STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of: REDLANDS UNIFIED SCHOOL DISTRICT, Employer, and REDLANDS CLASSIFIED EMPLOYEES ASSOCIATION, NEA, Employee Organization, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS REDLANDS CHAPTER 70, Employee Organization, and REDLANDS TEACHERS ASSOCIATION, CTA/NEA, Party of Interest.	Case Nos. LA-R-105 LA-D-88 PERB Decision No. 235 August 27, 1982

Appearances: Lawrence J. Gartner, Attorney (Littler, Mendelson, Fastiff and Tichy) for Redlands Unified School District; Robert M. Dohrmann, Attorney (Schwartz, Steinsapir, Dohrmann, Krepack, Sommers and Edelstein) for Redlands Classified Employees Association, NEA; Maureen C. Whelan, Attorney for California School Employees Association and its Redlands Chapter 70; A. Eugene Huguenin, Jr., Attorney for Redlands Teachers Association, CTA/NEA.

Before Tovar, Morgenstern and Jensen, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on exceptions filed by the Redlands Unified School District (District) and the California School Employees Association and its Redlands Chapter 70 (CSEA) to the attached proposed decision of a PERB hearing officer. The proposed decision issues from a hearing on CSEA's motion to dismiss a petition for decertification filed by the Redlands Classified Employees Association, NEA (RCEA).

CSEA is the exclusive representative of a unit of classified employees of the District, which includes the District's teachers' aides. The Redlands Teachers Association, CTA/NEA (RTA), which intervened as a party of interest in this action, is the exclusive representative of the District's teachers. CSEA seeks dismissal of RCEA's petition on the grounds that (1) some Redlands teachers supervise aides, (2) RCEA, the petitioner, and RTA, the teachers' representative, are the "same organization," and (3) that RCEA is therefore prohibited from representing the classified unit by subsection 3545(b)(2) of the Educational Employment Relations Act (EERA).[1]

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[1]EERA is codified at Government Code 3540 et seq. All statutory references are to the Government Code unless otherwise specified.

Subsection 3545(b)(2) provides as follows:

The hearing officer found that those of the District's classroom teachers who direct the activities of teachers' aides are not, by virtue of that direction, "supervisors" within the meaning of subsections 3540.1(m)[2] and 3545(b)(2). He found further that RCEA and RTA are not the "same organization" for purposes of subsection 3545(b)(2), supra. Based on those findings the hearing officer concluded that nothing in EERA would prohibit RCEA from serving as the exclusive representative of the District's classified employees, including teachers' aides, should those employees select

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(b) In all cases:

. . . . . .

(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.

[2]Subsection 3540.1(m) provides as follows:

(m) "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.

RCEA for that purpose. His proposed order thus denies CSEA's motion to dismiss the petition for decertification and orders that the decertification election should proceed.

The Board has reviewed the proposed decision, the exceptions thereto, and the entire record in this case. We affirm the hearing officer's finding that classroom teachers of the Redlands Unified School District are not supervisors within the meaning of EERA, for the reasons set forth in the proposed decision.

Because we find that classroom teachers are not supervisors, it is unnecessary to reach the issue of whether RCEA and RTA are the same organization. Nothing in the EERA prohibits an employee organization from representing two discrete units of nonsupervisory employees within a district.

ORDER

Upon the foregoing facts, conclusions of law and the entire record in this case, it is hereby ORDERED that:

1. The Motion to Dismiss Decertification Petition, filed by the California School Employees Association and its Redlands Chapter 70 in case Nos. LA-D-88, LA-R-105, is hereby DENIED.

2. Upon a showing of the necessary proof of support, the regional director shall take immediate steps to schedule and direct an election in the unit which is the subject of the petition.

By: Irene Tovar, Member

Marty Morgenstern, Member

Virgil Jensen, Member

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of: REDLANDS UNIFIED SCHOOL DISTRICT, Employer, and REDLANDS CLASSIFIED EMPLOYEES ASSOCIATION, NEA, Employee Organization, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS REDLANDS CHAPTER 70, Employee Organization, and REDLANDS TEACHERS ASSOCIATION, CTA/NEA, Party of Interest.	Representation Case Nos. LA-R-105 LA-D-88 PROPOSED DECISION (4/29/82)

Appearances: Lawrence J. Gartner, Attorney (Littler, Mendelson, Fastiff and Tichy), for Redlands Unified School District; Maureen Whelan, Attorney, California School Employees Association and its Redlands Chapter 70; Robert M. Dohrmann, Attorney (Schwartz, Steinsapir, Dohrmann, Krepack, Sommers and Edelstein), for Redlands Classified Employees Association, NEA; A. Eugene Huguenin, Jr., Attorney, for Redlands Teachers Association, CTA/NEA and California Teachers Association.

