

(hereafter District) on September 22, 1981 and opposed by the Federation.¹

FACTS

The Federation was certified as the exclusive representative of a unit of classified employees of the District on May 7, 1980, by the PERB.²

On March 20, 1980, the District school board approved the creation of the transportation supervisor position. Sometime soon thereafter, prior to April 14, 1980, Glenn Chaffin was appointed the incumbent by Superintendent Dilts.

¹PERB's Rules and Regulations are codified at California Administrative Code sections 31001 et seq. At the time the instant petition was filed, PERB rule 33261(b)(1) provided, in pertinent part:

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

(1) To delete classifications no longer in existence or which by virtue of changes in circumstances are no longer appropriate to the established unit. [Emphasis added.]

²The unit description is as follows:

INCLUDED: Bus Driver-Maintenance, Bus Driver/Custodian, Custodian, Cook Helper, Clerk Typist, and all Aides.

EXCLUDED: All Management, Supervisory and Confidential employees including: Financial Secretary, Cafeteria Manager, and Head Custodian.

It is clear from the record and not contested that Chaffin has at all times material herein lacked the authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline employees, or adjust their grievances, or to effectively recommend such action.

Chaffin voted without challenge in the election which led to the May 7, 1980 certification of the classified unit. He subsequently served on the Federation's negotiating team for the initial contract between the parties, with no objection from the District. His terms and conditions of employment are and have been established pursuant to the collective bargaining agreement. On January 17, 1981, Chaffin was informed by Dilts that, pursuant to the contract, he was required to verify absence due to illness by means of a doctor's note.

On February 20, 1981, Dilts counseled Chaffin regarding his work schedule and duties, by memo. That memo set forth 12 tasks which Chaffin had failed to perform. Each of these tasks was a routine custodial or clerical function. In that same memo, Dilts gave Chaffin the first of three detailed schedules, each of which breaks Chaffin's entire workday into increments and sets forth a given task for each such increment. None of the duties described in the schedules is supervisory in nature. The first six hours of his day are filled with custodial tasks such as setting up cafeteria tables, with time out to drive his regular bus route. The last three hours of

his workday are taken up with general duties in the transportation department such as maintaining, repairing, and washing the buses and completing routine paperwork.

Thus, like the other employees who drive regular bus routes, Chaffin performs custodial, grounds-keeping and maintenance duties in addition to driving one regular route per day.

The only possible indication of supervisory status on the part of Chaffin is the limited extent to which he directs and assigns work to the other drivers.

As noted above, each driver has a regular daily route. It is clear that Chaffin does not have the authority to assign these regular routes, which constitute the bulk of the drivers' duties.

Although he does not assign drivers their regular routes, Chaffin allegedly selects drivers for "extra-duty" assignments such as field trips and athletic events. The evidence indicates that Chaffin was told by Dilts to set up a system for extra duty runs. It is not clear from the record whether Dilts told Chaffin to establish a seniority system, or whether Chaffin and the other drivers mutually agreed upon such a system. Chaffin held a meeting of the drivers, told them that extra duty assignments would be made on a rotational basis according to seniority, and asked if there were any objections to such a system. None of the drivers had any objection.

It is not clear how often such extra duty assignments arise. The record reflects that even the limited authority to assign such extra work is subject to review by Dilts. On at least one occasion, Dilts countermanded Chaffin's assignment of an extra duty run.

Another incident allegedly establishing Chaffin's authority to assign work involved a driver's request that she be allowed to avoid driving on a particularly rough road on her regular route. Upon her request, Chaffin told her not to drive the road until it was repaired to her satisfaction, and to get his permission before she resumed driving it. After parents of children who lived on that road complained to the District, the school board ordered that bus service be restored.

On one occasion, Chaffin instructed two drivers to switch buses so that the driver with the greater number of students to transport could drive the larger of two buses. Subsequently, Dilts informed Chaffin that the driver who had been given the smaller bus should not have to drive it. It is unclear whether this resulted in negating the switch ordered by Chaffin, or whether it was an admonition to avoid such reassignments in the future.

The record further reflects that on one occasion Chaffin instructed a driver to substitute on a regular route for another driver who was unavailable that day.

Chaffin prepared written performance evaluations on two drivers in April of 1980, prior to the certification of the Federation as the exclusive representative. The record does not establish whether such evaluations were relied upon by the District for any purpose which affects the terms and conditions of the drivers. The hearing officer held that evidence of Chaffin's authority to evaluate drivers, without more, was not itself an indicia of supervisory status. The District did not except to this finding.

DISCUSSION

The hearing officer found, based upon Chaffin's authority to assign extra duty runs, his order to two drivers to switch buses, his assignment of a driver to substitute for another driver, and his grant of permission to a driver to avoid a rough road, that Chaffin had the authority to assign and direct work within the meaning of subsection 3540.1(m), and thus that he was a supervisor. He further held that while Chaffin had the authority to perform such functions prior to the Federation's certification, he didn't exercise that authority until after the Federation's certification, and thus that Chaffin's employment status changed after certification.

