STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED PUBLIC EMPLOYEES, LOCAL 790, SEIU, AFL-CIO,	)	
Charging Party,	)	Case No. SF-CE-1114
v.	)	Remand from Court PERB Decision Nos. 688 688a
SAN FRANCISCO COMMUNITY COLLEGE DISTRICT,	)	PERB Decision No. 688b
Respondent.	)	December 20, 1989

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for United Public Employees, Local 790, SEIU, AFL-CIO; Liebert, Cassidy & Frierson by Jeffrey Sloan and Nicholas T. Calderon, Attorneys, for the San Francisco Community College District.

Before Hesse, Chairperson, Shank and Camilli, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on remand from the California Court of Appeal, First Appellate District, Division Five.[1] On June 27, 1988, the Board issued San Francisco Community College District (1988) PERB Decision No. 688, wherein the Board reversed its decision in San Francisco Community College District (1986) PERB Order No. Ad-153 that the San Francisco Community College District (District) was the joint employer of the classified

[1]In Case No. SF-CE-1114, United Public Employees, Local 790, SEIU, AFL-CIO, the exclusive representative for classified employees, alleged that the San Francisco Community College District unilaterally adopted a policy barring classified personnel who worked in the District from also serving as certificated employees, in violation of section 3543.5(a), (b), (c) and (d) of the Educational Employment Relations Act.

employees working within the District. In San Francisco Community College District, supra, PERB Decision No. 688, the Board held that the District and the City and County of San Francisco were not joint employers of those classified employees working within the District. Rather, the sole employer was the City and County of San Francisco.[2] Accordingly, the Board dismissed the unfair practice charge and complaint. In San Francisco Community College District (1988) PERB Decision No. 688a, the Board denied the request for reconsideration filed by United Public Employees, Local 790, SEIU, AFL-CIO (Association). Thereafter, the Association filed a writ of review with the California Court of Appeal, First Appellate District, Division Five.

On September 6, 1989, the Court of Appeal in United Public Employees, Local 790, SEIU, AFL-CIO v. Public Employment Relations Board (1989) 213 Cal.App.3d 1119 held that the District

[2]Originally, this case was consolidated for hearing with Case No. SF-CE-1146 involving the certificated employees' exclusive representative. After the hearing, the administrative law judge issued two separate proposed decisions. Both decisions were appealed to the Board. In San Francisco Community College District, supra, PERB Decision No. 688 and San Francisco Community College District (1988) PERB Decision No. 703, the Board dismissed the unfair practice charge and complaint based on the finding that the District and the City and County of San Francisco were not joint employers. While charging party filed a request for reconsideration of PERB Decision No. 703, neither party appealed the decision. Consequently, PERB Decision Nos. 703 and 703a (reconsideration) are not vacated. However, the Board notes that the Court of Appeal, in its decision in United Public Employees Local 790, SEIU, AFL-CIO v. Public Employment Relations Board (1989) 213 Cal.App.3d 1119, held that the District and City and County of San Francisco are joint employers.

and the City and County of San Francisco are joint employers of the classified employees, and concluded that the Association should continue to bargain with the District over those matters in which the District exerts authority and control, and with the City and County of San Francisco over the areas within its purview. Accordingly, the court annulled Decision Nos. 688 and 688a and remanded the case to the Board for further proceedings.[3] As the court's decision is binding on the Board, PERB Decision Nos. 688 and 688a are vacated. Consistent with the court's decision that the District and the City and County of San Francisco are joint employers, the Board rejects the District's exception that PERB lacks jurisdiction because the District is not a public school employer of classified employees under the Educational Employment Relations Act.

