

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CHOWCHILLA UNION HIGH SCHOOL)
DISTRICT,)
)
Employer,) Case Nos. S-UM-525
) S-UM-552
and)
) PERB Decision No. 1040
)
CHOWCHILLA UNION HIGH SCHOOL) March 10, 1994
FACULTY ASSOCIATION/CTA/NEA,)
)
Exclusive Representative.)
_____)

Appearances: Stroup & de Goede by Daniel G. Stevenson, Attorney, for Chowchilla Union High School District; California Teachers Association by Diane Ross, Attorney, for Chowchilla Union High School Faculty Association/CTA/NEA.

Before Caffrey, Carlyle and Garcia, Members.

DECISION

GARCIA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Chowchilla Union High School District (District) to the attached proposed decision of a PERB hearing officer. In the proposed decision, the hearing officer found that: (1) nine area coordinator positions are not supervisory under the Educational Employment Relations Act (EERA)¹ and (2) the position of counselor/administrative assistant (AA) is not a confidential position within the meaning of EERA, and thus the unit modification petitions filed by the

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Chowchilla Union High School Faculty Association/CTA/NEA should be granted.

The Board has reviewed the entire record in this case, including the proposed decision, transcripts, exhibits, exceptions, and responses thereto. We find the hearing officer's conclusion to be supported by the testimony and evidence and affirm and adopt it as the decision of the Board itself. With respect to the confidential position issue, we affirm the hearing officer's conclusion based on the expanded reasons discussed below.

DISCUSSION

District's Exceptions

On appeal, the District disagrees with the conclusions drawn by the hearing officer. The District argues that: (1) the area coordinators are supervisory; and (2) the counselor/AA position is confidential. With respect to the "supervisory" nature of area coordinators, the hearing officer's conclusions are firmly supported by the record. However, the issue of "confidential" status warrants further discussion.

Counselor/Administrative Assistant

Maureen Riley (Riley) holds the dual position of counselor/AA. She has held the AA position since the start of the 1989-90 school year. To date, her duties as an AA only comprise 10-15 percent of her time and have been limited to writing grants and minimal involvement with collective bargaining

on the District's behalf. The record and attached proposed decision describe Riley's involvement in the types of activities defined as "confidential" under EERA.²

To decide whether Riley's position is confidential, the hearing officer applied the definition of "confidential employee" from EERA section 3540.1(c)³ and PERB precedent, and concluded that the position is not confidential largely because Riley did not participate in contract negotiations.

Although we agree that Riley's position is not confidential, we wish to emphasize the necessity of regularly functioning in the employer-employee relations area in order to be considered a confidential employee. Reviewing the section 3540.1(c) definition of confidential employee, we note that it focuses on the employee's access to a particular type of information: "information relating to, his or her employer's employer-employee relations."

"Employer-employee relations" includes negotiations and grievance processing but not mere processing of personnel records

²See proposed decision, pp. 20-22.

³EERA section 3540.1(c) defines confidential employee as:

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

In citing this section in the proposed decision, the Hearing Officer omitted the key word "regular."

and evaluations.⁴ In addition, under PERB precedent, a confidential employee must function as such in the regular course of his or her duties meaning that more than a fraction of the employee's time is spent on confidential matters dealing with employer-employee relations.⁵

The proposed decision appropriately focuses on Riley's lack of participation in contract negotiations. After discussing that aspect of Riley's job, the hearing officer concludes by stating that "ample opportunity had existed for Riley to become involved in some aspect of the negotiations process," and, since this had not occurred, the position was not confidential. However, a review of the status of this position must also focus on the regular functions assigned to it rather than merely its lack of participation in contract negotiations to determine confidential status.

At the hearing, Riley testified that she spends approximately 85-90 percent of her time counseling students and the remainder as an AA. In the AA job, Riley testified that her duties had been limited to writing grants, that she had not been involved in any negotiations, nor had she been formally trained

⁴See Upper Lake Union Elementary School District (1989) PERB Decision No. 736; Fremont Unified School District (1976) EERB Decision No. 6 (PERB was known as the Educational Employment Relations Board (EERB) prior to January 1, 1978.); and Campbell Union High School District (1978) PERB Decision No. 66. See also Los Rios Community College District (1977) EERB Decision No. 18, holding that tangential contact with confidential information is insufficient to make an employee a confidential employee.

⁵Upper Lake, supra; Imperial Unified School District (1987) PERB Decision No. 647.

by the District in collective bargaining. . It is obvious that very little, if any, of Riley's typical workday is spent on matters that involve access to confidential information dealing with employer-employee relations. Thus, she does not function as a confidential employee and the hearing officer's conclusion is correct.

ORDER

Based upon the foregoing findings of fact, conclusions of law, and the entire record in this case, the responsibilities of the area coordinators are not supervisory under the Educational Employment Relations Act (EERA). Therefore, the unit modification petition filed by the Chowchilla Union High School Faculty Association/CTA/NEA in Case No. S-UM-525 is hereby GRANTED.

It is also determined, for the reasons stated above, that the position of counselor/administrative assistant is not a confidential position within the meaning of EERA. Therefore, the unit modification petition filed by the Chowchilla Union High School Faculty Association/CTA/NEA in Case No. S-UM-552 is also hereby GRANTED.

Member Caffrey joined in this Decision.

Member Carlyle's concurrence begins on page 6.

Carlyle, Member, concurring: This case is before the Public Employment Relations Board (PERB) on appeal by the Chowchilla Union High School District (District) to the attached proposed decision of a PERB hearing officer.

