



On the matter excepted to, the hearing officer's decision is substantially in accord with prior precedent of the Board. See Grossmont Union High School District.<sup>1</sup> For that reason, the hearing officer's proposed order is adopted as the order of the Educational Employment Relations Board.

By: Reginald Alleyne, Chairman

Jerilou H. Cossack, Member, concurring:

A proposed decision was issued by an Educational Employment Relations Board (EERB) hearing officer on April 11, 1977. Washington Association of Pupil Services Employees (WAPSE) thereafter filed exceptions to the hearing officer's decision that pupil services employees are appropriately included in a unit with other certificated employees.

Having considered the record as a whole and the attached proposed decision in light of the exceptions filed, I affirm the hearing officer's order that pupil services employees are appropriately included in a unit with other certificated employees.<sup>1</sup> Grossmont Union High School District, EERB Decision No. 11, March 9, 1977.

WAPSE contends that pupil services employees constitute an appropriate unit and that to find otherwise is an abuse of the Board's discretion. WAPSE argues, in effect, that failing to find appropriate a separate unit of pupil services employees is tantamount to applying a standard referred to as "the most appropriate" unit, while the EERA mandates a standard commonly called "an appropriate" unit. I find no merit in this argument.

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<sup>1</sup>/EERB Decision No. 11, March 9, 1977. The Board's Grossmont decision may be appealed to the judiciary. The Board denies WAPSE's "motion to delay" any action on its exceptions in this case, "or any further action on any aspect of the Washington Unified School District case until a final resolution of the Grossmont case is reached."

<sup>1</sup>Since guidance specialists do not possess significant responsibilities for formulating district policies within the meaning of Gov. Code Sec. 3540.1(g) as interpreted in Lompoc Unified School District, EERB Decision No. 13, March 17, 1977, I find it unnecessary to determine whether Washington Education Association (WEA) has standing to contest the district's failure to designate guidance specialists as management.

Section 3541.3(a) of the EERA grants the Board broad discretion to fashion

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appropriate negotiating units. This discretion is limited by Section 3545(a), which requires that we balance three equal criteria in determining appropriate units: the community of interest between and among employees, the established practices of employees, and the effect of the size of the unit on the efficient operation of the school district. These criteria, while analogous to those of other federal and state statutes, are unique to the EERA and our obligation is to apply them to the facts of each case.

In the instant case, any differences between pupil services employees and teachers are no greater than those which exist between various categories of teachers and are not sufficient to outweigh the functional coherence and interdependence of pupil services employees with the larger certificated unit. Any separate identity of pupil services employees has been largely submerged in their broader community of interest with other certificated employees and they do not possess a community of interest separate and apart from the larger certificated unit.

The criterion of the effect of the size of the unit on the efficient operation of the school district is generally understood to reflect a concern in the<sup>4</sup>public sector about the deleterious consequences of excessive unit fragmentation. In

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<sup>2</sup>Section 3541.3(a) of the EERA states: "The board shall have all of the following powers and duties: (a) To determine in disputed cases, or otherwise approve, appropriate units."

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.

<sup>4</sup>See Shaw & Clark, Jr., Determination of Appropriate Bargaining Units in the Public Sector: Legal and Practical Problems, 51 Oregon Law Review 152 (1971); Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976, at pp. 11-12.

the instant case, even if the approximately 20 pupil services employees did possess a separate and distinct community of interest, this criterion would mandate their inclusion in the broader certificated unit.

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By: ~~Jer~~ Jerilou H. Cossack, Member

Raymond J. Gonzales, Member, dissenting:

I respectfully dissent from the majority's decision to sustain the hearing officer in this case on the question of whether there should be a separate unit for pupil services employees.

I would refer the reader to my dissent in Grossmont Union High School District<sup>1</sup> and although the facts of this case are not totally identical, I feel the community of interest standard that I required in my Grossmont dissent would apply in this case. Therefore, I feel there is sufficient evidence in the present case to allow for "an" appropriate bargaining unit of pupil services employees.

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By: Raymond J. Gonzales, Member

Dated: September 14, 1977

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<sup>1</sup>Grossmont Union High School District, EERB Decision No. 11, March 9, 1977, pages 11-24.



Psychologists, guidance specialists, counselors,  
nurses, librarians, work experience specialists.

On April 7, 1976 the Washington Education Association, CTA/NEA, (here-  
after CTA), filed a petition with the District asking for recognition as the  
exclusive representative of:

. . . a unit of all certificated employees excluding  
superintendents, assistant superintendents, directors,  
coordinators, principals, vice-principals, guidance  
specialists, counselors, psychologists, psychometrists,  
nurses and librarians.

