

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



FALLBROOK UNION HIGH SCHOOL DISTRICT,)
Employer,) Case Nos. LA-R-581
and) LA-R-585
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION, Chapter 353,) PERB Decision No. 78
Employee Organization,) December 4, 1978
and)
SERVICE EMPLOYEES INTERNATIONAL)
UNION, Local 102, AFL-CIO,)
Employee Organization.)

Appearances: Robert P. Thomas, Acting Superintendent for Fallbrook Union High School District; Michael L. Trestick, Field Representative and Harry L. Hasler, Field Representative for California School Employees Association, Chapter 353; James A. Hawes, Executive Secretary-Treasurer for Service Employees International Union, Local 102, AFL-CIO.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members,

DECISION

Two employee organizations have filed petitions seeking recognition as the exclusive representative for certain of the classified employees of Fallbrook Union High School District (hereafter District). California School Employees Association, Chapter 353 (hereafter CSEA) proposes that the classified employees be divided into two units¹ and seeks recognition as

¹In its initial petition CSEA requested a single, wall-to-wall unit to be composed of all classified employees

the exclusive representative of each. Service Employees International Union, Local 102 (hereafter SEIU), on the other hand, takes the position that three units would be appropriate and seeks recognition as the exclusive representative of one of those units.² The District contends that a wall-to-wall unit would be appropriate. There is also disagreement among the parties as to the supervisory status of one of the positions, the gardener crew leader.

This matter comes before the Public Employment Relations Board (hereafter PERB or Board) on exceptions filed by SEIU to a proposed decision in which the hearing officer concluded that the gardener crew leader was not a supervisor within the

except noon duty supervisors, and management, confidential, or supervisory employees. Prior to the hearing in this matter, however, CSEA amended its initial request and it now urges the appropriateness of two units with the following composition:

Unit A

Accountant, bookkeeper, program budget clerk, keypunch operator, school secretary, library service technician, senior clerk typist, stenographer clerk, intermediate clerk typist, library assistant, clerk typist, receptionist/telephone operator, instructional aide, and campus aide;

Unit B

Snack bar supervisor, cafeteria worker, senior maintenance worker, storekeeper/utility, gardener crew leader, general maintenance worker, custodian crew leader, gardener, and custodian.

²The proposed unit for which SEIU seeks recognition as exclusive representative would be composed of gardener crew leader, general maintenance, custodian crew leader, gardener, and custodian classifications.

meaning of the Educational Employment Relations Act (hereafter EERA)³ and that a single unit composed of all classified employees was an appropriate unit.

FACTS

District has an ADA (average daily attendance) of approximately 1800 students. Although land has been purchased for future expansion, at the present time the high school facility and continuation school are located on a single 54-acre site. All of the approximately 40 employees in question work at this same location.

The parties have stipulated as to the management, supervisory, and confidential status of several positions⁴ and since those stipulations are supported by the record, we accept them here without further inquiry. Of those employees still in dispute there are approximately 12 clerical, accounting, and office services employees who work in offices and do not perform physical labor; eight instructional or campus aides who perform various clerical duties as well as work directly with students; four food services employees who

³The EERA is codified at Gov. Code sec. 3540 et seq. All subsequent statutory references are to the Government Code unless otherwise specified.

⁴Those employees stipulated to be management are the superintendent, assistant superintendent, principal, and business manager. The director of operations was stipulated to be a supervisory employee and the administrative secretary was stipulated to be a confidential employee. It appears also that the cafeteria manager was excluded from any potential appropriate units.

work in the cafeteria; and 15 maintenance, custodial, and gardening employees responsible for maintaining a proper physical environment.

Certain common lines of supervision appear among some of the classified employees. The 12 office employees are supervised either directly or indirectly by the school principal or the business manager. For example, while office employees such as clerk typists may be assigned to a particular person for direct supervision, that person to whom they are assigned will invariably report either to the school principal or to the business manager. The campus aides report to the school principal while the instructional aides are supervised by the teacher to whom the individual aide is assigned. All of the maintenance, custodial, and gardening employees are supervised by the director of operations, although for some of these employees there is interposed an intermediate level of supervision in the form of a crew leader. In the case of cafeteria workers, although the record is sparse, it appears that the cafeteria manager, who is responsible for the operation of the cafeteria, is the supervisor for these food services workers.

All of the District's classified employees are paid from the same salary schedule and share the same fringe benefits. The custodians work evenings, as do the cafeteria workers on occasion; other classified employees work a day shift.