In the proposed decision in Case No. SF-CE-1114 (see attached), the administrative law judge (ALJ) found that the subject matter (i.e., the new policy regarding part-time certificated staff) related solely to certificated employees and, thus, was beyond the scope of representation for the exclusive representative of the classified employees. On this basis, the ALJ dismissed the unfair practice charge and complaint. As the Board agrees with the ALJ that subjects relating to employees in

[3]On September 21, 1989, the Board filed a petition for rehearing with the Court of Appeal, First Appellate District, Division Five. On October 4, 1989, the court denied the petition for rehearing. On October 13, 1989, the Board filed a writ of review with the California Supreme Court. On November 21, 1989, the Supreme Court summarily denied the Board's writ of review.

their capacity as certificated employees are beyond the Association's scope of representation, the Board affirms the ALJ's dismissal of the unfair practice charge and complaint in Case No. SF-CE-1114.

ORDER

IT IS HEREBY ORDERED that PERB Decision Nos. 688 and 688a are VACATED, and the unfair practice charge and complaint in Case No. SF-CE-1114 are DISMISSED.

Chairperson Hesse and Member Camilli joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED PUBLIC EMPLOYEES, LOCAL 790, SEIU, AFL-CIO, Charging Party, v. SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, Respondent.	Unfair Practice Case No. SF-CE-1114 PROPOSED DECISION (4/16/87)

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg for United Public Employees, Local 790, SEIU, AFL-CIO; Ronald A. Glick for the San Francisco Community College District.

Before: Barry Winograd, Administrative Law Judge.

PROCEDURAL HISTORY

On July 21, 1986, the United Public Employees, Local 790, SEIU, AFL-CIO (Local 790 or SEIU), filed this charge against the San Francisco Community College (District). SEIU alleged that the District had unilaterally, without negotiations, adopted a policy barring classified personnel who worked in the District from also serving as certificated employees. This conduct, in SEIU's view, violated sections 3543.5(a), (b), (c) and (d) of the Educational Employment Relations Act (EERA or Act).[1]

[1]The EERA is codified at Government Code section 3540, et seq., and is administered by the Public Employment Relations

The PERB General Counsel issued a complaint on October 20, 1986. This complaint alleged that the District had, without notice and negotiations, altered its previous policy of hiring certificated staff who also served as classified employees.[2]

A settlement conference on November 24, 1986, failed to resolve the dispute. The District's answer was filed December 17, 1986, admitting certain facts, denying the alleged unlawful conduct and advancing affirmative defenses.

Board (PERB or Board). Unless otherwise indicated, all statutory references in this decision are to the Government Code. Section 3543.5 provides in relevant part that it shall be unlawful for a public school employer to:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.
>
> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

[2]The complaint stated that sections 3543.5(a), (b) and (c) were violated, but was silent about the charging party's claim regarding section 3543.5(d). That provision was not cited again by the charging party, either at the hearing or in its brief, and will not be considered in this decision.

Admissions, denials and defenses will be considered below where relevant.

The hearing was consolidated with another case raising similar issues of law and fact, Case No. SF-CE-1146. That unfair practice charge was filed by the San Francisco Community College Federation of Teachers, AFT 2121 (Federation), the exclusive representative of certificated employees in the District. Separate decisions in the two cases are being issued on this date.

Post-hearing briefs were filed by the parties and the matter was submitted on March 16, 1987.

FINDINGS OF FACT

Local 790 is the exclusive representative of the District's classified employees, voluntarily recognized as such by the District in February and March 1986. Following recognition, various bargaining proposals were made by SEIU, including one or more bearing upon the subject matter of this dispute; that is, classified employees also working as part-time certificated staff. The details of such proposals are not at issue in this case.

For a period of time preceding recognition of the union, and continuing to the present, the District has claimed that it is not a public school employer of classified employees under the EERA because the City and County of San Francisco has the legal authority, by statute and charter, over the working conditions of that portion of the District workforce. The City

and County, as an employer, is under the labor relations jurisdiction of the Meyers-Milias-Brown Act (MMBA) (sec. 3500, et seq.).

This objection by the District was considered and rejected in a decision by the Board itself: San Francisco Community College District (1986) PERB Order No. Ad-153.[3] That decision, however, was based on an interlocutory appeal and, after the District's unsuccessful attempt to secure extraordinary appellate relief, the case was remanded to a hearing officer. Ultimately, the case was dismissed without a hearing on the merits. In this context, the PERB decision on the District's employer status under the EERA was not a final, preclusive adjudication, because the legal issue was not subject to appellate review (Chern v. Bank of America (1976) 15 Cal. 3d 866, 871-72), but it does serve as Board precedent, unless and until it is subsequently modified.