I have reviewed said proposed decision, the District's exceptions and brief, and all documents and pleadings filed in connection therewith. I find the hearing officer's proposed decision to be free of prejudicial error and adopt it as my decision.

I write separately to distance and disassociate myself from the three page DISCUSSION section contained in the majority opinion.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CHOWCHILLA UNION HIGH SCHOOL DISTRICT,)	
)	
Employer,)	Representation
)	Case Nos. S-UM-525
and)	S-UM-552
)	
CHOWCHILLA UNION HIGH SCHOOL FACULTY ASSOCIATION/CTA/NEA,)	
)	PROPOSED DECISION
Exclusive Representative.))	(8/30/93)

Appearances: Stroupe and De Goede by Daniel G. Stevenson, Attorney, for Chowchilla Union High School District; California Teachers Association by Diane Ross, Attorney, for Chowchilla Union High School Faculty Association/CTA/NEA.

Before Jerilyn Gelt, Hearing Officer.

PROCEDURAL HISTORY

On October 31, 1991, the Chowchilla Union High School Faculty Association/CTA/NEA (Association) filed a unit modification petition with the Public Employment Relations Board (PERB or Board) pursuant to PERB Regulation 32781(a)(I).¹ The petition sought to add area coordinators to the established certificated bargaining unit in the Chowchilla Union High School

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32781(a)(1) provides:

(a) A recognized or certified employee organization may file with the regional office a petition for modification of its unit(s):

(1) To add to the unit unrepresented classifications or positions;

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

District (District). The District opposed the unit modification based on the supervisory status of the area coordinators.

On December 17, 1992, the Association filed a unit modification petition with PERB pursuant to PERB Regulation 32781(b) (2) and (3).² The petition sought to include the position of counselor/administrative assistant in the certificated unit. The District opposed the inclusion based on the confidential status of the position. Pursuant to the agreement of the parties, the two unit modification petitions were consolidated.

After an informal settlement conference conducted by PERB on January 24, 1992, a formal hearing was scheduled for June 29 and 30, 1992. Having been rescheduled on three separate occasions, the hearing commenced on November 12, 1992 and was continued on February 11 and 12, 1993. Briefs and reply briefs were timely filed, and the case was submitted for decision on May 7, 1993.

²PERB Regulation 32781(b) (2) and (3) provides:

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:

(2) To make technical changes to clarify or update the unit description;

(3) To resolve a dispute as to unit placement or designation of a new classification or position;

ISSUES

At the hearing, the parties entered into a stipulation in which the following area coordinator positions were added to the certificated unit: Fine Arts, Work Experience, Special Programs, and Community Services.³ Thus, the remaining issues are as follows:

1. Are the following area coordinator positions supervisory within the meaning of the Educational Employment Relations Act⁴ (EERA or Act): Agriculture (Steve Obad); Humanities/Media Director (Birt McKinzie); Industrial Arts (John McLaughlin); Math/Science (David Pettit); Performing Arts (Donald Thissen); Physical Education/Athletic Director⁵ (Mike Little); Social Studies (Conrad Gaunt); Student Activities (Linda Veatch); and Vocational Education (Leona Pistoresi)?

2. Is the position of counselor/administrative assistant (Maureen Riley) confidential within the meaning of EERA?

FACTS

Chowchilla Union High School District consists of one high school, one continuation high school and the District office. During the 1992-93 school year, approximately 675 students were

³A unit modification order effective as of the date of the stipulation, November 12, 1992, was issued by PERB on May 5, 1993.

⁴EERA is codified at Government Code section 3540 et seq.

⁵Although the Athletic Director is listed on the certificated management/supervisory salary schedule (District Exhibit 5) as a position separate and apart from that of Physical Education Area Coordinator, the parties have treated the position as one with dual responsibilities.

enrolled in the District.⁶ The administration is headed by Superintendent Ronald Moore. The next level of authority is the principal of the high school, Bob Green. The other certificated members of the management team are the principals of adult education and the continuation high school, the director of guidance, the dean of students, the counselor/administrative assistant and the area coordinators (13 at the time the unit modification petition was filed), a total of 20 individuals. All area coordinators report directly to the principal.

In addition to the management/supervisory personnel listed above, there were 22 other certificated employees who taught in the District at the time the petition was filed, 4 of whom are employed by either Merced or Madera County Offices of Education. Thus, there was a ratio of 20 management/supervisory personnel to 22 bargaining unit personnel. This ratio was diminished with the addition of four area coordinators to the bargaining unit at the start of the hearing.

All area coordinators teach a full load of five classes with the exception of Mike Little and Linda Veatch, each of whom teaches four periods and receives one period of release time for their responsibilities as athletic director and student activities area coordinator,⁷ respectively. In addition to

⁶See the California Public School Directory, 1992, prepared by the Bureau of Publications, California Department of Education.

⁷Veatch was also referred to as student activities director; the titles appear to be interchangeable.

teaching in their own areas, some area coordinators also teach in other areas.

All area coordinators work a longer year than other certificated employees and are paid on the certificated management/supervisory salary schedule. All area coordinators make recommendations regarding curriculum and budget to the principal and/or superintendent. These recommendations are typically developed collaboratively with area staff and are not always approved. Area coordinators sign all purchase orders for their areas; however, they must be approved by the superintendent.

Area coordinators evaluate the certificated staff in their areas, if any. In addition, all teachers, including area coordinators, are evaluated by the principal. The superintendent testified that he gives these evaluations equivalent weight.

After the area coordinators perform classroom observations but before the evaluations are written, they meet with the principal to discuss their observations. The area coordinator then writes up the evaluation and meets with the teacher to review it. No evaluation has been signed or changed by the principal after being signed by the area coordinator and the teacher at the time of the evaluation meeting.