The gardener crew leader also holds the position of assistant director of operations. He reports to the director

of operations and is responsible for keeping the landscaped areas of the campus in good condition. In addition to giving general direction to other gardeners, he is expected to perform some of the functions of the director of operations when the latter individual is absent or otherwise unavailable. In connection with these latter duties, the individual who holds these dual positions testified that he has at times relayed information to the custodian crew leader or to individual custodians concerning chores that needed to be done, although this is not done on a regular basis. He sat in on one interview for a new hire but made no comments concerning the applicant, nor were any comments solicited from him. The individual in these dual positions has completed no evaluations on subordinate employees, does not regularly inspect the work of the custodial crew, has never recommended the promotion or demotion of any member of the custodial staff, and is not present the majority of the time that the custodial crew is employed. When asked how he would deal with an employee who needed a reprimand of some sort, this witness testified that he would take the employee to someone "[w]ith more authority than me" for discipline.

DISCUSSION

The Board has previously determined that among classified employees three units are presumptively appropriate: a paraprofessional unit composed of instructional aides, an office-technical and business services unit, and an

operations-support unit. However, by establishing presumptively appropriate units the Board has not precluded the possibility that another unit configuration could also be appropriate when supported by sufficient evidence to overcome the presumption.

The hearing officer concluded that because of the relatively small number of classified employees here involved and because of their common work site that there was sufficient interaction between the employees and sufficient threat of a disruption in efficient operations to warrant a finding that the presumption was overcome and that a wall-to-wall unit was appropriate. We disagree since there was no evidence introduced upon which to base this conclusion.

The maintenance, custodial, and gardening employees have common supervision and perform physical labor rather than work in offices. Although under separate direct supervision, the cafeteria workers have much in common with the maintenance, custodial, and gardening employees. They perform physical labor and do not work in offices. The food services workers at times find themselves working an evening shift in common with custodians. All of these employees have a common purpose of providing a proper physical environment and support services for students.⁵ Moreover, there was testimony that there was

⁵Sweetwater Union High School District (11/23/76) EERB Decision No. 4; Sacramento City Unified School District (9/20/77) EERB Decision No. 30, at 8-10.

at least some interaction between these employees. Accordingly, we find that the maintenance, custodial, gardening, and food services employees constitute an appropriate operations-support services unit.⁶

The clerical, accounting, and office services employees have much in common. They are all supervised either directly or indirectly by the school principal or the business manager. They do not perform physical labor but rather utilize various skills inside an office. None of these employees works an evening shift. The employees thus identified form what would otherwise constitute a single office-technical and business services unit. The District also employs approximately eight instructional and campus aides. Instructional aides constitute a separate presumptively appropriate unit of paraprofessional employees unless there is sufficient evidence to overcome that presumption. In this case the instructional and campus aides perform many clerical-type duties such as typing and filing. One aide spent nearly 100 percent of her time on such tasks. Moreover, in the case of the campus aides there are common lines of supervision with the office employees. These factors, coupled with the small number of aides involved, convinces us that the presumption in favor of a separate paraprofessional

⁶The position of snack bar supervisor, which testimony indicated was no longer in existence, is not considered in this decision.

unit has been overcome and that the instructional and campus aides together with the clerical, accounting, and office services employees constitute an appropriate unit.

The remaining issue, that of the supervisory status of the gardener crew leader/assistant operations foreman needs little discussion. Section 3540.1(m) of the EERA provides that:

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

The evidence here is overwhelming that the employee in question possesses none of the described authority and the hearing officer is affirmed on his holding of non-supervisory status.

ORDER

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

1. The following units are appropriate for the purposes of meeting and negotiating, provided that an employee organization becomes the exclusive representative thereof:

Operations-Support Services Unit consisting of employees in the following job classifications: cafeteria worker; custodian; custodian crew leader; gardener; gardener crew leader/assistant operations foreman; general maintenance worker; senior maintenance worker; and storekeeper/utility; excluding all other employees and including those positions agreed by the parties to be management, supervisory, or confidential.

Office-Technical and Business Services Unit consisting of employees in the following job classifications: accountant, bookkeeper, program budget clerk, keypunch operator, school secretary, library service technician, senior clerk typist, stenographer clerk, intermediate clerk typist, library assistant, clerk typist, receptionist/telephone operator, instructional aide, and campus aide; excluding all other employees and excluding those positions agreed by the parties to be management, supervisory or confidential.

