

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



PAJARO VALLEY UNIFIED SCHOOL DISTRICT,)
)
Employer,) Case No. SF-UM-241
) (SF-R-222)
and)
) PERB Decision No. 363
PAJARO VALLEY FEDERATION OF TEACHERS,)
AFT LOCAL 1936, AFL-CIO,) December 13, 1983
)
Employee Organization.)
)
_____)

Appearances: Mark W. Goodson, Attorney (Breon, Galgani, Godino, and O'Donnell) for Pajaro Valley Unified School District; Janet K. King and Susan Devencenzi, Attorneys (Garry, Dreyfus and McTernan Inc.) for Pajaro Valley Federation of Teachers, AFT Local 1936, AFL-CIO.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal filed by the employer, the Pajaro Valley Unified School District (District), of the attached determination of the Board Agent. In his decision the Board Agent granted the petition of the Pajaro Valley Federation of Teachers, AFT Local 1936, AFL-CIO filed pursuant to former PERB rule 33261(a)(1)1 to modify the

¹At the time that this case arose, PERB rule 33261(a)(1) provided:

(a) A recognized or certified employee organization may file with the regional

existing certificated unit to include the District's adult education teachers.

We have reviewed the Board Agent's determination in light of the appeal filed and the entire record in this matter and, finding it free from prejudicial error, adopt it as the decision of the Board.

ORDER

Based upon the foregoing findings of fact, conclusions of law, and the entire record in this matter, it is hereby ORDERED that:

The petition for unit modification by the Pajaro Valley Federation of Teachers, AFT Local 1936, AFL-CIO is GRANTED, thereby adding adult education teachers to the established certificated unit.

Members Morgenstern and Burt joined in this Decision.

office a petition for unit modification
pursuant to Government Code section
3541.3(e):

(1) To add to the unit unrepresented
classifications or positions which
existed prior to the recognition or
certification of the current exclusive
representative of the unit, . . .

In his decision, the Board Agent inadvertently cited to PERB rule 32781(a)(1), which was adopted after the unit modification petition was filed in this case. This miscitation was a harmless error and does not affect the outcome of the case.

STATE OF CALIFORNIA
DECISION OF THE
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PAJARO VALLEY UNIFIED SCHOOL DISTRICT,)	
)	
Employer,)	Representation
)	Case No. SF-UM-241
and)	SF-R-222
)	
PAJARO VALLEY FEDERATION OF TEACHERS,)	
AFT LOCAL 1936, AFL-CIO,)	Administrative
)	Determination
Exclusive Representative.)	(3/18/83)

PROCEDURAL HISTORY

The Pajaro Valley Federation of Teachers, Local 1936, AFT/AFL-CIO (Federation) was certified by the Public Employment Relations Board (PERB) as the exclusive representative for the established certificated unit on April 30, 1978.1

¹The established certificated unit includes regular classroom teachers, K-12, children's center teachers, department chairpersons, head teachers, K-8, and children's center, drivers training, drivers training coordinator, athletic directors, released time teachers, student activities directors, athletic coaches (regular District employees) special teachers: home teacher (regular contract), teachers of communicatively handicapped, teachers of learning handicapped, teachers of physically handicapped, migrant educational support teachers, migrant instructional support teachers, migrant health specialist, Miller-Unruh, resource teachers, regular classroom, special education, special educator curriculum specialist, language arts specialist, counselors: career, elementary, secondary, bilingual, CSAA HOLD bilingual curriculum specialist, ROI placement and community classroom coordinator, psychologists, nurses, librarians (elementary and secondary) assistant librarians, basic skills consultant.

On March 3, 1982, the Federation filed a unit modification petition with PERB to add the adult education teachers to the established certificated unit.

On March 26, 1982, the Pajaro Valley Unified School District (District) filed an opposition statement to the unit modification petition. The District opposes the addition of the adult education teachers to the established certificated unit because the employees in question allegedly do not share a community of interest with the regular teachers. The District also contends the Federation has never negotiated on behalf of the adult education teachers, and that the addition of the adult education teachers will impair the efficient operation of the District more than the establishment of a separate unit of adult education teachers.

A pre-hearing conference was held on July 1, 1982. The parties agreed to an administrative determination rather than a formal hearing. The parties met with the hearing officer on July 8 and July 20, 1982, and submitted stipulations of fact and joint exhibits.

