STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN FRANCISCO COMMUNITY COLLEGE DISTRICT,	)	
Employer,	)	Case No. SF-R-713
and	)	PERB Decision No. 1068
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, LOCAL 261,	)	November 17, 1994
Petitioner.	)	

Appearances: Liebert, Cassidy & Frierson by Jeffrey Sloan and Scott N. Kivel, Attorneys, for San Francisco Community College District; Neyhart, Anderson, Reilly & Freitas by William J. Flynn, Attorney, for Laborers' International Union of North America, AFL-CIO, Local 261.

Before Carlyle, Garcia and Johnson, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Laborers' International Union of North America, AFL-CIO, Local 261 (Local 261) to a Board agent's proposed decision (attached) which denied its petition for recognition for a bargaining unit of gardeners and nursery specialists employed by the San Francisco Community College District (District).

The Board has reviewed the entire record in this case, including the proposed decision, transcripts, Local 261's appeal and the District's response thereto. The Board finds the Board agent's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

DISCUSSION

Local 261 raises numerous exceptions to the proposed decision. The main arguments include that the employees of the District are city employees and therefore the Board does not have jurisdiction; and the District gardeners share a community of interest among themselves but not with skilled journeypersons such as plumbers or carpenters employed by the District.

In United Public Employees v. Public Employment Relations Bd. (1989) 213 Cal.App.3d 1119 [262 Cal.Rptr. 158], the court determined that the district is a public school employer under the Educational Employment Relations Act (EERA) and the relationship between the district and the city is that of "joint employers." Based upon this court decision, the Board finds that the Board has jurisdiction over this case and the employees at issue.

Next, EERA section 3545(a)[1] sets out the following criteria to be used in establishing appropriate units:

> (a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

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[1]EERA is codified at Government Code section 3540 et seq.

In Sweetwater Union High School District (1976) EERB Decision No. 4 (Sweetwater),[2] the Board established three presumptively appropriate units: (1) instructional aides; (2) office technician and business services; and (3) operations-support services. The operations-support services unit included transportation, custodial, gardening, cafeteria, maintenance and warehouse employees. By creating three presumptively appropriate units for classified employees, the Board determined that a strong community of interest generally exists among the employees in each of these groups.[3]

The burden is upon the party seeking a unit or units different than the Sweetwater unit configuration. (Compton Unified School District (1979) PERB Decision No. 109.) Specifically, the Board stated:

> The EERA does not prescribe that 'the most appropriate' unit be awarded; rather, the statute repeatedly refers to 'an appropriate unit.' [Fn. omitted.] Thus by requiring an employee organization to establish that a variant unit is more appropriate than a Sweetwater unit, the Board gives weight to its preference for Sweetwater units without converting them into 'most appropriate' or 'only appropriate' units. In this sense, an employee organization need not rebut the Sweetwater presumption in order to obtain a variant unit.

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

[3]Local 261 also argues that the Sweetwater presumption does not apply in this case. However, we concur with the Board agent's rejection of this argument on pages 27-28 of the proposed decision.

The record indicates support for the Board agent's finding that there are sufficient common factors among the unrepresented classified employees to find that the gardeners and nursery-specialists do not have a "separate and distinct" community of interest. This conclusion is based upon the fact that all of the unrepresented employees are involved with the maintenance of the physical plant of the District, work with their hands and with tools, perform both skilled and unskilled manual labor, exercise independent judgment, have similar health and safety concerns and are subordinates of the building and grounds superintendent.

Moreover, another reason that lends support to finding the unit determination as proposed by Local 261 to be inappropriate is the potential for the proliferation of small units of building trades employees. Local 261's request for recognition would consist of only eight employees in three classifications: gardener, assistant supervisor gardener, and nursery specialist. However, the District also employs approximately 25 other unrepresented classified employees in a variety of classifications.[4] Assuming the Board found that the gardeners had a distinct and separate community of interest, this would make it difficult to deny to other groups the formation of units who share "unusual circumstances" like that of gardeners.

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[4]The District's other classified employees are currently represented in a single unit. The District granted voluntary recognition on February 18, 1986, to United Public Employees, Local 790, SEIU, for a unit of classified employees, less managers, confidential, supervisory, and "building and trade classifications."

Finally, significant amounts of time are also required for preparations for negotiations, training for managers and supervisors, contract administration and grievance processing, and meeting with the Board of Trustees. The Board has previously found that negotiation and administration of additional agreements may have a negative impact upon state personnel resources. (State of California (Department of Personnel Administration)) (1993) PERB Decision No. 988-S, pp. 25-26.) These factors weighed and balanced along side statutory criteria support the denial of the petition for recognition.

Finally, the Board agrees with the Board agent that the building trades classifications share similar and often related job functions: They work under common supervision and working conditions; have similar training in common; and they work with similar tools and equipment. Therefore, the Board agrees that a single unit comprised of the building trades classifications at the District is an appropriate unit for representation purposes under the EERA.

ORDER

Based on the foregoing adopted findings of fact, conclusions of law, discussion herein and the entire record in this case, Laborers' International Union of North America, AFL-CIO, Local 261's (Local 261) request for recognition of a unit consisting of solely gardeners and nursery specialists is hereby DENIED.

The Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit Title: Skilled Crafts .

Shall Include: The classifications of gardener, nursery-specialist, painter, painter supervisor I, electrician, plumber, steamfitter, stationary engineer, truck driver, locksmith and carpenter.

Shall Exclude: All other employees, including management, supervisory and confidential employees.

Within 10 days following issuance of this decision, the San Francisco Community College District (District) shall post on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed, a copy of the Notice of Decision attached hereto as an Appendix. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

Pursuant to PERB Regulation 33470,[5] Local 261 shall have 15 workdays from the date of service of this decision to demonstrate to the satisfaction of the San Francisco Regional Director, at least 30 percent support in the unit described as appropriate. An election shall be scheduled and conducted by the Public Employment Relations Board if such evidence of employee support is demonstrated, unless Local 261 demonstrates proof of majority

[5]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

support and the District grants voluntary recognition. (PERB Regulations 33470 and 33480.)

