

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRANKLIN-McKINLEY SCHOOL DISTRICT

Employer,

Case No. SF-R-604 A & B

and

PERB Decision No. 108

SAN FRANCISCO BAY AREA CERTIFICATED
EDUCATORS AND PROFESSIONAL
ASSOCIATES, TEAMSTERS LOCAL #856,

October 26, 1979

Employee Organization.

Appearances: Frank E. Mayo (Atwood and Hurst) Attorney for the Franklin-McKinley School District; Mike McLaughlin and Wilma Rader, Attorneys for San Francisco Bay Area Certified Educators and Professional Associates, Teamsters #856.

Before Gluck, Chairperson; Gonzales and Moore, Members.

ORDER

The Franklin-McKinley School District excepts to the proposed decision of the hearing officer in the above-captioned case. The District excepts to the finding of the hearing officer that the business office supervisor is not a confidential employee within the meaning of the Educational Employment Relations Act and that she should be included in a unit of classified employees. The District also excepts to the hearing officer's finding that the director of instruction is not a managerial employee and that he should be included in a unit of certificated employees.

After considering the record as a whole and the attached proposed decision in light of the exceptions filed, the proposed order of the hearing officer is hereby adopted as the ORDER of the Board itself.

PER CURIAM

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

FRANKLIN-McKINLEY SCHOOL
DISTRICT,

Employer,

and

SAN FRANCISCO BAY AREA CERTIFICATED
EDUCATORS AND PROFESSIONAL ASSOCIATES,
TEAMSTERS # 856,

Employee Organization

Representation Case
No. SF-R-604 A & B

PROPOSED DECISION

(3/22/79)

Appearances; Frank E. Mayo (Atwood and Hurst) Attorney for the Franklin-McKinley School District; Mike McLaughlin and Wilma Rader, Attorneys for San Francisco Bay Area Certificated Educators and Professional Associates, Teamsters #856.

Before Fred D'Orazio, Hearing Officer.

PROCEDURAL HISTORY

On February 28, 1978, the San Francisco Bay Area Certificated Educators and Professional Associates, Teamsters Local 856 (hereafter Local 856 or Teamsters or employee organization) requested recognition as the exclusive representative of the certificated supervisory employees in the Franklin-McKinley School District (hereafter District). On March 7, 1978, Local 856 requested recognition as the exclusive representative of the classified supervisory employees in the District. Both requests were denied by the District.

The cases were consolidated and a formal hearing was conducted on June 19, July 13, and July 14, 1978 by the Public Employment

Relations Board (hereafter PERB). At the hearing Local 856 amended its requests so that the requested units are as follows:

Classified Supervisory Employees;

manager of maintenance and operations
business office supervisor
food service supervisor
custodial supervisor
transportation supervisor

Certificated Supervisory Employees;

administrative assistant
director of instruction
director of special services
coordinator of bilingual and cross-cultural education
principals
vice principals

With respect to the classified unit, the District contends the manager of maintenance and operations is both managerial and confidential. The District also contends that the business office supervisor is a confidential employee. Therefore, these two positions should be excluded from the unit. Finally, the District argues that the requested classified unit is inappropriate because of its size.

Regarding the certificated unit, the District contends the administrative assistant, the director of instruction, the director of special services and the coordinator of bilingual and cross-cultural education are management employees. It further contends that principals are confidential employees. Therefore, they all should be excluded from the unit.

The parties stipulated that the following positions are managerial and are therefore excluded from any supervisory unit:

superintendent, assistant superintendent, business manager.¹¹

The parties further stipulated that vice principals were properly included in a supervisory unit of certificated employees, and the custodial supervisor, the food service supervisor, and the transportation supervisor were properly included in the classified supervisory unit.

ISSUES

1. The classified unit:

A. Whether the manager of maintenance and operations is a management or confidential employee.

B. whether the business office manager is a confidential employee.

2. The certificated unit:

A. Whether any of the following are management employees: administrative assistant, director of instruction, director of special services, coordinator of bilingual and cross cultural education, and principals.

B. Whether principals are confidential employees.

3. Whether a single unit composed of both classified and certificated employees is an appropriate unit under the Educational Employment Relations Act (hereafter the Act or EERA). If so, is such a unit appropriate in the present case.

DISCUSSION

The District has developed two groups of administrative

¹¹Testimony indicated that employees filling these positions are also confidential employees, since they play a significant part in the District's negotiations with non-supervisory employees.

personnel which meet regularly and consider a variety of subject matter areas within the District.

The "Administrative Staff" is made up of site administrators and principals, vice-principals, cafeteria managers, transportation supervisors, and all the certificated staff who are not teachers. The Administrative Staff meets once a month.

The "Management Team" (hereafter Team) is a smaller collection of administrative personnel which meets twice a month. Except for the business manager, all members of the Management Team work in the District complex.

The manager of maintenance and operations, the administrative assistant, the director of instruction, the director of special services, and the coordinator of bilingual and cross cultural education regularly attend Management Team meetings. Principals sometimes attend Team meetings. In large measure, the District's contention that these positions are managerial rests on the role they play on the Team. The following represents a general description of the operation of the Team.

The Management Team functions informally. The Team's input into District policy can be triggered in a variety of ways. Sometimes the board will ask the Team for a review of existing policy. Sometimes the superintendent or the assistant superintendent will ask the Team to consider a new policy. It is also possible for Team members or other administrative personnel in the District to suggest that a policy is needed in a certain area. Team members therefore have the opportunity for input into District policy.

Team members sometimes receive proposed policy in writing prior to the actual meeting so that they have the chance to review it and

prepare comments for the meeting. Sometimes no written proposal is given to them, and the policy is simply discussed at the meeting.

The Team usually operates on a consensus basis. After items are presented and discussed, they are forwarded to the board as part of the board's agenda if a consensus is reached. However, this process is not always followed and an item can be forwarded to the board as part of its agenda even when no consensus is reached. Additionally, policy items may be presented to the board independent of Team participation.

Sometimes a policy matter is discussed by the Team for the sole purpose of determining whether the Team members could live with it, as opposed to discussing it for the purpose of soliciting input into the policy. Almost all items which go to the board do so via the superintendent. The superintendent has the authority to block any policy item from being sent to the board.

Other groups have a similar opportunity to offer input into District policy. Administrators participate in the Administrative Staff meetings in a manner not unlike that described for the members of the Management Team.

