STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PASADENA AREA COMMUNITY COLLEGE DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Employee Organization, and INSTRUCTIONAL SUPPORT SERVICES UNIT, Employee Organization.	)	Case Nos. LA-R-958 LA-I-106 Administrative Appeal PERB Order No. Ad-219 December 17, 1990

Appearances: Howard Lawrence, Director, Organizing, for California School Employees Association; Sylvia Ryan, President, for Instructional Support Services Unit.

Before Shank, Camilli, and Cunningham, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association (CSEA) of a Board agent's administrative determination (attached) denying CSEA's motion to disqualify the Instructional Support Services Unit (ISSU) from intervening in an election wherein CSEA is seeking to become the exclusive representative of a unit comprised of office technical/business services employees of the Pasadena Area Community College District (College or District). In reaching his conclusion, the Board agent found that: (1) ISSU is an employee organization within the meaning of Government Code

section 3540.1(d); (2) the College did not dominate, but did support, ISSU; and (3) notwithstanding that support, the facts taken as a whole did not suggest interference with employee free choice and therefore did not provide a basis upon which to invalidate ISSU's proof of support. We affirm the Board agent's denial of the motion, in accordance with the discussion set forth below.

DISCUSSION

The essence of CSEA's appeal is that ISSU is dominated by the employer and, but for the employer's admitted improper conduct, ISSU would not have qualified to intervene in CSEA's petition.[1] CSEA urges PERB to require a new showing of interest, not tainted by employer misconduct.

PERB Regulation 32380[2] reads, in pertinent part:

> The following administrative decisions shall not be appealable:
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> . . . . . .

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[1]Specifically, CSEA contends that ISSU is dominated by the employer and that the employer's domination of ISSU is evidenced by the fact that: (a) the employer provided financial assistance to ISSU; (b) ISSU was formed at the request of the college president; (c) all meetings are scheduled by the employer since ISSU only meets on paid release time; (d) the employer selects ISSU representatives to sit on all classified standing committees; and (e) the employer allows only ISSU a seat with the college board of trustees to represent classified "concerns" at the trustee meetings. CSEA also contends the fact that a supervisor openly encouraged employees to sign authorization cards for ISSU calls into question the validity of the signatures.

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

> (b) Except as provided in section 32200, any of the following interlocutory rulings which may be raised when the case as a whole is appealed to the Board itself:
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> . . . . . .
>
> (4) A determination that a petitioner's proof of support is adequate . . . .

Regulation 32380 was amended on March 25, 1989, to add, inter alia, subsection (4).[3]

In Inglewood Unified School District (1990) PERB Order No. Ad-204, the Board noted that the purpose of PERB Regulation 32380(b)(4) was to avoid lengthy and unnecessary delay in the election process. In that case, CSEA asserted that the proof of support gathered by a rival union was procured through fraud and misrepresentation. Relying on PERB Regulation 32380(b)(4), the Board declined to entertain an appeal of the Board agent's determination as to the adequacy of the proof of support. Similarly, in this case, we must decline to rule on the merits of CSEA's contention that, but for the employer's domination of ISSU, ISSU would not have been able to obtain the proof of support required for intervention. Therefore, the Board agent's determination that ISSU's proof of support is adequate will stand.[4]

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[3]Subsections (b)(3), (b)(4) and (c) were also added at that time.

[4]Our decision here does not, however, foreclose CSEA from challenging the proof of support determination in an appeal to the Board after the election has occurred.

CSEA also contends that an evidentiary hearing is necessary to demonstrate employer domination through financial contributions. The Board agent has discretion to determine whether a hearing is necessary in a representation matter.[5] As CSEA did not request a hearing below, we have no record upon which to determine what factors went into the Board agent's determination not to conduct a hearing.[6] We are therefore unwilling to second guess the Board agent's decision in this regard.[7]

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[5]PERB Regulation 33237 provides:

> (a) Whenever a petition regarding a representation matter is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election or take such other action as deemed necessary to decide the questions raised by the petition. . . . (Emphasis added.)

