STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 19, Employee Organization, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 99, Employee Organization.	)	Case Nos. LA-R-10 LA-R-11 LA-R-12 LA-R-538 EERB Decision No. 29

Appearances: Shelby E. Wagner, for the Norwalk-La Mirada Unified School District; Ken B. Metzger, for California School Employees Association, Chapter 19; Howard M. Friedman, for Service Employees International Union, Local 99.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION AND ORDER

This case is before the Educational Employment Relations Board on exceptions to the attached proposed decision of a hearing officer. Norwalk-La Mirada Unified School District excepts to the hearing officer's proposed decision that three separate units of classified employees are appropriate for the purpose of representation under the Educational Employment Relations Act: an instructional aides (paraprofessional) unit, an office-technical and business services unit, and an operations-support services unit. The Board has considered the record and the proposed decision in light of the exceptions.

The hearing officer's decision is substantially in accord with precedents of this Board. See Sweetwater Union High School District,[1] Fremont Unified School District,[2] and San Diego Unified School District.[3] Accordingly, the hearing officer's proposed order is adopted as the order of the Educational Employment Relations Board.

By: Reginald Alleyne, Chairman

Raymond Gonzales, Member

Jerilou H. Cossack, Member

Dated: September 16, 1977

[1]EERB Decision No. 4, November 23, 1976.

[2]EERB Decision No. 6, December 16, 1976.

[3]EERB Decision No. 8, February 18, 1977.

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

ORDER

NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT, Employer,	)	
and	)	Case No. LA-R-10 LA-R-11
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 19, Employee Organization,	)	LA-R-12 LA-R-538
and	)	EERB Decision No. 29
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 99, Employee Organization.	)	

The Educational Employment Relations Board directs that:

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

Instructional aides (paraprofessional)

Included: instructional aides employees
Excluded: all other employees including managerial, supervisory and confidential employees.

Office-technical and business services employees

Included: accounting, purchasing and secretarial-clerical employees.
Excluded: all other employees including managerial, supervisory and confidential employees.

Operations-support services employees

Included: transportation, custodial, maintenance, grounds, warehouse, food services, security employees.
Excluded: all other employees including managerial, supervisory and confidential employees.

Within ten workdays after the employer posts the Notice of Decision, the employee organizations shall demonstrate to the Regional Director at least 30 percent 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) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Educational Employment Relations Board

by

Charles L. Cole
Executive Director

9/16/77

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT, Employer and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 19, Employee Organization and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 99, Employee Organization	)	PROPOSED DECISION Case Nos. LA-R-10 LA-R-11 LA-R-12 LA-R-538

Appearances: Shelby E. Wagner, for the Norwalk-La Mirada Unified School District; Ken B. Metzger, for California School Employees Association, Chapter 19; Howard M. Friedman, for Service Employees International Union, Local 99.

Before James Romo, Hearing Officer.

PROCEDURAL HISTORY

On April 1, 1976, Service Employees International Union, Local 99 (hereinafter SEIU) filed requests for recognition as the exclusive representative in separate units composed of transportation,[1] maintenance,[2] and operations[3] employees with the Norwalk-La Mirada Unified School District.

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[1]The following job classifications comprise the transportation unit petitioned for by SEIU: auto mechanic II; auto mechanic I; bus dispatcher; bus driver; food van operator.

[2]The following job classifications comprise the maintenance unit petitioned for by SEIU: painter-plasterer; painter; cabinet maker; carpenter; glazier; audio-visual electrician; electrician; heating and ventilating mechanic; plumber; office equipment repairman; locksmith; welder; maintenance man.

[3]The following job classifications comprise the operations unit petitioned for by SEIU: security agent; stock clerk senior; stock clerk; gardener; grounds leadman; auditorium attendant; custodian senior; pool attendant; custodian; shower and locker room attendant; gym attendant; plant protection officer - high school.

On April 9, 1976, California School Employees Association, Chapter 19 (hereinafter CSEA), filed a request for recognition as the exclusive representative of a unit composed of all classified employees in the District.[4]

On April 21, 1976, CSEA filed a petition of intervention with the District which constituted a competing claim of representation in the transportation unit filed by SEIU.

On April 29, 1976, CSEA filed petitions of intervention with the District which constituted competing claims of representation in the maintenance and operations units filed for by SEIU.

On May 3, 1976, SEIU filed petitions of intervention with the District which constituted competing claims of representation for the school secretaries and the special education instructional aides, employees within the unit for which CS sought exclusive representation.