The facts relevant to this case, apart from the jurisdictional issue, are essentially undisputed.

For years, the District has hired part-time certificated staff, mostly for instructional purposes, on a semester-to-semester schedule. These employees are selected on the basis of individual qualifications for specific courses or

[3]Administrative notice has been taken of the PERB's official records involving PERB Order No. Ad-153 and the underlying proceeding, Case No. SF-CE-884. (See Antelope Valley Community College District (1979) PERB Dec. No. 97 at p. 23.)

projects and are paid an hourly wage. Some of the District's part-time certificated employees also work in the District as full-time classified employees.[4]

Certificated employees of the District are represented by the Federation and are the subject of a bargaining agreement between that union and the District. Among other provisions applicable to part-time staff, the Federation contract contains a salary schedule, a termination appeal procedure, and limited preferential rehiring rights. The certificated agreement also sets forth various management rights regarding employer control over the selection and assignment of the workforce.

Early in June 1986, the District's management was analyzing the impact of new regulations and guidelines applying the federal Fair Labor Standards Act (FLSA) to the salaries paid by state and local employers.[5] In conjunction with this analysis, the District's personnel manager contacted the Department of Labor and prepared a report and

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[4]The District's brief submitted with its answer in the consolidated Federation case asserted that about 10 to 15 of 1,000 part-time certificated employees also work as classified personnel. There was no specific testimony or documentary evidence on this point, although references during the hearing suggest that the number of dual capacity employees was small.

[5]In Garcia v. San Antonio Metropolitan Transit Authority (1985) 105 S.Ct. 1005, the Supreme Court upheld application of the minimum wage and hour provisions of the FLSA (29 U.S.C, sec. 201, et seq.) to local transit workers. Thereafter, the Department of Labor promulgated regulatory standards.

cost projection on whether and how much the District would have to pay under the FLSA as overtime compensation to part-time certificated staff who also were classified employees.

The personnel manager's analysis and calculations based on the information conveyed was that the District would be required to pay overtime for the dual capacity employees in each capacity they served, even though certificated staff, as professional employees, are otherwise exempt from the FLSA. If, as the District previously had argued, classified and certificated employees worked for different employers, there would be no need under the FLSA to combine the working hours of different classifications for overtime calculations. In this situation, however, since the primary work of the part-time certificated staff was in a covered capacity for the same employer (that is, as classified personnel), the professional exemption would not apply. In addition, as the District understood the law, the higher base salary payable to certificated staff also inflated the classified pay scale for the purpose of overtime computations.

Based on this review and related conversations, the District's chancellor on June 24, 1986, issued a new policy statement. Initially, noting that the FLSA became applicable on April 15, 1986, he observed that there was "much confusion regarding specific provisions of the Act, and the application of those provisions" to certificated staff. He stated that a new policy was being adopted after having consulted with

District officials and administrators.

This new policy had three parts: (1) classified employees without certificated spring 1986 assignments would not be granted any such assignments in the future; (2) classified staff who had worked in certificated positions in spring 1986 could be given such assignments in fall 1986 only, with none thereafter; and, (3) certificated assignments in fall 1986 could not exceed the number of hours assigned in spring 1986. Full implementation of the new part-time certificated staff policy was delayed to spring 1987 because, the chancellor said, "staffing difficulties" were anticipated.

The chancellor's June 24, 1986, policy statement was adopted without advance notice or negotiations with SEIU. There was no evidence offered by the District, in the form of an explicit federal directive or rule, requiring the District to adopt the specific policy set forth by the chancellor.[6]

Once informed of the chancellor's new policy, Local 790 protested the decision and requested restoration of the status quo pending the outcome of negotiations. The District has conceded, in its pleadings and in the testimony of its personnel manager, that negotiations with SEIU did not take place and that the new policy has gone into effect. As a

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[6]As testimony revealed, other full-time San Francisco civil service employees represented by Local 790 may continue to serve as part-time certificated staff in the District; the policy applies only to classified employees working in the District.

result of the new policy, individuals who would have received certificated assignments in spring 1987 have not.

