

CSEA originally filed a petition for a unit consisting of all classified employees in the district. The District answered by requesting a representation election and later amended its decision to contest the appropriateness of the unit, arguing that certain positions included in the proposed unit are confidential.

At the representation hearing, the parties stipulated that a unit of all classified employees, excluding management, confidential and supervisory employees, is appropriate. The hearing officer accepted that stipulation without inquiry. The Board, pursuant to PERB rule 32320(a)(2), ¹/ overrules that acceptance, remands this case to the hearing officer, and orders the record reopened to take evidence on the appropriateness of a wall-to-wall unit of classified employees in this district. The Board further orders that additional evidence be taken on the issue of whether the positions in question are confidential.

DISCUSSION

Appropriateness of the Unit

In its earliest days, the Board developed a policy of accepting without question the stipulations of parties as to unit composition, as long as these stipulations were

¹/PERB rules are codified at Cal. Admin. Code, tit. 8, sec. 31100 et seq. Sec. 32320(a)(2) provides:

The Board itself may:

.....
Affirm, modify or reverse the proposed decision, order the record reopened for the taking of further evidence, or take such other action as it considers proper.

"not inconsistent with a clear and specific mandate in the unit criteria provisions" of the Educational Employment Relations Act (hereafter EERA)^{2/}. One of the reasons for adopting such a policy was to expedite representation elections by encouraging agreement between the parties on as many issues as possible. Another factor was that the Board itself had not yet developed any policies interpreting and applying section 3545.³

In the nearly two years since the Board decided to accept stipulations without question, it has decided many disputed unit determination cases and has developed certain policies in applying section 3545. Yet parties continue to create

²Tamalpais Union High School District (7/20/76) EERB Decision No. 1. The EERA is codified at Gov. Code sec. 3540 et seq. All statutory references are to the Government Code unless otherwise indicated.

3sec. 3545 provides:

(a) 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.

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

(2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

stipulated units which differ substantially from those the Board has found to be appropriate.

The Board therefore finds it necessary to modify its policy on stipulations. Henceforth, when it has jurisdiction in a representation case, it will examine stipulations between the parties to determine if the stipulations are inconsistent with the EERA or established Board policies. Established Board policies are those which the Board has developed and consistently followed. Thus, the Board does not intend, in every representation case that comes before it, to overturn the parties' stipulations merely because the stipulated units vary from unit configurations previously established by the Board. However, it will set aside those stipulations which contravene the EERA or consistent policies established by the Board.

These policies include those relating to community of interest. Under the EERA, community of interest is a statutorily mandated consideration in unit determination cases. The Board therefore considers its established policies in interpreting and applying this criterion to be significant enough to justify examining stipulations to ensure that they comply with these policies.

The Board's new practice with respect to stipulations is consistent with the Board policy enunciated in PERB rule 33000, which states,

It is the policy of the Board to encourage the persons covered by the Act to resolve questions of representation by agreement

among themselves, provided such agreement is not inconsistent with the purposes and policies of the Act and the Board.

In the present case, the parties stipulated that a wall-to-wall unit of classified employees was appropriate. Not only has the Board never found such a unit to be appropriate, it has on several occasions found such a unit to be inappropriate.⁴ Based on community of interest criteria, the Board has consistently created two or three units among classified employees of elementary and secondary school districts. Three units are presumptively appropriate,⁵ regardless of the number of classified employees in a district:⁶ instructional aides (paraprofessionals), operations-support services, and office-technical and business services.⁷ The Board finds that three presumptively appropriate units is a sufficiently well-established policy to justify overturning a stipulation creating a single classified unit. This is not to say that the Board is ruling that all units which differ from presumptively appropriate units are

⁴See, for example, Sweetwater Union High School District (11/23/76) EERB Decision No. 4.

⁵Foothill-DeAnza Community College District (3/1/77) EERB Decision No. 10.

⁶Shasta Union High School District (10/25/77) EERB Decision No. 34.