Generally, no formal district training in evaluation technique has been given to the area coordinators; however, some area coordinators have attended workshops, conferences and/or taken classes in which evaluation techniques were discussed.

Additionally, they typically discuss techniques with the principal at the beginning of their tenure as area coordinator as well as at the management meeting at the beginning of the school year and during the year on an as-needed basis.

Area coordinators are involved in the paperscreening and interviewing of applicants for hire. If there are several applicants' for a position, the District normally uses a committee for the interview process. The committee typically consists of the area coordinator, the principal, the director of guidance, and sometimes the dean of students and/or other teachers. The committee is expected to reach a consensus recommendation, which is given to the superintendent. There has been at least one instance in which the area coordinator and principal did not agree on a candidate; the superintendent referred the matter back to them for further discussion.

When there are only one or two applicants, the committee may consist of only the area coordinator and one other individual, such as the director of guidance or another teacher. This smaller committee is also expected to reach a consensus recommendation to be forwarded to the superintendent. As discussed below, the hiring process has varied from these models in some instances.

Area coordinators are designated in the collective bargaining agreement to handle the first step of the grievance procedure. However, no evidence was presented showing actual adjustment of a formal grievance by an area coordinator.

In general, both Superintendent Moore and Principal Green testified that they have consistently solicited, adopted and/or given great weight to the recommendations of area coordinators. Green described his relationship with the area coordinators as a close one in which they function much like a team, discussing and ultimately reaching agreement on personnel matters.⁸ Since the testimony of both Moore and Green regarding specific personnel actions was, for the most part, conclusory, it will be relied upon only insofar as it is substantiated by the area coordinators themselves.

Agriculture Area Coordinator

Steve Obad has worked in the District's agriculture area for 14 years; 1992-93 was his first year as the area coordinator. Obad is paid by the District for one period as area coordinator and is also an employee of the Merced County Office of Education.

Obad meets with the four other teachers in the agriculture area twice a month. At the time of the hearing, he had not had an opportunity to perform any evaluations.

Obad's responsibilities include making recommendations regarding the classes teachers are assigned; he generally discusses these recommendations with Green. He has made one assignment with which teacher Charles Holloway was unhappy. He

⁸When pressed by the Association's counsel, Green stated that he would follow an area coordinator's recommendation in matters such as transfer and tenure if it was in direct conflict with his own. However, Green could not recall any situation in which this had actually occurred. Therefore, his testimony in this regard is speculative and given little weight.

has also made recommendations which were followed regarding curriculum (dropping two classes and adding a section to another) and hiring one teacher (Bobby Downs). As is the usual practice in the agriculture area, he discussed both matters with staff members and attempted to reach a consensus.

Obad testified that he has corrected teachers in his area on such matters as the processing of purchase order requests, procedures in the classroom and at fairs, and the use of vehicles.

Kenneth Tucker, area coordinator for agriculture for 2-1/2 years prior to Obad, also testified. Like Obad, he met with area staff twice a month.

Tucker's experience with the hiring process involved Kim Donaher, a student teacher under his predecessor, Lloyd McCabe, who had recommended that she be retained as a regular teacher. As McCabe's successor, Tucker's recommendation was solicited by the superintendent; Tucker told Moore that he agreed with McCabe's recommendation.

Tucker recommended that Abe Perez, an employee of Merced County ROP, be dismissed from the agriculture area. A week or so after he made this recommendation (at the end of the school year), Perez was transferred by the county to another district. Tucker also recommended that Jan Maddux, also an employee of Merced County ROP who was working part-time for the District, assume Perez's periods the following school year, which she did.

Tucker testified that he informally disciplined teachers in his area. For example, he told one teacher not to let students drive farm machinery or he would "write him up." He also issued memoranda to the agriculture staff reminding them of such responsibilities as utilizing their student project supervision period and putting doors on a newly built storage shed. Tucker also testified regarding his responsibility in monitoring of the agriculture department budget, which is larger than other district departmental budgets (\$30,000) due to a state grant.

Harry Maddux was agriculture area coordinator from 1977-87.⁹ He received one period of release time for his area coordinator responsibilities.

Maddux testified that five persons were hired during this period. He stated that, although the applicants were interviewed by the area staff and a consensus was reached, he made the ultimate recommendation to the superintendent. These recommendations were never rejected. In that same vein, Maddux described the assignment of classes in his area as a collaborative process, with the ultimate responsibility regarding who to recommend to the superintendent for specific assignments resting with him.

At some time prior to 1991, Maddux also served as area coordinator for vocational education and industrial arts. When these areas were separated out, he recommended that Leona

⁹Lloyd McCabe, who did not testify, was agriculture area coordinator from 1987 until Tucker's tenure began.

Pistoresi and John McLaughlin be made the area coordinators; his recommendations were followed. He recommended that Lloyd McCabe be hired as his replacement, and also recommended subsequent agriculture area coordinators Kenneth Tucker and Steve Obad.

Maddux stated that he recommended to Moore that Doug Thomas, a probationary teacher not be retained; Thomas was not hired back the following year. He also testified that two other certificated employees resigned after he gave them negative evaluations. Maddux verbally reprimanded employees regarding such matters as not following through on their supervision of student projects, i.e, not contacting parents when necessary and not showing up at fair activities as required.

Humanities Area Coordinator

Birt McKinzie has been area coordinator for humanities (English and Foreign Language) for approximately 11 years. In addition to herself, there are four other instructors in her area with whom she holds monthly meetings.