If proof of at least 30 percent support is not provided by Local 261, the petition shall be dismissed.

The Board hereby ORDERS that this case be REMANDED to the San Francisco Regional Director for proceedings consistent with this decision.

Members Garcia and Johnson joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

CASE: SAN FRANCISCO COMMUNITY COLLEGE DISTRICT
Case No. SF-R-713
PERB Decision No. 1068
November 17, 1994

EMPLOYER: San Francisco Community College District
33 Gough Street
San Francisco, CA 94103
(415) 241-2255

EMPLOYEE ORGANIZATION
PARTY TO PROCEEDING:

Laborers' International Union of North America,
AFL-CIO, Local 261
3271 18th Street
San Francisco, CA 94110
(415) 826-4550

FINDINGS:

The Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit Title: Skilled Crafts

Shall Include: The classifications of gardener, nursery specialist, painter, painter supervisor I, electrician, plumber, steamfitter, stationary engineer, truck driver, locksmith and carpenter.

Shall Exclude: All other employees, including management, supervisory and confidential employees.

Pursuant to PERB Regulation section 33450, within 10 days following issuance of this Notice of Decision, the San Francisco Community College District (District) shall post on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed, a copy of this Notice of Decision. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, altered, defaced or covered with any other material.

Pursuant to PERB Regulation 33470, the Laborers' International Union of North America, AFL-CIO, Local 261 (Local 261) shall have 15 workdays from the date of service of this decision to demonstrate to the satisfaction of the San Francisco Regional Director, at least 30 percent support in the unit described as appropriate. An election shall be scheduled and conducted by the Public Employment Relations Board if such evidence of employee support is demonstrated, unless Local 261 demonstrates proof of majority support and the District grants voluntary recognition. (PERB Regulations 33470 and 33480.)

If proof of at least 30 percent support is not provided by Local 261, the petition shall be dismissed.

Dated: _____

SAN FRANCISCO COMMUNITY COLLEGE DISTRICT

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR A MINIMUM OF FIFTEEN (15) WORKDAYS. REASONABLE STEPS SHALL BE TAKEN TO ENSURE THAT THIS NOTICE IS NOT REDUCED IN SIZE, ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, Employer, and LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, LOCAL 261, Petitioner.	)	Representation Case No. SF-R-713 PROPOSED DECISION (2/14/94)

Appearances; Liebert, Cassidy & Frierson, by Jeffrey Sloan and Scott N. Kivel, Attorneys, for San Francisco Community College District; Neyhart, Anderson, Reilly & Freitas, by William J. Flynn, Attorney, for Laborers' International Union of North America, AFL-CIO, Local 261.

Before Les Chisholm, Hearing Officer.

PROCEDURAL HISTORY

On June 15, 1990, the Laborers' International Union of North America, AFL-CIO, Local 261 (Local 261 or Petitioner) filed a request for recognition with the San Francisco Community College District (SFCCD or Employer), and concurrently served a copy of the request on the San Francisco Regional Office of the Public Employment Relations Board (PERB or Board).[1] The proposed unit described by Local 261 included "[a]11 classifications recognized by the City and County of San Francisco as being within Unit [sic] of Laborers' Local #261." Local 261 alleged on the face of its petition that the City and County of San Francisco (City) is a "joint employer" with SFCCD. Attached to and referenced by the

[1]PERB's regulations, found at California Code of Regulations, title 8, section 31001 et seq., establish the procedures for such filings beginning at section 33050.

petition was an excerpt from a memorandum of understanding between the City and Local 261 listing 32 job classifications for which Local 261 has been certified as the exclusive representative.

As later clarified, Local 261 seeks a unit including two classifications currently utilized by SFCCD: Gardener (Class Code 3417) and Nursery Specialist (Class Code 3428).[2]

On August 13, 1990, the parties were advised of PERB's finding that Local 261 had evidenced majority support for its petition. On September 6, 1990, the Employer filed its notice of decision, denying voluntary recognition on the grounds that the unit sought was inappropriate and requesting that PERB investigate the issue of unit appropriateness.

Settlement conferences were conducted with the parties on November 19, 1990, January 29, 1991 and April 1, 1991. On May 20, 1991, PERB issued an order affording the Petitioner an opportunity to show cause, by way of information and argument, why its petition should not be dismissed. The Petitioner filed a timely response to the order, and the Employer filed a reply to the response. The parties were subsequently advised, by letter dated August 30, 1991, that this matter would be submitted to formal hearing, and the case was assigned to the undersigned.

A prehearing conference was conducted on November 5, 1991 and hearing dates were set for November 25 - 27, 1991. However,

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[2]SFCCD currently employs seven gardeners and one nursery specialist. The classification of Assistant Gardener Supervisor (Class Code 3418) has also been utilized by SFCCD, but is presently vacant.

following additional settlement discussions with another Board agent on November 5 and 21, 1991, the hearing was cancelled based on the parties' tentative agreement. The official case file in this matter reflects that there followed periodic communications between the parties and a Board agent, including an additional settlement conference on June 1, 1992, concerning the status of the tentative agreement. Finally, by letter dated March 1, 1993, the Petitioner requested that PERB reactivate the instant case if no final agreement had been presented within 30 days.

On April 19, 1993, the parties were advised that the matter would again be set for hearing before the undersigned. A hearing was then conducted on August 17, 18 and 19, and September 9, 24 and 30, 1993. Petitioner's request that the record be reopened to allow introduction of certain legislative history materials was denied on December 14, 1993.[3] Upon receipt of the parties' briefs on December 27, 1993, the matter was submitted for decision.[4]

LEGAL BACKGROUND

The status of SFCCD as a public school employer under the Educational Employment Relations Act (EERA)[5] was decided by the

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[3]Counsel for Petitioner urges in his brief that this decision be reconsidered. The motion to reopen the record is denied here for the reasons set forth in the earlier ruling.

[4]On December 23, 1993, Petitioner filed a motion to correct the transcript on three points. The final volume of the hearing transcript was served on October 12, 1993. Pursuant to PERB Regulation 32209, the Petitioner's request is untimely and must be denied.