⁷Sweetwater Union High School District (11/23/76) EERB Decision No. 4; Fremont Unified School District (12/16/76) EERB Decision No. 6; San Diego Unified School District (2/18/77) EERB Decision No. 8; Antioch Unified School District (11/7/77) EERB Decision No. 37.

inappropriate, since the presumption is rebuttable.⁸ The Board holds only that it will not accept a stipulated unit that does not conform to established Board policy unless there are facts on the record which would enable it to find the unit appropriate. In this case, there are no such facts, since the parties did not address this issue at the hearing. Therefore, the Board remands this case to the hearing officer so that he may reopen the record and take additional evidence, including stipulated facts, on the appropriateness of a wall-to-wall unit of classified employees.

In the future, hearing officers in unit determination cases over which the Board has jurisdiction should scrutinize stipulated units to ensure that they comply with the EERA and established Board policies. If the units do not comply, the hearing officers should conduct a representation hearing and elicit evidence, including stipulated facts, which will support the establishment of the stipulated unit or enable the hearing officer to issue an appropriate unit determination order.

Confidential Employees

The record in this case does not provide the Board with enough information to determine whether or not the positions in

⁸Foothill-De Anza Community College District,
supra, EERB Decision No. 10.

question are confidential.⁹ In Sierra Sands Unified School District,¹⁰ the Board recognized that

the employer should be allowed a small nucleus of individuals who would assist the employer in the development of the employer's positions for the purpose of employer-employee relations.

Employers need staff support in preparing for negotiations. Research must be done, reports and proposals must be prepared and typed, records must be kept. However, the Board also recognizes that employees who are designated confidential are denied representation rights under the EERA. Thus, the small nucleus concept contemplates that only a small number of employees necessary to the employer to do the staff work needed to develop its positions shall be given access to confidential information. Employers cannot unnecessarily distribute confidential information to large numbers of employees and then claim them as confidential. Therefore, in each case in which there is a dispute as to whether positions are confidential, the Board will examine the facts to determine whether the employees in question must necessarily have access to confidential information in the regular course of their normal duties.

⁹Gov. Code sec. 3540.1(c) provides:

"Confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

¹⁰(10/14/76) EERB Decision No. 2.

In this case, the record shows that principals are on the management negotiating team which develops proposals, and on the administrative cabinet which discusses negotiations policies. The record shows that principals receive various documents, such as draft negotiations proposals, through the mail, to which their secretaries currently have access. However, the mere receipt by the secretary's superior of confidential material cannot make the secretary a confidential employee. Persons who open mail are not involved in the development of confidential material and have no essential need to deal with it. To classify them as confidential would allow easy abuse of the "small nucleus" concept articulated in Sierra Sands, since employers could exclude all secretaries from a unit by unnecessarily allowing them access to confidential information.

Therefore, the Board needs additional information on the principals' role in negotiations and grievance processing, particularly as to the types of written responses they are regularly expected to make. Most of the principals testified that if they responded in writing, their secretaries would type their response. But it was unclear whether written responses are a normal or necessary part of the District's negotiating structure. Similarly, the content of such responses was not defined. The amount of writing that principals are required to do in connection with negotiations is highly significant in determining whether their secretaries are sufficiently involved in developing confidential material. Other important factors

are whether secretaries are expected to take minutes of meetings in which negotiations are discussed or to actively organize and maintain negotiations files.

Similarly, the Board needs additional information on the roles of the secretary to the director of the continuation school, secretary to the director of special projects, duplicating clerk and word processing clerk in negotiations and grievance processing.

Since the board has already remanded this case for the taking of additional evidence on the appropriateness of the stipulated unit, it will use the opportunity to get additional information on whether the positions in question are confidential.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

This case be remanded to the hearing officer and the record be reopened for the taking of further evidence, at a hearing or by stipulation or both, on the issues of (1) whether a unit consisting of all classified employees, excluding management, confidential and supervisory employees, in the Centinela Valley Union High School District is appropriate and if not, what units are appropriate, and (2) whether the positions of secretary to the principal, secretary to the director of the continuation school, secretary to the director of special projects, duplicating clerk, and word processing clerk are confidential.