Additionally, employee organizations, particularly the Franklin-McKinley Education Association (hereafter FMEA) and the California School Employees Association (hereafter CSEA), are given the opportunity to submit input regarding District policy. These organizations receive a copy of the District's proposed policy and are given 10 days to comment before the policy is sent to the Board. Their comments are sometimes meshed with those of the Management Team, so that the proposed policy and the attached

comments or recommendations which finally get to the board reflect the positions of both. Management Team input is given no more weight than the input of these other groups.

In addition to the Team, employee organizations and the administrative staff, community groups and even individuals in the District may recommend that a certain policy be developed in a given area. Thus, input into the formulation of District policy comes from a variety of sources.

In the final analysis, the board retains policy making authority. The board and the superintendent use the team as a consulting or advisory committee, with the superintendent serving as the conduit through which the Team's input or recommendations may or may not pass to the board.

Given the function of the Team, membership thereon, standing alone, is not sufficient to qualify any position at issue as managerial. The Team role of each employee whose position is at issue herein will be specifically discussed below.A.

The Managerial Employees Issues

Government Code section 3540.1(g) defines a management employee as follows:

(g) 'Management employee' means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Educational Employment Relations Board.

Each position at issue will be considered in view of the criteria set forth in this section and applicable PERB and National Labor Relations Board (hereafter NLRB) precedent.

1. The Classified Unit

Manager of Maintenance and Operations

The manager of maintenance and operations (hereafter MMO) is responsible for the custodial operation, the maintenance and grounds operation, the transportation department and the warehousing operation. At the time of the hearing, Mr. Anthony Mazzotti was the MMO.

The MMO prepares a general budget for the areas under his responsibility. It is then given to the business manager who fashions a proposal to be presented to the superintendent or the board of education. There are budget hearings conducted and the board adopts a final budget which the MMO is compelled to accept.

As a member of the Management Team, Mr. Mazzotti attends and participates in its regular meetings. He testified that he does not effectively recommend or develop policy, and in fact could not recall recommending any specific policy. Some areas in which Mr. Mazzotti played a role, and the extent of that role, are as follows.

The Transportation Handbook; This document outlines the responsibilities of school bus drivers and students when on school buses. Prior to the development of the handbook, there existed a loose, outdated collection of District policies . The District, the bus drivers and the California School Employees Association, the employee organization which represents the bus drivers, requested new guidelines be developed in this area. A committee was formed of bus drivers, the supervisor of transportation and the clerk-typist,

who works in that department, for the purpose of developing a set of guidelines which would be acceptable to the employees and the District. The committee did so, and Mr. Mazzotti reviewed the rough draft. After editing, the draft was brought to the attention of the superintendent and then to the board, which adopted it after making changes and clarifications during three separate meetings.

Mr. Mazzotti participated in the presentation of the handbook to the board.

The relationship with outside contractors; Mr. Mazzotti is directed by the superintendent or the business manager in his dealings with outside contractors or architects. The outside firms submit their bids directly to the board in accordance with the Education Code. Mr. Mazzotti has no authority to reject or accept a bid on behalf of the District. His relationship with these outsiders extends to providing them access to District buildings when it becomes necessary for them to visit a site where they may be working. Also, the board may have him check out the reliability of a particular contractor or architect in the community before making a decision on whether to hire that particular individual or company.

The gas line at McKinley School: Mr. Mazzotti gathered information in regard to the concern for a gas line at McKinley School. The board had requested the information from the superintendent who, in turn, asked Mr. Mazzotti to get it. Mazzotti relayed the information to the superintendent, who then presented it to the board.

The walking distance policy; The District had a policy under which it would provide transportation to students when they lived a certain distance from school. The board requested that the policy be revised and the superintendent passed the assignment on to Mr. Mazzotti. He worked with the business manager and the administrative assistant, and they developed a policy which would meet the needs of the District and the equipment it had. The proposed policy was then presented to the Management Team for discussion, and ultimately to the board via the superintendent. The board adopted the policy after making some changes.

Mr. Mazzotti's role in formulating the Transportation Handbook, his dealings with outside contractors on behalf of the District, his role in regard to the gas line at McKinley School and his participation in developing the walking distance policy do not support the District's contention that he possesses significant responsibility for the formulation of District policy.

A draft of the transportation handbook was developed by a committee under Mazzotti. After it was edited by the administrative assistant, it was presented to the board through the superintendent. The board considered it at three separate meetings which Mazzotti attended and adopted it with some clarifications and minor modifications. Mazzotti's role in the formulation of the handbook is not significant since it had to be approved by at least two levels of management, the superintendent and the board, before it became final. Lompoc Unified School District (3/17/77) EERB Decision No. 13. This rationale is equally applicable to Mazzotti's

role in the development of the District's walking distance policy.

Additionally, the handbook and walking distance projects were not conceived or developed solely by Mazzotti. These projects represented work assignments within his particular area of responsibility and were accomplished in large part by others.

Similarly, Mazzotti's relationship with outside contractors does not indicate that he possesses significant responsibility for formulating District policy in this area. Bids are let to these contractors by the board, and Mazzotti's role consists only of providing access to District buildings and, at the direction of the board, checking out their reliability in the community. Mazzotti has no authority to bind the District in any way in his dealings with these contractors. Therefore, this part of his job does not make him a managerial employee.

In sum, the District did not present sufficient evidence to support its position that the manager of maintenance and operations administers District programs and formulates District policies. Before an employee can be found to be managerial, it must be shown that he or she has significant responsibility for both the formulation of District policy and the administration of District programs. Lompoc Unified School District, supra, EERB Decision No. 13. Therefore, it is concluded that the manager of maintenance and operations is not a managerial employee within the meaning of section 3540.1(g).

Mazzotti does direct the District's operation in the custodial, maintenance and grounds, transportation and warehousing areas. In doing so, he supervises about 40 employees and has significant

authority in their hiring, evaluation, and potential termination. Also, as stated earlier, he prepares a recommended budget for his area of responsibility, reports to the business manager and superintendent, and is evaluated by the business manager. Accordingly, it is concluded that his duties are more akin to those of a supervisory employee. See San Rafael City High School District (10/3/77) EERB Decision No. 32.