[6]We note that the Board agent may have determined a hearing was unnecessary based on the fact that CSEA presented no allegations as to the District's alleged financial contributions to ISSU other than those allegations that the District admits in the settlement of the unfair practice case and that ISSU admits in the instant case. The Board agent concluded, based on the admissions of the parties, that the employer involvement did not justify an invalidation of ISSU's intervention.

[7]We note that the unfair practice procedure is the appropriate procedure for litigating an employer domination/ support charge. Once a complaint issued in CSEA's blocking charge against the District, CSEA had the right to go to hearing and litigate the financial contribution issue. CSEA chose, instead, to withdraw its charge with prejudice in exchange for the District's admissions that it did indeed violate Government Code section 3543.5(a), (b) and (d) by certain specified acts. By settling the unfair practice case, CSEA relinquished its opportunity to attempt to procure an order blocking the election on the basis that the District's actions had interfered with employee free choice.

Finally, CSEA asserts that the District "continues to deny CSEA equal access to the employees by providing release time for ISSU meetings and by providing ISSU a seat at board of trustees meetings." This contention is ambiguous as it does not refer to any specific incidents or time frames. In the February 21, 1990 settlement agreement between the District and CSEA, the District promised to cease and desist from this conduct. In its response to CSEA's appeal, ISSU contends that it has not been granted any release time nor held any meetings on campus since the June 9, 1989 meeting, and that the ISSU representative stepped down as a non-voting member of the board of trustees in the fall of 1989. Assuming CSEA is realleging the same incidents addressed by the Board agent, and is claiming the alleged denial of equal access had a bearing on ISSU's ability to gather proof of support, we are precluded from addressing those contentions by PERB Regulation 32380(b)(4). If CSEA is contending that the alleged denial of equal access interfered with employee free choice, we note that CSEA had an opportunity to litigate that issue in its unfair practice charge and chose to enter into a settlement agreement (see p. 4, fn. 7). If CSEA is alleging new incidents of denial of equal access, we cannot consider those incidents here as they are raised for the first time on appeal. (See Colusa Unified School District (1983) PERB Decision No. 296a, pp. 7-8.) Thus, for the above reasons, we reject this argument as meritless.

ORDER

The Board AFFIRMS the administrative determination denying the motion to disqualify ISSU from intervening in the election and REMANDS this case to the Regional Director to be processed in accordance with PERB regulations.

Members Camilli and Cunningham joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

PASADENA AREA COMMUNITY COLLEGE DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Employee Organization, and INSTRUCTIONAL SUPPORT SERVICES UNIT, Employee Organization.	Case Nos. LA-R-958, LA-I-106 ADMINISTRATIVE DETERMINATION July 6, 1990

PROCEDURAL HISTORY

On June 5, 1989, California School Employees Association (CSEA) filed a request for recognition with Pasadena Area Community College District (College or District) seeking to become the exclusive representative of a unit of the College's office technical/business services employees. A copy of the request, accompanied by proof of support, was filed with the Public Employment Relations Board (PERB).[1] Thereafter, on July 7, 1989, an intervention was filed with the College by Instructional Support Services Unit (ISSU). A copy of the intervention, accompanied by proof of support, was filed with PERB.

[1]Notice of the request was posted by the College, pursuant to PERB regulation 33060, on June 21, 1989. The notice indicated that an intervention must be filed within 15 workdays of posting, which was no later than July 13, 1989.

On August 14, 1989, the College was notified by letter that both CSEA and ISSU had filed sufficient proof of support; the College was given 15 days to file a decision pursuant to regulation 33190. On August 28, 1989, the College filed a request for an election. However, on August 24, 1989, CSEA had filed a request to hold in abeyance the setting of an election date pending the resolution of an unfair practice charge (LA-CE-2887) which it had filed against the College.

A complaint issued on the unfair practice charge on September 26, 1989, alleging that the College had supported an employee organization, ISSU, in violation of the Educational Employment Relations Act (EERA), by providing ISSU with mailing labels and printing supplies, by granting paid release time for an ISSU meeting, by providing a return address to the College's Information Office, and by the fact that an agent of the College had been a signatory to an ISSU flyer. In a pleading filed on October 16, 1989, CSEA repeated its contention that no election should be held until resolution of the unfair practice complaint. CSEA also questioned ISSU's status as an employee organization, asserted that ISSU would not have been able to gather support without the paid release time provided to ISSU, and finally, asserted that "had it not been for the employer the intervenor would not exist."