[5]EERA is codified at Government Code section 3540 et seq.

Court of Appeal in United Public Employees, Local 790, SEIU, AFL-CIO v. Public Employment Relations Board (September 1989) 213 Cal.App.3d 1119 [262 Cal.Rptr. 158] (UPE).[6] The Court of Appeal addressed the need to harmonize provisions of EERA, the Education Code[7] and the City Charter[8] in considering the Employer's

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[6]The court's decision in UPE thus reversed the Board's finding that SFCCD is not under PERB's jurisdiction (San Francisco Community College District (1988) PERB Decision No. 688), finding more persuasive the Board's reasoning in an earlier case (San Francisco Community College District (Barnes) (1986) PERB Order No. Ad-153).

[7]Under Education Code section 88000, certain provisions of the Education Code which would otherwise apply to all classified employees of a community college

> shall not apply to employees of a community college district lying wholly within a city and county which provides in its charter for a merit system of employment for employees employed in positions not requiring certification qualifications.

Education Code section 88137 further provides as follows:

> In every community college district conterminous with the boundaries of a city and county, employees not employed in positions requiring certification qualifications shall be employed, if the city and county has a charter providing for a merit system of employment, pursuant to the provisions of such charter providing for such system and shall, in all respects, be subject to, and have all rights granted by, such provisions; provided, however, that the governing board of the district shall have the right to fix the duties of all of its noncertificated employees.

It is undisputed that these provisions apply uniquely to SFCCD.

[8]The City Charter provides for a Civil Service Commission (CSC) at Article III, Chapter 5, sections 3.660 and 3.661, and sets forth Civil Service Provisions in Article VIII, Chapter 3, sections 8.300 et seq.

argument that PERB lacked jurisdiction in the UPE case. The court found that SFCCD hires and fires its employees, supervises them on the job, assigns duties, administers leaves and other benefits provided under the City's civil service system, grants other benefits, sets salaries, and determines what holidays will be taken by employees. (UPE, supra.) The City, through its civil service system, establishes classifications, qualifications and lists of persons eligible for appointment, awards certain fringe and leave benefits, and administers retirement and a health service plan. (Ibid.) In sum, in the court's view, SFCCD and the City had "successfully harmonized and divided their responsibilities over the employees." (Ibid.) The court thus concluded that SFCCD is a public school employer and that SFCCD and the City are "joint employers" of SFCCD's classified employees.[9] (Ibid.)

FACTS

SFCCD operates at several campuses and other locations throughout the City, and has an enrollment of approximately 90,000 students. SFCCD employs approximately 1,600 certificated staff and 700-800 classified staff. Currently, there are established bargaining units and exclusive representatives for

[9]The court cites NLRB v. Browning-Ferris Industries, Etc. (3d Cir. 1982) 691 F.2d 1117, 1128 [111 LRRM 2748] for the proposition that "where two or more employers exert significant control over the same employees -- where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment -- they constitute 'joint employers'. . . ."

certificated personnel,[10] certificated supervisors[11] and general classified staff.

The latter unit, represented by United Public Employees, SEIU Local 790 (Local 790), includes custodians, storekeepers and cooks, paraprofessionals, and clerical and technical employees. Local 790's unit includes a number of classifications which it also represents in City units, and 41 classifications that are either represented by a different employee organization, or are not represented, at the City.

Local 790's unit excludes painters (3 employees), electricians (3), plumbers and steamfitters (3), stationary engineers (9), truck drivers (2), gardeners and nursery specialist (8), and locksmith and carpenters (4),[12] The total number of unrepresented classified employees is 32.

SFCCD's labor relations, including negotiations, contract administration and advice to the Board of Trustees, are handled by Employee Relations Director Lawrence C. Klein, who is assisted by one employee relations representative, one secretary and one part-time clerk. Negotiations with each of the three current exclusive representatives have been time consuming, involving 300

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^Represented by the American Federation of Teachers, Local 2121.

Represented by the Department Chairperson Council.

[12]Local 790 was granted voluntary recognition by SFCCD on February 18, 1986, in PERB Case No. SF-R-679. The unit proposed as appropriate by Local 790 excluded "building trades classifications", and the resolution approved by SFCCD's Board of Trustees granting recognition specifically listed the various building trades classifications excluded.

or more hours for each agreement reached in the last round of negotiations. Significant amounts of time are also required for preparations for negotiations, training for managers and supervisors, contract administration and grievance processing, and meeting with the Board of Trustees.

Civil Service Provisions

The City's civil service system sets up a "merit and fitness" requirement for employment, including provisions for testing and examinations, appointments from a list of certified eligibles based on the "rule of three scores," and disciplinary suspensions and dismissals.

The civil service system also provides for the setting of compensation for most covered employees based on the principle of "like compensation . . . for like service." The Charter also requires, for most employees, that compensations be fixed "in accord with the generally prevailing rates of wage for like service and working conditions in private employment or in other comparable governmental organizations" in California. Under the Charter's provisions, the CSC conducts salary surveys using "benchmark" comparisons based on classification and recommends a compensation schedule or adjustments each year.

The CSC's compensation recommendations are normally reflected in a Salary Standardization Ordinance (SSO) adopted by the City's Board of Supervisors. The SSO sets forth salary schedules, vacation and sick leave accruals, holidays, shift differentials, night duty pay and other components of compensation. The SSO includes frequent reference to specific

provisions which have been negotiated as a part of a memorandum of understanding (MOU) between the City and an exclusive representative, but in many cases wages are not addressed by the MOU.

The SSO states that its provisions apply to the SFCCD and the San Francisco Unified School District (SFUSD). In addition, SFCCD's Board of Trustees has by resolution adopted the provisions of the SSO each year as applicable to its classified employees. When the City negotiated "furlough days" agreements with its exclusive representatives after the veto of the proposed 1993-94 SSO,[13] SFCCD reached similar agreements covering most of its classified employees.