The issue to be decided in this case is whether the addition of the adult education teachers to the established certificated unit is appropriate.

DISCUSSION

PERB Regulation 32781(a)(1) provides that a recognized or certified employee organization may file with the regional

office a petition for unit modification:

- (1) To add to the unit unrepresented classifications or positions which existed prior to the recognition or certification of the current exclusive representative of the unit.

Government Code section 3545(a) and (b) sets forth the standards for determination of an appropriate unit:

- (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.

(b) In all cases:

- (1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

Community of Interest

The Board has interpreted section 3545 as establishing a rebuttable presumption that all classroom teachers should be contained in a single unit, absent a showing of a lack of community of interest between the groups. In Peralta Community College District (11/17/78) PERB Decision No. 77, the Board held that:

Reading subsection 3543(b) together with its companion subsection (a) gives rise to the

presumption that all teachers are to be placed in a single unit save where the criteria of [subsection (a)] cannot be met. In this way, the legislative preference, as the Board perceives it, for the largest possible viable unit of teachers can be satisfied. Thus, we would place the burden of proving the inappropriateness of a comprehensive teachers' unit on those opposing it. (Id., at p. 10.)

In Rio Hondo Community College District (1/25/79) PERB Decision No. 87, the PERB found that summer session teachers should be included in a comprehensive unit with part-time and full-time teachers. The Board found that summer school courses, like regular year courses, are offered in both day and evening sessions and also like regular year courses, are available for credit. Observing that many summer session courses were the same as regular year courses, that the summer session was an integral part of the district's education program, and that summer session and regular teachers, both performed the same principal job function, the Board concluded that the two groups shared a community of interest.

In Redwood City Unified School District (10/23/79) PERB Decision No. 107, the Board included summer school teachers in the same unit with regular teachers. In Redwood City, summer school teachers, like regular teachers, were required to hold credentials, prepare lesson plans and instruct; summer session and the regular session class schedules covered similar subjects, such as reading, writing, and arithmetic; and summer

school teachers and regular teachers participate in extra curricular activities such as back-to-school night. In light of these facts, the Board found a community of interest between the two teacher groups.

In El Monte Union High School District (10/20/80) PERB Decision No. 142, the Board concluded that summer school teachers, home teachers, enrichment teachers, evening continuation teachers and driver training instructors shared a community of interest with regular teachers despite such differences as work location, work hours, courses taught and lack of evaluation.

In Dixie Elementary School District (8/11/81) PERB Decision No. 171, the PERB directed that all substitute teachers be included in the established certificated unit. The Board found that like regular teachers, substitute teachers carried out lesson plans, administered tests, prepared bulletin boards, evaluated students, shared the same work locations and generally performed the same job function.

In the instant case, the adult education teachers, like regular teachers, must hold a valid California teaching credential.² Like regular teachers, the adult education

²There are four basic adult education credentials; designated subject, single subject, multiple subject and specialist instruction. Requirements for the credentials vary from a high school diploma to a Bachelor of Arts degree plus

teachers prepare lesson plans, update course objectives and descriptions, assign students work,³ assess and evaluate student progress, conduct and/or attend student conferences, supervise instructional aides, keep records and reports on students, including attendance and grades for credit courses, use a variety of teaching methods, including lecturing, individualized instruction and group participation. Adult education teachers and regular teachers perform the same kind of work, teaching many of the same courses, including such academic subjects as English, reading, math, U.S. history, U.S. government, health, science, sociology, psychology, and foreign languages. The parties stipulated that 186 students, between the ages of 14 and 17, transferred from the traditional high school classes to adult education classes during the 1981-82 school year.

Adult education teachers who have classes located at school sites share facilities and equipment with regular classroom teachers, including media resource materials from the County Office of Education.

experience in a skill or trade or minimum of 240 hours of classroom experience to teach an academic subject.

³Students in adult education classes range primarily from 18 to 65 or more years of age. In 1981, approximately 45 percent of the adult education students were under 21 years of age.

Adult education teachers as well as the regular classroom teachers accumulate sick leave. Adult education teachers who teach more than 20 hours per week are entitled to the same fringe benefits as regular classroom teachers; adult education teachers who teach more than 60 percent of full-time for three consecutive years and are re-elected to a fourth year can become permanent employees like regular classroom teachers.