In the Employer's Decision filed pursuant to Section 33190 of the Educational Employment Relations Board (hereinafter EERB) Rules and Regulations, the District doubted the appropriateness of the units petitioned for by SEIU. A unit determination hearing was conducted by an EERB hearing officer on March 14, 1977.

At the hearing, the District argued that notwithstanding the Board's decisions in Sweetwater Union High School District,[5] and Fremont Unified School District,[6] a comprehensive unit composed of all classified personnel in the Norwalk-La Mirada Unified School District is appropriate. Conversely, the employee organizations took the position that the three units found appropriate in Sweetwater and Fremont are also appropriate in this District.

ISSUE

1. What unit or units are appropriate for the purpose of meeting and negotiating?

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[4]Included in the unit petitioned for by CSEA are employees from the following job series: food services; clerical; secretarial; instructional aides; and all other support service positions.

[5]EERB Decision No. 4, November 22, 1976.

[6]EERB Decision No. 6, December 16, 1976.

DISCUSSION

Where a question regarding the appropriateness of a particular unit or units, is raised, the Board is guided in its determination by the language contained in Government Code Section 3545(a).[7]

In applying the statutory unit determination criteria to the facts in the Sweetwater and Fremont decisions, the Board found three units to be appropriate for meeting and negotiating for classified employees.

In Foothill-DeAnza Community College District,[8] the Board noted that its decision in Sweetwater had established for classified employees, units that are presumptively appropriate. The Board also noted that this presumption was rebuttable and that a "party may show a unit that deviates from a presumptively appropriate unit is also appropriate."

In light of the Board's language in Foothill-DeAnza, and the position taken by SEIU and CSEA at the hearing, the presumption that three units are appropriate is raised. Consequently, the District would appear to have the burden of showing that a unit or units different from the units found appropriate in Sweetwater are appropriate.

Community of Interest

Turning first to the criterion of community of interest, the District contends that a unit composed of all the classified employees in the District is appropriate for the reason that they share a common community of interest.

In support of this contention, the District introduced evidence to show that all classified employees under current District practice are: (1) subject to the same rules and regulations regarding promotions, discipline, transfers and hiring; (2) paid from the same salary schedule; (3) enjoy the same fringe benefits if eligible; (4) subject to the same leave promotions; (5) extended access to the same grievance procedures.

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[7] 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.

[8] EERB Decision No. 10, March 1, 1977.

Without question, these terms of employment are the type of factors that warrant consideration in determining whether employees share a community of interest.[9] However, the fact that classified employees are equally subject to the same terms of employment as those listed above, is not determinative in the resolution of the issue concerning the appropriateness of units.

In Fremont, the Board was faced with a similar factual situation. The district in Fremont had instituted pursuant to Section 13701 of the Education Code, a merit system in which most employees were subject to the same terms of employment. The Board in Fremont, however, was not persuaded that this factor alone was sufficient to preclude the creation of separate units.[10]

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[9]The Board in Sweetwater cited the NLRB case Kalamazoo Paper Box Corp. 136 NLRB 134, 49 LRRM 1715 (1962), as an instructive case on the issue of community of interest. The NLRB in that case listed the following as factors that warranted consideration in determining the existence of substantial differences in interests and working conditions: (1) a difference in method of wages or compensation; (2) different hours of work; (3) different employment benefits; (4) separate supervision; (5) the degree of dissimilar qualifications; (6) training and skills; (7) differences in job functions and amount of working time spent away from the employment or plant situs under state and federal regulation; (8) the infrequency or lack of contact with other employees; (9) lack of integration with the work functions of other employees or interchange with them; (10) and the history of bargaining.

[10]See the Board's decision in Fremont, where it was stated:

> With regard to the community of interest of the comprehensive unit, the district noted that it is a merit system district with a Personnel Commission established according to the scheme set forth in Education Code Sections 13701 et seq. The district argues that the merit system renders unnecessary separate units because the Personnel Commission promulgates rules which apply to all classified employees while recognizing the special interests and needs of certain employees.
>
> We find that the existence of the merit system in this district does not mandate the establishment of a comprehensive classified employee unit. The merit system was developed to assist districts in personnel matters prior to the time when employees were able to select or reject an exclusive representative. The procedures under the merit system do not control the development of the new meeting and negotiating system implemented by Government Code Section 3540.

Instead, the Board chose to review other factors and, in particular, emphasized the work function performed by the various groups of employees.[11]

In this connection, the Board in Sweetwater noted that the three units found appropriate in that district performed distinctly different work functions. For instance, it was observed that the employees included in the "operations-support services" unit performed duties that involved various forms of physical labor.