As part of her responsibilities, she testified that she makes assignments regarding classes. For example, since speech competitions are scheduled in the spring, she ensures that speech units are taught in January. She also works with the area staff to coordinate the assignment of research papers so as not to overtax the library.

McKinzie testified that, several years ago, teacher Linda Peterson was unhappy with some classes that McKinzie had assigned to her. In an evaluation done in June 1990, McKinzie recommended

that Peterson not be retained. However, Peterson was retained until August 1991, when she requested and was granted a transfer to the continuation high school.¹⁰

McKinzie testified regarding the hiring of seven instructors in the humanities area during her tenure as area coordinator. She interviewed four of these instructors with the principal, and they jointly recommended them for hire to Moore. It is her understanding that she and the principal must agree on a candidate before forwarding a recommendation to Moore. However, three of these teachers were hired without being interviewed by McKinzie. Patty Pistoresi, an intern in the District whose work was known to McKinzie and Green, was recommended to Green by McKinzie and subsequently hired without an interview. Wendy Cripe was recommended for interviewing by McKinzie based on a review of her application. She was interviewed, along with other applicants, without McKinzie's participation (she was out of town) and subsequently hired. Another teacher, Tony Cabezut, was hired without McKinzie's involvement.

McKinzie has issued memoranda to humanities staff advising them of various matters. For example, she wrote memos reminding them of due dates for submitting their course objectives, that no further expenditures were to be made due to a depleted budget, and that a meeting had been scheduled to discuss the budget

¹⁰Despite the District's assertion that teacher Dwight Benafield was not retained based on McKinzie's evaluation and recommendation, McKinzie's testimony regarding Benafield was internally inconsistent and cannot be relied upon.

problem. She has also spoken to teacher Patty Pistoresi to correct her behavior, i.e., once, to admonish her for using an inappropriate expression in the classroom and another time to tell her not to take a student home without making prior arrangements with the office.

McKinzie also serves as media director, i.e., area coordinator for the library. In that capacity, she oversees and evaluates one classified library clerk, Kathy Chambers, who has been employed in that position for eight years. In 1986, she issued a letter of reprimand to Chambers reminding her of her hours and duties.

Chambers also testified regarding a meeting she had with the superintendent last year to complain about McKinzie's evaluation of her. In that meeting, Moore offered to perform her evaluation himself if it would make her more comfortable.

Industrial Arts Area Coordinator

John McLaughlin has been industrial arts area coordinator for three years. There is one other teacher in his area, an auto shop instructor, who also works part-time for Merced County ROP. McLaughlin has monthly meetings with this employee. There have been no hires in his area during his tenure as area coordinator. McLaughlin has acted as a go-between for his area and the maintenance and driver training areas when conflicts have arisen between employees regarding the use of machines or vehicles.

Robert Hoffer was area coordinator for industrial arts, drivers education, and business education from 1973-74 through

1987-88, when he retired. As area coordinator, he received one period release time and held monthly meetings with area staff members.

Hoffer recommended two employees who were hired into the industrial arts area, one of whom, Pat Noian, was also interviewed by the superintendent and the other, current area coordinator McLaughlin, who was already a district employee in another department. McLaughlin testified that he was also interviewed for this teaching position by the superintendent, the principal and the dean of students.

Hoffer testified that he considered it his responsibility as area coordinator to inform instructors when they were violating district policy, and, to that end, he issued written directives to correct such inappropriate behavior as tardiness and disrupting a class in session by walking through it and gesturing to students.¹¹ Although Hoffer testified that he assigned teachers to either automobile or simulator instruction, he explained that the schedule was worked out collaboratively with the teachers, and that he merely reminded them of the schedule.

Math/Science Area Coordinator

David Pettit was hired by the District as math/science area coordinator in August 1989. There are four other instructors in

¹¹In its brief, the District asserts that teacher John Landgren was terminated as a result of an evaluation by Hoffer. However, at the hearing, both parties stipulated that Landgren was not dismissed from the District for cause.

this area, and Pettit receives release time on an as-needed basis for evaluating them.

•Regarding his role in the grievance process, Pettit testified that science teacher Jennifer Bredberg filed a grievance with him concerning an evaluation she was given by the principal; however, the grievance was referred to the principal for action since, as area coordinator, Pettit does not have the authority to undo actions taken by the principal.¹²

Pettit testified that he occasionally assigns work to the staff in his area. For example, he divided an accreditation study into portions which were assigned to each teacher and collated by him.

There have been seven employees hired in the math/science area since 1989; Pettit was not involved in the hiring process for four of them. The other three were interviewed by himself and Green, and they agreed to recommend them for hire. Pettit and Green also had several discussions regarding Pettit's on-going observation and evaluation of Margaret Thissen, a math teacher whom he recommended not be retained; she was subsequently reassigned to another department. Pettit also testified that he recommended that teachers Gonzales and May not be retained. His recommendation regarding Gonzales was made through the evaluation process; Gonzales was not rehired. May left the District prior to his formal evaluation. In his final evaluation of John Cho,

¹²See District Exhibit 10.

Pettit recommended that Cho be retained; however, Cho was not retained.¹³

Pettit has issued letters to area staff regarding such issues as their lack of professional conduct around other teachers and lack of attendance and tardiness at meetings. While one of the letters regarding attendance/tardiness threatened "administrative action" if the behavior continued, no evidence of any such action was produced.

Charles Heimstra was the math/science area coordinator for approximately 12 years before he retired in 1989. He received one period of release time as area coordinator.