CONCLUSIONS OF LAW

SEIU contends in its brief that the District's new policy "effects the livelihood, income, benefits, hours and working conditions of classified employees," and that extra work hours for classified employees are a matter for negotiations, not unilateral action.

The District advances several defenses. These include the jurisdictional objection previously mentioned, as well as various management rights claims. The District also argues, as a primary defense, that subjects related to certificated staff are beyond the scope of representation for the classified employee union. This objection is well-taken for the reasons stated below. Given this conclusion sustaining the District's scope objection, in the interest of economy there is no need to rule upon the other defenses put forward by the employer.[7]

Section 3543.2 of the EERA states that the scope of representation" . . . shall be limited to matters relating to

[7]The jurisdictional defense apparently raises issues involving fundamental subject matter jurisdiction, as well as the exercise of the PERB's discretionary jurisdiction. The core question of subject matter jurisdiction has been answered in the aforementioned PERB Order No. Ad-153, although the application of that jurisdictional precedent depends on the exercise of the Board's discretion to draw boundary lines dividing the PERB's jurisdiction under the EERA from matters which fall under the MMBA. (Id., at pp. 16, 19.) As stated above, the present dispute can be resolved without engaging in such a complex line-drawing exercise.

wages, hours of employment, and other terms and conditions of employment." Several Board decisions support the general proposition that extra work assignments and overtime are negotiable subjects because of the relationship to wages and hours.[8] Nonetheless, despite the general negotiability of overtime assignments, the bargaining rights of exclusive representatives are strictly defined by section 3543.1(a) of the Act:

> . . . once an employee organization is recognized or certified as the exclusive representative of an appropriate unit . . . only that employee organization may represent that unit in their employment relations with the public school employer. (Emphasis added.)

It is this provision, and Board decisions construing the rights of exclusive representatives, that require dismissal of the instant complaint because negotiations by SEIU and the District over certificated employment issues would subvert the

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[8]See, e.g., Lincoln Unified School District (1984) PERB Decision No. 465; State of California (Department of Transportation) (1983) PERB Decision No. 361-S; Oakland Unified School District (1983) PERB Decision No. 367. Wages and hours also may be negotiable in cases involving the transfer of work from one bargaining unit to another. (See, e.g., Solano County Community College District (1982) PERB Dec. No. 219; Rialto Unified School District (1982) PERB Dec. No. 209.) This approach, however, will not justify negotiations in this case because the part-time certificated work has never been considered the work of the classified unit.

principle of exclusivity.

In some of the earliest cases decided by the PERB, it has limited the right of unions to negotiate over working conditions for employees represented by another union. In Hanford Joint Union High School District (1978) PERB Decision No. 58, for example, the Board dismissed a charge filed by a non-incumbent organization alleging an employer's unlawful unilateral adoption of the school calendar. The conduct at issue occurred prior to the time a competing organization became the exclusive representative. The charge, however, was filed after the recognition. In light of the intervening recognition, the Board reasoned that allowing one union to intercede in the affairs of an exclusive representative would create possibilities of mischief and interfere with the exercise of negotiating judgments.[10]

In other Board decisions determining the negotiability of

[9]Other provisions of the EERA also are relevant: sections 3540.1(b), (e), (h) and (1) define "certified organization," "exclusive representative," "meeting and negotiating," and "recognized organization," respectively. Section 3543.3 states that the employer's duty to negotiate is "with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation." Bargaining violations of section 3543.5(c) only arise for a refusal or failure to negotiate "with an exclusive representative."