The unfair practice complaint was set for hearing. However, on February 21, 1990, CSEA and the College entered into a settlement agreement in which the College admitted certain

actions in violation of the unfair practice provisions of the government code, agreed to cease and desist, and to post a notice. For its part, CSEA withdrew the unfair practice charge, with prejudice.

The question of whether to hold the election in abeyance pending resolution of the unfair practice charge was resolved by the settlement agreement and consequent withdrawal of the charge. However, two issues raised by CSEA in its letter of October 16, 1989, reguired resolution: whether ISSU could have obtained the necessary support without the assistance of the College, and whether ISSU is an employee organization within the meaning of Government Code section 3540.1(d).

On April 9, 1990, ISSU filed a pleading which addressed CSEA's contentions in light of the admissions by the District set forth in the settlement agreement. By letter dated April 23, 1990, ISSU was directed to serve copies of its April 9 pleading upon CSEA and the District, who were given 10 days after service by ISSU to respond and to submit any other facts and argument they wished to have considered. Only CSEA responded, filing on May 1, 1990, a "motion to disqualify ISSU from intervention . . . due to employer domination and support of ISSU." In this motion CSEA, expanding upon its earlier pleading, argues that

> 'but for' the employer's conduct, including but not limited to the creation, administrative support, financial assistance, support and domination of ISSU, including release time for attendance at organizing meetings, ISSU would fail to exist as an alleged employee organization. CSEA submits the signatures collected by ISSU were done so with the assistance and

partiality of the District, and, as such, should be declared as invalid support.[2]

ISSUES

This case requires resolution of the following issues: 1) whether ISSU is an employee organization within the meaning of government code section 3540.1(d); 2) whether the College dominated and/or supported ISSU; and 3) assuming illegal domination and/or support has been demonstrated, whether dismissal of ISSU's intervention is warranted.

FACTS

Because of their importance to resolving the issues presented in this case, the pertinent portions of the settlement agreement entered into by the College and CSEA are set forth here as follows:

> To settle this dispute without an evidentiary hearing, the parties agree as follows:
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> 1. The District admits it provided paid release time for district employees to attend a meeting where intervention in an election against CSEA was discussed.
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> 2. The District admits that, prior to June 9, 1989, it provided ISSU with mailing labels.
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> 3. The District admits that it provided ISSU a mail collection box for the purpose of collecting employee opinions on whether ISSU should become a collective bargaining agent.
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> 4. The District admits that a supervisory employee of the District participated in union activities as an elected ISSU Board member.

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[2]ISSU, as an intervenor, was required by PERB regulation 33070(b) to provide proof of at least 30 percent support in the unit claimed to be appropriate.

5. The District admits that as a result of the conduct admitted in paragraphs one through four, it violated Government Code Sections 3543.5(a), 3543.5(b) and 3543.5(d).

6. As a remedy, the District agrees it shall not provide labels, printing services, materials, labor, supervisory/management support, or free use of facilities to ISSU. The District agrees to cease and desist meeting and conferring with ISSU or recognizing ISSU as a representative to the Board of Trustees. The District agrees to post this settlement agreement at all places where notices to employees are customarily placed for a period of 30 workdays.

7. By this agreement, CSEA withdraws the unfair practice charge in Case No. LA-CE-2887 with prejudice.

In its response to the admissions of the District, ISSU denies that its existence was made possible by the District's impermissible actions. ISSU does not dispute any of the District's admissions, but rather asserts additional facts relating to admissions one through four as set forth above. First, ISSU provides rather detailed information concerning employees who attended the June 9 meeting, including a comparison of the number of bargaining unit members who attended[3] with those who signed cards supporting ISSU. ISSU contends fewer than half of those cards were from persons who attended the meeting, and that most of its support cards were obtained as a result of a flyer which it mailed to unit members. Further, ISSU admits it utilized labels and a mail collection box provided by the

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[3]Included among ISSU's documentary support was a copy of an "Attendance Roster for 6/9/89" which contains 57 signatures of persons in attendance at the June 9 meeting. ISSU asserts those present included CSEA's Pasadena College Chapter President, whose name appears on the "Roster," and CSEA's Director of Organizing, whose name does not appear.