Heimstra's testimony centered on his participation in the hiring process when he was area coordinator. He stated that the process was done by committee during the last several years of his tenure. Previously, he conducted preliminary interviews with the candidates, who were then also interviewed by the superintendent or principal. He traveled out of state to interview one candidate, whom Moore had interviewed by telephone. The applicant was offered the position based upon his recommendation; however, she was unable to relocate.

Heimstra evaluated teacher Edward Gray in 1982 and 1983 and recommended that Gray not be retained; he was transferred to the continuation high school.

¹³Green testified that Pettit made a verbal recommendation to dismiss Cho; however, since this testimony was unsubstantiated by Pettit and in direct conflict with the written evaluation, it is not credited.

Performing Arts Area Coordinator

Donald Thissen has been the performing arts area coordinator for four years. He oversees one non-certificated employee, Debby Donahue, who has worked on a year-to-year basis as color guard¹⁴ advisor since before Thissen became area coordinator. Donahue assists him, much like a coach, in teaching the color guard one period a day, and some evenings and Saturdays. Thissen evaluates Donahue, and testified that she would not be retained if he recommended her dismissal.

Physical Education Area Coordinator

Mike Little has been the area coordinator for physical education and athletic director since 1989. Little's area coordinator responsibilities include making suggestions regarding curriculum and grading policy; making scheduling assignments regarding which periods specific activities should occur; ordering supplies and equipment; and evaluating the one full-time physical education teacher. There are three instructors who each teach one period of physical education whom he does not evaluate.

Little receives one period of release time as athletic director. He testified that his athletic director duties include coordinating the 13 member coaching staff, of whom 4 are certificated employees of the District and the others are "walk-on" coaches; finding, selecting and interviewing coaches; preparing the budget for athletics; arranging athletic schedules,

¹⁴The color guard is made up of letter girls and flag girls; they are taught dance routines using flags or other equipment.

including ordering transportation, "ordering" and paying officials; acting as a go-between for the coaches and administration, and serving on the boards of directors of the Booster Club and the Park and Recreation Department. Little conducts the preliminary interviews for coaches; Green also interviews the candidates, sometimes informally. Little's recommendations for hire are typically followed; however, his request that teacher Doug Espinola be hired as a coach was turned down by Moore. Little has changed assignments of coaches, and has made assignments about which the principal had expressed reservations at least twice. He has also recommended the promotion of individuals from assistant to head coach. This year Little recommended to Green that instructor May be removed from teaching a physical education class; this recommendation was followed. In all of the examples given to illustrate his alleged supervisory authority, Little testified that he consulted with Green prior to making the recommendation.

While Little has never been involved in a formal grievance, he has been involved informally in resolving problems between coaches and staff. He has also admonished the coaches when he felt they were lacking in professional demeanor.

Social Studies Area Coordinator

Conrad Gaunt has been employed by the District for 27 years, and has been the social studies area coordinator for the past 4-5 years. He receives release time upon request to evaluate the two other teachers in his area, one of whom is Linda Veatch, the

student activities area coordinator. He conducts monthly meetings with the social studies staff.

Some social studies class assignments are made by Gaunt in collaboration with Green or Moore; some are made without Gaunt's input. He did independently assign one class to a teacher contrary to that teacher's wishes; the class constituted an extra assignment which had to be taught either by that teacher or Gaunt himself.

Gaunt's recommendation that Linda Veatch be hired as a full-time social studies teacher when a position became available was followed; Veatch was teaching three or four classes in the area at the time. Two other teachers were assigned to his area without his input or request.

Gaunt testified regarding two recommendations he made concerning transfers of teachers into his area. In the first instance, Moore informed him that a teacher was needed to fill a position immediately, and that he should decide which of two individuals already employed by the District should be selected. Gaunt recommended that Ron Seals be transferred to the position from the continuation high school; Seals was given the position. In the second instance, he recommended that a teacher whose field was math, not social studies, not be assigned to his area. The teacher himself agreed and left the District at the end of the school year.

Student Activities Area Coordinator

Linda Veatch has been student activities area coordinator for the last three of her five years with the District. She also teaches four periods in the social studies area, where she is evaluated by Gaunt. Veatch is released one period for her student activities responsibilities which include coordinating all student activities as well as assisting the instructor teaching the yearbook class with the financial aspects of the yearbook. Veatch has issued memos to club advisors regarding the proper District procedures for writing purchase orders.

Prior to this year, there was one probationary teacher in Veatch's area whom she evaluated. That teacher is currently on leave of absence, and Veatch has been instructed not to evaluate her replacement, who is the principal of the adult school.

Vocational Education Area Coordinator

Leona Pistoressi has worked for the District for 8-9 years, and had been the vocational education area coordinator for 1-1/2 years at the time of the hearing. She testified that she contracted for 30 days release time as area coordinator this year; last year she received release time on an as-needed basis for evaluating the teachers in her area.

There are two other vocational education instructors in addition to Pistoressi whom she evaluates and with whom she holds monthly meetings. Pistoressi has asked her area teachers to gather information in preparation for writing grants and developing ideas for career paths for students.

Administrative Assistant (to the Superintendent)

Maureen Riley has held the dual position of counselor/administrative assistant since the beginning of the 1990-91 school year. Riley carries a full counseling load and testified that she spends approximately 85-90 percent of her time as a counselor and the remainder as an administrative assistant. To date, her duties as an administrative assistant have been limited to writing grants; she has not participated in negotiations and has had no bargaining-related training.