2. The gardener crew leader/assistant operations foreman is not a supervisor.

3. Within 10 workdays after the employer posts the Notice of Decision, the employee organizations shall demonstrate to the regional director at least 30 percent support in the above units. The regional director shall conduct an election at the end of the posting period in each unit if: (1) more than one employee organization qualifies for the ballot, or (2) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

The date used to establish the number of employees in the above units shall be the date of this Decision unless another date is deemed appropriate by the regional director and notice to the parties. In the event another date is selected, the regional director may extend the time for employee organizations to demonstrate at least 30 percent support in the units.

By: Jerilou Cossack Twohey, Member Harry Gluck, Chairperson _____

Raymond J. Gonazles, Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:)
)
FALLBROOK UNION HIGH SCHOOL DISTRICT,) Case No. LA-R-581
)
Employer,) LA-R-585
)
and) PROPOSED DECISION
)
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION)
CHAPTER 353,)
)
Employee Organization,) September 13, 1977
)
and)
)
SERVICE EMPLOYEES INTERNATIONAL UNION,)
LOCAL 102, AFL-CIO,)
)
Employee Organization.)
)
)

Appearances: Robert P. Thomas, for Fallbrook Union High School District; Michael L. Trestick and Harry L. Hasler, for California School Employees Association, Chapter 353; James A. Hawes, for Services Employees International Union, Local 102, AFL-CIO.

Before David Schlossberg, Hearing Officer.

PROCEDURAL HISTORY

On April 12, 1976, California School Employees Association, and its Fallbrook Union High School Chapter (CSEA) #353 filed with the Fallbrook Union High School District (District) a request for recognition as the exclusive representative of a unit consisting of all the District's classified employees, excluding those employees who could lawfully be declared management, supervisory and confidential employees and noon duty supervisors, a unit stated to number approximately 40 employees. The District posted the notice of this request for recognition on April 13, 1976.

On April 19, 1976, Service Employees International Union, Local 102, AFL-CIO (SEIU), filed with the District a request for recognition as the exclusive representative of a unit consisting of employees in these job classifications: gardener crew leader; general maintenance; custodian crew leader; gardener; and custodian; and excluding management, supervisory and confidential employees, a unit stated to number approximately 13 employees. The District posted the notice of this request for recognition on April 20, 1976.

In a letter dated July 7, 1976, SEIU requested that the Educational Employment Relations Board (EERB) conduct a unit determination hearing.

On or before May 9, 1977, CSEA filed with the District an amended request for recognition, seeking two units instead of one comprehensive unit. The first unit was stated to number approximately 21 employees and to include but not be limited to the employees in the following major groupings of jobs: clerical and secretarial and instructional aides (paraprofessional). The second unit was stated to number approximately 19 employees and to include employees in the food service classification and the operations and maintenance classification. Both proposed units were stated to exclude those positions which could lawfully be declared management, supervisory or confidential.

A unit determination hearing was held on May 23, 1977, in FALLBROOK, California. At the hearing the parties clarified their positions as to the requested units, as detailed below.

Current Positions of the Parties

At the hearing CSEA sought two units. Unit A consists of these job classifications: accountant; bookkeeper; program budget clerk; key punch operator; school secretary; library service technician; senior clerk typist; steno-clerk; intermediate clerk typist; library assistant; clerk typist; receptionist/telephone operator; instructional aide; and campus aide; and excluding noon duty supervisors, substitutes, management, supervisory and confidential employees, administrative secretary and those positions described in Unit B. Unit B consists of these job classifications: cafeteria worker; senior maintenance worker; storekeeper/utility; gardener crew leader; general maintenance worker; custodian crew leader; gardener; and custodian; and excluding noon duty supervisors, substitutes, management, supervisory and confidential employees, director of operations and those positions described in Unit A. CSEA maintains that a separate unit of aides is not appropriate in this case because of their small number (there are a total of eight instructional and campus aides) .

SEIU's position is that three units are appropriate: (1) an office-technical unit consisting of those job classifications included in CSEA's proposed Unit A, but excluding instructional and campus aides; (2) an operations-support services unit consisting of those job classifications included in CSEA's proposed Unit B, but excluding cafeteria worker and gardener crew leader/assistant director of operations;¹ and (3) a unit consisting of these job classifications:

¹ Effective October 1, 1976, the position of gardener crew leader was reclassified to that of gardener crew leader/assistant director of operations.

instructional aide, campus aide and cafeteria worker. SEIU contends that the cafeteria workers should be included in the same unit as aides because they correct students who are enrolled in the vocational food training courses on a work experience basis, and such correction is in effect the kind of instruction and supervision which instructional and campus aides provide to students.