District, but argues that neither constituted irreplaceable assistance because alternatives were readily available to ISSU. By way of examples, ISSU notes that one of its members subsequently typed a set of labels in one evening, and that campus mail could have been used for collecting cards, a mail system which it asserts has been used by CSEA. Finally, ISSU notes that Donald Holthaus, the supervisor who was an ISSU board member at the time, and whose name appeared on the ISSU flyer, supervised only one unit employee during the period when cards were collected, and currently supervises no one in the proposed unit.

ISSU also submitted "An Historical Background of ISSU," which indicates it was formed in March of 1978 with a membership of technical and office employees, including supervisors.[4] ISSU states its early purpose was to "meet and confer" with the District "on salary and benefits questions, to provide classified representation on College committees, and to serve as an informational link between the Administration and the classified staff." ISSU asserts that its decision to seek to become an exclusive representative, which it made "in late June 1989," followed a series of events including the following: In the

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[4]PERB records indicate other classified employees are represented by exclusive representatives: Teamsters Local 911 was certified to represent operational support employees in 1977 and 1989. The Pasadena Area Community College Peace Officers Association was voluntarily recognized to represent campus security officers in 1983. However, elections for the office technical/business services unit which were held in June of 1977 and again in September of 1979 resulted in no representation; CSEA participated in both elections.

spring of 1989 a District-wide committee met to consider changes in health care benefits. ISSU members felt vulnerable as the only campus segment which was not represented for purposes of collective bargaining. During the meetings ISSU members discussed their concerns with the negotiator for the certificated unit, who "suggested the possibility of ISSU becoming an independent collective bargaining agent." The proposal was "appealing" in part because of concerns about the cost of "outside union dues" and of the "negative and adversarial stance CSEA was taking against the College Administration." The June 9 meeting was held "so all aspects of collective bargaining could be presented to the ISSU membership." ISSU asserts that no position was advocated at the meeting, and that an informational flyer was sent to members following the meeting requesting a vote on whether to pursue exclusive representative status. This resulted in intervention by ISSU.

CSEA supports its "motion to disqualify" by reiterating many of the facts stated by ISSU. CSEA also asserts that ISSU's formation was requested by the College's president following the "no representation" vote in 1977. As further evidence of domination of ISSU, CSEA points to the factual admissions of the District, namely, that without cost to ISSU the College granted release time for employees to attend ISSU board meetings, provided printing services and mailing labels,[5] and allowed

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[5]CSEA observes that ISSU would not be capable of paying for such services in light of its annual $1.00 membership fee. Further, it asserts that Teamsters Local 911 receives no similar

supervisors to become members and to participate on ISSU's Board.[6] CSEA states with special emphasis that ISSU Board member Donald Holthaus was allowed to attend the College's Board of Trustees meetings, and was actually in attendance in that capacity on June 15, 1989, when CSEA was denied voluntary recognition.

In contrast to the assistance provided to ISSU, CSEA contends that the College permitted it to contact employees during rest and lunch breaks and to use College mail, but would not grant paid release time nor provide facilities free of charge. Further, the College did not offer CSEA the use of duplicating or printing facilities, and denied CSEA a list of bargaining unit members.

DISCUSSION

The first issue is CSEA's allegation that ISSU is not an "employee organization" as defined by Government Code section 3540.1(d).[7] The precise basis for the allegation is not clear.

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services or release time without cost.

[6]CSEA also states that supervisors are "encouraged" to become ISSU members, although it does not state who provides the encouragement nor what form the encouragement takes.

[7]This definition reads as follows:

> (d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

However, ISSU appears to meet not only the statutory definition of employee organization, it also falls within the parameters established by the Board in the lead case on this subject, State of California (Department of General Services) (1982) PERB Decision No. 228-S. Regardless of whether or not ISSU has a formal structure, it clearly exists "for the purpose of furthering the interests of employees by dealing with the employer on [matters] of employer-employee relations." State of California, supra, at p.9. CSEA's allegation is, therefore, without merit.