Testimony was unclear regarding the time frame for past certificated negotiations, although it is uncontested that the most recent collective bargaining agreement between the District and the Association at the time of the hearing expired in June 1991. Both Riley and Moore testified that Riley was not prepared to be brought into the certificated negotiations which were at an impasse when she began as administrative assistant in the fall of 1990. PERB records, however, do not reflect the existence of an impasse at this time.¹⁵

A request for impasse determination (PERB Case No. S-M-1818) was filed with PERB on February 20, 1992, over a successor agreement, proposals for which were sunshined in June and July of 1991. According to that request, negotiations began in September 1991 and six sessions were held prior to filing the request. The

¹⁵PERB records do reflect that an impasse (PERB Case No. S-M-1635), apparently over reopeners, had been reached in the certificated unit on February 26, 1990; notification of settlement was received in July 1990, prior to Riley's employment as administrative assistant.

District's bargaining team for these negotiations consisted of the director of guidance, the business manager and the District's attorney. No evidence was presented that Riley was involved in these negotiations beyond being "made aware" of them by Moore.

Moore testified that he intended to include Riley in classified negotiations last year, but that they were concluded at the initial meeting. No other negotiations have taken place since that time. Moore stated that he plans to have Riley assist him in formulating policy and developing strategy for bargaining, as well as confer with him, and, when necessary, the Board of Education, regarding the status of negotiations in the future. According to Moore, previous administrative assistants have been involved in the negotiations process. Lloyd McCabe, administrative assistant from 1980-86, was involved in formulating strategy for both certificated and classified negotiations, and sat at the table during the classified negotiations. Moore testified that the two subsequent administrative assistants, Alberta Hargas (1986-87) and Harry Maddux (1987-89), were involved in formulating strategy and consulting with Moore regarding negotiations, but had no role at the table.¹⁶ Maddux testified that, in his role as administrative assistant, he was asked his opinion regarding a teacher salary increase and personnel projections, and that he

¹⁶Moore also testified regarding many other functions that these employees performed while they were serving as his administrative assistant. Since none of these duties are relevant to a finding of confidential status, they are not discussed herein.

met and discussed the progress of negotiations with the management team. He also stated that he spent 80 percent of his time while administrative assistant performing his counseling responsibilities, in addition to which he taught a two period class.

DISCUSSION

SUPERVISORY ISSUE

Government Code section 3540.1(m) defines a supervisory employee as follows:

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

Since the definition of a supervisor is written in the disjunctive, the performance of any one of the enumerated actions or the effective power to recommend such action is sufficient to render an employee a supervisor under EERA. (Sweetwater Union High School District (1976) EERB Decision No. 4;¹⁷ Office of Kern County Superintendent of Schools (1985) PERB Decision No. 533.)

PERB has held that the party seeking to exclude an employee from statutory coverage as a supervisor must satisfy a burden of demonstrating that "the specific task is regularly performed and

¹⁷Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

not a sporadic or atypical exercise of duties." (California State University (1983) PERB Decision No. 351-H.)

In New Haven Unified School District (1977) EERB Decision No. 14, the Board found that administrative activities such as balancing a departmental budget, providing leadership in the development of curriculum, and presiding at department meetings were not supervisory activities. In that case, as here, those activities were determined to be routine in nature and require little exercise of independent judgement.

In San Diego Community College District (1977) EERB Decision No. 28, the Board cited National Labor Relations Board precedent holding that, while the ratio of supervisors to rank-and-file employees is not always determinative, in cases where the ratio is unusually high and at sharp variance with the norm, it is a highly persuasive factor militating toward inclusion of the alleged supervisors in the bargaining unit. (Commercial Fleet Wash, Inc. (1971) 190 NLRB 326 [77 LRRM 1156].)¹⁸ The Board found that, in such cases, a closer scrutiny of the proposed supervisory positions is required. (San Diego Community College District, supra). In this case, the ratio of supervisory/management personnel to rank-and-file employees is 16 to 26, an unusually high ratio in a public school setting, particularly one as small as the Chowchilla Union High School

¹⁸While the National Labor Relations Act, unlike EERA, excludes supervisory employees from coverage, the test used to determine the supervisory status of an employee is substantially the same.

District.¹⁹ Thus, the alleged supervisory responsibilities of the area coordinators will be considered in light of this factor.

The Board has held that performing evaluations alone is not an indicia of supervisory status, but that it must also be shown that the alleged supervisor effectively recommends the ultimate outcome of that evaluation process. (Hemet Unified School District (1990) PERB Decision No. 820; Cantua Elementary School District (1983) PERB Decision No. 295.) In this case, the area coordinators consult with the principal prior to writing an evaluation and presenting it to a teacher. Furthermore, the principal also evaluates all certificated employees, including the area coordinators. In most, if not all, cases where a personnel action is recommended to the superintendent based upon these evaluations, the area coordinator and the principal first discuss the recommendation and reach agreement thereon. Therefore, any supervisory weight given to the role played by area coordinators in the evaluation process is considerably diminished.²⁰

¹⁹In both San Diego Community College District and Commercial Fleet Wash. Inc., supra. the ratio of management/supervisory to bargaining unit personnel was approximately nine to eight.

²⁰The Association argues that little or no significance should be given to the evaluation responsibilities of the area coordinators since the District has not complied with its own policy and Education Code requirements for certification of competency in the evaluation process. The District disputes this assertion. In any event, compliance with these regulations is of limited relevance and not persuasive.

Agriculture Area Coordinator

Steve Obad had been agriculture area coordinator for less than six months at the time of the hearing, although he had been an agriculture instructor for 14 years. He testified that recommendations regarding curriculum and hiring are discussed with the area staff in an attempt to reach a consensus before being forwarded to the principal and/or superintendent. During his limited tenure, Obad has corrected area teachers, but only insofar as reminding them to follow established District procedures.