As for the office-technical and business services unit employees, the Board noted that these employees generally performed in a clerical or record-keeping function.

Finally, with respect to the instructional aides unit, the Board concluded that the primary duties of these employees involved assisting students in their educational development.

Similarly, in this District, the classified employees can also be separated by work function and placed in units like those found appropriate in Sweetwater and Fremont.

A review of the job descriptions of classified employees in this District reveals that there is a group of employees whose primary work function involves providing a proper physical environment and providing support services for students.

Like the employees in the Sweetwater operations-support services unit, this group of employees drive and repair buses, prepare meals for students, handle equipment and supplies, and perform janitorial, gardening and general maintenance work. Also like the employees in the Sweetwater operations-support services unit, the majority of operations-support service employees in this District are not generally required to have the same educational qualifications as the other classified employees at issue. Generally, these employees are not required to have a high school education. Instead, the District emphasizes the possession of practical work experience.

As an additional distinction, these employees are paid out of the District's general fund as opposed to the categorical funding used to pay most instructional aides and some clerical employees in the District.

Further, unlike the instructional aides[12] who are only part-time employees, the operations and support services employees work full-time. These employees

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[11] Fremont, note 6 supra. See also Sweetwater, note 5 supra.

[12] Head Start Instructors who were included in the certificated unit were not the subject of this hearing.

also work the entire year as opposed to instructional aides and fifty to seventy percent of the clerical employees who work only during the school year.

Relying upon factors similar to these, the Board in both Sweetwater and Fremont concluded that the operations-support services employees shared a community of interest that was distinct from other employees which thereby justified their separation. A similar conclusion in the instant case is warranted.

In its decision in Fremont, the Board in reference to the creation of an instructional aides unit remarked:

> In the present case, the duties of the instructional aide employees involve assisting the certificated staff with the supervision and training of students. The primary duties of other classified employees do not involve direct interaction with students and their educational development. Additionally, instructional aides are required to have an education equivalent to the completion of the tenth grade plus some applicable education, experience or training in the care and supervision of children. Instructional aide employees are compensated by non-district state and federal categorical funds. Their retention as an employee depends upon the continuation of categorical funding. Aides have little contact with other classified employees. Customarily, aides are assigned for a full school year to the classroom of a particular teacher or teaching team. They have a line of supervision distinct from other classified employees in that they are directly supervised by a classroom teacher or teachers, and ultimately by the principal and the business manager, superintendent and Board of Trustees.
>
> The distinguishing characteristics of the instructional aide employees relating to work function, education and experience requirements, compensation, lack of interaction with other classified employees, work location, and supervision combine to establish that a separate instructional aides unit, consisting of the job classifications listed in footnote 7, supra, is appropriate.

Many of the factors that were instrumental in the Board's decision in Fremont and Sweetwater to find a separate unit of instructional aides also exist in this District.

In the instant case, the primary duty of the instructional aides involves the direct assistance in the educational development of students.

This is contrasted with the primary duties performed by the other classified employees that do not involve direct interaction with students and their educational development.

Generally, instructional aides are required to have at least the equivalent of a high school education. In fact, in some instances, the aide is required to possess additional education, experience or training in the particular area in which he assists. These educational requirements exceed the educational requirements imposed on the other classified employees.

The majority of aide positions in the District are funded by categorical grants. In this connection, their retention as an employee depends upon the continuation of the categorical funding.

As noted earlier, these aides are part-time employees, working only during the school year. Finally, with the work of an aide being largely performed in the classroom, there is little contact with employees in the operations-support services unit.

In sum, the similarity between these community of interest factors and those the Board discussed in Fremont also justify the creation of a separate unit composed of instructional aides on the basis that they have a separate community of interest distinct from the other classified employees.

The remaining employees perform clerical and record-keeping work. The job descriptions of these employees indicate that they type, operate business machines, maintain files and keep records. These employees are generally required to have the equivalent of a twelfth grade education.

Fifty to seventy percent of the clerical employees work only during the school year. A small percentage of the clericals work part-time. Like the operations-support services employees, they are generally compensated from the general fund as opposed to being categorically funded.

Finally and most importantly, unlike the operations-support services employees, they do not assist in providing a proper physical environment for students. Nor do they directly assist in the educational development of students as do the instructional aides.

Faced with substantially similar facts, the Board in Fremont and Sweetwater found that a unit of office-technical and business services employees was appropriate in each of the above-named districts. In the

instant case, the District has failed to rebut the presumption that the office-technical and business services employees share a distinct community of interest. Therefore, based on the fact that office-technical and business services employees share a distinct community of interest, a separate unit composed of office-technical and business services employees is appropriate.