Before Jeffrey Sloan, Hearing Officer.

STATEMENT OF THE CASE

Redlands Classified Employees Association/NEA ("RCEA") is the Petitioner in a decertification action seeking to oust the California School Employees Association and its Redlands

Chapter 70 ("CSEA") from its role as the incumbent exclusive representative of a unit of employees, including teachers' aides, employed by the Redlands Unified School District ("District").

The instant decision arises from a hearing held concerning a motion to dismiss filed by CSEA on October 19, 1981. CSEA's motion argued that RCEA should be disqualified from representing teachers aides because it is the "same employee organization" as Redlands Teachers Association, CTA/NEA,[1] the exclusive representative of teachers who are the purported "supervisors" of aides. (See Educational Employment Relations Act ("EERA") section 3545(b)(2); EERA section 3540.1(m).)[2] The only issues involved in the instant case are those raised by CSEA in its motion to dismiss:

1. Are RCEA and RTA the "same employee organization" under EERA section 3545(b)(2)?

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[1]At the hearing, the hearing officer granted a motion to intervene filed by RTA and California Teachers Association.

[2]The EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise indicated. Section 3545(b)(2) states:

> 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.

Section 3540.1(m) states:

> "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 indepedent judgment.

2. Are the certificated employees represented by RTA "supervisors" of aides under EERA section 3540.1(m)?

The parties agree that, absent these issues, a hearing would be unnecessary and an election in the unit would be appropriate.[3]

DISCUSSION

I. The "Same Employee Organization" Issue.

CSEA and the District argue that because of certain alleged organizational connections between RTA and RCEA, the two are functionally "the same" for purposes of section 3545(b)(2), ante at fn. 2.

a. The Common Affiliation with the National Education Association ("NEA").

First, the District and CSEA argue that RCEA and RTA's common affiliation with NEA permit NEA to dictate both of their courses of action.[4]

The Board considers case decisions of the National Labor Relations Board ("NLRB") to be persuasive if they involve interpretations of statutory provisions that are similar or identical to those in the EERA. Under section 9(c)(3) of the National Labor Relations Act ("NLRA"),[5]

> . . . no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership employees other than guards. (Emphasis added.)

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[3]At the hearing, the parties stipulated that (1) CSEA, RTA and RCEA are all "employee organizations" within the meaning of the Act; (2) the District is an "employer" within the meaning of the Act; and (3) the unit requested by RCEA is the existing bargaining unit for which the District granted voluntary recognition on May 4, 1976.

[4]While RCEA is not yet affiliated with NEA, affiliation papers are apparently forthcoming.

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

If the "direct or indirect" affiliation test were applicable here, the common NEA affiliation would result in RCEA's disqualification.

However, in Sacramento City Unified School District (3/25/80) PERB Decision No. 122 [4 PERC paragraph 11052], the Board held that the Legislature, having omitted from the EERA language paralleling NLRA section 9(c)(3), intended not to adopt the "affiliation test" of section 9(c)(3). Instead, the Board interpreted section 3545(b)(2) as follows:

> When two employee organizations are affiliated with the same International, this Board must carefully scrutinize their relationship in order to determine whether they are in fact separate and autonomous entities that act independently from each other and from their common parent. If either organization in fact dictates the other's course of action, they are the "same employee organization." Similarly if their parent organization controls both of them in such a manner and to such a degree as to render those locals mere alter egos of the International, unable to determine and control their own course of action, then the International is the true representative of both units, in violation of EERA.
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> Sacramento City, supra, at 14, 4 PERC at 237, emphasis added.