2. The Certificated Unit:

Administrative Assistant

Mr. Roger Cryer has held the position of administrative assistant for approximately five years. His duties are broken down into four general areas: public information, research, planning and supervision of the print shop.

With respect to the area of public information, Mr. Cryer edits and publishes "Reach Out", a document directed to parents and the community, and "Inside", a document directed to employees in the District. The latter publication summarizes the happenings at board meetings and includes other areas of personnel information in the District. Additionally, the administrative assistant serves as the District's liaison with the press and electronic media. In this capacity he prepares press releases. These duties do not amount to significant responsibilities for formulating policy or administering programs in the District. See Marin Community College District, (6/26/78) PERB Decision No. 55.

Cryer also does a considerable amount of demographic research and planning for the District. He gathers information about the

number of school age children in the District, the number of school age children projected for the District, the District's ethnic population, and the number of students per household in the District. At the direction of the superintendent, Cryer uses this information to prepare the District's master plan, which includes such subjects as student attendance, student population, student placement, and District boundaries.

Based on this information, Cryer makes recommendations to the board regarding the adoption of the master plan and ethnic composition of the school. The board is free to accept, reject or modify his recommendations.

Cryer's research and planning function do not make him a managerial employee. The board retains the final decision making authority in this area, and simply relies on Cryer's research and expertise in reaching its decision. See Lompoc Unified School District, supra, EERB Decision No. 13, citing Flintkote Co. (1975) 217 NLRB No. 85 [89 LRRM 1295] with approval. Therefore, it is concluded that Cryer's research and planning duties do not represent significant responsibility for the formulating of District policy or administering of District programs.

The administrative assistant also supervises the print shop. In addition to publishing "Inside" and "Reach Out", the print shop publishes requests from all departments in the District office, including such items as school menus, curriculum and business forms.

Cryer prepares the yearly print shop budget, which is then submitted to the business office for revision and then forwarded on to the board for final approval. He is then told what his budget

will be and he is required to accept it.

Additionally, the administrative assistant serves as the District's liaison to the San Jose Department of Parks and Recreation. The District enters into an annual contract with the Department of Parks and Recreation concerning the recreational program. Cryer reviews the Department's proposal and gives his analysis of its content to the business manager, the superintendent and occasionally the board. He makes no recommendations regarding the proposal.

At the request of the superintendent, he makes calls and initiates contacts with those who are interested in purchasing District property. This requires that he keep abreast of city, county and other administrative regulations which may affect such a transaction. Cryer has never determined if District land was to be bought or sold.

There is insufficient evidence to show that the duties involving his role in supervising the print shop, his role as the District's liaison to the city's Department of Parks and Recreation, or his contact with individuals desiring to purchase District property involve significant responsibility for both formulating District policy or administering District programs. Lompoc Unified School District, supra.

Cryer testified as to the role of the Management Team in policy making areas. He said that tentative policies are brought to the Team for comment and there is some attempt to reach a consensus on the matter. However, policy matters may be submitted to the board and considered without involving the Team at all.

With respect to his participation on the Management Team, Cryer gave the following examples: For purposes of style, he drafts resolutions at the request of the board or the superintendent, but has no input into the content of these resolutions. He also assists others in drafting proposals, studies or projects. Once again, he has no influence regarding the content of these documents. Rather, his participation is more in the way of proofreading or editing in a technical sense.

Cryer holds a Ph.D from Stanford University in the field of sociology of education, a joint program in the schools of education and business. His dissertation was in the area of decision making. He testified that, in his opinion, the District's decision making mechanism regarding policy matters was "hierarchical". In other words, the superintendent tends to use individuals in a consultative or advisory capacity, but he retains final decision making authority. The board retains the ultimate responsibility for establishing the basis for decision making. It establishes criteria through its policy which are used in decision making.

Therefore, it is determined that neither the actual duties of the administrative assistant, nor his role on the Management Team make him a managerial employee within the meaning of section 3540.1(g).

Cryer directly supervises his executive secretary and the supervisor of the print shop, as well as work study students. He testified that he evaluates the executive secretary and the duplicating people in the print shop. Therefore, it is concluded that his duties are more akin to those of a supervisor under section

Director of Instruction

Mr. James Cassini is presently the director of instruction. He has the responsibility for assessing the District's instructional needs and for recommending appropriate programs to meet these needs. Cassini uses student test scores, parent input, staff input, legislative mandate, and various committees in fulfilling his responsibility.

The major responsibility of the director of instruction is the development of the curriculum. Cassini chairs a curriculum committee, which is made up of one teacher from each school and the president of the employee organization which represents the teachers. The individual schools select their representative. It is the responsibility of the committee to develop a basic curriculum for the District.

Once the committee has articulated a curriculum it is presented to the administrative staff, the management team, the superintendent and then to the board for final approval. However, under the present decentralization of the District, schools may, at the local level, establish their own curriculum in the basic skills area. In other words, there exists some discretion at the local level to deviate from the District's policy and determine the specific content of curriculum in the basic skill areas, such as reading.

In regard to the selection of educational materials which are to be used in classrooms and libraries, the following procedure is

used. The State Board of Education has a textbook review committee which provides a catalog from which educational materials approved by the state board may be selected by the local school district. Local school districts are given a credit allocation from Sacramento for the purchase of textbook materials from the catalog.

Each year Cassini establishes a committee, similar to the curriculum committee, to review the approved materials. Each school in the District is represented on the committee. Additionally, the District provides other means by which staff members can review educational materials and make recommendations as to which materials should be selected. For example, the District held a science review where teachers on the committee and others could review science materials and make recommendations for selection based on the students' reading level and content of the material. Also, there is a county resource center where all state approved materials are available for review, and the District provides substitute time for staff members to review the materials and make recommendations. In accordance with the District's decentralization policy, no one particular series of materials is recommended, though the committee may make recommendations as to basic materials.

The credit allocation for purchasing these materials is also decentralized. It is based on enrollment, and each school receives a set amount per child. The principals are made aware of this amount and the individual school submits its order for materials to Cassini, who consolidates the orders and forwards them to Sacramento. Cassini's office then receives the materials and is responsible for distribution. This decentralized process has been

used in the District for approximately five or six years. Under this process, the selection for educational materials for classroom use does not have to be approved by the board.

After policy has been adopted by the board, Cassini, as director of instruction, has the responsibility for administering the programs. He issues directives, meets with staff, and provides interpretation for ambiguities which may arise in the program.

