaining unit. (*Regents of the University of California* (1994) PERB Decision No. 1039-H.) In that case, the Board declined to accept the appropriateness of a pharmacists unit, even though, under NLRB standards, such a unit was found appropriate. (*Ibid.,* see also *Salinas Union High School District*, *supra*, PERB Order No. Ad-315.) Accordingly, in this case, because PERB's unit modification and unit determination process is not analogous to the NLRB, it would not be appropriate to rely heavily on federal decisions.

II. EERA Unit Determination Analysis

A. Community of Interest

PERB makes community of interest determinations by considering working conditions such as wages, hours, employment benefits, job function and purpose, supervision, qualifications, training, and contact among employees. (*Oakland Unified School District* (1983) PERB Decision No. 320; *Peralta*, *supra*, PERB Decision No. 77.) In previous decisions, the Board weighed "the similarity in work performed more heavily than the other community of interest factors." (*San Diego Community College District* (2001) PERB Decision No. 1445.) However, community of interest determinations consider whether under the totality of the circumstances, the positions share mutual interests. (*Ibid.*)

In *Fairfield-Suisun Unified School District* (1983) PERB Decision No. 370 (*Fairfield-Suisun*), the Board considered the appropriateness of a proposed petition to include hourly adult education instructors in an existing certificated bargaining unit. In finding the proposed unit to be appropriate, the Board noted the similarities between hourly adult education teachers and the employer's other teachers. Both of these groups taught many of the same subjects, and delivered education in basically the same manner, i.e., preparing lesson plans, administering

examinations, and issuing grades. (*Ibid.*) Both needed a State credential to teach, were evaluated by the same type of administrators, and maintained a similar expectation of continued employment. (*Ibid.*) Both groups participated in the same curriculum development meetings and in-service training. (*Ibid.*) The Board did not find differences in work site locations and funding sources to be sufficient to overcome the community of interest. (*Ibid.*)

The Board reached a similar conclusion regarding adult education instructors in *Palo Alto Unified School District* (1983) PERB Decision No. 352 (*Palo Alto*). In that case, the Board found both groups of teachers shared the same goals and objectives of educating students seeking a high school diploma. The Board further found that the "instructional practice and techniques, tools and materials used to achieve those goals are also similar." (*Ibid.*) Although the Board recognized differences in the manner that each group of teachers taught different subject matter ("either as discrete classes or as part of more general classes in the general subject area"), the Board did not find that such differences defeated a community of interest. (*Ibid.*) The Board also found unsubstantial differences in hours and benefits. (*Ibid.*)

In contrast with the above-referenced decisions, in *Santa Clara Unified School District* (2007) PERB Decision No. 1911 (*Santa Clara*), an employee organization petitioned for the creation of a separate unit of adult education instructors. In that case, the Board found that a separate unit of adult educators could be appropriate because of those teachers' unique hours, supervisors, school term, pay rate, benefits, credentialing requirements, and the lack of any expectation of continued employment. (*Ibid.*) Notably, the issue in that case was whether a separate unit was appropriate which is a separate inquiry from whether a comprehensive unit would have been inappropriate. Moreover, as will be discussed in more detail below, the deciding factor in that case was the fact that the incumbent representative of the employer's

teachers had declined to petition to include adult education instructors in the existing teachers unit for more than 25 years. (*Ibid.*)

In *Peralta*, *supra*, PERB Decision No. 77, the issue was whether instructors at a skills center shared a community of interest with other teachers at a community college district. In that case, the Board found significant differences between skills center employees and regular faculty including a different educational purpose. Skills center instructors taught job training courses designed to ready students for immediate employment while other faculty taught courses as part of the community college district's general curriculum. (*Ibid.*) In addition, the Board held that skills center employees maintained employment only upon receiving federal grants to continue the program. Faculty, on the other hand, had a reasonable expectation of continued employment. The Board also found that differences in salary and benefits reflected a different set of priorities between skills center employees and regular faculty. For all these reasons, the Board found that skills center employees lacked a community of interest with the employer's faculty. (*Ibid.*)

Considering all of the relevant case law as well as the CSA, I find that certificated personnel at the Academy share a community of interest with the teachers in the District's certificated bargaining unit. Both sets of employees have the same basic goals, delivering State-mandated curriculum to students in the Santa Maria Valley. Both seek to achieve these goals in similar ways, including use of the same teaching materials and textbooks. Such similarities favor finding a community of interest. (See, *San Diego Community College District*, *supra*, PERB Decision No. 1445; *Fairfield-Suisun*, *supra*, PERB Decision No. 370; *Palo Alto*, *supra*, PERB Decision No. 352.)