In Sacramento City, Service Employees International Union ("SEIU")--the parent organization of the two affiliates involved in that case--had the power to impose trusteeships on errant affiliates. The Board held, however, that such power was insufficient to render the two SEIU affiliates to be "the same" under section 3545(b)(2). Under the Board's approach, the mere potential for the parent organization to control sister locals in the same school district is insufficient to disqualify them from representing supervisory and non-supervisory units. After all, employee organizations can exercise their authority in a manner consistent with EERA even though a potential exists for abuse. Further, the Board observed, PERB certainly can reconsider the qualification of a bargaining agent affiliated with a parent organization if, in the future, the parent organization exercises power

inconsistent with the policies underlying section 3545(b)(2). Sacramento City, supra, at page 17; and see EERA section 3541.3(m). Also see Fairfield-Suisun Unified School District (3/25/80) PERB Decision No. 121 [4 PERC paragraph 11051]; Los Angeles Community College District (3/25/80) PERB Decision No. 123, vacated (12/16/81) PERB Decision No. 123a.

In the instant case, it is unclear whether NEA even is an "employee organization" under the EERA. See Link v. California Teachers Association & National Education Association (12/29/81) PERB Order No. Ad-123. Even if NEA is an "employee organization," however, NEA's guidelines permit it to exercise far less control over the operations of its affiliates than that which the Board found not to disqualify the union affiliates in Sacramento City. NEA's guidelines state aspirational goals for its affiliates to seek in negotiating and administering collective bargaining agreements. The NEA Handbook uses language such as "urges," "insists," "denounces," and "believes," in stating the positions of NEA, but it nowhere mandates its affiliates to take a particular course of action.

Further, unlike SEIU's authority to impose trusteeships and otherwise control the workings of its affiliates, NEA's powers of sanction are limited. NEA does not have the power to disband its affiliates for non-compliance with the guidelines.[6] While NEA can sever affiliates from the national organization, it has no authority to impose trusteeships, to disintegrate them or replace them with NEA agents. In light of Sacramento City, the limited authority vested in NEA by its Constitution and Bylaws thus counsels against a finding that RTA and RCEA are "the same employee organization" by virtue of their NEA affiliation.

The District and CSEA further argue that the NEA services available to both RTA and RCEA indicate a strong tie with the parent organization. NEA affiliates have access to NEA field staff for assistance in collective bargaining matters, and the same regional field staff might at some point assist both RTA and RCEA. NEA also offers services such as legal assistance through a special fund, legal opinions by its General Counsel,

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[6]Article VIII, section 5, of the NEA Constitution provides that affiliates that fail to comply with the standards and procedures of the Bylaws will be subject to "censure, suspension, or disaffiliation" (NEA Handbook, at p. 15).

an extensive computer bank for assorted information, group buying privileges and liability insurance. Such sharing of information and resources, however, is certainly not enough to render two otherwise autonomous entities "the same" under section 3545(b)(2). NEA's provision of support services to its affiliates does not establish that NEA necessarily controls them.[7]

b. Citrus Belt Uniserv ("CBU") and Ed Hogenson.

Second, CSEA and the District argue that RTA and RCEA are functionally the "same employee organization" because of their common relationship with CBU and its Executive Director Ed Hogenson.

The Relationship Between CBU and RTA. It is unclear whether CBU itself is an "employee organization" under the EERA. See EERA section 3540.1(d). CBU is a conglomerate of five employee organizations, including RTA, each of which represents teachers in five different school districts. Overseeing CBU's operation is its board of directors, which consists of one representative from each of the five member organizations. Primarily through Hogenson, CBU shares information with its members and gives them assistance in matters concerning members' collective negotiations relationships with school employers.

While CBU may influence to some degree the actions of its member organizations, the ultimate decisions on all matters concerning each union rests with its respective leadership and constituents. There is no evidence that any one of them lacks complete autonomy in controlling its own affairs. CBU has no power to sanction its members, who can abandon it at any time.

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[7]The District also contends that the policy resolutions passed at national NEA conventions are binding on all of its affiliates and constitute the type of conflict of interest between supervisory and non-supervisory employees which section 3545(b)(2) sought to avoid. The District argues that because delegates from both RTA and RCEA would be able to vote on these policy resolutions, the interests of one or the other would necessarily be compromised in violation of the Act. This contention has merit only if the national executive board is empowered to force an affiliate to comply with a policy resolution that is not in its best interests. As discussed above, however, the amount of NEA's coercive power is negligible.