Efficiency of Operation and Established Practices

Turning next to the criterion of efficiency of operation, the District at the hearing and in its post-hearing brief argued that the creation of more than one unit would have an adverse affect upon the efficient operation of the District. Specifically, the District argued that creation of separate units would have a demoralizing effect on employees because separation of units would mean a reduced possibility of promotions and mobility between job classifications. Further, the District contended that the creation of different units could result in increased costs to the District caused by having to maintain separate fringe benefit programs for the different units.

Concerns similar to these were raised by witnesses called to testify in the Fremont hearing. The Board in that case noted that none of the witnesses who testified on the subject of efficiency of operation had any experience negotiating with multiple units. The Board also noted that absent from the record were concrete facts relating to projected time requirements for district personnel dealing with negotiation matters. Nor was there evidence regarding the projected number of employees that would be required to be released during working hours for negotiations with single as opposed to multiple units.

Similarly, in the instant case the witness called by the District to testify on the subject of efficiency of operation indicated that he lacked specific experience in either the private or public sector negotiating with multiple units. Furthermore, as in Fremont, the record is bare of "concrete facts" supporting the District's claim that multiple units would affect the efficient operation of the District. Accordingly, the testimony of the witness called by the District must be viewed as speculative in nature and given little weight.

Assuming arguendo that the creation of multiple units may have such an effect, the statutory criteria involved in determining the question of appropriateness of units still require consideration of the other factors, i.e., community of interest and established practices.

In this regard the Board in Sweetwater stated:

> ...It is a legitimate concern that excessive fragmentation of negotiating units may burden an employer with multiple negotiating processes and postures and with a variety of negotiated agreements difficult to administer because their provisions differ. Interorganization competition may increase demands made upon the employer by an employee organization. The employer may have to give the benefits of the 'best' settlement in each area of negotiations to all employees to avoid employee unrest or the administrative inconvenience caused by multiple agreements.
>
> On the other hand, while a single unit is theoretically the most conducive to the efficient operation of the school district, it is only one of three criteria for unit determination set forth in Section 3545(a). Further, the purpose of the Act is stated in Government Code Section 3540 as follows:
>
> > It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of employees in an appropriate unit...
>
> This section recognizes the rights of public school employees to join and be represented by the employee organization of their choice. Implicit in this statement of legislative

> intention is the notion that the employees will have the ability to choose an organization which is an effective representative. An effective representative will generally be one largely determined by the community of interest and established practices of the employees rather than the efficient operation of the school district.

In Fremont, the Board concluded that the evidence presented by the District regarding efficiency of operation was insufficient to preclude the creation of three units.

Here, too, the evidence with respect to efficiency of operation is not sufficient to preclude the creation of three units.

Finally, with respect to established practices, the District argues that the prior history of the District supports the notion of the appropriateness of a single unit.

Evidence introduced by the District at the hearing shows that for the five previous years, representatives from both SEIU and CSEA met and conferred with the District on matters pertaining to salaries, fringe benefits, and other terms of employment. The District also emphasized the fact that when a proposal was initiated by an employee organization and subsequently adopted, the proposal would have a district-wide effect. In other words, the adoption of a wage increase would affect all classified employees in the District and would not be limited to members of the initiating employee organization. The fact that meeting and conferring sessions did, in some instances, result in the adoption of policies affecting all classified employees, the District contends, reinforces its contention that the established practices of the District have been to "bargain" with a single unit of employees in mind.

Because of the many differences in the process leading up to and surrounding negotiating under this Act and the meet and confer sessions that predated the Act, the Board has determined that prior practices under the Winton Act are not conclusive evidence. In light of the Board's treatment of the criteria of established practices, the evidence introduced by the District in the instant case and consequently is not sufficient to preclude the creation of three units for meeting and negotiating.

PROPOSED DECISION

It is the proposed decision that:

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

Instructional aides (paraprofessional)

Included: instructional aides employees

Excluded: all other employees including managerial, supervisory and confidential employees.

Office-technical and business services employees

Included: accounting, purchasing and secretarial-clerical employees.

Excluded: all other employees including managerial, supervisory and confidential employees.

Operations-support services employees

Included: transportation, custodial, maintenance, grounds, warehouse, food services, security employees.

Excluded: all other employees including managerial, supervisory and confidential employees.

The parties have seven calendar days from receipt of this proposed decision in which to file exceptions in accordance with Section 33380 of the Rules and Regulations. If no party files timely exceptions, this proposed decision will become a final order on July 8, 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 percent 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) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Date: June 23, 1977

James Romo, Hearing Officer