[10]Id. at p. 8. Similar restraints on the involvement of nonexclusive representatives were approved in Mount Diablo Unified School District (1978) PERB Decision No. 68, and Santa Ana Unified School District (1978) PERB Decision No. 73.

contract proposals, the PERB has confined exclusive representation to employees in the designated unit. Thus, in Healdsburg Union High School District (1984) PERB Decision No. 375, certain hiring proposals were deemed non-negotiable because they concerned short-term and substitute employees who were not part of the bargaining unit.[11]

Decisions of the PERB on related bargaining issues also support the principle of exclusivity, particularly in the context of section 3545(b)(3) of the EERA, a provision erecting a statutory wall separating classified and certificated bargaining. That section states: "Classified employees and certificated employees shall not be included in the same negotiating unit."

In Gilroy Unified School District (1984) PERB Decision No. 471, the PERB held that release time was permissible for coordinated bargaining by classified and certificated units represented by the same union, but that such release time would not be proper if the bargaining was merged, thereby destroying the independent identity of the units. Subsequently, in Banning Unified School District (1985) PERB Decision No. 536, petition for review granted sub nom. Banning Unified School District v. Public Employment Relations Board.

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[11]Id. at pp. 38-39, 41-42. Negotiations over aspects of non-unit student employment were permissible, but only to the extent the proposal concerned the preservation of unit work. (Id. at pp. 42-43.)

No. LA-32300 (Jan. 29, 1987), the Board concluded that a salary parity clause negotiated with a classified unit did not constitute a per se intrusion on the bargaining rights of the certificated representative, although a violation might be found in later case-by-case analyses if independent negotiations actually were impeded.

Unions who are not exclusive representatives also receive a measure of protection in the event non-unit employees complain that the union has not protected the employee rights. For example, in Los Angeles Unified School District/United Teachers of Los Angeles (Wadsworth) (1986) PERB Decision No. 599, a non-unit substitute teacher alleged that the union deprived her of fair representation by failing to pursue a contractual grievance on her behalf. The Board concluded, however, that the union's duty did not extend to protecting employees outside the bargaining unit.

The PERB's multifaceted treatment of the exclusivity principle and an employer's duty to negotiate is consistent with traditional labor relations doctrine. As one commentator has observed:

> [B]argaining on a pluralistic basis, with each individual or group speaking for itself, generates a severe risk of employer domination or interference, of divisiveness and inequality of working conditions within the plant, and of economic strife—all of which undermine the fundamental congressional objective of stablizing industrial relations and minimizing disruptions in interstate commerce.[12]

[12]Gorman, Basic Text on Labor Law, at p. 379.

A restrictive view of representational rights also is consistent with the leading federal labor relations precedent regarding an employer's duty to bargain over the interests of non-unit individuals. In Allied Chemical & Alkali Workers v. P.P.G. Co. (1971) 404 U.S. 157, the Supreme Court held that retirement benefits for retired employees were not negotiable. The holding was based on two theories: first, that the retirees were not employees within the statutory definition; and, second, relevant here, that the retirees were not included in the bargaining unit.[13] This conclusion was not altered by reference to the industrial practice of negotiations by some employers and unions over retirement benefits: "Common practice cannot change the law and make into bargaining unit 'employees' those who are not."[14]

The reasoning described in the cases and comments above compels dismissal of Local 790's bargaining complaint. In this situation, SEIU seeks to negotiate terms and conditions of certificated, not classified employees. If, for example, the District negotiated a minimum hour or wage agreement with SEIU in order to preserve the extra assignments of previous years, the Federation, as the exclusive certificated representative, could rightfully object to interference with its lawful domain.

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[13] Id. at pp. 171-175.

[14] Id. at p. 176.

Conversely, if the Federation, in response to the District's new policy and the demands of the FLSA, negotiated a limit on the use of part-time certificated staff, with a resulting increase in the hours and wages of full-time employees, the classified unit bargaining agent would be powerless to demand negotiations over a different arrangement that might preserve the extra assignments that would now be reduced.