Hogenson's specific responsibilities as CBU's Executive Director do not indicate that he, as CBU's agent, controls RTA or dictates its course of action. As an advisor to the CBU board of directors, Hogenson has only as much authority as that body delegates to him. Because the board of directors has no compelling authority over its members, it is all the more true that the board has not delegated such authority to Hogenson. Thus, neither RTA nor any of the other four members of CBU are the "same employee organization" as CBU under section 3545(b)(2).

The Relationship between CBU and RCEA. Because RTA is not the "same employee organization" as CBU, any connection between CBU and RCEA certainly would lend no support to the assertion that RTA and RCEA are the same. Even if RTA were the "same employee organization" as CBU, however, it is clear that RCEA is not.

RCEA itself is an "employee organization" as defined in the EERA. A CBU-RCEA contract for services explicitly states that RCEA is not a member of CBU and the independence of RCEA is in no way altered by the provisions of the contract. No evidence suggests that the contract for services is a sham arrangement concealing an intimate connection between RCEA and CBU.

Hogenson's role vis-a-vis RCEA also should be considered. As CBU's Executive Director, Hogenson gave RCEA assistance in its organizational efforts free of charge. He helped draft the Constitution, Bylaws and the petition to decertify CSEA, suggested the affiliation with NEA, helped with campaign materials, and drafted the contract for services with CBU. At least some RCEA members consider him to be their "Executive Director." Further, if RCEA is certified as the exclusive representative, Hogenson will act as a consultant to RCEA under a contract for services with CBU.

The RCEA-CBU contract, however, restricts Hogenson to functions assigned to him by the RCEA president. RCEA has its own operational rules and its own elected, policy-making body. Nothing in the relationship between RCEA and CBU or Hogenson suggests that Hogenson, as CBU's agent, controls or dictates RCEA's course of action. Further, any future change in these circumstances can, if necessary, be remedied by the Board. Sacramento City, supra.

In summary, the facts do not support the District and CSEA's assertion that RCEA and RTA depend on CBU and Hogenson's expertise and judgment to such an extent that their autonomy may be compromised. Both RCEA and CBU appear to be independent

and autonomous, and their respective leadership bodies--not Hogenson--make the critical decisions about organizational policies and strategic courses of action.

Further, the practical effect of this District/CSEA assertion cannot be ignored in evaluating its sensibility. Following the argument to its logical conclusion, virtually any effective representative of diverse labor organizations would impermissibly compromise their freedom of action. This would seriously and unnecessarily impinge upon the ability of patently autonomous employee organizations to retain effective advocates and advisors.

c. Funding.

Third, CSEA argues that RTA and RCEA members directly fund NEA, CBU and Hogenson, and are therefore the "same employee organization." CSEA cites as its authority Fairfield-Suisun Unified School District, supra, in which the Board found that statewide CSEA and a local affiliate seeking to represent District supervisors were the "same employee organization" as statewide CSEA and another local affiliate under EERA section 3545(b)(2) which represented non-supervisory District employees.

In Fairfield-Suisun, CSEA membership dues largely bypassed the locals and directly funded the statewide organization, thereby indicating the plenary authority of statewide CSEA over the locals. Further, in Fairfield-Suisun, the fact that the statewide CSEA was a joint petitioner with the two locals alleged to be "the same" was of critical significance. For, statewide CSEA had direct control over the use of funds from membership dues, and could decide whether or not to finance the filing and prosecution of a grievance by a non-supervisory employee in one negotiating unit against a supervisory employee in the other. This is a situation clearly sought to be avoided under section 3545(b)(2), which is not involved in the instant case.

Here, the majority of dues paid by CBU's member organizations goes to NEA and its state affiliate, CTA. NEA in turn grants CBU $11,300 per year, and CTA contributes approximately $37 per year per certificated employee of CBU's member organizations. NEA does not place any restrictions on the use of funds; indeed, the record shows that it has never requested an accounting from CBU.

Further, even if NEA did control CBU's pursestrings, the record does not establish that RCEA's spending authority has been similarly controlled. Under its dues structure, RCEA is to pay

CBU directly for Hogenson's services, and additionally is to pay a membership fee to NEA. RCEA membership dues are to be divided between NEA and CBU for the services of Hogenson. NEA would not be disbursing funds back to RCEA at all. An impermissible funding connection between NEA, CBU and RCEA cannot be made out on the record in this case.

d. Potential Conflicts of Interest.