Although the director of instruction has general responsibility for the development of curriculum, he alone does not establish policy in that area. The curriculum committee, which is made up of elected members from each school and chaired by Cassini, develops the curriculum in the first instance. It is then presented to the superintendent and then to the board for final approval. The curriculum is also presented to the administrative staff and the Management Team. This procedure places considerable emphasis on the committee approach. Moreover, under the District's decentralization program, even after the board adopts a general curriculum, schools may, at their option, establish their own curriculum in the basic skills area.

Thus, based on the foregoing, it is concluded that the director of instruction does not possess significant responsibility for formulating District policy in the area of curriculum development. If anything, he is responsible for the overall administration of the District's curriculum development program.

With respect to the selection of educational materials, the committee approach is again used, and selections must come from an approved list. Further, there exists considerable discretion with

the schools at the local level to make selections. Finally, attending to the ordering, payment and distribution of these materials is more in the nature of ministerial work than it is policy making.

Based on the foregoing, it is concluded that the director of instruction does not possess significant responsibility in the formulating of District policy for selection of educational materials. If anything, he is responsible for the overall administration of the District's selection program.

Testimony also indicated that Cassini recommended increased funding for mentally gifted minor students, and his recommendation was favorably acted upon by the board. Cassini also drafted guidelines for the superintendent's "new notions" program. These duties are not sufficient to place him in the category of management employee. The evidence presented by the District was not sufficient to support its contention that these duties amount to significant responsibility in the formulation of District policy.

Cassini testified in great detail regarding both the operation of the administrative staff and Management Team meetings and his role in each. He used examples of formulating District policy in the areas of affirmative action, library selection policy, and textbook selection policy to describe the process.

Cassini established a committee of parents and staff for the purpose of developing an affirmative action policy. The committee, which was functioning at the time of the hearing, is to draft a tentative written policy and present it to the Management Team. The Team will then recommend a policy, which is in compliance with

federal regulations, to the board.

In order to establish a tentative library selection policy Cassini utilized a committee of librarians. To promulgate a textbook selection policy Cassini used a committee of reading resource specialists. There were discussions of these tentative policies at Team meetings. Additionally, copies of the tentative policies were distributed to the FMEA, CSEA, principals and other administrative personnel in the District for input before the proposals were finally forwarded to the board.

For example, the FMEA president and the FMEA board of Directors met with the affirmative action committee and gave input to the committee. That input was shared with the District's board of education. Similarly, the committee met with a state consultant in this field and solicited input, which will be meshed with other information and ultimately sent to the board.

It is noteworthy that all of these tentative policies are submitted to the administrative staff, as well as to the Management Team, for input. Cassini said there is no difference between tentative policy which may be developed in a Management Team meeting and tentative policy which may be developed at an administrative staff meeting. He said the Team has "the responsibility for getting something down on paper". In conclusion, Cassini testified as to the purpose behind getting input from these various sources regarding any tentative policy.

So if someone isn't in a staff meeting they have the opportunity to receive that tentative policy and return it to the person who sort of has the major responsibility for getting it moving.

And that person takes those items and brings, incorporates that if they make sense or get back to the person and discusses it with them, or the group of people and discusses it, and then it gradually moves forward until it comes to the board, at which time I have felt an obligation and I know like Don (Don Howlett, director of special services) and others have felt the same obligation to be able to point out to the board that not all of the wording in this policy is mine but that the teachers group felt that this needed to be included, the classified staff felt these things needed to be included, or the administrative staff, you know, without saying there was consensus of a whole staff but there were members of that group that felt this was important. Does that help?

Thus, the director of instruction, as a result of his role on the Team, has the opportunity to have input into District policy and to recommend tentative policy to the board. Since his substantive input appears to be similar to that of employee organizations, parents, and other administrative personnel, such as principals, it is concluded that he does not possess significant responsibility for formulation of policy.

Therefore, even if it is determined that the director of instruction administers the District's program in the areas of curriculum and selection of educational materials, it is concluded that he is not a managerial employee because there is insufficient evidence to show that, as a result of his overall duties or his role on the Management Team, he has significant responsibility in formulating District policy. In order to be a managerial employee, one must have significant responsibilities for both the formulation of District policy and administration of District programs. Lompoc Unified School District, supra.

Cassini supervises traveling music teachers, librarians, reading resource teachers, the coordinator of bilingual and cross cultural education and his clerical staff. He has the authority to effectively recommend termination of these employees, if necessary. He also interviews applicants for these positions and evaluates the employees who presently fill these positions. Therefore, it is found that these duties are supervisory in nature and it is concluded that he is a supervisory employee within the meaning of section 3540.1(m).

Director of Special Services

At the time of the hearing this position was held by Mr. Don Howlett. In general, the director of special services administers federal or state programs for the education of mentally or educationally handicapped students. This includes programs which mainstream handicapped students into the District's regular education program. The Director also administers categorically funded programs, such as those for disadvantaged youth.

The specific categorically funded programs administered by Mr. Howlett are as follows: (1) Title I, a federal program which provides funds to areas with a high percentage of disadvantaged youth, (2) Educationally Disadvantaged Youth (EDY), a state program for educationally disadvantaged youth, and (3) Early Childhood Education (ECE), another state educational program.

These programs all have mandated state or federal guidelines, and they must be administered in accordance with these guidelines to

maintain funding. All categorically funded programs must go to the board for approval.

Mr. Howlett also administers Public Law 94142, dealing with handicapped students and personnel, and Assembly Bill 65, which concerns public school financing and consolidates programs like ECE and aid for disadvantaged youth. The District has not yet adopted any policies under Public Law 94142. In carrying out these responsibilities, Mr. Howlett frequently works with parents and staff committees.

Mr. Howlett's testimony in regard to the functioning of the Management Team was essentially the same as that given by other witnesses. He said the Team functioned in an informal manner, with members being permitted to give input into the process in an attempt to reach a consensus on any given issue. The fact that a consensus could not be reached does not, however, prevent the board from adopting a policy anyway. For example, Howlett said the Team could not reach consensus on the extended day learning program (homework), but the board adopted the program anyway.