An amendment on the bottom of the CTA petition reads:

In addition to the above named positions, exclude early  
childhood specialists, work experience specialists.

At that point, therefore, the District had two non-competing petitions  
before it. On April 8, 1976 the District posted the appropriate notices describing  
the requests of the two organizations.<sup>1</sup> On May 5, 1976, the CTA amended its petition so that the petition  
a request for a unit:

. . . of all certificated employees excluding superintendents,  
assistant superintendents, directors, coordinators, principals  
and vice-principals. Included in this unit but not limited to  
are credentialed classroom teachers (K-12), specialist teachers,  
children's center teachers, psychologists, guidance specialists,  
counselors, nurses, librarians and work experience specialists  
who deal directly with the education of children . . . 2/2

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1. Government Code section 3544 requires a public school employer to  
"immediately" post notice that an employee organization has requested recognition.  
Under EERB emergency Rule 30026 which was in effect on April 1, 1976, the employer  
was obligated to post the notice "not later than the end of the fifth workday"  
following receipt of the petition. Government Code section 3544.1 requires the  
employer to grant recognition to the organization except when certain conditions  
exist. Among these exceptions is that "[a]nother employee organization either  
files with the public school employer a challenge to the appropriateness of the  
unit or submits a competing claim of representation within 15 workdays of the  
posting of notice of the written request. . . ." Gov. Code, sec. 3544.1(b).

2. Excluding weekends, there were 20 days from April 8, 1976 when the  
District posted the notice of the WAPSE request until the CTA amendment of May 5,  
1976. No party has raised the issue of whether the amendment was filed within the  
15 workdays required in Government Code section 3544.1(b). The hearing officer  
notes that California school districts took a spring vacation of about five school  
days during that time period. Because no party has contended that the CTA

With that amendment, the District was for the first time confronted with petitions for conflicting units.

On May 17, 1976, the Board of Education of the Washington Unified School District issued separate decisions about the requests for recognition from WAPSE and the CTA. In its decision about the WAPSE petition the District found that the organization had requested "an appropriate unit." It upheld the showing of interest by WAPSE, determined that the intervention by the CTA was "invalid" and declared that no representation election was desired.<sup>3</sup> The decision concludes as follows:

The Board of Education request (sic) that the Educational Employment Relations Board certify [the] Washington Association of Pupil Services Employees to represent those employees described in the unit for purposes of representation under provisions of SB-160, Collective Bargaining.

On May 18, 1976, the Washington Education Association filed a petition with the EERB seeking a hearing to resolve the unit question. The hearing was conducted August 11-12, 1976.

#### ISSUES

The legal issues presented by this case are:

1. Is there a question of representation pending in the District over the appropriateness of the unit proposed by WAPSE?
2. If there is a dispute, is the unit requested by WAPSE an appropriate unit?
3. Are adult education instructors appropriately within the unit?
4. Are summer school teachers appropriately within the unit?
5. Are the guidance specialists excluded from the unit as being either management or supervisory?

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(Footnote 2 continued.)

amendment was not timely, the hearing officer assumes that the amendment was timely filed and was thereby a valid intervention into the petition earlier filed by WAPSE.

3. Determination of the appropriate unit and a resolution of conflicting petitions from employee organizations is the responsibility of the EERB under Government Code section 3545.

JURISDICTION OF THE EERB

During the hearing the counsel for WAPSE took the position that there was not a challenge to the appropriateness of the unit before the EERB.

At one point WAPSE's counsel said:

It would be my contention there has not been [a challenge] and that these documents will show that and that, therefore, the only issue that's before the Board is the question of competing claims of representation.<sup>44</sup>

Subsequently, counsel objected to the further taking of evidence about the appropriateness of the unit requested by WAPSE. Counsel described the question as "jurisdictional" and argued that because, in counsel's view, the Washington Education Association had not challenged the appropriateness of the unit and that all testimony about that matter should be struck from the record.<sup>5</sup>

The hearing officer called counsel's attention to the Washington Education Association's May 5, 1976 amendment. Counsel for WAPSE, however, said he could see "no distinction between that document and the earlier petitions" and continued his insistence that there was no challenge to the appropriateness of the unit.<sup>6</sup>

In its brief, the District contends that the EERB does have jurisdiction to consider the unit question. The District argues that by the amended petitions it was confronted by conflicting requests from two rival employee organizations. The District argues that although it agrees with the request of WAPSE it could not and did not recognize that organization and that it had asked the EERB to resolve the dispute.