The next issue concerns CSEA's allegation that the College has dominated and supported ISSU. It is axiomatic that a public school employer may not dominate an employee organization or provide support to one employee organization in preference to another.[8] PERB and its predecessor, the Educational Employment Relations Board (EERB), have examined a wide diversity of such conduct and found it to be prohibited. Azusa Unified School District (1977) EERB Decision No. 38 (violation for the employer to rent a school building to one of two competing organizations for less than fair market value); Antelope Valley Community College District (1979) PERB Decision No. 97 (violation to set up

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[8]Government code section 3543.5 provides, in relevant part:

It shall be unlawful for a public school employer to:

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

an employee organization purporting to represent classified employees); Sacramento City Unified School District (1982) PERB Decision No. 214 (violation to form and confer with an organization while there was a question concerning representation pending); Clovis Unified School District (1984) PERB Decision No. 389 (violation to provide typing, stationery, and release time to one organization but not to a rival organization).

The Board's remedies for such violations have been as diverse as the employer conduct and the factual context in which it occurred. In Sacramento City Unified School District, supra, impounded ballots were destroyed and the election was rerun. In Azusa Unified School District, supra, the district was ordered to charge a fair market rental fee for the property which it was renting to one of the employee organizations.

None of the above-cited cases are directly on point. Certain decisions are instructive, however, notwithstanding their factual differences. In Redwoods Community College District (1987) PERB Decision No. 650, the Board held that the district unlawfully aided in the formation and support of an employee organization, the Classified Employees Council. The district had allowed the Council to act in a representative capacity for employees at a time when a CSEA Chapter was the exclusive representative. The Board ordered the disestablishment of the Council.

The issues in Redwoods Community College District, supra, were set entirely in the context of an unfair practice charge.

The case had nothing to do with an election, either past or pending. It did, however, involve a charge and ultimately, a finding, that the employer dominated and supported the non-exclusive representative. CSEA argues that, just as employer domination and support led to disestablishment of the non-exclusive representative in Redwoods, District domination and support of ISSU warrants dismissal of ISSU's intervention.

A crucial distinction was drawn between employer "domination" and employer "support" in Redwoods. Domination exists when an organization is directed by the employer rather than the employees. The rather severe remedy of disestablishment was imposed because the district was found to have dominated and not merely supported the non-exclusive representative.[9]

CSEA correctly notes that supervisory participation in an organization such as ISSU is a factor to be considered in evaluating the nature and extent of employer involvement. CSEA emphasizes the fact that a supervisor, Donald Holthaus, attended Board of Trustees meetings as a representative of ISSU, including the meeting at which the Trustees declined to recognize CSEA. However, supervisory participation does not lead to a per se finding of employer domination. See Sierra Vista Hospital (1979) 241 NLRB 631, 100 LRRM 1590. The facts asserted by CSEA, while

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[9]The decision notes that "if the District merely interfered with or supported [the Council], a cease and desist order is appropriate." Redwoods Community College District, supra, at p.62 (Proposed Decision).

clearly indicative of supervisory participation in ISSU, do not infer College control.[10]

Similarly, the fact that the College's president suggested the formation of ISSU some twelve years ago does not advance the argument that ISSU was then, or is now under the control of, or directed by, College management. In sum, the facts alleged by CSEA do not demonstrate the kind of "pervasive involvement" which has been found to constitute employer domination. See Antelope Valley Community College District, supra. Therefore, there is insufficient evidence to support CSEA's contention that the College unlawfully dominated ISSU.

However, there remains the question of whether the College provided unlawful assistance and support to ISSU. The District's admissions in settlement of the unfair practice complaint clearly provide evidence of support of ISSU. Furnishing labels, a collection box, and release time for a meeting are all benefits provided to ISSU which were apparently not provided to CSEA. Such assistance violated the requirement that the College remain strictly neutral when there is a question concerning representation. However, the consequence, if any, of the District's actions, and not simply their legality, must also be determined. Just as not all unlawful conduct will provide a basis for rerunning an election (San Ramon Valley Unified School

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[10]Supervisory participation which may indicate that the employer favors one organization over another is a factor to be considered later in this determination.