It is true that teachers at the Academy utilize different techniques from the rest of the District. Academy teachers employ themes and do not rely heavily on grade-level based

teaching. As a function of its unique teaching model, Academy teachers have certain job duties other teachers do not. Academy teachers are required to perform a counseling function for Academy students. In addition, Academy teachers are required to give presentations to local parents about the Academy and its programs. However, in *Palo Alto*, *supra*, PERB Decision No. 352, the Board did not find such distinctions to be controlling. Moreover, neither party presented evidence suggesting how a single unit of teachers would adversely affect the Academy's teaching model. Indeed, nothing in the existing CBA addresses whether to implement or disregard any particular teaching method. Even if it did, nothing would require the parties to apply the existing CBA to the Academy's teachers. Thus, the Academy's education model does not demonstrate a community of interest distinct from the District's other teachers.

The Academy's teachers share other similarities with District certificated staff. They are paid on the same pay-scale and receive the same benefits, including leave. Both groups are supervised and evaluated by principals. Both groups are required to possess a State teaching credential and are eligible to participate in the State BTSA program. These factors also are indicative of a community of interest. (*Los Angeles*, *supra*, PERB Decision No. 1267; *Pasadena Community College District* (1995) PERB Decision No. 1098; *Fairfield-Suisun*, *supra*, PERB Decision No. 370.)

Academy and other District teachers do not interact on a daily basis, but this appears to be true of all District teachers that work in separate school sites. Both groups of teachers do participate in Curriculum Councils for the purpose of discussing District-wide curriculum issues. At the school site level, Academy teachers participate in local curriculum discussions similar to discussions held at other District school sites. Both groups of teachers have also

attended the same in-service GATE training. These factors too favor finding a community of interest. (*Fairfield-Suisun*, *supra*, PERB Decision No. 370.)

In addition, Academy and other District teachers receive annual teaching contracts. Both groups of teachers can achieve permanent status, which guarantees the employees some expectation of continued employment. The Board has found that a similar expectation of permanent employment favored finding a community of interest. (*Fairfield-Suisun*, *supra*, PERB Decision No. 370.) Conversely, differences on this factor have been found to favor a distinctive interest. (*Peralta*, *supra*, PERB Decision No. 77.)

There are some notable differences between Academy teachers and the District's other certificated employees. Academy teachers teach more instructional hours per year. Academy teachers are hired through an interview process that involves more interviewers and more steps than other District teachers. Academy principals conduct more observations prior to conducting an evaluation. A teacher at the Academy's elementary school program does not have an automatic right to transfer to the Academy's high school program. However, given the numerous similarities, I do not find that these differences rebut the presumption in favor of a single teachers unit. This is especially true because many of the differences listed above are subject to the collective bargaining process.[12] PERB has previously found differences that could be adjusted through the bargaining process to be insufficient to rebut the *Peralta* presumption. (*Palo Alto*, *supra*, PERB Decision No. 352, citing *Redwood City Elementary School District* (1979) PERB Decision No. 107.)

B. Efficiency of Operations and Ability to Pursue the Goals of the CSA

[12] PERB has previously found that an employer's transfer policy and teacher evaluation process to be within the scope of negotiations. (*Fall River Joint Unified School District* (1998) PERB Decision No. 1259; *Modesto City Schools* (1983) PERB Decision No. 347.) PERB has also found that instructional hours could implicate issues that are within the scope of representation. (*Cloverdale Unified School District* (1991) PERB Decision No. 911.)

As discussed above, the Board considers the effect the proposed unit may have on the employer's operations. (*Peralta*, *supra*, PERB Decision No. 77.) However, "[a]bsent concrete evidence that a district's operational efficiency will be unduly impaired . . . operational efficiency will not be considered as a factor which militates against the establishment of the [proposed] unit." (*Lodi Unified School District* (2001) PERB Decision No. 1429, other citations omitted.)

The District argues that "[i]ncluding Academy teachers in the same unit with District teachers would be problematic for Academy operations especially if they were to operate under the same terms and conditions of employment as District teachers with respect to such things as class size, hours of employment, including instructional and preparation time, transfers and reassignments, impact of lay-off, combination classrooms and extra-duties." However, the essence of this argument is undercut by the fact that nothing requires the parties to apply existing terms and conditions of employment to Academy teachers. In *Palo Alto*, *supra*, PERB Decision No. 352, the Board acknowledged that not all of the terms and conditions of the existing teachers' contract could apply after adding substitute teachers. The Board stated that "the fact that there may be different provisions . . . merely means that the comprehensive negotiations will be slightly more complex." (*Palo Alto*, *supra*, PERB Decision No. 352, citing *Oakland Unified School District*, *supra*, PERB Decision No. 320, *El Monte Union High School District* (1982) PERB Decision No. 220, and *Dixie Elementary School District* (1981) PERB Decision No. 171.)

If PERB were to approve the instant unit modification petition, the Union and the District would have a mutual obligation to negotiate over the terms and conditions of Academy teachers. Any decision regarding the application of the CBA to Academy teachers would be subject to the negotiations process. The mere fact that the District would be required to

negotiate with the Union over these terms is not sufficient to render the proposed unit inappropriate. (*Palo Alto*, *supra*, PERB Decision No. 352; see also, *Santa Ana Unified School District* (2010) PERB Order No. Ad-383.)