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4. Reporter's transcript on page 87 beginning at line 1.

5. Reporter's transcript on page 96, beginning at line 12.

6. Reporter's transcript on page 98, beginning at line 7. No brief was submitted by WAPSE, but the hearing officer does consider the argument made on the record.



A close examination of the various petitions, amended petitions and the District's decisions reveals that the District's analysis of the situation is correct. With the May 5, 1976 amendment, the CTA abandoned its earlier position which would have allowed the District to recognize the two organizations in their mutually exclusive units. With the amendment, the CTA in effect requested a wall-to-wall unit of certificated employees. Presented with the two competing petitions, the District stated a preference for the composition of the units. But it did not and could not have recognized either group.

Thus, a hearing was properly scheduled by the EERB to resolve a matter which was then in controversy. Counsel for WAPSE stated that he could see "no difference" between the two CTA petitions. There was in fact a great difference between the two. The amended CTA petition created a question of representation in the District and under Government Code section 3544.7 the EERB was empowered to conduct a hearing and resolve the dispute.

#### THE APPROPRIATE UNIT

The Washington Unified School District of Yolo County has an average daily attendance of 4,720.<sup>7</sup> It has nine schools with elementary grades, two regular high schools and one continuation high school.

The District takes the position that there are appropriately two units for certificated personnel who are not management or supervisory. One unit would consist of approximately 225 employees comprised of all classroom teachers in kindergarten, primary grades, intermediate grades, upper elementary grades, high school, continuation high school, preschool, children center and specialist

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7. Annual Report, Financial Transactions Concerning School Districts of California, Fiscal Year 1975-76, published by the State Controller, State of California.

8. 1976 California Public School Directory, published by the Superintendent of Public Instruction, State of California.

teachers assigned to categorical programs. Excluded would be substitute teachers, adult education teachers, summer school teachers.

The second unit proposed by the District would contain psychologists, guidance specialists, counselors, school nurses, librarians, and work experience specialists, a total of approximately 20 positions.

WAPSE would create a separate unit, identical to the District's second unit, comprised of psychologists, guidance specialists, counselors, nurses, librarians and work experience specialists.

CTA would create a single unit of all certificated employees, excluding substitute teachers and certain kinds of temporary teachers. Included within the CTA unit would be summer school and adult school teachers. CTA would exclude as management all persons excluded by the District with the addition of the guidance specialists whom CTA would exclude as being either management or supervisory. CTA's contention that guidance specialists should be excluded was a change made at the hearing from CTA's May 5, 1976 amendment. Thus, the unit sought by the CTA would include all of the persons sought by WAPSE with the exception of the guidance specialists.

The hearing officer will first address the question of the separate unit of certificated employees which is proposed by the District and WAPSE.

The Educational Employment Relations Board considered this question in

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Los Angeles Unified School District, <sup>11</sup> Grossmont Union High School District  
and Oakland Unified School District.

Los Angeles Unified School District was unique in that the parties had stipulated that nurses, librarians and pupil services and attendance counselors should be in the same unit with the regular teachers. Applying community of

9. EERB Decision No. 5, November 24, 1976.  
10. EERB Decision No. 11, March 9, 1977.  
11. EERB Decision No, 15, March 28, 1977.

interest criteria under Government Code section 3545(a), the EERB concluded that the remaining counselors belonged in the unit with teachers and other certificated personnel.

The complicating factor of the stipulation does not appear in Grossmont and that case undisputedly serves as precedent. In Grossmont the Board placed counselors, psychologists, school nurses and social workers into the same unit as the teachers. In considering the community of interest question, the Board found it significant that:

\_\_\_Fringe benefits paid to counselors, psychologists, nurses and social workers were the same as those paid to teachers;

--For the most part, school principals provided a common source of supervision for teachers and the other non-teaching certificated employees;

\_\_\_Salaries paid to the counselors, psychologists, nurses and social workers were fixed in a definite relationship to the salaries paid to teachers;

\_\_\_All of those employees were evaluated under closely related systems.

\_\_\_Credential requirements of the non-teaching certificated employees were highly similar to those of teachers.

--A substantial interaction occurred between the counselors, psychologists, nurses, social workers and the teachers.

The question of a separate unit for counselors arose again in Oakland and the Board ruled once again that they belong in the same unit with the teachers. Board precedent on this issue is clear.