By: Raymond J. Gonzales, Member

Harry Gluck, Chairperson

Jerilou Cossack Twohey, Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:)
) Case No. LA-R-233
CENTINELA VALLEY UNION HIGH)
SCHOOL DISTRICT,)
)
Employer,)
and)
)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION, Chapter 47,)
)
~~Employee Organization~~)
)

Appearances: Alison MacKenzie, Attorney, for Centinela Valley Union High School District; John Bruhl, Field Representative, for California School Employees Association, Chapter 47.

Before Jeff Paule, Hearing Officer.

PROCEDURAL HISTORY

On April 1, 1976, the California School Employees Association, Centinela Chapter 47 (CSEA) filed a request for recognition with the Centinela Valley Union High School District (CVUHSD)¹ for a unit consisting of all classified employees.

¹ Centinela Valley Union High School District has an enrollment of 7072 at five high schools and an evening school. See 1977 California Public Schools Directory at p. 172, California State Department of Education.

On May 2, 1976, the CVUHSD filed its employer's decision in which a representation election was requested. On March 1, 1977, the CVUHSD filed an amendment to its employer's decision in which the appropriateness of the unit was contested. It is the District's position that certain positions included in the proposed unit are confidential in nature.

A hearing was held on April 26, 1977, and May 17, 1977. During the course of the hearing, the parties stipulated that a unit of all classified employees excluding management, supervisory and confidential is appropriate. That stipulation is accepted without inquiry.

The parties further stipulated:

1. The following positions are management: superintendent, assistant superintendent, administrative assistant, director of career education, director of continuation school, director of extended services, director of maintenance and operations, director of special projects, director of E.S.L., accounting officer, purchasing agent. This stipulation is accepted without inquiry.

2. The following positions are considered confidential: secretary to the superintendent, secretary to the assistant superintendent. This stipulation is accepted without inquiry.

3. The following positions are in dispute: secretary to the principal; secretary to the assistant principal; secretary to the director of career education; secretary to the director of special projects; secretary to the director of the continuation school; secretary to the director of the English as a second

language program; secretary to the director of maintenance and operations; word processing clerks; duplicating clerk; payroll clerks; PBX/file clerk; and secretary to the purchasing agent.

ISSUE

Whether the following positions are confidential: secretary to the principal; secretary to the assistant principal; secretary to the director of career education; secretary to the director of special projects; secretary to the director of the continuation school; secretary to the director of the English as a second language program; secretary to the director of maintenance and operations; word processing clerks; duplicating clerk; payroll clerks; PBX/file clerk; and secretary to the purchasing agent.

CONCLUSION

In Sierra Sands Unified School District, EERB Decision No. 2 (October 14, 1976), the Board set forth its general commentary on Government Code Section 3540.1(c) which defines

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the term "confidential employee."² In summary, the Board's position on the question of confidentiality is that, in interpreting the Act, the Board feels that an employer should be allowed a small nucleus of individuals to assist the employer in its employer-employee relations. Further, the employees who are designated as "confidential employees" are not to be considered "public school employees" within the meaning of the Act. Finally, the Board believes that the employer's right to the undivided loyalty of a small nucleus of staff designated as "confidential" outweighs the inherent denial of representation rights of those employees designated as "confidential".

²Gov. Code Section 3540.1(c) defines confidential employee as: "confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

Secretary to the Principal

The school district has five high schools and one continuation school. The principals at all the District's schools are involved directly in the hiring, firing, disciplining and evaluating of employees in their particular school. The principal acts as the first level in a grievance dispute and is thus in a position to adjust grievances filed by employees.

In Fremont Unified School District, EERB Decision No. 6 (December 16, 1976), the Board held that "employer-employee relations", as that term is used in the definition of a confidential employee in section 3540.1(c), includes the processing of grievances and participation in the negotiations process.