Howlett also testified as to his role on the Team. He said that the only policy he drafted and recommended to the Team concerned programs which were state or federally funded, and the extent of his recommendation was determined by the state or federal guidelines. These were mandatory guidelines, which had to be followed if the program was to receive continued funding. According to Howlett, they did not afford him a great deal of flexibility in drafting a program. Examples of areas in which he drafted such programs include school site improvement councils, parent involvement

activities and special education programs.

Howlett believes he has input in the policy making machinery within the District, but, according to his testimony, so do advisory groups, board members and interested citizens.

In administering federal programs, state programs, or other categorically funded programs, the director of special services' main responsibility is to make sure that the programs operate within federal and state guidelines. He is, therefore, required to administer these various programs within the guidelines mandated by the federal or state governments. By definition, then, he does not possess significant responsibility in administering these programs; his responsibility is considerably limited by the guidelines themselves.

Even assuming that the director of special services possessed significant responsibility for the administration of District programs, he must also possess significant responsibility for the formulation of District policy in order to fall within the section 3540.1(g) definition of management employee. The PERB has held that an employee must do both in order to be a management employee. Oakland Unified School District (3/28/77) EERB Decision No. 15. Since there is no indication that the director of special services possessed significant responsibility for either the formulation of District policy or the administration of District programs, he cannot be considered a managerial employee.

Howlett supervises nurses, psychologists, speech therapists, aides in special education classes, special education teachers, and office staff. At least part of his supervisory duties involves the

evaluation of these employees. He also prepares a budget for his area of responsibility. Therefore, it is concluded that his duties are supervisory in nature within the meaning of section 3540.1(m).

Co-ordinator of Bilingual and Cross Cultural Education

At the time of the hearing this position was held by Ms. Henrietta Dominguez. Her main job responsibilities include coordinating the bilingual program for the District, supervising the District's community liaison program and insuring District compliance with Title IX. More specifically, she assists individual schools in administering their bilingual program by providing inservice staff development programs for aides and bilingual teachers. Basically, bilingual programs are developed in accordance with state requirements and federal guidelines.

Ms. Dominguez prepared a grant proposal for the Indochinese program. The request to prepare the proposal was made by the superintendent to the office of the administrative assistant, who, in turn, assigned it to Dominguez to prepare.

The District is a member of the San Jose area bilingual consortium, a federally funded program, which is apparently geared toward developing bilingual programs in the participating school districts. Dominguez coordinates this program within the District, but the assistant superintendent sits on the consortium advisory board .

There is no evidence that her discretion or authority in administering these programs went beyond the District's established

policy or the state or federal guidelines applicable to these programs. Thus, it is concluded that she does not possess significant responsibility in administering these programs. See Lompoc Unified School District, supra, Decision No. 13, where the PERB found subject coordinators not to be managerial employees.

Additionally, the coordinator of bilingual and cross cultural education acts basically as an expert in her particular field. There was no evidence presented that she actually formulated District policy. Any recommendations she made would have to be channeled through the superintendent to the board, with possible preliminary discussion at the management team meeting.

Furthermore, Ms. Dominguez testified that she never presented a policy proposal to the Management Team. She said that members of the Team have input into District policy, but so do teacher organizations, the community and anyone who wants to comment on a proposed policy at a public meeting. In her opinion, the main responsibility of the Team members is to provide leadership in a given area, but the Team members do not have more influence than these other groups.

Based on the foregoing, it is found that the coordinator of Bilingual and Cross-Cultural Education does not possess significant responsibility in either formulating District policy or administering District programs. Therefore, it is concluded that she is not a managerial employee within the meaning of section 3540.1(g).

As indicated, Ms. Dominguez supervises a secretary, the District's bilingual resource teachers, a District English as a

Second Language resource teacher, and a clerk typist and four instructional aides from the Indochinese program. She evaluates all of these employees with the exception of teachers assigned to a particular school site. She also formulates a proposed budget for her area of responsibility. Therefore, it is concluded that she is a supervisory employee within the meaning of section 3540.1(m).

Principals

Mr. Cotrell, a principal, testified that principals sometimes attend Management Team meetings, and he has attended meetings on occasion. With respect to the role principals play, he said the main purpose in attending a Team meeting is to afford the individual the opportunity to give his or her input on a given subject. It is not uncommon for principals to submit "impact statements" regarding what effect a given proposal would have on their school.

The weight given to principal's input was also described by Cotrell. His opinion, which was corroborated by several other witnesses, indicates that the input of teachers, parents and the entire school community has the same influence on policy as that offered by administrators who sit on the Team.

Further, there were no specific examples offered which would support the District's position that principals have a significant responsibility in either the formulation of District policy or the administration of District programs. Therefore, it is concluded that principals are not managerial employees within the meaning of section 3540.1(g).

B. The Confidential Employees Issues

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

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

Each position at issue will be considered in view of the criteria set forth in this section and applicable PERB and NLRB precedent.

1. The Certificated Unit

Principals

There are eleven principals in the District. Dr. Ralph McKay, the assistant superintendent, is the District's chief negotiator. Since 1973 he has used six principals on the District's team during the meeting and conferring with non-supervisory certificated employees. Those six principals and the meetings in which they participated are as follows. John Jorgenson participated in about 25 sessions in 1973. Jim Abbott has been on the team every year since 1973, missing only a few sessions. The same is true of Ken Van Otten. Ken Rice served on the team for the 1976-77 meetings, as well as on the current team. Ann Huddleston served on the team during the 1977 summer meetings and continues to serve on the current team.

The District's approach to conducting negotiations is as follows. The board establishes guidelines in executive session as

to what the limitation will be in any given subject area. This executive session is attended by board members, the superintendent, the assistant superintendent, and sometimes the business manager. The District's initial proposals are drafted by only the superintendent and the assistant superintendent. No others are involved in drafting the initial proposals. They are usually only about one page in length and must be approved by the board.

During the course of negotiations, the assistant superintendent, who is the chief negotiator for the District, has the sole authority to modify proposals and make counterproposals, but he cannot go beyond the Board's established guidelines. The board may modify its guidelines as negotiations progress.

Other members of the District's negotiating team are not told the extent of the Board's guidelines at the outset of negotiations. However, they are told of the guidelines in a given area as negotiations develop.

Dr. McKay testified as to the reasons he chose principals to sit on the negotiating team, the criteria he used in selecting the principals, and the role they played on the team.