The presumption must be, therefore, that the psychologists, guidance specialists,<sup>12</sup> counselors, nurses, librarians and work experience specialists belong in the same unit with the teachers. The evidence in this case does not differ

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12. Whether or not guidance specialists should be excluded as management or supervisory is an issue apart from appropriateness of the unit and will be considered later in this decision.



to established practices which precede the enactment of the Educational Employment Relations Act.<sup>15</sup> Evidence elicited at the Washington Unified hearing provides little comfort to the proposition that the positions claimed to be appropriately separate by WAPSE have any history of separate representation.

In 1965, at the start of the Winton Act,<sup>16</sup> there were nine seats on the District Negotiating Council, all of which were held by the Washington Education Association. There was no change in composition until 1970-71 when, after an amendment in the Winton Act, the Washington Association for Better Education got one seat on the Certificated Employees Council. The Washington Education Association continued to hold the other eight. The Washington Association for Better Education was comprised of principals, vice-principals, assistant superintendents, counselors, psychologists, librarians and school nurses.

In 1971-72, the Washington Education Association had seven seats on the council. The Washington Association for Better Education had one seat and a new organization called Discover had one seat. Discover was basically an organization of teachers, other certificated persons and some residents of the community.

In 1972-73, the Washington Education Association had six seats. The Washington Association for Better Education had one seat. Discover had one seat. And a new organization, Professional Educators' Group of East Yolo, had one seat. The Professional Educators' Group was comprised of managers, teachers and any certificated person wishing to join it.

In 1973-74, the Washington Education Association had six seats, Discover had one seat, the Professional Educators Group had one seat and the Washington Federation of Teachers/AFT had one seat.

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15. Grossmont Union High School District, EERB Decision No. 11 at page 8 citing Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976.

16. Former Education Code section 13080 et seq.

In 1974-75, the Washington Education Association had seven seats, the Washington Federation of Teachers had one seat and the Professional Educators Group had one seat.

In 1975-76, the Washington Education Association had seven seats. The Washington Federation of Teachers had one seat. And the Washington Association of Pupil Services Employees had one seat. WAPSE, from when it first was organized, was limited to non-classroom certificated employees who were not managers.

Through all of those years, the various organizations had cross membership and until WAPSE was formed no single organization represented only these employees WAPSE now claims. Additionally, the evidence was clear that the Washington Education Association had performed a key role in the negotiations which led to the salary relationship under which counselors and others get a higher salary than teachers.

Thus the established practices in the Washington Unified School District show no clear history of the separate representation for the classes sought by WAPSE.

The final criterion to be considered is efficiency of operations. The superintendent said he sees no significant problems in negotiating with two exclusive representatives. However, on cross-examination, he acknowledged that dealing with two organizations which want different contracts could pose additional administrative problems for the District.

Accordingly, in consideration of facts recited above and the record as a whole, it is clear that Board precedent requires the inclusion of psychologists, guidance specialists, counselors, nurses, librarians and work experience specialists in the same unit with teachers.

ADULT EDUCATION TEACHERS

The CTA takes the position that adult education teachers are appropriately contained in the unit along with other certificated employees. The District would exclude adult education teachers.

This question has been considered by the Board in Petaluma City Elementary and High School Districts,<sup>17</sup> Lompoc Unified School District,<sup>18</sup> and New Haven Unified School District.<sup>19</sup> In each of these cases the Board has found that adult education teachers do not share a sufficient community of interest with regular teachers to justify the inclusion of both within the same unit. The presumption, therefore, must be that adult education teachers are excluded from the unit unless a party seeking their inclusion can overcome the presumption.

No evidence was presented in the Washington hearing to overcome the presumption.

An adult education teacher is hired once a sufficient number of students have signed up for a particular class to make an opening class ADA of 17. Usually, a class is closed if the enrollment drops below an ADA of 15. In the 1975-76 school year 13 of the planned adult classes were not opened because an insufficient number of students signed up and five classes were closed after they opened because of a drop in enrollment. Thus 18 teachers had classes that did not open or were closed because of inadequate enrollment. Adult school teachers are paid only for the classes they actually teach.

In the fall semester of 1975-76, the District had 39 adult education teachers. Of these, 22 were full-time teachers in the District's regular program.

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17. EERB Decision No. 9, February 22, 1977.

18. EERB Decision No. 13, March 17, 1977.

19. EERB Decision No. 14, March 22, 1977.

Two worked for the District full-time as classified employees, Six were employed as teachers outside the District. Five were employed in non-teaching jobs outside the District. The employment status of four was unknown. In the spring semester, these statistics changed only slightly.