Fourth, the District and CSEA allege potential conflicts of interest between RTA and RCEA through Hogenson. CSEA argues that a conflict could arise where an aide from RCEA filed a grievance against a teacher "supervisor" from RTA or any other member of CBU. Hogenson, it is argued, would be put in the position of representing the adverse interests of both parties to the complaint. This argument, however, rests on the speculative and suspect premise that Hogenson, a labor relations specialist and attorney licensed to practice law in California, would disregard his fiduciary duties by failing to disqualify himself in the event of a cognizable conflict between RTA and RCEA. (See Business & Professions Code section 6068, and ABA Code of Professional Responsibility, Disciplinary Rule 5-105.) The argument also ignores the Board's authority to reevaluate the qualifications of bargaining agents if circumstances change. Sacramento City, supra.

In conclusion, the record does not support the contention that RTA and RCEA are "the same employee organization." Thus, even if RTA-represented teachers "supervise" aides, RCEA is not disqualified from representing them.

II. The Supervisory Issue.

Under the EERA, the supervisory indicia of section 3540.1(m) (ante, fn. 2) are to be read in the disjunctive. Thus, the authority to make or effectively to recommend any one of the enumerated supervisory powers, in the exercise of "independent judgment" and "in the interest of the employer," is sufficient to establish supervisory status. Sweetwater Unified School District (11/23/76) EERB Decision No. 4 [1 PERC 11].[8]

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[8]Before January 1, 1978, PERB was called the "Educational Employment Relations Board."

CSEA and the District assert that because teachers and librarians exercise some of the enumerated powers and "assign" and "direct" aides' work, they should be considered aides' "supervisors" under the EERA. Application of a line of analogous NLRB cases,[9] however, mandates rejection of this assertion. The NLRB has long recognized a distinction between personnel who supervise others essentially as an agent of the employer, and those who direct the tasks of others incidentally to the performance of their own professional duties.[10]

In the health care industry, the NLRB has held that nurses who were alleged to "supervise" staff nurses and assistants were not supervisors under the NLRA because they spent a majority of

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[9]CSEA argues that NLRA precedent is not germane to the determination of an employee's supervisory status under EERA because the effect of such determination differs greatly between the two bodies of law. The NLRA effectively excludes supervisors from representation, while EERA allows representation by a different unit from that of the employees they supervise. While this is true, it does not follow that NLRB precedent should be flatly discarded. The Board has held that regardless of the different effects of the NLRA exclusion and EERA sections 3545(b)(2) and 3540.1(m), the underlying intent of both statutes is essentially the same:

> . . . to protect management's interest in the undiluted loyalty of those employees to whom it delegates supervisory responsibilities and to guard against potential conflicts between supervisors and the employees they supervise.

Sacramento City, supra, at p. 13.

[10]CSEA incorrectly states that the validity of this distinction has been questioned by the Fourth Circuit in Monongahela Power Co. v. NLRB (4th Cir. 1981) 657 F.2d 608, 108 LRRM 2352, denying enforcement of 252 NLRB 715, 105 LRRM 1351. 252 NLRB No. 102, 108 LRRM 2352. The NLRB's decision that control room foremen (CRF) of a power-generating facility were supervisors under the Act was based on the Court's reexamination of the nature of the CRF's actual duties, and not on the validity of the distinction between professional and supervisory employees.

their time in direct patient care. Their direction over staff nurses and assistants, the NLRB observed, was incidental to their professional responsibility to provide proper health care in their designated areas of responsibility. Mt. Airy Psychiatric Center (1981) 253 NLRB No. 139 [106 LRRM 1071]; Trustees of Noble Hospital (1975) 218 NLRB 1441 [89 LRRM 1806]. In both Mt. Airy and Noble, the nurses in question had input into the decisions to hire, fire, discipline or promote staff nurses and assistants. This input was held not to be "supervisory" under the NLRA, because rather than representing the interests of the employer, the nurses in question merely were ensuring, consistent with their professional responsibility to provide adequate health care, that their sections were properly staffed with competent and qualified personnel. Mt. Airy, 253 NLRB at p. 1008; Noble Hospital, 218 NLRB at p. 1443.