Obad's predecessor, Kenneth Tucker, testified regarding a hiring recommendation he made, but the record reveals that he was merely passing on a recommendation of his predecessor, under whom the applicant had been a student teacher. Tucker's recommendations regarding transfer and assignment of classes (one example each) were apparently followed. However, these instances are simply too isolated to be indicative of supervisory authority. Tucker issued daily memoranda to agriculture staff reminding them of their departmental responsibilities and occasionally admonished them regarding minor infractions of area policy and procedures. In this role, he functioned as a leadperson working to ensure the smooth operations of the agriculture area.

Harry Maddux also testified regarding his duties as area coordinator prior to 1987. While his tenure is too remote to be determinative of the status of the current area coordinator, it

is noted that, even were it given weight, his responsibilities would fall short of supervisory.

For these reasons, the agriculture area coordinator is found not to be a supervisor.

Humanities Area Coordinator

Birt McKinzie testified that she assigns work to the humanities staff. However, the record reveals that the type of assignments she makes are nothing more than the "routine application of established policy or practice" and do not require the use of independent judgement. (Cantua, supra.) Regarding tenure, she testified about one recommendation to release an employee that was not followed.

During her tenure as area coordinator, McKinzie interviewed four of the seven employees hired in her area with the principal; she stated that she understood that they must reach agreement on candidates to recommend to the superintendent. Three other teachers were hired without her participation.

The memoranda that McKinzie has issued to the area staff have been in the nature of reminders of District policy and procedures, and her verbal admonishments have been in the nature of counseling rather than disciplinary.

Testimony was also given regarding McKinzie's responsibilities as media director. In that capacity, the only evidence of her alleged supervisory authority proffered was that she evaluates one classified employee (who was given the choice of being evaluated by the superintendent only last year) and that

she issued that employee a letter of reprimand seven years ago. These responsibilities over a non-unit employee are analogous to those of a teacher's "supervision" of an instructional aide, i.e., incidental to the performance of her professional duties rather than in promotion of the employer's interest. (Redlands Unified School District (1982) PERB Decision No. 235; Glendale Community College District (1979) PERB Decision No. 88.)

For these reasons, it is determined that the humanities area coordinator/media director is not a supervisory employee.

Industrial Arts Area Coordinator

No evidence was presented to conclude that John McLaughlin has exercised any supervisory authority in his three years as area coordinator. In fact, there is only one part-time certificated employee in the industrial arts area beside himself. While he has acted to resolve minor conflicts between his area and others, his efforts appear to spring from a desire to maintain a smooth functioning working environment, rather than out of an obligation to the employer. (California State University, supra.)

The recommendations for the hire of two employees by his predecessor, Robert Hoffer, do not reach the level of supervisory authority since both employees were also interviewed by the superintendent and one by the principal and dean of students as well. The assignment of work by Hoffer was not only routine but also a result of collaboration with the area staff. (Monterey Peninsula Community College District (1978) PERB Decision

No. 76.) Finally, the issuance of memoranda regarding minor infractions of District policy does not rise to the level of disciplinary action and, therefore, is not indicative of supervisory status. Thus, the industrial arts area coordinator is not a supervisor within the meaning of the Act.

Math/Science Area Coordinator

David Pettit was not involved in the hiring of four of the seven employees hired in the math/science area since he became area coordinator; he collaborated with Green in hiring the other three. Thus, his involvement in the hiring process is not sufficient to render him a supervisor. The recommendation of his predecessor, Heimstra, to hire one teacher whom he traveled out of state to interview is diminished in light of the fact that she was also interviewed, albeit by telephone, by the superintendent. Furthermore, Heimstra testified that hiring was done by committee during the last several years of his tenure as area coordinator.

Regarding reappointment, while Pettit's recommendations not to retain two teachers may have been followed, his recommendation to retain another was not. The evidence given by Heimstra in this regard is so remote (1982-83) as to be irrelevant.

Standing alone, the letters of reprimand issued to area staff by Pettit can be characterized as counseling and reminders, which, having resulted in no further action, fall short of the type of "discipline" which may be considered supervisory.

For these reasons, the math/science area coordinator is not a supervisory employee.

Performing Arts Area Coordinator

Donald Thissen oversees only one non-certificated employee who assists him in teaching one class. While he is responsible for evaluating her and testified that she would not be retained if he so indicated, this testimony was purely speculative. No evidence was presented regarding the exercise of any other supervisory authority over this employee. Moreover, it appears from the record that Thissen's "supervision" of this employee is incidental to his "performance of professional duties rather than in promotion of the employer's interests." (Redlands Unified School District, supra: Glendale Community College District, supra.) Thus, it is determined that the performing arts area coordinator is not a supervisory employee.

Physical Education Area Coordinator/Athletics Director

Mike Little serves in a dual role as physical education area coordinator and athletic director. The only duties he performs which can arguably be considered supervisory are part of his athletic director responsibilities. In this capacity, he has played an significant role in hiring coaches, of which there were four certificated individuals in the 1991-92 school year. However, this responsibility, as well as those relating to assignment (from girls to boys coach), promotion (from assistant to head coach) and transfer, are diminished vis-a-vis their supervisory effectiveness in light of the fact that all such recommendations were made in collaboration with Green prior to any action being taken. Furthermore, one recommendation made by

Little that a District teacher be hired as a coach was turned down by Moore. Thus, it is found that the physical education area coordinator/athletic director does not possess the authority to warrant designating the position supervisory.