Adult school teachers are paid on an hourly basis. Although credentials are required, experience counts as a qualification for a credential in a non-academic subject and a degree is not necessary. There is no health plan for adult teachers whereas other regular teachers are covered. Adult school teachers are not covered by the District dental plan. Adult school teachers cannot receive tenure. Teachers are not able to build up credit in the state teachers retirement program by instructing adult classes.

The situation for adult teachers in the Washington Unified School District is thus like that considered by the Board in the decisions listed above. Accordingly, in consideration of these facts and the record as a whole, it is clear that Board precedent prohibits the inclusion of adult education teachers in the same unit with the regular, day-school teachers.

#### SUMMER SCHOOL TEACHERS

The CTA takes the position that summer school teachers are appropriately contained within the same unit as other certificated employees. The District would exclude summer school teachers from this unit.

This question has been considered by the Board in Petaluma City Elementary and High School Districts and in New Haven Unified School District. In both of those cases the Board has found that summer school teachers do not have a sufficient community of interest with regular teachers to justify the inclusion of both in the same unit. The presumption, therefore, must be that summer school teachers are excluded from the unit.



No evidence was presented in the Washington hearing to overcome the presumption.

Summer school teachers are employed by contract to teach classes during a summer session. In the summer session of the 1975-76 school year, the District employed 15 elementary school teachers. Of these, nine were regular full-time teachers in the District. One was a person hired part-time by the District as a classified employee. Three were persons who work as substitute teachers during the regular year. Two were persons who are unemployed. At the high school level, the District employed 21 summer school teachers. Of these, 18 were full-time District teachers. Two were persons who work as substitute teachers during the regular year. One was otherwise unemployed.

As with adult education classes, summer school classes are dropped when the enrollment falls below acceptable levels. In the summer programs, the minimum enrollment is about 10. When a summer class is dropped the teacher is no longer paid. Summer school teachers receive no health and welfare benefits. They receive no credit toward retirement programs. They receive only one day of sick leave.

The situation for summer school teachers in the Washington Unified School District is thus like that considered by the Board in the cases cited above. Accordingly, in consideration of these facts and the record as a whole, it is clear that Board precedent prohibits the inclusion of summer school teachers in the same unit with the regular, day-school teachers.

#### TEMPORARY AND SUBSTITUTE TEACHERS

The District and the CTA entered the following agreement at the hearing:

It is stipulated that the unit determined to be appropriate for classroom teachers shall include those temporary employees hired pursuant to the provisions of Education Code [sec] 13337.3, employed to fill positions of certificated employees on leaves of absence or experiencing long term illness for one semester or more and those temporaries hired pursuant to Education Code section 13329, hired pursuant to contract in categorically funded or specially contracted programs. Temporary employees hired under Education Code Sec. 13337 and 13337.6 and all substitute employees are excluded.

The hearing officer adopts the stipulation without inquiry.

#### GUIDANCE SPECIALISTS

It was stipulated by the District, WAPSE and CTA that the following positions be excluded from the unit as management:

superintendent, assistant superintendents, directors, coordinators, principals, vice principals and child development specialist.

The hearing officer adopts the stipulation without inquiry.

The only disputed position is that of guidance specialist. CTA contends that this position should be excluded as management or supervisory. The District and WAPSE contend that the position should not be excluded.

The position of guidance specialist exists only at the seventh and eighth grade schools. Guidance specialists work with students in relation to their academic pursuits and with behavioral problems they experience at school. The guidance specialists work primarily through the principal and for the principal. They consult with parents and classroom teachers and use tests to design programs for students with any special problems. Between 75 and 90 per cent of their time is spent in counseling students. They do not formulate policies except under the supervision and direction of a principal.

In the absence of the principal, guidance specialists are placed in charge of the schools where they are assigned. Vice principals serve this function at the high school level. A teacher designated by the principal performs this service at the elementary school level.

Guidance specialists assist in the evaluation of teachers involved in programs for the educable mentally retarded and the educationally handicapped. However, the role of the guidance specialist is advisory because the principal carries the full responsibility for the evaluation of all personnel. Guidance specialists do not attend administrative meetings.

The position of guidance specialist was created approximately three years ago. Prior to that time there was a vice principal at the seventh and eighth grade levels. After the position of vice principal was removed from the seventh and eighth grade schools it initially was replaced by the position of counselor. After that, the position was redesignated as guidance specialist. There is much similarity between the job description of vice principal and that of guidance specialist.