The NLRB has applied the same rationale to lawyers acting as "unit heads" in legal services offices. These lawyers directed the work of other staff attorneys and paraprofessionals, but the Board refused to consider them supervisors:

> . . . to the extent that unit heads train, assign, or direct work of legal assistants and paralegals for whom they are professionally responsible, we do not find the exercise of such authority to confer supervisory status within the meaning of Section 2(11) of the Act, but rather to be an incident of their professional responsibilities as attorneys and thereby as officers of the court."
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> Neighborhood Legal Services (1978) 236 NLRB 1269, 1273, 98 LRRM 1414, (footnote omitted).

The NLRB also has applied this distinction in the educational context. In Redlands Christian Migrant Association (1980) 250 NLRB No. 27 [104 LRRM 1546], the Board concluded that a head teacher in charge of the training of several other teachers was not a "supervisor" under the Act. Citing the head teacher's lack of authority in matters such as hiring and disciplinary action, the Board determined that his power to transfer and assign teachers was in exercise of his professional judgment as to the most efficient distribution of his teachers, and not an indication that the head teachers acted in the interests of the employer.

In slightly different contexts, PERB itself has applied an analysis akin to the one discussed above. See SEERA Unit Determination (12/31/80) PERB Decision No. 110-c-S (ALRB regional field examiners); San Diego Community College District (9/16/77) EERB Decision No. 28 (accountants); New Haven Unified School District (3/22/77) EERB Decision No. 14 (high school department heads).

Teachers in the instant case "supervise" their aides incidentally to their performance of professional duties rather than in promotion of the employer's interests. Extensive Education Code provisions specify teachers' professional duties toward students, and establish strict standards for professional conduct and competence (see, generally, Education Code section 44200 et seq.; also see Education Code sections 44421, 44630 et seq. and 44938). Other Education Code sections reveal that the legislative intent in providing for instructional and teacher aides was to allow teachers more freedom from other duties in order to maximize the use of their professional knowledge and skills in actual teaching. (See Education Code sections 45340 et seq. and 45360 et seq.) Given this context, it is clear that the "independent judgment" and "supervisory" functions exercised by teachers in assigning tasks to their aides is consistent with their professional and statutory responsibility for the instruction and direction of all pupils in their classrooms.

Similarly, the limited input that some District teachers may have in the hiring, assignment, and transfer of aides allows teachers some voice in selecting the most competent and compatible aide available.[11] These quasi-supervisory powers

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[11]The contention that District teachers are "supervisors" by virtue of this input is not supported by the evidence. Ernest Owen, principal of Mission Elementary School, testified that teachers are asked to sit in on approximately 50 percent of all hiring interview panels. He also stated that while he might consider a teacher's recommendation, the final decision would be made on the basis of his own judgment. The initial assignment of aides is the responsibility of the principal as administrator of the school's personnel, and while teachers' preferences are no doubt considered, the final decision is still with the principal. As for the transfer of aides, the record shows that Owen once transferred an aide because a teacher was dissatisfied with the aide's performance. However, there is no evidence that the expression of dissatisfaction was either in the interest of the employer, or constituted an effective recommendation under section 3540.1(m). Further, another teacher in the same District was told by a vice

are aimed at the professional goal of improving the quality of education and are not "in the interest of the employer" within the meaning of section 3540.1(m).[12] For example, teachers and librarians do not perform such duties as checking time sheets, approving vacations and leaves of absence, authorizing overtime pay, or adjusting grievances on behalf of the employer. The sole authority for accomplishing these functions lies with the school's principal or the District's personnel office. The authority in "assigning" tasks to an aide, on the other hand, stems from the mission of both teacher and aide to improve the quality of education.

Even if teachers "supervise" aides in the interest of the employer, their exercise of true supervisory authority is so infrequent that it does not justify a finding of "supervisory" status. Adelphi University (1972) 195 NLRB 639, 79 LRRM 1545. In Adelphi, the NLRB adopted the rule of Westinghouse Electric Corporation (1967) 163 NLRB No. 96, [64 LRRM 1440], that individuals who spent less than 50 percent of their working time supervising non-unit employees, and more than 50 percent in the performance of regular professional duties, were not "supervisors" under the NLRA. Such a sporadic exercise of supervisory authority, the NLRB reasoned, did not align the employee so much with management as to create the conflict of interest sought to be avoided by section 2(11) of the NLRA.[13]

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principal that nothing could be done about an unqualified aide unless the principal's evaluation indicated problems with the aide's performance. These examples demonstrate that the principal has final authority in the assignment and transfer of aides as well as in hiring, and may as easily disregard as consider the recommendations of teachers. PERB has held that such minimal participation in these functions is insufficient to confer supervisory status under section 3540.1(m). San Rafael City Schools (10/3/77) EERB Decision No. 32, [1 PERC paragraph 433], Foothill-DeAnza Community College District (3/1/77) EERB Decision No. 10, [1 PERC paragraph 64].