Social Studies Area Coordinator

Conrad Gaunt's successful recommendation that a teacher be hired is countermanded by the fact that two other teachers were assigned to his area without his input or request. Similarly, while Gaunt has assigned classes to social studies teachers, assignments have also been made without his input. The assignment he made with which a teacher was unhappy was within the narrow confines of a choice between that teacher and himself and does not demonstrate a meaningful measure of independently exercised control.

The significance of Gaunt's successful recommendation that a teacher be transferred to his area is diminished in light of the fact that Moore gave him two choices from which to make a recommendation. (California State University, supra.) Thus, the record does not support a finding that the social studies area coordinator is a supervisor.

Student Activities Area Coordinator

Linda Veatch's alleged supervisory authority is limited to two factors: (1) that she has issued memos to student club advisors regarding proper District procedures for writing purchase orders, and (2) that, in the past, she evaluated the

instructor teaching the yearbook class. In the first instance, it must be noted that club advisors are District employees who are members of other areas, and, furthermore, such memos are merely reminders of established District policy. Secondly, no evidence was presented of any action resulting from her evaluation of the yearbook teacher. In fact, that teacher, who was probationary for two years prior to the current year, was on leave of absence and replaced by the principal of the continuation high school, who Veatch was instructed not to evaluate. For these reasons, it is found that the student activities area coordinator is not a supervisory employee.

Vocational Education Area Coordinator

Leona Pistoresi had been area coordinator for vocational education for 1-1/2 years at the time of the hearing. The only alleged supervisory activities she testified about were evaluating the two other teachers in her area and asking them to gather information to help her write grants and develop career paths for students. Neither of these activities is sufficient to render this position supervisory.

CONFIDENTIAL ISSUE

Government Code section 3540.1 (c) defines a confidential employee as one

who, in the course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

"Employer-employee relations" includes, at least, employer-employee negotiations and the processing of grievances.²¹

(Fremont Unified School District (1976) EERB Decision No. 6.)

The mere access to or possession of confidential information by an employee is insufficient, by itself, to designate an employee as confidential. (Campbell Union High School District (1978) PERB Decision No. 66.) A confidential employee must function as such in the regular course of his or her duties, meaning that more than a fraction of the employee's time is spent on confidential matters, although the frequency of access to confidential information is not important. (Upper Lake Union Elementary School District (1989) PERB Decision No. 736; Imperial Unified School District (1987) PERB Decision No. 647.) The individual must have access to or possess sufficient information to warrant the conclusion that the employer's ability to negotiate with employees from an equal posture might be jeopardized, and the balance in employer-employee relations sought to be achieved by EERA thus distorted, if the information was prematurely made public. (Campbell Union High School District, supra.)

Because employees who are designated confidential are denied representation rights under the EERA, PERB has held that the number of confidential employees should consist of only "a small nucleus of individuals" who assist the employer in developing employer positions in the employer-employee relations arena.

²¹The District does not claim that the counselor/administrative assistant has any role in grievance processing.

(Centinela Valley Union High School District (1978) PERB Decision No. 62, citing Sierra Sands Unified School District (1976) EERB Decision No. 2.) Hence, the exclusion of confidential employees from statutory coverage dictates that section 3540.1(c) be narrowly construed. (Los Rios Community College District (1977) EERB Decision No. 18.)

In this case, the incumbent, Maureen Riley, has not participated in any aspect of the negotiations process since assuming the position of counselor/administrative assistant in the fall of 1990.²² The record reveals that proposals for both the classified and certificated units have been developed during that time, and at least some negotiation sessions have taken place, all without her involvement. The assertion that she was unable to participate in certificated negotiations because they were at an impasse is without merit. Even if the record supported the existence of an impasse at that time, impasse and mediation are integral parts of the negotiation process.

According to Moore's testimony, Riley's predecessors were involved in formulating strategy and consulting with him regarding negotiations. Harry Maddux, administrative assistant from 1987-89, testified that his opinion was solicited regarding a certificated salary increase and personnel projections, and that he met and discussed the progress of negotiations with the management team. However, while Maddux may arguably have

²²In its reply brief, the District states that Riley began her tenure in mid-year 1990-91. However, as discussed above, she testified that she began in the fall of 1990.

performed confidential duties during his tenure as counselor/administrative assistant, the incumbent has not.

The District, relying on Calexico Unified School District (1990) PERB Decision No. 800, argues that the counselor/administrative assistant should remain confidential based on her job description, the status of her supervisor (Moore), and the fact that she simply has not had the opportunity to perform confidential duties. In Calexico, the alleged confidential employee had occupied her newly-created position for only five months at the time of the hearing, during which time no negotiations had taken place and no grievances had been filed. In this case, the position in question is not newly created, and ample opportunity had existed for Riley to become involved in some aspect of the negotiations process, e.g., development of initial proposals.

For the reasons stated above, the position of counselor/administrative assistant is found not to be confidential.

CONCLUSION AND ORDER

Viewed in the context of the unusually high ratio of supervisory/management to bargaining unit personnel in the District and for the reasons discussed above, it is found that the responsibilities of the area coordinators are not supervisory under the Educational Employment Relations Act. Therefore, the unit modification petition filed by the Chowchilla Union High School Faculty Association/CTA/NEA in Case No. S-UM-525 is hereby GRANTED.

It is also determined, for the reasons stated above, that the position of counselor/administrative assistant is not a confidential position within the meaning of the Educational Employment Relations Act. Therefore, the unit modification petition filed by the Chowchilla Union High School Faculty Association/CTA/NEA in Case No. S-UM-552 is also hereby GRANTED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a 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 Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 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 Cal. Code of Regs., tit. 8,
secs. 32300, 32305 and 32140.)

Jerilyn Jerilyn Gelt
Hearing Officer