Initially, it is necessary to examine the CTA contention that the guidance specialists are management employees. Government Code section 3540.1(g) reads as follows:

"Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Educational Employment Relations Board.

The District argues in its brief that the guidance specialists cannot be considered management employees because the District has not designated them as management in accord with the requirements of the code. The District's argument follows the plain meaning of the statute. Under a literal interpretation of the statute the EERB is not even entitled to pass on the question of whether some employee is management unless that person holds a job which the employer has designated as management. Case law supports this literal interpretation. In interpreting the meaning of a statute the initial place to look is at the words of the statute itself.

Moyer v. Workmen's Compensation Appeals Board, (1973) 10 Cal.3d 222 at 230.

And interpreting the words of a statute, the language is to be construed in accordance with the original meaning of the words used. People v. Rodriguez, (1963) 222 Cal.App.2d 221.

A literal interpretation of the statute in this situation produces a logical result. Management employees are the persons in whom the employer entrusts the highest authority. They are the employer's inner circle, the persons who make the decisions and plot the strategy. No employer can be compelled to take someone into this category on the motion of someone outside. The employer must have confidence in its managerial employees. This confidence arises from the employer's original decision to designate someone as management.

The CTA, therefore, does not have standing to raise the issue that the District failed to designate the guidance specialists as management.

In its brief, the CTA takes a fall back position that the guidance specialists are at least supervisory employees and are thus excluded from the unit. Government Code section 3540.1(m) reads as follows:

"Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The EERB has ruled that the definition of supervisory employee is written in the disjunctive so that an employee need possess only one of the enumerated authorities or functions to be considered a supervisor.<sup>20</sup>

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20. Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976.

There is no Board decision which involves the position of guidance specialist. The Board has ruled that subject coordinators are not supervisory<sup>21</sup> and that high school department heads and curriculum team members are not supervisory.<sup>22</sup>

There was no evidence submitted at the hearing to indicate that the guidance specialists are supervisory employees. Their job description, upon which CTA places much reliance, recites numerous duties they have with students. They counsel, consult with staff and parents, study the character of the student population, perform liaison with community groups and so forth. No evidence was presented that they have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees. There was no evidence they can assign work to other employees or direct them or to adjust their grievances or to effectively recommend such action. The only testimony remotely supportive of the proposition that they are supervisory is that they have some limited, advisory role to the principal about the operation of programs for handicapped students. But they do not rate the employees.

Counsel for CTA seems to place some reliance on the concept that the work of the guidance specialists appears quite similar to the work of the high school vice principals. The hearing officer makes no judgment about whether the District's designation of vice principals as management would have been upheld had the matter been disputed and testimony been taken. The hearing officer accepts the stipulation of the parties. However, acceptance of that stipulation provides no support for the proposition that guidance counselors also should be excluded as supervisory because they appear to have duties similar to vice principals.

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21. Lompoc Unified School District, EERB Decision No. 13, March 17, 1977.

22. New Haven Unified School District, EERB Decision No. 14, March 22, 1977.

On the basis of the evidence recited above and the whole record, the hearing officer determines that guidance specialists are not excluded from the unit as being supervisory. The hearing officer further rules that the CTA has no standing to contend that the guidance specialists are management. They are therefore to be included within the unit.

#### PROPOSED DECISION

It is the Proposed Decision that:

1. The following unit is appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative of the unit:

Certificated Employee Unit consisting of all regular, full-time teachers, specialist teachers, children's center teachers, psychologists, guidance specialists, counselors, nurses, librarians and work-experience teachers and those temporary teachers covered by the stipulation between the District and the CTA; but excluding the superintendent, assistant superintendents, directors, coordinators, principals, vice principals and child development specialist, substitute teachers, adult education teachers, summer school teachers and management, supervisory and confidential employees.

2. The position of guidance specialist is not supervisory and the CTA does not have standing to contend that it is management.

The parties have seven calendar days from receipt of this proposed decision in which to file exceptions in accordance with section 33380 of the Board's rules and regulations. If no party files timely exceptions, this proposed decision will become a final order of the Board on April 20, 1977 and a Notice of Decision will issue from the Board.

Within ten workdays after the employer posts the Notice of Decision, the employee organizations shall demonstrate to the Regional Director at least 30 per cent support in the above unit. The Regional Director shall conduct an election at the end of the posting period if: (1) more than one employee organization qualifies for the ballot, or (2) if only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Dated: April 11, 1977

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Ronald Blubaugh  
Hearing Officer