SFCCD employees generally receive the benefits set forth in the SSO. Gardeners at SFCCD, for example, receive the same night duty pay as do City gardeners. As noted in the SSO, SFCCD and SFUSD employees receive the same number of paid holidays as do City employees, but the school districts may, and do, designate different holidays than those observed by the City. SFCCD and SFUSD employees are covered by a different dental benefits plan than employees of the City and received dental benefits earlier than City employees. SFCCD employees are covered by the same health service and retirement plans as are City employees.

To hire a gardener or other classified employee, SFCCD requests an eligible list from CSC, utilizing the same list and

[13]The 1992-93 SSO remains in effect for 1993-94 due to a veto of the proposed SSO by the mayor.

examination process as used by City departments.[14] The actual hiring decision is made by SFCCD. SFCCD's classified employees are under the City civil service system; they can transfer into or from City or SFUSD positions,[15] carry vacation and sick leave credits with them upon transfer, and have SFCCD experience count toward any experience requirement for a promotional examination. Because gardener is designated as a "citywide" class for layoff purposes, a SFCCD gardener subject to layoff could "bump" a less senior employee in a City department (or vice versa).

The City's Bargaining Units

The City is subject to the provisions of the Meyers-Milias-Brown Act (MMBA),[16] which provides collective bargaining rights for employees of cities, counties and special districts, and has adopted an Employee Relations Ordinance (ERO)[17] pursuant to the MMBA. City bargaining units are established by the ERO, including Unit 1 - Crafts.

Unit 1 - Crafts is comprised of multiple bargaining sub-units for each "building trade or other craft or group which has historically established separate bargaining units in private

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[14]There are limited exceptions to this general rule, namely certain prohibitions against the employment by a public school system of persons convicted of sex crimes or of dealing drugs. (Hearing Transcript, Volume III, p. 6.)

[15]Two gardeners currently employed by SFCCD, Roul Hernandez and Guido Nannini, have been continuously employed under the civil service system since 1970 and 1964, respectively, while working in various positions with the City, SFUSD and SFCCD.

[16]Government Code section 3500 et seq.

[17]San Francisco Administrative Code, section 16.200 et seq.

industry or the journeymen of which normally attain status through the completion of a substantial period of apprenticeship." (San Francisco Administrative Code, section 16.210.) There are more than 30 such units which exist within the Unit 1 framework.

Local 261 represents Unit 1-N, including more than 800 employees in such classifications as farmer, gardener, general laborer, tree topper, pest control specialist, sewer maintenance worker and asphalt finisher.

In all, there are over 200 bargaining units which have been established under the ERO, with representation by more than 30 separate employee organizations.[18] The City negotiates separate memoranda of understanding for these 200-plus bargaining units, although informal coalition bargaining takes place on occasion over such issues as pay equity and wage freezes.

Community of Interest Factors

A. Representation History

Local 261 has engaged in representation activities for gardeners employed by SFCCD, including informal negotiations over wage issues. Gardeners employed by SFCCD are members of Local 261, and Local 261 receives dues payments by SFCCD employees through payroll deduction.[19]

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[18]Local 790, for example, represents several different bargaining units under the City structure.

[19]SFCCD employees, though paid out of SFCCD funds, receive a City check through an arrangement between the City and SFCCD.

B. Supervision

Gardeners report directly to Building and Grounds Superintendent James Keenan (Keenan), who in turn reports to the director of operations. Keenan is responsible for all maintenance-related activities at SFCCD, and supervises a staff of 40 including all of the unrepresented classifications. Of these unrepresented classifications, only the gardeners and truck drivers do not have a formal apprenticeship requirement.

SFCCD has plans for a shops complex as a location for all employees who report to Keenan, but currently they do not report to a central location. Except for stationary engineers, who work three different shifts, all building trades employees work within the hours of 6:00 a.m. and 4:30 p.m.

All of the employees reporting to Keenan exercise independent judgment and frequently work without direct supervision.

C. Job Duties

The nursery specialist works in the Ornamental Horticulture/ Retail Floristry Department, an academic department. The nursery specialist is involved in plant propagation activities in a nursery, greenhouse or conservatory. Typical duties of a nursery specialist include making cuttings and grafts, sowing and gathering seeds, transplanting cuttings and seedlings, pruning and staking plant stock, preparation of floral displays and potting and repotting plants. The nursery specialist also sterilizes soil and applies fungicide, insecticide, and fertilizers. This position requires a working knowledge of plant

and ornamental horticulture, completion of high school and two years' experience as a gardener (or equivalent training and experience).

Gardeners maintain landscaped areas and athletic fields. They mow, rake, water, weed, burn, plant, and prune; operate power equipment such as large and small mowers, chain saws, rototillers, edgers, blowers and shredders; drive trucks; sweep and clean; inspect and repair sprinklers and hoses; repair damaged trees and shrubs; trap rodents; do minor repairs on equipment and facilities as needed; and spray for disease and insect control. The position requires two years of formal education in landscape gardening or garden-center operation (an A.A. degree is preferred), or equivalent experience.

Gardeners at SFCCD work an assigned "beat" (area of responsibility), but also work in teams on specified projects. On occasion, gardeners will work on a project with employees in other classifications, such as plumbers, but may also work on a project, such as tree topping, with a crew from a City department.[20]

The work performed by painters is primarily on small maintenance projects; one of their major jobs is dealing with graffiti. Painters work with chemicals, including a recovery system that separates paint from thinners. Electricians also

[20]SFCCD contracts with City departments for certain work for which they do not employ personnel, such as glaziers and tree toppers. In addition, SFCCD purchases its trucks through the City, and these vehicles carry the City seal and are sent to City shops for repair.

work primarily on maintenance and preventive maintenance projects, including work with high voltage material and emergency generators. Plumbers work both with fresh water and sewerage, pumps, drinking fountains, bathrooms and chemicals, and do both maintenance and remodelling projects. Plumbers also repair gas lines in laboratories. Steamfitters work with high pressure steam and boiler systems, including maintenance and repair. Stationary engineers run high pressure boilers and also maintain and repair heating, ventilation and air conditioning systems. The locksmith is responsible for the key control and locks for all SFCCD buildings, rooms, fire alarm boxes and safes. Carpenters perform maintenance and construction work, including repair of blackboards, building partitions and cabinets, and installing doors and window sashes. The truck drivers operate trucks, transport mail and furniture, and haul material and supplies for maintenance activities.