With respect to the reasons he wanted principals on the team, McKay said:

I was looking for input which would not erode management prerogatives. I was looking for assistance in drafting contract language that would not adversely affect the principal's administration of the school and really relying on their general expertise to insure that we didn't include something in the contract that would have an adverse impact on the District.

In selecting the principals, McKay said he considered prior experience in the District, experience in working with the

memorandum of understanding that the District had with employees prior to the enactment of EERA, demonstrated success as a principal, effective administration of current policies and contracts, and insight into the collective bargaining processes.

McKay described the principals' participation as follows:

Participation includes drafting contract language, participating in caucuses, presenting, (sic) acting as spokesperson at the table. I would say full participation.

McKay further described the process by which a principal would be involved in drafting contract language:

Q. And then that person would draft it for you, is that correct?

A. What has to be understood that it's a collaborative effort in attempting to reach agreement. We may put down some language on the chalk board or we may write it down on paper and then collaboratively work on the wording so that it meets what our intent is.

Q. When you say collaborative effort, who do you mean?

A. I mean the members of the negotiating team.

Robert Cotrell, a principal who serves on the District's negotiating team, said the principals "filled in when others got tired." By this he meant that the principals would watch people on the other side of the table to determine what their reaction to certain proposals or arguments might be. Also, he said the principals would "brainstorm" on ideas which came up during the course of negotiations, in addition to serving as a resource to Dr. McKay regarding the impact certain teacher proposals might have

on the schools.

Cotrell's testimony regarding his role is somewhat contradictory. In regard to the 1976 negotiations in which he participated, he said that McKay never told him what the District had authorized him (McKay) to offer in the area of salary and fringe benefits. He said the same thing about the 1977 reopener negotiations on compensation and fringe benefits. Further, he testified that he didn't feel McKay trusted the principals enough to tell them anything that "might be dangerous." However, in response to a question concerning the confidential nature of the information he came in contact with during negotiations, he said:

I think we all knew by the nature of what we were doing that we should not discuss what was going on in the sessions with the people on the other side of the table.

Thus, Cotrell's testimony indicates that, although he and other principals who participated in the negotiations were not privy to the District's position on these key issues, nevertheless they knew they should not discuss the sessions with those on the other side of the table.

McKay said principals were not privy to the District's position on all types of compensation, leaving open the question of exactly what types of compensation information the principals were privy to. However, McKay also testified that principals on the **negotiating team were privy to information** concerning **the District's** position on grievance procedures, evaluations, discipline and "all the terms of the collective bargaining agreement that might contain confidential information."

Based on the foregoing, it is concluded that the principals who presently sit on the District's negotiating team and participate in the negotiations with nonsupervisory certificated employees are confidential employees.

There is no doubt that the principals are not involved in the negotiations to the same extent as the assistant superintendent. Much less information is available to them, and they have no authority to make or modify proposals or counter proposals. However, these principals are an integral part of the District's negotiating effort. They actually sit at the bargaining table and participate in negotiations as well as in caucuses. Indeed, the very purpose of a caucus is to enable one party to discuss matters involving the negotiations away from the other. They assist in the drafting of contract language for the purposes of developing language which reflects the District's intent in a particular proposal. Through all of this, the principals come in contact with information which reflects the District's position on a number of negotiable items.

These principals have substantial involvement in the negotiating process. In fact, they are chosen to participate precisely because, among other things, they have some insight into that process. It seems impossible to play such a role in negotiations and not come into contact with information which, if made public prematurely, might jeopardize the District's ability to negotiate with employees from an equal posture.

In conclusion, it is noted that principals who serve on the team were not randomly selected. They were chosen because of their

performance, experience and insight into the collective bargaining process. Jim Abbott and Ken Van Otten have been on the negotiating team every year since 1973. Bob Cotrell served on the team during 1976-77 and is presently on the team. Ann Huddleston served on the team for the 1977 summer negotiations and is presently on the team. Since these four principals were specifically selected and are presently on the District's team, and since their involvement in the bargaining process as described above is substantial, not to find them confidential employees would deny the District a small nucleus of employees to assist in its employer-employee relations. Sierra Sands Unified School District (10/14/76) EERB Decision No. 2.

Therefore, these four principals are found to be confidential employees within the meaning of section 3540.1(c)

As stated, there are eleven principals in the District. Six different principals have served on the negotiating team since 1973. Of these six, John Jorgenson served on the team for only the 1973 negotiations, and Ken Rice served on the team for only the 1976-77 negotiations. Since these two only served on the team for one year and are not presently on the team, they are not found to be confidential employees.

Since there was no evidence presented that the other five principals ever served on the team, they are not found to be confidential employees. Also, since there was no evidence presented that Jorgenson, Rice or the other five principals otherwise have, in the regular course of their duties, access to information dealing with the District's employer-employee relations they are not found to be confidential employees.

The Teamsters, in its brief, argue that the present case presents the confidential employee issue in a context totally different from that in which the PERB has previously considered the issue. In the usual case, it is argued that an employee should be excluded from a proposed unit because he or she has access to confidential information concerning the District's employer-employee relations with employees in the proposed unit, as opposed to having access to confidential information concerning a unit other than the proposed unit.

The union argues that an entirely different issue is presented when the District maintains that a supervisory employee should be excluded from a proposed unit of supervisory employees because that supervisor has access to information which concerns employer-employee relations with non-supervisory employees. According to the union, the present case does not present the same conflict of interests problems which would arise if a supervisory employee had access to confidential information concerning the employer-employee relations of employees in a proposed supervisory unit.

In Fremont Unified School District (12/16/76) EERB Decision No. 6, the PERB discussed a similar situation. Fremont concerned a situation where the certificated personnel office assistant was declared a confidential employee, although the unit petitioned for was a classified one. She worked for the assistant superintendent of personnel, who had functions relating to both certificated and classified negotiations and personnel matters. The PERB stated:

Even though the activities of the
Certificated Personnel Office Assistant

relate only to certificated employees, we conclude that she is a confidential employee. The language of Government Code section 3540.1(c) does not distinguish between information relating to certificated employees and information relating to classified employees. The employer cannot be expected to rigidly segregate negotiating information so that it is applied in only one negotiating arena. Information or data pertinent to one series of negotiations will often be applied in the other series, especially in the area of the budget.