In the instant case, the principals' involvement in negotiations is de minimus. If a particular subject is being discussed during negotiations that involves a certain school, the principal from that school is asked to present his or her views on the matter. The principals do not participate in negotiations on a regular on-going basis.

With respect to the processing of grievances, the principals' involvement in the processing of grievances is at the first level. It is noted that in Fremont, supra the position in dispute, who was found to be confidential, was the secretary to the assistant superintendent of personnel. This is a significant difference. Processing grievances at the district level often involves preparing a detailed and extensive written response to the grievant, the

preparation of which is highly confidential; whereas writing a response to a grievance at the first level rarely involves the preparation of confidential materials.

The evidence with respect to the Centinela Valley Union High School District's grievance procedure, the various levels, the involvement of the principals and of higher level district administrators in preparing a response to a grievance was scant. Based on the evidence presented, it is found that the principals and their secretaries do not participate in the processing of grievances at a level which would involve the preparation of confidential written statements or documents. Accordingly, the secretary to the principal is not a confidential employee within the meaning of the Act.

Secretary to the Director of the Continuation School

The evidence adduced at the hearing indicates that the director of the continuation school is actually a principal and has all the duties, functions and responsibilities of a principal.

Therefore, based on the above discussion, it is found that the secretary to the director of the continuation school is not a confidential employee.

Secretary to the Assistant Principal

All schools in the District except the continuation school employ assistant principals. The number of assistant principals varies; some schools have three, others two and one school has none. The assistant principals perform various functions relating to curriculum, instruction, student management and internal business matters.

There was testimony offered which indicates that the assistant principals perform the functions of a principal when the principal is away from the school. Thus, an assistant principal is involved in the processing of grievances, but only when the principal is absent.

Having found the secretary to the principal not to be a confidential employee it follows that the secretary to the assistant principal also is not a confidential employee.

Secretary to the Director of Career Education

The director of career education works in several areas, such as the District's work experience program, CETA program, vocational education program, and coordinates the counselor's work in the schools. There are approximately 18 employees under the director's supervision.

The testimony with respect to the director's secretary centered around the fact the secretary has access to the director's files, which contain information regarding the budgetary considerations of the above-listed program. The secretary also types evaluations of the employees under the director's supervision.

Access to employees' evaluations and information relating to the budgets of various school district programs, however, are not confidential information within the meaning of the term "employer-employee relations". It is found that the secretary to the director of career education is not a confidential employee within the meaning of the Act.

Secretary to the Director of Special Projects

The director of special projects coordinates all federal and state education projects in which the District is involved and handles all communications regarding the funding of such projects.

The director's secretary handles all mail addressed to the director and maintains the files. There was testimony that the secretary has access to information relating to the budgets of the funded programs. Additionally, the secretary to the director has access to evaluations of employees under the director's jurisdiction.

The above duties of the secretary to the director of special projects are similar to the secretary to the director of career education. The secretary to the director of special projects, however, performs one function which/decidedly distinguishes this secretarial position. The secretary to the director of special projects sits in on management negotiating meetings and takes minutes of such meetings. The secretary to the director of special projects thus has information relating to the employer's negotiating position and strategies.

To summarize the Board in Sierra Sands, supra, individuals who possess information on matters "that if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture" should be considered confidential employees.

The secretary to the director of special projects is a confidential employee within the meaning of the Act.

PBX/File Clerk

The PBX/file clerk is supervised by the assistant superintendent for business services. The PBX/file clerk files all employee evaluations in the District and distributes all the District's mail and thus has "access" to mail which may contain the employer's contract offers and negotiating strategies.

It is found that the PBX/file clerk's "access" to matters relating to the employer's employer-employee relations is not the type of "access" the Legislature had in mind in Section 3540.1(c). The PBX/file clerk merely transmits and distributes the correspondence. There was no testimony that the PBX/file clerk is required to open all communications, read the contents, and then make the appropriate distribution. The PBX/file clerk does not actually possess, as a regular part of the clerk's duties, information relating to employer-employee relations, and therefore is not a confidential employee within the meaning of the Act.