POSITIONS OF THE PARTIES

Petitioner

Local 261 argues that the record demonstrates a sufficient community of interest among the gardeners to find the proposed unit appropriate. The community of interest identified by Local 261 derives from the "joint employer" status of SFCCD and its employees' inclusion in City bargaining units. Local 261 asserts that the gardeners at SFCCD share a community of interest among themselves and with other employees in City Unit 1-N, but not with skilled journeypersons such as plumbers or carpenters employed by SFCCD. SFCCD's gardeners, according to Local 261,

are affected by the same benchmark comparison for salary setting purposes, are covered by the same layoff rules and procedures, belong to the same employee organization (and no other), and generally enjoy the same benefits under the civil service system and SSO as other Unit 1-N employees.

Local 261 asserts that the traditional unit analysis found in Sweetwater Union High School District (1976) EERB[21] Decision No. 4 (Sweetwater) and decisions following Sweetwater is inapposite to the present case because of unique factors. The unique factors are the "joint employer" status of SFCCD and the City, the inclusion of SFCCD's employees under the City's civil service system and the resultant degree to which Local 261 arguably already represents the petitioned-for employees before the CSC and in negotiations for City Unit 1-N. Local 261 also argues that Sweetwater is inapplicable where, as here, the existing bargaining unit structure does not allow for creation of the three classified units preferred under Sweetwater.

PERB must find in favor of the proposed unit, according to Local 261, in order to harmonize the UPE decision with the requirements of EERA, the MMBA, Education Code section 88137 and the City Charter. Local 261 cites in particular the following underlined language found in EERA at section 3540:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the

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

> right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy.

According to Local 261, denial of its petition would result in one of two outcomes violative of EERA section 3540: either employees would be denied the right of representation with the public school employer, or employees would be placed in a unit at SFCCD different than their City unit and with representation by a different exclusive representative.

The first result, according to Local 261, would flow from the fact that Local 261 does not wish to represent all currently unrepresented SFCCD employees and Local 790 has not sought to amend its SFCCD unit to include them. The alternative result, to place gardeners and other building trades employees in either a single unit or the Local 790 unit, would result in "dual" representation, not the representation by a single exclusive representative required under EERA.

Local 261 also cites EERA[22] for the proposition that denial

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[22]Here, Local 261 cites the following language, also contained in Government Code section 3540:

> This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the

of its petition would be violative of the proscription against EERA's supersession of the Education Code, particularly Education Code section 88137.

Local 261 dismisses the Employer's efficiency of operations arguments, and concerns over the possible proliferation of small units of crafts employees, as speculative and unpersuasive. Local 261 argues, however, that efficiency concerns should be considered, in the sense that failure to find their unit appropriate would result in confusion and inefficiency for the SFCCD and City,[23] exclusive representatives and employees due to the placement of employees in two bargaining units with the two employers with different representatives.

Employer

The Employer's opposition to the petitioned-for unit is organized around five themes: 1) the proposed unit is inappropriate; 2) efficiency of operations considerations; 3) the special status of the City and SFCCD as joint employers does not require such a small unit; 4) denial of the petition will not deny representation rights to employees; and 5) Local 261 should be disqualified from representing the unit even if it is approved.

Concerning unit appropriateness, the Employer relies upon Sweetwater and Compton Unified School District (1979) PERB

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public school employer do not conflict with lawful collective agreements.

[23]PERB lacks jurisdiction over the City, and no consideration will be given to potential efficiency of operations concerns of the City.

Decision No. 109 (Compton) for the proposition that small, narrow units will be approved only where a distinct and separate community of interest is demonstrated. The Employer argues that Local 261 has failed to establish a distinct and separate community of interest among the gardeners which would be sufficient to overcome the presumption set forth in Sweetwater, Compton, et al.

The Employer notes that, in Foothill-DeAnza Community College District (1977) EERB Decision No. 10 (Foothill), the Board found a "skilled crafts and maintenance" unit appropriate based on the separate community of interest and functional relationships of those employees. Drawing a parallel with Foothill, the Employer argues that its gardeners and crafts employees share similar training, have a common functionality (maintenance of the physical environment), and have in common their use of equipment and machinery and skilled work with their hands. The Employer also points to the shared hours, similar working conditions and common lines of supervision of gardeners and building trades employees.

Second, the Employer contends that approval of the requested unit would create serious operational inefficiencies. In part, this argument rests on the assumption that approval of a unit of gardeners would open the door to creation of up to seven additional units at SFCCD, each numbering from two to nine employees. SFCCD points to the significant amount of time already required for negotiations and related activities with three exclusive representatives, and the limited resources

available within the Employer's employee relations office, and posits that creation of these additional units would place a severe burden on the Employer. The Employer also argues that the released time of unit employees for negotiations[24] in so many units would unduly strain the Employer's resources and negatively affect the maintenance operations themselves. The Employer also cites the experience of SFUSD[25] and the City[26] in dealing with multiple units in support of its thesis concerning the efficiency of operations issue.

Third, the Employer contends that the relationship between the City and SFCCD does not require approval of the unit sought by Local 261. While acknowledging that "[m]any of the terms and conditions of employment of [SFCCD's classified employees] are determined by provisions of the Charter of the City or by collective bargaining between the City and its employee

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[24]**EERA** provides at section 3543.1 (c) as follows:

> (c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

[25]Dr. Bruce Julian, negotiator for SFUSD, testified about the experience in that district where the employer has granted voluntary recognition to separate units of gardeners, painters and carpenters. He offered his opinion that the SFUSD's efficiency interest would be better served by a single skilled crafts bargaining unit.