District (1979) PERB Decision No. 111), not all unlawful conduct requires invalidation of proof of support.[11]

CSEA's assertions concerning the consequences of the District's actions are two-pronged: First, CSEA asserts that "but for" the District, ISSU would not exist. As noted above, CSEA has failed to offer sufficient evidence which confirms College domination or control of ISSU, therefore, there is no basis upon which to conclude that ISSU's very existence is dependent upon the District.

CSEA also contends the proof of support was collected by ISSU "with the assistance and partiality" of the College and is, therefore, invalid. CSEA has not identified the precise basis for this alleged invalidity, but rather seems to suggest that it is the inevitable result of College assistance. The evidence, however, does not support such a conclusion, for there is no basis to conclude that the "practical" assistance, such as the labels and the collection box, made any significant difference to ISSU.[12]

Beyond the question of the value to ISSU of the tangible College assistance is the question of whether the District's

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[11]The test here is analogous to that used when investigating a blocking charge, which is whether the conduct "will so effect the election process as to prevent the employees from freely selecting their representatives." Jefferson School District (1979) PERB Decision No. Ad-66.

[12]It is not PERB practice to reveal the extent of the proof of support submitted by either a petitioner or an intervenor. In this case, however, ISSU revealed the number of cards which it submitted in its pleading filed April 9, and that number was well in excess of the 30 percent needed for filing an intervention.

conduct inhibited the employees' ability freely to decide whether to support ISSU. The answer to this question requires evaluation of the totality of the facts.

One fact which is emphasized by CSEA is the longstanding and apparently amicable relationship between the College and ISSU. In the absence of domination of ISSU by the District, such cooperation was not prohibited prior to the period when the question concerning representation arose. Azusa Unified School District, supra. The fact that a cooperative relationship existed long before CSEA's current organizing effort not only fails to support CSEA's argument, it militates against it.[13] CSEA also relies heavily on the participation of Donald Holthaus in the affairs of ISSU, including his representation of ISSU at College Board of Trustees meetings. Yet there is no allegation of pressure or coercion of any sort by Holthaus among those with whom he was in a position to influence. Indeed, CSEA has not disputed ISSU's contention that he supervised only a single unit employee at the time support was collected. The mere fact of his presence as a supporter of, and active participant within ISSU[14] does not, without more, provide evidence that employees were

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[13]These facts are usefully contrasted to those in Sacramento City Unified School District, supra, where the non-exclusive representative came into existence at the behest of the employer at approximately the same time as the rival organizations filed petitions for representation.

[14]EERA does not prohibit supervisory participation in an employee organization, although section 3545(c) prohibits a negotiating unit of supervisors from being represented by the same organization which represents rank-and-file employees.

unduly pressured or influenced to support ISSU. See NLRB v. San Antonio Portland Cement Co., 611 F2d 1148, 103 LRRM 2631 (CA 5, 1980).

The facts presented here, taken as a whole, simply do not suggest interference with employee free choice. Thus, there is no basis upon which to invalidate ISSU's proof of support.

For the foregoing reasons, CSEA's motion to disqualify ISSU is denied. The College filed a timely request for an election pursuant to PERB regulation 33190, and both CSEA and ISSU have met the requirements for appearing on the ballot. Accordingly, an election shall be conducted to determine the organization, if any, to be certified as the exclusive representative of the unit of office technical/business services employees. A PERB representative will contact the parties shortly to discuss the mechanics of the election.

Right of Appeal

To the extent that this determination finds the proof of support submitted by ISSU to be adequate, it is not appealable.[15] As to any remaining issues, an appeal to the Board itself may be made within ten (10) calendar days following the date of service of this decision (PERB regulation 32360). To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

MEMBERS, PUBLIC EMPLOYMENT RELATIONS BOARD

1031 18th Street, Suite 200

[15]PERB regulation 32380(b)(4).

Sacramento, CA 95814-4174

A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (regulation 32135). Code of Civil Procedure section 1013 shall apply.

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (regulation 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justifications for the request (regulation 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (regulation 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Los Angeles regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see regulation 32140 for the required contents and a sample form). The document will be considered properly

"served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Dated: July 6, 1990

Charles F. McClamma
Labor Relations Specialist