Payroll Clerk

The District currently employs two payroll clerks. The payroll clerks have access to all personnel files. The assistant superintendent of business services testified that the payroll clerks prepare all employee payroll information which is then used in negotiations. Additionally, the payroll clerks have access to health and welfare costs for the District and they often prepare the costs of various fringe benefit proposals.

The mechanical preparation of costs for fringe and salary-proposals is even less than the work performed by employees in Sierra Sands, supra, who were found not to be confidential employees. Nothing in the record demonstrates that the payroll clerk regularly performs duties that would be considered confidential within the meaning of the Act. The payroll clerks are not confidential employees within the meaning of the Act.

Duplicating Clerk

The evidence with respect to the duplicating clerk was scant. The duplicating clerk operates the duplicating machine and in the course of performing this function has access to information such as memoranda relating to budgetary matters. There was little evidence introduced which indicates the duplicating clerk performs duties or has access to matters considered "confidential" within the meaning of the Act.

The duplicating clerk is not a confidential employee within the definition of Government Code Section 3540.1(c).

Word Processing Clerk

The District employs two word processing clerks. These clerks type all correspondence, letters and memoranda which are dictated by counselors and management personnel. There was evidence that the word processing clerks may be called upon to type contract proposals or notes from a member of the District's negotiating team, but only if this information has been dictated. There was no evidence, however, that the District intended to dictate its negotiations materials and correspondence.

It does not appear from the record that the word processing clerks, in the regular course of their duties, possess information relating to the employer's employer-employee relations.

The word processing clerks are not confidential employees within the meaning of the Act.

Secretary to the Director of English as a Second Language Program

The director of E.S.L. has been designated by the District as management employee, but is not on the District's negotiating team. Thus, the director's secretary does not have access to, as a regular part of the secretary's duties, confidential matters relating to employer-employee relations.

The secretary to the director of English as a second language is not a confidential employee within the meaning of the Act.

Secretary to the Purchasing Agent

The purchasing agent employed by the District is responsible for all purchases made by the District. The purchasing agent supervises all the employees in the purchasing and storage department.

The purchasing agent is a member of the District's negotiating team and thus is involved in preparing contract proposals and negotiating strategies. The purchasing agent's secretary types all communications regarding such information and therefore has access to, or possesses information relating to the employer's employer-employee relations.

The secretary to the purchasing agent is a confidential employee within the meaning of the Act.

Secretary to the Director of Maintenance and Operations

The director of maintenance and operations coordinates all maintenance work throughout the District.

The District has selected the director of maintenance and operations to be on the District's negotiating team and thus the director is involved in all contract proposals and negotiating strategies prepared by the team. The director's secretary types all correspondence regarding such information and therefore has access to, or possesses information relating to, the employer's employer-employee relations.

It is noted that the director's secretary at the present time is an officer of the employee organization involved in this case. This situation existed in Fremont, supra, and the Board did not consider this to be a relevant factor.

The secretary to the director of maintenance and operations is a confidential employee within the meaning of the Act.

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: all classified employees of the Centinela Valley Union High School District, excluding management, supervisory, and confidential employees.

2. The following positions are confidential: secretary to the director of special projects, secretary to the purchasing

agent, and secretary to the director of maintenance and operations.

3. The following positions are not confidential: secretary to the principal, secretary to the director of continuation school, secretary to the assistant principal, secretary to the director of career education, secretary to the director of the English as a second language program; word processing clerk, duplicating clerk, payroll clerk, and PBX/file clerk.

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 of the Board on July 19, 1977 and a Notice of Decision will issue from the Board.

Within 10 workdays after the employer posts the Notice of Decision the employee organization 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: July 8, 1977

Jeff Paule
Hearing Officer