[26]Claude Everhart, former executive deputy mayor of the City, testified concerning the problems the City faced in its labor relations due to the proliferation of units and representatives. He opined that the City's interests, and collective bargaining, would be better served by a more rational structure with fewer bargaining units.

organizations," and that SFCCD's authority over these employees is "circumscribed," the Employer asserts that its status as a public school employer under EERA is controlling in this case. (Employer's Brief at p. 26.) The Employer notes that Education Code section 88137 places its classified employees under the City's civil service system, not the ERO or the MMBA. The Employer contends that the role of the CSC vis-a-vis the SFCCD is analogous to that of a personnel commission to the governing board of a merit system community college district under Education Code section 88080 et seq., but that this relationship is not relevant to unit determination for SFCCD's employees. The Employer also rejects the notion that there is any parallelism between Local 261's City unit and the unit sought here, noting that Unit 1-N includes over 800 employees in 30-plus varied classifications while the proposed unit would include only 8 employees in 2 classifications.

The Employer disputes Local 261's contention that denial of the instant petition would deny representation rights to gardeners. The Employer finds no bar to its employees having separate representation by two different employee organizations for purposes of negotiations with the City and itself. The Employer announces its readiness to agree either to the accretion of gardeners to Local 790's unit, or to the establishment of a

single unit of the "building and trades" classifications now unrepresented.[27]

Finally, the Employer opines that Local 261's representation of supervisory employees, at the SFUSD and in City Unit 1-N, disqualifies Local 261 from representing the unit it seeks here, even if the unit is approved. The Employer cites the prohibition in EERA, at Government Code section 3545(b)(2), as interpreted in Los Angeles Unified School District v. Public Employment Relations Board (July 1986) 191 Cal.App.3d 551 [237 Cal.Rptr. 278] (LAUSD),[28] against the "same employee organization" representing both supervisory and rank-and-file employees. The Employer acknowledges that the MMBA allows the inclusion of supervisors and the employees they supervise in the same unit, but contends that the policy interests expressed in EERA at section 3545(b)(2) apply not only where the supervisory employees and rank-and-file employees work for the same employer, but also where, as argued here by Local 261, there is such a close relationship among the two employers and their employees.

As a part of this latter argument, the Employer asserts that Local 261 and the other unions representing City and SFCCD building trades employees are, using the LAUSD test, the "same

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[27]The Employer cites the testimony of David Daneluz, a representative of Teamsters Local 216, concerning the Teamsters' interest in representing such a unit at SFCCD.

[28]In brief, this case holds that a local of the Service Employees International Union (SEIU) may not represent supervisory classified employees of a school district where another local of SEIU represents the rank-and-file employees of the district.

employee organization" because they share affiliation with international unions which are affiliated with the AFL-CIO and they are members of the San Francisco Building Trades Council. The Employer also relies on this premise to argue that the gardeners should be considered as belonging to the same employee organization as other building trades employees for purposes of analysis of the statutory criteria.

ISSUE

Is a unit including only the gardeners and nursery specialist[29] at SFCCD appropriate under EERA?

DISCUSSION

In each unit determination case, the Board is bound to follow the criteria set forth in EERA at section 3545(a):

> (a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

The Board ruled early in its history that it must in each case determine the "appropriateness" of a unit without being limited only to a choice between "an" or the "most" appropriate unit, and must in each case weigh and balance the statutory criteria in

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[29]The question of placement of the position of assistant gardener supervisor is not at issue because the position is vacant and because no evidence other than the job description was introduced into evidence concerning the duties of the position. (See Marin Community College District (1978) PERB Decision No. 55 and Mendocino Community College District (1981) PERB Decision No. 144a.)

order to achieve consistency of application and the general objectives of EERA. (Antioch Unified School District (1977) EERB Decision No. 37 (Antioch); see also Marin Community College District, supra.)

In Sweetwater, the Board announced its preference for three units of classified employees: instructional aides; office-technical and business services; and operations and support services. The significance of the Sweetwater "preferred" units was further explained in Compton where the Board held that

> a variant unit will not be awarded unless it is more appropriate than the Sweetwater unit based on a separate and distinct community of interest among employees in the variant unit or other section 3545(a) criteria. (Emphasis added; footnote omitted.)

In Compton, the Board rejected a separate unit for skilled crafts employees, and included them with the operations and support services unit, despite a petitioner's demonstration of 84 percent membership among the skilled crafts employees.

In later denying a unit of hourly bus drivers, where other bus drivers were already included in the operations and support services unit, the Board noted that:

> Every classification possesses a community of interest among its members. Janitors, undisputably, have more in common with other janitors than they do with gardeners, but we have yet to find a separate unit of only janitors appropriate, absent unusual circumstances. (San Diego Unified School District (1981) PERB Decision No. 170 (San Diego).)

Thus, in light of PERB precedent, the questions posed by the instant case are: (1) Does the record support a finding that the

SFCCD gardeners share a "separate and distinct" community of interest which warrants their inclusion in a separate unit, and (2) does this case present "unusual circumstances" warranting approval of a separate unit of gardeners?

Community of Interest

Like the hypothetical janitors in San Diego, SFCCD's gardeners share a community of interest derived from common job functions, supervision, hours of work, frequency of contact, and wages, benefits and working conditions. The nursery specialist does not fit the gardeners' profile perfectly, but the similarities (especially in terms of training, job functions and working conditions) are sufficient to outweigh any distinctions.

The gardeners and nursery specialist also have in common their membership in Local 261 and their representation by Local 261 before the CSC and in City negotiations under the MMBA.

However, it is necessary to also consider the indicia of the gardeners' community of interest with the other unrepresented employees at SFCCD. Like the gardeners, the truck drivers, electricians, carpenters, etc., are under the City civil service system, and have representation under MMBA and the ERO in sub-units created under the "umbrella" of the ERO's Unit 1.