Adult education classes may be cancelled if a specified minimum number of students do not attend. It is reasonable for adult education teachers as a class, however, to expect continued employment since the District has on a regular basis employed adult education teachers as an integral part of its work force. (Dixie, supra, p. 5.)

There are differences, as the District states, between adult education teachers and regular teachers. Sites for adult education classes are in locations other than K-12 school sites? adult education teachers are paid on a different salary schedule than regular teachers and adult education teachers are not required by law to be formally evaluated. Further, adult education teachers do not receive fringe benefits, except those who teach 20 hours per week or more. They have a different workday than regular teachers and they do not have class size limits. The adult education program⁴ has differences in funding than the regular K-12 program.

⁴The District argues that the regular K-12 program should

In Redwood City, however, the Board concluded that disparities between wage rates and fringe benefits of summer school and academic teachers was not enough to establish a lack of community of interest, because for all practical purposes the hours, wages, and other terms and conditions of summer school employment are wholly within the District's control. Further, in Dixie, supra, the PERB concluded that even substitute teachers who worked as few as one or two days per year were properly included in a comprehensive unit with regular teachers. When analyzed in light of these PERB precedents, the record compels the conclusion that adult education teachers share a community of interest with the regular teachers and should be included in the same unit.

Established Practices

In addition to community of interest, the PERB must also look to established practices when making a determination of unit appropriateness. (Government Code section 3545(a).) Established practices that are relevant include efficiency of operations and negotiating history.

In Oakland Unified School District (9/20/79) PERB Decision No. 102 PERB held that:

be separate because of separate sources of funding. However, the funding restrictions also apply to Children's Center teachers, special education and other groups already included in the established certificated unit (See Redwood City, p. 7).

. . . negotiation of a supplementary agreement covering the petitioned-for employees impose no greater burden on the parties than would the negotiation of a separate agreement. . . . Nor . . . do negotiations covering all employees in the modified unit present any more potential for disruption than bifurcated negotiations covering two separate units. (Oakland, supra, at pg. 1.)

Further, in Livemore Valley Joint Unified School District (6/21/81) PERB Decision No. 165, the Board held that the efficiency of operations criteria is a factor against fragmentation of units. The greater number of units for the District to negotiate with, the greater must be its use of resources for administering and negotiating contracts. .

In the instant case, adding the adult education teachers would reduce, rather than increase, the number of negotiation sessions which would be required between the District and the Federation if two separate units existed.⁵ The certificated unit contract, currently in effect, includes separate salary schedules and school calendars for regular certificated staff

⁵The District has taken the position that a separate unit of adult education teachers would be preferable to the addition of these employees to the established certificated unit. It should be noted, however, that no party has petitioned for a separate unit of adult education teachers. Thus, the issue of creation of a second unit is not before the Board in this case. Additionally, the Board is not required by the EERA to find "the most appropriate" unit, but rather, "an appropriate unit." (Compton Unified School District (10/26/79) PERB Decision No. 109.) As discussed herein, the established certificated unit, with the addition of the adult education teachers, is an appropriate unit.

and the Children's Center certificated employees. It thus appears that consolidated negotiations would be less disruptive to the efficient operation of the District. Indeed, the District provided no evidence to show that the stable negotiation relationship which now generally exists in the District would be disrupted if the unit modification is granted.

Considering the community of interest criteria between and among employees, established practices and the effect of the size of the unit on the efficient operation of the school district, it is concluded that the adult education teachers be included in the established certificated unit.

CONCLUSION

Based upon the foregoing, and the entire record in this matter, the petition for a unit modification by the Pajaro Valley Federation of Teachers, AFT Local 1936, AFL-CIO is granted, thereby adding adult education teachers to the established certificated unit represented by the Federation.

An appeal of this decision pursuant to PERB Regulations 32350 through 32380 may be made within 10 calendar days following the date of service of this decision by filing an original and 5 copies of a statement of the facts upon which the appeal is based with the Board itself at 1031 18th Street, Suite 200, Sacramento, California 95814. Copies of any appeal

must be concurrently served upon all parties and the Sacramento Regional Office. Proof of service pursuant to Regulation 32140 is required.

Dated: March 18, 1983

JANET E. CARAWAY
DIRECTOR OF REPRESENTATION

By JOSEPH C. BASSO
Board Agent