The Federation excepted essentially on three grounds:

1) Chaffin was not a supervisor at the time of the hearing, and never has been a supervisor; 2) if Chaffin was a supervisor at the time of the hearing, he was a supervisor prior to

certification as well, and thus the District has failed to show changed circumstances as required by PERB's rules governing unit modification; and 3) the collective bargaining agreement between the Federation and the District, not due to expire until June 30, 1982, constituted a bar to the filing of a unit modification petition. Because we find that the District has failed to demonstrate Chaffin's supervisory status, we shall dismiss the instant petition on that ground, and thus find it unnecessary to reach the Federation's additional arguments.

The record reflects that Chaffin, at all times pertinent herein, has spent all of his workday either driving a bus, maintaining and repairing the buses, or performing custodial duties. In this regard, his job function is virtually indistinguishable from that of the other drivers. He has decided, on one occasion, which of two available drivers would substitute for one who was unavailable, ordered two drivers to switch buses to accommodate passenger load, acceded in a driver's request that she refrain from driving a rough and dangerous road, and established, with the mutual consent of all other drivers, a seniority rotation for extra duty assignments. Even as to these relatively insignificant decisions, Chaffin has been countermanded by Dilts regarding field trip assignments, told by Dilts that he should not have ordered the bus switch, and overruled by the school board regarding the cessation of bus service on a rough road.

At the time the petition was filed, Chaffin had been in his allegedly supervisory role for 18 months. In all that time, the above-discussed incidents are the only examples cited in the record of even remotely supervisory conduct on his part. Further, all of his terms and conditions of employment had been set according to the collective bargaining agreement for some 17 months prior to the filing of the petition.³ While not dispositive of the issue by itself, this fact certainly provides some indication that Chaffin remained a nonsupervisory employee.

The transportation function is quite routine in this small unit of five employees who are only engaged in driving duties for a limited portion of their workday. Each drives a pre-ordained route, fills in mileage records, sweeps out his or her bus, and turns it in. Chaffin is not even on duty in the

³The District argues that it would be unfair to view Chaffin's treatment as a unit employee as an indication that he is nonsupervisory. This is so, argues the District, because it was obligated to treat him as a nonsupervisory employee, entitled to the benefits and subject to the constraints of the contract, until such time as the Board itself granted unit modification. This argument might have some appeal had the District filed its unit modification petition soon after changing Chaffin's status, rather than waiting 5 months after expiration of the 12-month election bar to do so. Had the District filed in a more timely manner, it would have been on record as to its contention as to Chaffin's supervisory status, and could more reasonably contend that it was only treating him as a rank and file employee until PERB officially acknowledged the change in his status.

transportation area when the other drivers report for work. He does not observe their performance, nor does he have the authority to correct their performance should it be deficient. The only "direction of work" engaged in by him occurs sporadically, and merely involves adherence to established policy. Even so, on at least two occasions noted in the record, Dilts countermanded Chaffin's directions.

The hearing officer correctly notes that this Board has adhered to the principle that supervisory criteria are to be viewed in the disjunctive and thus that proof that an individual possesses any one of the enumerated indicia is sufficient. Sweetwater Union School District (11/23/76) EERB Decision No. 4.4 However, the statute dictates that we must also analyze purported supervisory authority to determine whether exercise of such authority is of a routine or clerical nature, or whether it requires the use of independent judgment. In this case, we find that the purported assignment and direction of work engaged in by Chaffin is sporadic, that it amounts to nothing more than the routine application of established policy or practice, and hence that it does not require the use of independent judgment. Like the direction of work engaged in by the school secretary/office manager found

⁴Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

nonsupervisory in Sweetwater, supra, it is insufficient to render Chaffin a supervisor. We have held employees with far greater apparent supervisory authority than that possessed by Chaffin to be nonsupervisory. For example, in Oakland Unified School District (4/14/78) PERB Decision No. 50, we held "supervisory custodians II through V" to be rank-and-file lead persons, despite their authority to prepare schedules, make routine work assignments, and evaluate employees. In Foothill-DeAnza Community College District (3/1/77) EERB Decision No. 10, custodial foremen were held nonsupervisory despite evidence that they prepared evaluations, could initiate termination proceedings, participated in hiring panels and made hiring recommendations, recommended promotions, and could direct employees to correct deficient job performance.

On the basis of the record as a whole, we conclude that Chaffin does not exercise independent judgment in assignment of work nor does he in any other manner exercise or possess the authority to exercise any of the statutory supervisory power set forth in subsection 3540.1(m), and thus that he is not a supervisor within the meaning of EERA. On that basis, we will dismiss the instant petition.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the Public Employment

Relations Board hereby ORDERS that the petition filed by the Cantua Elementary School District in Case No. S-R-371, S-UM-138 be DISMISSED.

Chairperson Gluck and Member Jaeger joined in this decision.