While, unlike the skilled crafts employees, neither the truck drivers or gardeners are required to pass a formal apprenticeship, the gardeners (and nursery specialist) are subject to a formal education/training requirement. All of the unrepresented employees (except the nursery specialist) are involved in maintenance of the physical plant of the SFCCD, work

with their hands and with tools, perform both skilled and unskilled manual labor, exercise independent judgment, have similar health and safety concerns, are subordinates of the building and grounds superintendent, work together on occasion in the performance of their duties, and most work both indoors and outdoors. There are, in sum, sufficient common factors among the unrepresented classified employees to find that the gardeners and nursery specialist do not have a "separate and distinct" community of interest.[30]

"Unusual Circumstances" Standard

The unusual circumstance in this case derives from the joint employer relationship between the City and SFCCD, and the fact that the gardeners' conditions of employment are determined by, some mix of decision-making by the CSC, the SFCCD itself and negotiations between Local 261 and the City. Local 261 submits that this unusual circumstance requires approval of its unit, as the only alternative is a scheme where SFCCD employees have dual representation.

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[30]In reaching this conclusion, no credence is given to the Employer's assertion that the "same employee organization" represents these employees under the City ERO. Neither case law, nor the record of this case, supports the conclusion that the affiliation of local unions with a central labor council, or with international unions which are in turn affiliated with the AFL-CIO, is sufficient to bring them within the definition of "same employee organization" set forth in LAUSD. For example, the Constitution and By-Laws of the San Francisco Building Trades Council, at Article IX, provides in pertinent part as follows:

> Affiliated National and International Unions have autonomy over the conduct of their respective Local Unions and members. . . ." (Employer Exhibit No. 15.)

Local 261 first argues that dual representation would violate the statutory right of employees to a single exclusive representative. Local 261 asserts that UPE "contemplated the same union representing the same employees at both of the joint employers." (Petitioner's Brief at p. 17, emphasis in original, citing UPE at pp. 1131-1132.)

Local 261 further contends that such dual representation would result in confusion among employees, employee organizations and employers as to the proper forum for dispute resolution, and impair the efficiency of operation of the joint employers.

Petitioner's reliance on UPE is not persuasive in this context, however. The facts before the UPE court involved an issue arising where Local 790 represented the employees involved with both the City and SFCCD. The court's reference to this fact does not equate with a requirement for such "parallelism" in every case concerning these two employers.

Petitioner's reliance on the "single exclusive representative" language in EERA is similarly unpersuasive. Petitioner attempts to stretch the meaning of provisions which apply only to employer-employee relationships in public schools to a situation where, as here, there are employees who fall under the provisions of both EERA and the MMBA. UPE holds that SFCCD is a public school employer subject to both the EERA and the City's civil service system. UPE does not, as noted by the Employer, require that the SFCCD be covered by the City ERO.

Contrary to Local 261's arguments, EERA does not preclude, in every case, an employee's placement in more than one

bargaining unit. An employee holding two positions with the same employer, e.g., part-time instructional aide and part-time bus driver, might well be included in two separate bargaining units represented by two different exclusive representatives. Such a situation might result in the employee paying dues to two unions, and might even result in some confusion, but the result is not contrary to EERA's general provision of the right of employees to have a single exclusive representative.[31]

The issue here, of course, does not involve placement of employees in two units of the same employer. If the Employer's position were adopted, SFCCD's employees would still be placed in only one bargaining unit of the public school employer; the fact that they are also included in a bargaining unit with the City, even if potentially represented by a different union, is ultimately not relevant to the unit determination decision.

Local 261's expressed concerns about confusion and inefficiency which would accompany dual representation are not supported by the record. Local 790 has since 1986 represented a significant number of SFCCD employees who have representation by a different union with the City. There is no evidence that this situation has caused any difficulty or confusion for the employees, employers or employee organizations. The Employer and

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[31]See Unit Determination for Employees of the State of California (1981) PERB Decision No. 110d-S, Oakland Unified School District (1983) PERB Decision No. 320, and Berea Publishing Co. (1963) 140 NLRB 516 [52 LRRM 1051]. The instant case is admittedly distinguishable in that the employees are not "dual function" employees of a single employer, but the analysis is analogous.

any employee organization representing its classified employees will have to reconcile the means and forum for resolution of certain issues given the interrelationships among the civil service system, City negotiations and the SFCCD's own collective bargaining obligations under EERA, but the Board, in determining the appropriateness of a unit, is bound to consider only the criteria set forth in EERA.

The Applicability of Sweetwater

Local 261 argues that the Sweetwater presumption is inapplicable to the instant case, in part because Sweetwater units cannot be established as a consequence of the Employer's earlier agreement to a non-Sweetwater unit requested by Local 790. The Employer responds that its agreement to consolidate the three Sweetwater units into one, in order to promote efficiency of operations, should not work to its detriment.[32]

The Local 790 unit includes such classifications as custodian, school lunchroom cook and warehouse worker, and

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[32]As noted above, the unit now represented by Local 790 with the Employer is the result of a voluntary agreement and recognition. In Redondo Beach City School District (1980) PERB Decision No. 114, the Board held that:

> It has been PERB's policy to encourage voluntary recognitions and settlements among the parties subject to its jurisdiction. The Board also has a strong interest in labor relations stability. Therefore we are loathe to upset working relationships and will not disrupt existing units . . . lightly.

The policy interests thus expressed mean that, in a case such as the instant matter, the determination of an appropriate unit must be made with consideration only of those classifications not already placed in a unit.

therefore makes establishment of a pure Sweetwater operations and support services unit impossible in the instant case and difficult under any circumstance. This situation does not, however, render Sweetwater and other Board precedent, inapplicable. It is worth noting, too, that not all units approved under Sweetwater look exactly alike.[33]

Efficiency of Operations

As noted by the Employer, creation of a residual unit including all the unrepresented building trades classifications would result in two classified bargaining units for SFCCD. Implicit in the Employer's argument is that such an outcome is close enough to the three unit configuration preferred under Sweetwater that it should be favored over the result sought by Local 261, and that it reflects the proper weighing and balancing of unit criteria discussed in Antioch.