The prospect for conflicting union interests was heightened by the facts of this case which indicate the District's confusion over FLSA requirements, as well as a delay in full implementation of the new policy because of concern about staffing difficulties. While SEIU and the Federation might agree on how these issues should be resolved, the two unions might also be in fundamental disagreement and susceptible to employer interference. Briefly stated, bargaining over certificated employee status is for the Federation and the District, without the involvement of another, possibly competing union.

Further, there has been no showing in this case that the District's new policy had any negotiable impact on the wages, hours or working conditions of the classified employees JLS classifieds. Classified employees were not deprived of promotions within the unit or reassignment to other unit work. Nor were classified employees required to work more, or to be paid less on the classified salary schedule. While there might

have been an inflationary effect on the classified pay scale when an employee also served in a certificated capacity, assuming the District's FLSA interpretation was correct, the impact on classified employees was indirect and derivative. Thus, as a practical matter, the District's new policy eliminated a differential arising out of and attributable to certificated staff work, leaving intact the classified pay scale for classified work. In this context, Local 790's bargaining demand over the new policy, conscientious though it may have been for several members of its unit, exceeded the statutory bounds of the union's authority.[15]

A limitation on Local 790's negotiating rights is supported not only by the hypothetical examples of bargaining unit conflicts that could arise if the Federation and SEIU sought to negotiate over the same part-time positions, but by the realistic potential for such conflicts in the everyday world of California's public sector labor relations. The stage for possible union conflicts (and employer interference) across

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[15]This is not to say that SEIU would be precluded from PERB relief regarding negotiations or policies that did have an impact on its representational interests. For example, a proper charge presumably would be stated if the Federation and the District negotiated a contract clause that completely eliminated SEIU's access or communication rights under section 3543.1(b). These rights are not dependent on exclusivity and, it may be assumed, they cannot be abrogated by third parties in negotiations. (Cf. Richmond Unified School District (1979) PERB Dec. No. 99 (access to internal mail system); Chula Vista City School District (1978) PERB Dec. No. 70 (expression of views at school board meeting).)

jurisdictional lines has been set by the PERB's determination that a certificated employee representative also can exclusively represent classified employees of the same employer.[16]

Recent reports indicate as well that a "union battle of potentially huge proportions appears to be on the horizon," referring to a decision by a major certificated union to embark on a widespread organizational drive to represent classified employees.[17] If bargaining rights for SEIU were recognized in this instance, it might trigger retaliatory interference in classified employee affairs, to the long term detriment of SEIU as well as the principle of exclusivity.

Finally, in light of the considerations set forth above, the authority cited by Local 790 does not support its bargaining claim. In American Federation of State, etc. Employees v. City of Santa Clara (1984) 160 Cal.App.3d 1006, a city was obliged under the MMBA to negotiate over a reduction of overtime pay for employees who previously had been paid at their bargaining unit wage rate for extra duty volunteer assignments. Although it does appear that work unrelated to normal unit work was involved, the Santa Clara case does not concern the right to negotiate over wages, hours and working

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[16]Redlands Unified School District (1982) PERB Dec. No. 235.

[17]NEA Extends Organizing to Classified Employees," 70 Cal. Pub. Employee Rel., Sept. 1986, at pp. 37-38.

conditions of employees in another bargaining unit. Indeed, two unions were plaintiffs in that case, pressing the interests of their respective bargaining unit employees.

Nor is SEIU's argument supported by Dublin Professional Fire Fighters, Local 1885 v. Valley Community Service District (1975) 45 Cal.App.3d 116. The union in Dublin sought negotiations over a new employer policy of using temporary employees for overtime work, thereby depriving permanent unit employees of priority for overtime assignments. Again, while the overtime had been considered voluntary in the past, it was preservation of unit work that was at stake, not protection of the right to work outside the unit in a classification represented by another union.

PROPOSED ORDER

Based on the findings of fact, conclusions of law, and the entire record in this case, the charge and the complaint in Case No. SF-CE-1114 is DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final unless a party files a timely statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code title 8, part III,

section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." See California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, part III, sections **32300, 32305,** and 32140.

Dated: April 16, 1987

BARRY WINOGRAD
Administrative Law Judge