The District's position is that a wall-to-wall unit is appropriate.

There is one supervisory issue. SEIU contends that the gardener crew leader/assistant director of operations is a supervisor within the meaning of Section 3540.1(m) of the Educational Employment Relations Act (**EERA**)² in his **capacity as** assistant director of operations. The District and **CSEA** dispute that status. Otherwise, the parties agree about the designation of management, supervisory and confidential employees, and the hearing officer accepts this stipulation without inquiry.³

ISSUES

The issues are:

- (1) What is (are) the appropriate unit(s) for purposes of meeting and negotiating?
- (2) Is the gardener crew leader/assistant director of operations a supervisor within the meaning of the EERA?

²Gov. Code Sec 3540 et seq.

³ Management employees are the superintendent, assistant superintendent, principal (these three positions are currently occupied by the same person) and the business manager. The director of operations is a supervisory employee. The administrative secretary is a confidential employee.

DISCUSSION

The Appropriate Unit(s)

Section 3545(a) of the EERA requires the determination of the appropriateness of a negotiating unit to be based on three factors:

(1) the community of interest between and among the employees; (2) the established practices of the employees, including the extent to which they belong to the same employee organization; and (3) the effect of the size of the unit on the efficient operations of the school district.

In a series of cases involving classified employees,⁴ the EERB, relying on the community of interest criterion, has held that three units are presumptively appropriate: (1) a unit of aides, except for clerical aides; (2) an office-technical and business services unit; and (3) an operations-support services unit. Yet, the Board has clearly indicated that the presumption that three units are appropriate is rebuttable.⁵ The circumstances in this case are such that the presumption is rebutted in favor of a comprehensive unit of all classified employees.

The District is comprised of one school site⁶ for its high school and continuation school and has an average daily attendance of _____

⁴See Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976; Fremont Unified School District, EERB Decision No. 6, December 16, 1976; San Diego Unified School District, EERB Decision No. 8, February 18, 1977; and Foothill-DeAnza Community College District, EERB Decision No. 10, March 1, 1977.

⁵See Foothill-DeAnza, at p. 2, supra.

⁶Additional land is available for a second site, as the present one is filled to capacity in terms of student enrollment. However, for purposes of this decision, the hearing officer is concerned only with the facts as they existed at the time of the hearing.

about 1800 students. There are approximately 20 employees in CSEA's proposed Unit A, eight of whom are either instructional or campus aides, and approximately 20 employees in proposed Unit B. These figures are compared to those in Sweetwater, where there were 11 sites, 29,227 students and 672 classified employees; in Fremont, where there were 48 sites, 32,759 students and approximately 346 classified employees; in San Diego, where there were 164 sites, 4,220 classified employees and an average daily attendance of 125,815; and in Foothill-DeAnza, where there were 576 classified employees.

The combination of only 40 employees and only one work site in Fallbrook presents a situation substantially different from that in the Board's precedential cases, as these factors themselves suggest a much stronger community of interest among the employees than that which existed in the other cases. For example, there is evidence that the lines of supervision are less structured than might otherwise be expected in a larger school district. The custodian crew leader testified that if he were given an order by the director of operations with which both he and the assistant director of operations disagreed, he himself would try to see both the business manager and the director of operations in order to work out the best policy which should be followed. Thus, there is some compression of supervision, as the business manager is the direct supervisor of many of the office employees as well as the director of operations' supervisor. Furthermore, because there is only one work site, there is substantially more interaction among all the classified employees than that which would exist in larger school districts. It is also noted that the

classified employees in Fallbrook are all on the same salary schedule and share the same fringe benefits.⁷

Although evidence of established representation practices predating the EERA are given little weight because of the possible unilateral nature of the unit designation procedure which existed in the District prior to the EERA,⁸ the evidence which was presented does not contradict a finding that a single unit is appropriate. In June, 1976, the Salary Committee of the Classified Employees Group "negotiated" a salary increase with the District for the 1976-1977 school year. Apparently, the Classified Employees Group represented all the classified employees whose unit placement is in dispute.

There was no evidence regarding the efficiency of operations criterion other than the acting superintendent's testimony that two or three units might jeopardize the harmony which exists among the employees. Nevertheless, it is recognized that the creation of more than one unit in a district as small as Fallbrook will result in a greater administrative burden than it would in a larger district.