The Employer's concerns over the potential impact on its efficiency of operations from a proliferation of small units of building trades employees cannot be dismissed as "speculative." A finding in the instant case that the gardeners have a separate and distinct community of interest, sufficient to warrant a separate unit, would make it extremely difficult to deny similar (i.e., separate) units to other building trades groups who clearly share the "unusual circumstances" of gardeners. The fact that petitions for such units are not now pending does not negate

[33]For example, the operations and support services units approved in Sweetwater and Compton differed in that the latter did not include food service workers. Also, the Board approved a unit of skilled crafts and maintenance employees in Foothill.

the Employer's concern over proliferation.[34] The evidence presented by the Employer supports a finding that a proliferation of units would have adverse impact. This factor must be weighed and balanced alongside the other statutory criteria.

Disqualification of Local 261

The Employer's contention that Local 261 would be disqualified under EERA section 3545(b)(2) from representing the unit it seeks is not, in any respect, persuasive. The Employer's theory rests on the alleged supervisory status of one position currently represented by Local 261 at SFUSD, the inclusion of supervisory positions as allowed under the MMBA in City Unit 1-N, and the statutory prohibition against the "same employee organization" representing both supervisory and rank-and-file employees.

As discussed in LAUSD, the legislative intent behind EERA section 3545(b)(2) included

> . . . the prevention of situations in which the loyalty of supervisors might be divided between management and rank-and-file, nonsupervisory, employees. (LAUSD at p. 556, citing Sacramento City Unified School District (1980) PERB Decision No. 122.)

The statutory prohibition does not on its face, and has never been interpreted to, bar an employee organization from representing rank-and-file employees with one employer and supervisory employees of a different employer.

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[34]According to PERB's case files, at least one such unit was previously sought. In Case No. SF-R-639, a request for recognition was filed for a separate unit of SFCCD's carpenters, but was later withdrawn.

The logical extension of the Employer's theory, combined with the earlier-described theory as to the "same employee organization" status of all AFL-CIO affiliates, would mean that all AFL-CIO unions would be barred from representing any rank-and-file employees under EERA if any other AFL-CIO union represented a single supervisory unit. Such an extreme result could not have been intended by the Legislature.[35]

Since the Employer does not allege that any supervisory positions are included among the eight gardener and nursery specialist positions petitioned for by Local 261,[36] the limitations set forth in section 3545(b)(2) are simply not relevant to this case.

In sum, the record in this case supports a finding that Local 261 is an employee organization as defined by EERA, and is eligible to represent a unit of rank-and-file employees at SFCCD.

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[35]See, e.g., Westminster School District (1977) EERB Decision No. 42 and Inglewood Unified School District (1991) PERB Order No. Ad-222.

[36]It is also noted that the Employer's allegation concerning the inclusion of supervisors in Local 261's SFUSD unit is merely that, an allegation. No party with standing to raise the issue of supervisory status of any position in that unit has done so, the SFCCD lacks standing to do so, and PERB has made no such determination. Further, PERB lacks jurisdiction to determine whether employees under the MMBA are supervisory employees based on EERA's definition of that term.

Unit Determination

Given the above-discussed reasons why the Local 261 petition cannot be granted, the question remaining is whether any unit should be ordered at this time.[37]

As noted by the Board in State of California (Department of Personnel Administration) (1989) PERB Decision No. 773-S",

> In unit determination proceedings, PERB clearly has the power to determine an appropriate unit, and the unit ultimately decided upon may be different from the unit proposed by the parties.

The Petitioner acknowledges in its brief (p. 18) that PERB has this authority and that one alternative presented in this case is placement of the gardeners in a unit with the other unrepresented building trades classifications.[38] The Employer has also proposed as an alternative that all of the unrepresented building trades classifications be placed in one unit.[39]

As discussed above, employees in the building trades classifications share similar and often related job functions, work under common supervision and working conditions, and have in common similar training and their work with tools and equipment. The nursery specialist, as also earlier noted, differs in several

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[37]Local 261 correctly notes that, absent Local 790's petitioning, the gardeners cannot be accreted to the Local 790 unit.

[38]The Petitioner continues to oppose its establishment, however, and goes on to disavow any interest in representing such a unit (p. 19).

[39]No weight is placed on the testimony concerning the Teamsters' interest in representing such a unit. Neither that organization or any other has filed a petition for the unit.

respects but shares sufficient similarity with the gardeners otherwise to be appropriately treated as a part of this grouping. These employees also have in common similar unit treatment for negotiations under the City's ERO, and are treated similarly for purposes of salary setting under recommendations of the CSC.

Establishment of a unit including all of the currently unrepresented classified employees would also comport with the efficiency of operations concerns of the Employer. A single unit of all building trades classifications is also consistent with relevant PERB precedent, including Sweetwater and Foothill. Such a unit would differ from that found appropriate in Foothill only by the omission of custodians and warehouse workers, and those classifications are not properly at issue here due to their inclusion in the unit now represented by Local 790.

Based on the efficiency of operations and community of interest factors discussed above, including the common job functions, supervision and working conditions, as well as their common unit treatment under the City collective bargaining scheme, it is determined that a single unit comprised of the building trades classifications at SFCCD is an appropriate unit for representation purposes under the EERA.

CONCLUSION AND ORDER

For the reasons discussed above, and in consideration of the entire record in this proceeding, it is hereby ORDERED that a unit comprised of the building trades classifications now unrepresented at SFCCD, including the gardeners and nursery specialist, is an appropriate unit for purposes of meeting and

conferring under EERA, provided an employee organization becomes the exclusive representative. The unit shall include the classifications of gardener, nursery specialist, painter, painter supervisor I, electrician, plumber, steamfitter, stationary engineer, truck driver, locksmith and carpenter, and shall exclude all other employees, including management, supervisory and confidential employees.

Pursuant to PERB Regulation 33470, Local 261 shall have 15 workdays from the date of issuance of a final decision in this case to demonstrate, to the satisfaction of the regional director, at least 30 percent support in the unit described as appropriate. An election shall be scheduled and conducted by PERB if such evidence of employee support is demonstrated, unless the Petitioner demonstrates proof of majority support and the Employer grants voluntary recognition. (PERB Regulations 33470 and 33480.)

If proof of at least 30 percent support is not provided by Local 261, the Local 261 petition shall be dismissed.

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.)

Les Chisholm
Hearing Officer