In support of this position the PERB said "we believe the employer has the right to expect loyalty from a nucleus of employees in matters of employer-employee relations without regard to whether the classified employee works with information relating apparently only to certificated or classified negotiations."

This reasoning is equally applicable to the present case. The District cannot be expected to rigidly segregate negotiating information so that it applies only to supervisory or nonsupervisory negotiations. Further, the District is entitled to expect loyalty from a small nucleus of employees on matters concerning employer-employee relations. These principles would be severely undermined if the positions at issue were not declared confidential because they are supervisory employees who participate in the District's negotiation with nonsupervisory employees. Therefore, the union's argument that these employees should not be declared confidential for this reason is rejected.

1. The Classified Unit

Manager of Maintenance and Operations

Mr. Mazzotti sits on the District's negotiating team which negotiates with non-supervisory classified employees because he has a considerable working knowledge of District policies as they affect classified employees. He has participated in these negotiations for the past two years.

The assistant superintendent, the superintendent, and the board are the parties who actually prepare the District's proposals, and Mazzotti doesn't get a copy until they are made public. His role is limited to reacting to proposals made by non-supervisory classified employees. Even after the negotiations begin, Mazzotti has no significant role in modifying the proposals. Although he has been told what the District's compensation package is, he learns this late in negotiations.

If this were the extent of Mazzotti's participation in the bargaining process, there would be considerable doubt that he was a confidential employee. There is minimal chance that this role and the information he received as a bargaining team member would in any way jeopardize the District's ability to negotiate with employees from an equal posture. Moreover, since Mazzotti does not receive copies of the District's proposals until they are made public and since he does not become aware of the District's compensation package until late in the negotiations, there is little chance that the District's position could have been made public prematurely. Also he participates in the District's caucuses during the bargaining process and actually assists in the drafting of contract language

during these caucuses. It would be virtually impossible for an individual to participate in the bargaining process on behalf of the employer in such a manner without becoming aware of the employer's position on certain issues early in the negotiations, or at a crucial point in the negotiations. For example, the very purpose of a caucus is to enable each team to discuss matters relating to the negotiations away from the other. In fact, Mazzotti did testify that he became aware of the District's position on binding arbitration early in one set of negotiations.

Given the extent of Mazzotti's involvement in the bargaining process, not to find him a confidential employee would effectively deprive the District of the nucleus of individuals needed to assist it in its program of employer-employee relations. Fremont Unified School District (12/16/76) EERB Decision No. 6.

Therefore, it is found that the manager of maintenance and operations is a confidential employee within the meaning of section 3540.1(c) of the EERA because he participates in negotiations to the extent described above.

Business Office Supervisor

Since March of 1978, the position of business office supervisor has been held by Ms. Glenys Struzan. The business office includes the payroll department, the accounts payable department and the special projects department. Ms. Struzan supervises approximately eight clerical employees who work in the business office. She evaluates them and plays a significant role in hiring and

discharging these employees.

There have been no negotiations since Ms. Struzan took over the position of business office supervisor. Her testimony regarding her role in negotiations refers to a period of time when she was an account clerk III in the business office and there was only an acting business manager with no business office supervisor. The negotiations in which Ms. Struzan said she participated occurred between the District and the non-supervisory certificated and classified employees in the District. Even assuming Struzen's account clerk III duties, as they relate to negotiations, are continued in her present position of business office supervisor, she is not a confidential employee.

The business office supervisor is involved in the costing out of proposals for negotiations, including those which deal with salaries, medical and other fringe benefits, and reclassification of employees. The computations are based on the percentage figure given to her by the assistant superintendent, and involve the use of the District's budget. Anyone who has access to the District's budget, a public document, can compute the same figures at any given percentage with reasonable accuracy.

The business office supervisor also prepares scattergrams, which show the number of certificated employees on each range and step of the salary scale. She uses the salary scale and payroll records to prepare a scattergram.

The evidence did not show that the business office supervisor did any more than this simple mechanical cost calculation. "The mechanical act of calculating costs does not necessarily provide

clerical support personnel with confidential knowledge pertaining to the employer's position on bargaining matters or other information relating to the employer's employer-employee relations." Sierra Sands Unified School District, supra. The business office supervisor appears to compile existing data, rather than evaluate or analyze the data for negotiations. Since the compilation of this data can be accomplished by other employees under the business office supervisor's supervision by use of public documents, this does not make the business office supervisor a confidential employee. San Diego Community College District, (9/16/77) EERB Decision No. 28.

The business office supervisor also testified that she comes in contact with personnel information relating to salaries, fringe benefits and budget. Regular contact with this type of personnel information, standing alone, does not necessarily relate to the employer's employer-employee relations. San Diego Community College District, supra.

Therefore, it is found that the business office supervisor is not a confidential employee within the meaning of section 3540.1(c) of the EERA.

The business office supervisor supervises approximately eight clerical employees who work in the business office. She evaluates them and is involved in the hiring and discharge process. Therefore it is concluded that she is a supervisor within the meaning of section 3540.1(m).

C. The Appropriate Supervisory Unit:

The union requested recognition for a unit of supervisory

certificated employees and a separate unit of supervisory classified employees. The District denied recognition in both petitions, asserting that several positions were either managerial or confidential. Additionally, the District asserted that the classified unit was not appropriate because it was too small. The petitioned for classified supervisory unit included four employees. The petitioned for supervisory certificated unit included approximately eighteen employees.

The union takes the position that both of the petitioned for units are appropriate separate units. Alternatively, the union takes the position that the EERA does not preclude a single unit including both certificated and classified supervisory units. This latter position will be addressed first.

Section 3545(b) (2) and (3) provide:

(2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

These subdivisions raise the question of whether an appropriate unit for supervisory employees can include both certificated and classified supervisors, under subdivision (b) (2), or, on the other hand, whether subdivision (b) (3) prohibits an appropriate unit from including both certificated and classified employees. The PERB has yet to directly address these questions. See Jefferson Union High School District (1/4/79) PERB Decision No. 83.

The basic purpose of the EERA and the scope of representation under the EERA, as set forth in sections 35402 and 3543.23

²Section 3540 states in relevant part:

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 right of public school employees to join organizations of their own choice, to be represented by such 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.

³Section 3543.2 states:

3543.2 The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, and procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

respectively, when considered in conjunction with the appropriate unit criteria in section 3545(a)⁴ requires a determination that the supervisory units in question be separate.