The Board has recognized the importance of striking the proper balance between excessive fragmentation of units and the employees' right to effective representation in appropriate units.⁹ In view of the stronger community of interest which exists among the employees in Fallbrook compared to those in the precedential cases and the small size of the District, it is concluded that the proper balance in this case is one unit consisting of all classified employees.

⁷In the EERB's precedential decision placing aides in a separate unit from other classified employees, there was a separate salary schedule for aides. See Pittsburg Unified School District, EERB Decision No. 3 at p. 5, October 14, 1976.

⁸Sweetwater, at p. 4.

⁹See San Diego, at p. 8.

Noon duty supervisors and substitutes are excluded from the unit because both CSEA and SEIU excluded them from their proposed units and the District did not specifically indicate that it desired to include them in the unit.

Supervisory Issue

SEIU contends that the gardener crew leader/assistant director of operations is a supervisor in his capacity as the assistant director of operations.¹⁰

Section 3540.1(m) of the EERA 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 such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

This section of the EERA is written in the disjunctive; therefore, an employee need not possess all of the enumerated functions or duties to be a supervisor. The performance of any one of the enumerated actions or the effective power to recommend such action is sufficient to make a person a supervisor within the meaning of the EERA.¹¹

¹⁰

SEIU does not contend that the gardener crew leader/assistant director of operations is a supervisor because of his position as gardener crew leader. Indeed, SEIU's initial petition for recognition included the gardener crew leader in the proposed unit. Therefore, the determination of the supervisory status of the gardener crew leader/assistant director of operations is based solely on his job functions as the assistant director of operations.

¹¹ Sweetwater, at p. 12.

The typical tasks of the gardener crew leader/assistant director of operations are set out as follows in the District's "Classified Job Descriptions":

1. Supervise the work of other gardeners.
2. Operate all heavy equipment used in groundskeeping such as skip loaders, back hoes, gang mowers, etc.
3. Does welding in maintenance of equipment.
4. Performs all duties as a gardener.
5. Performs as assistant director of operations.

This job description is not very helpful in determining whether the assistant director of operations is a supervisor, although the non-specific nature of the description is an indication that the assistant director of operations performs duties as directed by the director of operations rather than on his own initiative.

The testimony at the hearing does not establish that the assistant director of operations performs any supervisory functions. He does not complete performance evaluations in this capacity, nor has he been involved in the promoting or demoting of an employee. He has no direct involvement with the hiring of new employees. Although he inspects the buildings each morning, he does so to see if anything is torn up or broken into rather than to see if the custodians have cleaned the building. He has not discussed the performance of custodial employees with the custodian crew leader.¹² Any assignments of work he has

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It is noted that the assistant director of operations had been the acting director of operations for a little more than a month prior to the hearing, due to the illness of the director of operations, and he has performed some of these functions during this time as the acting director. However, his responsibilities as acting director do not affect the supervisory status of the position of assistant director of operations.

made have been in the nature of passing information to the custodian crew leader or custodians from the director of operations, the business manager or individual teachers. He does not regularly assign work on his own initiative using independent judgment to determine the work which needs to be done. Finally, the assistant director of operations stated that when the director of operations returns, he himself would "go back outside as a gardener crew leader and, if he [the director of operations] left the campus for anything, they would expect me to take over as the assistant director of operations."

Based on the foregoing, it is found that the assistant director of operations is not a supervisor within the meaning of Section 3540.1(m) of the EERA.

PROPOSED ORDER

It is the Proposed Decision that:

1. The following unit is appropriate for the purpose of meeting and negotiating, provided that an employee organization becomes the exclusive representative of the unit:

A single unit consisting of all classified employees, excluding noon duty supervisors, substitutes and management, supervisory and confidential employees.

2. The gardener crew leader/assistant director of operations is not a supervisor.

The parties have seven (7) calendar days from receipt of this Proposed Decision in which to file exceptions in accordance with Section 33380 of the EERB's Rules and Regulations. If no party files timely exceptions, this Proposed Decision will become final on September 26, 1977, and a Notice of Decision will issue from the EERB.

Within ten (10) workdays after the employer posts the Notice of Decision, the employee organizations shall demonstrate to the Regional Director at least 30 percent support in the above unit. The Regional Director shall conduct an election at the end of the posting period if (1) more than one employee organization qualifies for the ballot, or (2) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Dated September 13, 1977.

✓ _____
David Schlossberg
Hearing Officer