The District also argues that inclusion of the Academy's teachers into the existing certificated bargaining unit would adversely affect its ability to achieve the Academy's goals. The District contends that the Legislature sought to avoid this result. However, no evidence was presented that suggests that bargaining with the Union regarding Academy teachers would adversely affect the Academy's ability to achieve the goals specified in either its charter or in the CSA. For example, a collective bargaining obligation does not require that the Academy alter its instructional minutes, interview and hiring process, or transfer procedures.

In addition, Article III of the CBA dictates that District teachers should be given autonomy in the education process but that such autonomy must be exercised "within the District's curriculum framework." This suggests the parties' intent to respect the District's authority to decide the teaching model of the District's schools. Moreover, PERB has previously found that where "legitimate changes in the nature, direction or level of service have occurred, changes which are not based primarily on wage and benefit cost considerations" are outside the scope of negotiable issues. (*Antelope Valley Union High School District* (2000) PERB Decision No. 1402, quoting *East Side Union High School District* (1999) PERB Decision No. 1353.) Thus, many aspects of the Academy's operations could be found to be outside of the scope of representation and therefore not subject to change if the District were required to negotiate with the Union. Accordingly, the District has not presented "concrete evidence that [its] operational efficiency will be unduly impaired" by the proposed unit modification. (See *Lodi Unified School District*, *supra*, PERB Decision No. 1429.) Nor has

the District demonstrated that the proposed unit would unduly interfere with its ability to achieve the goals set forth in its charter petition or in the CSA.

C. History of Representation

As explained above, *Peralta, supra,* PERB Decision No. 77 was based almost entirely on community of interest factors because, at the time, there was only two years of negotiation history under EERA. In later cases, the Board recognized that representation history may play a more prominent role. (*Palos Verdes Peninsula Unified School District* (1982) PERB Decision No. 195.)

In *Long Beach, supra,* PERB Decision No. 765, the Board found that it was appropriate to create a separate unit of part-time faculty where the full-time faculty representative made no effort to represent those employees. The Board noted that it could not force the existing representative to petition for the unrepresented positions and that any other holding would leave part-time faculty without representation. (*Ibid.*)

As explained above, in *Santa Clara, supra,* PERB Decision No. 1911, the Board reached a similar conclusion where the existing faculty union declined to file a petition to represent adult education teachers for 25 years and only filed a petition when a competing organization sought to represent the group. The Board recognized under those circumstances that it would not be appropriate to disturb bargaining units that had been in existence for some time and had not previously demonstrated an interest in representing the adult education instructors. In that case, the Board declined to disturb the existing bargaining relationship by adding the new classifications. (*Ibid.*)

Unlike the above-cited cases, the Union is actively seeking representation of the Academy's teachers. The District points out that the Union declined to petition to represent the Academy's teachers when the Academy first opened in 2008. However, as in *Peralta,*

*supra*, PERB Decision No. 77, two years of negotiating history is not sufficient to make a useful analogy to the Board's reasoning in *Santa Clara*, *supra*, PERB Decision No. 1911 or *Long Beach*, *supra*, PERB Decision No. 765. In addition, unlike in *Santa Clara*, *supra*, PERB Decision No. 1911, the District has historically treated Academy and other District teachers similarly. For example, both groups of teachers are on the same salary scale and receive the same benefits. The parties have presented evidence that District teachers have taken positions at the Academy and visa versa. A history of distinctive treatment would have favored establishing a separate unit. (*Peralta*, *supra,* PERB Decision No. 77.) However, facts to that effect are not present in this case.

At least one of the Academy's teachers, Michael Shaw was concerned that the Union could not adequately represent Academy teachers' interests, particularly regarding other District employees' displacement rights into Academy positions in the event of a layoff. Shaw stated that other Academy employees share his views. PERB has previously considered employees' preferences as one factor in unit determination cases. (*State of California (Department of Personnel Administration)* (1993) PERB Decision No. 1025-S.) However, PERB has rejected the idea that employee free choice will supersede PERB's unit determination authority. (*Berkeley Unified School District* (2005) PERB Decision No. 1744; *Los Angeles*, *supra*, PERB Decision No. 1267.) Moreover, the presented evidence only suggests, at best, that some of the Academy's teachers were concerned that the Union and the District will negotiate the right of other District employees to transfer into Academy teaching positions. However, to presume this conclusion at this juncture would be improper since no evidence was presented about proposed subjects for negotiations. Therefore, this factor does not favor the District's position.

## PROPOSED ORDER

Based upon the foregoing, the CSA, and the entire record in this matter, I find a single bargaining unit consisting of all of the District's certificated personnel to be an appropriate bargaining unit. Academy teachers share a community of interest with other District teachers already part of the certificated bargaining unit. Neither the Academy's nor the District's operations would be significantly adversely affected by this unit determination, and the District has a history of treating Academy and other District teachers similarly. Therefore, the Union's unit modification petition is granted.

### Right of Appeal

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 95811-4124
(916) 322-8231
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 during a regular PERB business day. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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).)

Eric J. Cu
Regional Attorney