Section 3540 sets forth the basic purpose of the EERA, recognizing the right of public employees to join and be represented by the employee organization of their choice. "Implicit in this statement of legislative intention is the notion that the employees will have the ability to choose an organization which is an effective representative. An effective representative will generally be one largely determined by the community of interest and established practices of the employees rather than the efficient operation of the school district." Sweetwater Union High School District, (11/23/76) EERB Decision No. 4.

In order to meet this legislative intent, the PERB has repeatedly given the community of interest criterion great weight in determining the appropriateness of a unit. See Sweetwater Union High School District, supra, and San Mateo Union High School District (3/22/78) PERB Decision No. 49 , involving classified employees; Los Angeles Unified School District (11/14/76) EERB Decision No. 5 and Palo Alto Unified School District (1/9/79) PERB

⁴Section 3545(a) states:

3545. (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.

Decision No. 84, involving certificated employees; Los Rios Community College District (6/9/77) EERB Decision No. 18 and Hartnell Community College District (1/2/79) PERB Decision No. 81, involving community college employees.

In defining what constitutes a community of interest between and among employees, there are several factors which have been established by the National Labor Relations Board: qualifications, training and skills, job functions, method of wages or pay schedules, hours of work, fringe benefits, supervision, frequency of contact with other employees, integration with work functions of other employees, and interchange with other employees. Kalamazoo Paper Box Corp. (1962) 136 NLRB 134, [49 LRRM 1715] cited approvingly by the PERB in Los Angeles Unified School District (11/24/76) EERB Decision No. 5.

In the present case, the weight of the evidence indicates that certificated and classified supervisory employees have few, if any, of these factors in common. Therefore, the certificated and classified employees do not share the requisite community of interest which would permit a determination that together they constitute an appropriate bargaining unit, which, if certified, could serve to represent supervisory employees in a manner consistent with the purpose of the EERA as set forth in section 3540 and recognized by PERB in Sweetwater.

This point is underscored by the scope of representation permitted under the EERA. Given the lack of community of interest between and among certificated and classified employees, scope and substance of bargaining proposals for one group would often be

substantially different than proposals for the other group. Thus, this dissimilarity of interests may present a serious impediment to the negotiating process if certificated and classified supervisory employees were to be included in the same unit.

In addition to consideration of the criterion of community of interest in deciding the appropriateness of negotiating units, section 3545(a) requires consideration of:

...established practices including, among other things, the extent to which...employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

Consideration of these **two** criteria does not affect the determination that the supervisory units in question should be separate. With respect to past representation history, the fact that all supervisory employees in the District once belonged to the Association of District Administrators means little. That representation was under the Winton Act, not the EERA, and the PERB has stated that it will give little weight to established practices as they relate to the composition of the unit represented under that Act. Antioch Unified School District (11/7/77) EERB Decision No. 37,

The fact that the classified unit is made up of only four employees presents the potential problem of unnecessary fragmentation of units. This raises the further question of whether classified employees should be included in a unit with certificated employees for the sole purpose of avoiding fragmentation and the potential disruption of the efficiency of operations in the District. In Shasta Union High School District (10/25/77) EERB

Decision No. 34, the PERB considered the question of whether the small number of employees, standing alone, is a basis for concluding that a wall-to-wall unit is appropriate. It concluded that it is not.

We note that the number of employees (however small) is not, alone, a basis for concluding that a wall-to-wall unit is appropriate. However, the number of employees in a district may be so small that a district, as a consequence, may have assigned to employees interchangeable functions and parallel working conditions that are consistent with the community of interest required to find appropriate a wall-to-wall unit under the Act's unit criteria. Additionally, there may be a situation where the number of employees is so small that to find other than a wall-to-wall unit may adversely affect the efficient operations of the school district. While future cases reaching the board may present facts of the kind quoted herein, this case, does not. (Emphasis in original).

In the present case, the evidence does not show that the number of employees in the classified unit has resulted in the District assigning to employees interchangeable functions or parallel working conditions which are consistent with the community of interest criterion. Likewise, there was no evidence presented that the size of the classified unit would adversely affect the efficient operations of the District. Therefore, the size of the classified unit, standing alone, is insufficient to support the determination that a wall-to-wall unit of supervisory employees is appropriate. See also, Greenfield Union High School District (10/25/77) EERB Decision No. 35.

This District's argument that no classified unit is appropriate because of its size is dismissed. To find a unit of four

supervisory classified employees inappropriate based on size alone would serve to deprive these employees of all rights under the EERA. Such a finding would be inconsistent with the purpose and intent of the EERA.

ORDER

1. It is the proposed order that:

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

Certificated Supervisory Employee Unit including all supervisory certificated employees, and excluding all managerial and confidential employees.

B. The following principals be excluded from the Certificated Supervisory Employee Unit as confidential employees in accordance with this recommended decision: Jim Abbot, Ken Van Otten, Bob Cotrell, and Ann Huddleston.

2. It is further proposed that:

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

Classified Supervisory Employee Unit including all supervisory classified employees, and excluding all managerial and confidential employees.

B. The manager of maintenance and operations be excluded from the Classified Supervisory Employee Unit as a confidential employee.

Pursuant to California Administrative Code title 8, part III, section 32305, this Proposed Decision and Order shall become final on April 13, 1979 unless a party files a timely statement of exceptions within twenty (20) calendar days following the date of service of the decision. Such statement of exceptions and supporting brief must be actually received by the executive assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on April 11, 1979 in order to be timely filed. (See California Administrative Code, title 8, part III, section 32135.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. (See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.)

Upon notice that this Proposed Decision has become final and subsequent notice by the Regional Director that an election is being called, the employee organizations shall demonstrate to the Regional Director at least thirty (30) percent support in the Certificated Supervisory Employees unit and thirty (30) percent support in the Classified Supervisory Employees Unit within ten days of posting. After a determination of sufficiency of the showings of support have been made, the Regional Director shall conduct an election in the units if the employer does not grant voluntary recognition. If one unit is granted voluntary recognition and the other unit is not, there will be an election for the one unit which has not been

granted voluntary recognition. Voluntary recognition requires majority proof of support in all cases. See Government Code sections 3544 and 3544.1.

Dated: March 22, 1979

Fred D'Orazio"
Hearing Officer