[12]The same argument applies to librarians. Their direction of assistants is incidental to their professional duties in maintaining library facilities.

[13]In the educational context, the NLRB has applied the test of Adelphi to professional librarians in New York University (1973) 204 NLRB 4 [83 LRRM 1549], to determine that staff librarians are not supervisors under the Act.

The reasoning of this line of cases applies equally to the facts in the instant case. The amount of time teachers spend in directing their aides' work is necessarily minimal, since the intent of hiring aides is to allow more time to devote to "pure" teaching. The record indicates that meetings between the teachers and aides are short, and do not always occur on a daily basis. Furthermore, teachers who have aides in their classrooms still perform essentially the same teaching duties as teachers without aides. For these reasons, even assuming that teachers sporatically perform quasi-"supervisory" functions, this fact alone would be insufficient to confer supervisory status upon them.

Finally, the validity of the District and CSEA's argument, as a matter of statutory construction, should be considered. EERA section 3545(b)(1) requires the Board to place in one negotiating unit "all classroom teachers employed by the public school employer, except . . . supervisory employees." Section 3545(b)(2) states that a negotiating unit of supervisory employees "shall not be appropriate unless it includes all supervisory employees" employed by the District. Following the District and CSEA's argument to its conclusion, however, teachers who "supervised" aides could not be included in the unit of "all classroom teachers," despite the clear community of interest that all classroom teachers share. Further, only teachers who "supervised" aides could be represented in a supervisory unit which would include, in all probability, the school principals who clearly supervise the teachers working under them. Such inclusion of classroom teachers in negotiating units with their supervisors would maximize conflict between supervisors and their subordinates, sanction supervisory domination of rank-and-file activities, and might well dilute the loyalty of districts' true supervisory cadre. See Sacramento City, supra. In drafting the EERA, the Legislature could not have intended these bizarre results.[14]

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[14]EERA section 3540 states in part:

> 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

In summary, District teachers have a statutory duty to utilize aides in a manner beneficial to the educational process. This involves the use of independent, professional judgment to assess the aide's relative strengths and talents when "assigning" tasks. The limited input of teachers in hiring, assigning or transferring aides is consistent with their professional duty to ensure that the aide is able to perform the job and is compatible with the students and teacher. Thus, the allegedly "supervisory" authority of a teacher over an aide is actually guidance " . . . derived from his/her greater experience, and thus knowledge of the agency's mission and task." SEERA Unit Determination, supra, at page 22. It does not arise to the "supervisory" dimension contemplated in sections 3541.3(m) or 3545(b)(2).

PROPOSED ORDER

Based on the foregoing and the entire record in this matter, it is the proposed order that:

1. The Redlands Classified Employees Association, NEA and the Redlands Teachers Association, CTA/NEA are not the "same employee organization" for purposes of Government Code section 3545(b)(2).

2. The certificated personnel of the Redlands Unified School District who are in the negotiating unit represented by Redlands Teachers Association, CTA/NEA do not "supervise" classified aides for purposes of Government Code section 3540.1(m).

3. The Regional Director shall take immediate steps to schedule and direct an election in the unit which is the subject of the petition.

Pursuant to California Administrative Code, title 8, section 32305, this proposed decision and order will become final on May 19, 1982 unless a party files a timely statement of exceptions. See California Administrative Code, title 8, section 32300. Such statement of exceptions and supporting

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employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy.

brief must be actually received by the Executive Assistant to the Board at the Headquarters Office in Sacramento before the close of business (5:00 p.m.) on May 19, 1982 in order to be timely filed. (See Cal. Admin. Code, tit. 8, sec. 32135.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself.

Dated: April 29, 1982

JANET CARAWAY
Director of Representation

by: _____
JEFFREY SLOAN
Hearing Officer