

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



IMPERIAL UNIFIED SCHOOL DISTRICT,)
)
Employer,) Case Nos. LA-UM-408
) LA-UM-410
and) (R-330)
)
CALIFORNIA SCHOOL EMPLOYEES) PERB Decision No. 647
ASSOCIATION AND ITS IMPERIAL)
CHAPTER #565,) December 18, 1987
)
Exclusive Representative.)
)

Appearance; Jo Ann E. Ellis, Field Representative, for California School Employees Association and its Imperial Chapter #565.

Before Craib, Shank and Cordoba, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California School Employees Association and its Imperial Chapter #565 (CSEA) to the attached proposed decision, in Case No. LA-UM-408. In the proposed decision, a PERB hearing officer found that the newly created position of receptionist/clerk I is a "confidential" position within the meaning of section 3540.1(c) of the Educational Employment Relations Act (EERA).¹ The hearing officer thus denied CSEA's petition to add the new position to the existing wall-to-wall classified unit.

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

We have reviewed the entire record, including the proposed decision and the exceptions thereto and, finding the proposed decision free of prejudicial error, we adopt it as the decision of the Board itself.²

ORDER

The unit modification petition filed in Case No. LA-UM-408 to add the receptionist/clerk I position to the existing wall-to-wall classified unit in the Imperial Unified School District is hereby DENIED.

The unit modification petition filed in Case No. LA-UM-410 to add the attendance security supervisor to the wall-to-wall classified unit in the Imperial Unified School District is hereby GRANTED.

Members Shank and Cordoba joined in this Decision.

²In case No. LA-UM-410, the hearing officer granted CSEA's petition to add the attendance security supervisor to the existing wall-to-wall classified unit, rejecting the Imperial Unified School District's contention that the position was managerial within the meaning of EERA section 3540. Kg). As this finding was not excepted to, it is not properly before us for consideration and we do not address it here.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



IMPERIAL UNIFIED SCHOOL DISTRICT,)	
)	Representation Case
Employer,)	Nos. LA-UM-408 and
)	LA-UM-410 (R-330)
and)	
)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION)	PROPOSED DECISION
AND ITS IMPERIAL CHAPTER #565,)	(6/30/87)
)	
Exclusive Representative.)	
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Appearances; Horton, Knox, Carter and Foote by Frank A. Oswalt, II for Imperial Unified School District; Jo Ann Ellis, Field Representative for California School Employees and its Imperial Chapter #565.

Before Roger Smith, Hearing Officer

PROCEDURAL HISTORY

On December 24, 1986, California School Employees Association and its Imperial Chapter #565 (CSEA) filed a unit modification petition pursuant to PERB Regulation 32781(a)(2)¹ with the Public Employment Relations Board (PERB or Board) seeking to add the newly created position of receptionist/clerk I to the wall-to wall classified unit it

¹PERB Regulations are codified at California Administrative Code, title 8, part III section 31001, et seq.

PERB Regulation 32781(a)(2) provides:

- (a) A recognized or certified employee organization may file with the regional office a petition for unit modification:

- (2) To add to the unit unrepresented classifications or positions created since recognition or certification of the current exclusive representative.

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

represents at Imperial Unified School District (District). The District requested that the receptionist/clerk I position be found to be confidential.

On January 29, 1987, CSEA filed another unit modification petition with PERB pursuant to Regulation 32781(a)(2) which sought to add the retitled position of attendance security supervisor to the classified unit. The District designated the attendance security supervisor as a management position

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effective January 1, 1987.

On January 7, 1987, the District filed a response opposing CSEA's request to have PERB find the receptionist/clerk I position non-confidential. On February 4, 1987, the District filed a response opposing CSEA's request to have PERB determine the attendance security supervisor to be non-management. Informal discussions to resolve the disputed positions proved unsuccessful. A formal hearing was conducted on March 11, 1987. Briefs were timely filed and the case was submitted on June 8, 1987.

ISSUES

- (1) Is the receptionist/clerk I a confidential position as defined in the Educational Employment Relations Act (EERA)?³
- (2) Is the attendance security supervisor a management position as defined in the EERA?

²The District throughout this proceeding has not contended that the attendance security supervisor was supervisory.

³EERA is codified at section 3540 et seq. of the Government Code.

DISCUSSION

There are approximately 136 employees in the District, 60 of whom are classified, 10 of whom are designated as administrators or management and 4 of whom are confidential employees. The disputed positions are included in the total number of confidential and management employees listed. PERB previously reviewed the confidential status of this District's employees. (Imperial Unified School District, (1978) PERB Decision No. HO-R-55). At that time, the parties stipulated that the District secretary and bookkeeper were confidential employees and the hearing officer found that the assistant bookkeeper and the purchasing and billing clerk were confidential employees. Since that time, the number of confidential employees rose to five, and dropped to three prior to the creation of the receptionist/clerk I position in August 1986.

A. Receptionist/Clerk I

The receptionist/clerk I works in the administration building of the District with three confidential employees and the superintendent. She works in a room with the administrative assistant. The room is approximately 36 feet by 20 feet and divided by a clear glass partition with a large center piece missing as if an open window. The reception area for District business is immediately adjacent to the administrative assistant's office and the superintendent's

office. The superintendent's office is separated from the reception area by a wooden door and wall. The remaining two confidential employees (bookkeeper and assistant bookkeeper) work in an office separated from the front reception area by a 15 foot long hallway which runs behind the superintendent's office.

Jenifer Walker, the receptionist clerk I, Patti Kiser, administrative assistant, and Adrienne Scott, bookkeeper, stated that they worked together as a team, sharing assignments and responsibilities and covering one another's duties in case of absence or heavy workload. All three employees confirmed that duties became somewhat interchangeable when workflow mandated it. Walker verified calculations of bargaining proposals for the District's negotiating team in recent negotiations with CSEA. In the absence of the bookkeeper, she was asked by her supervisor, the administrative assistant, to assure that calculations on an economic proposal were accurate.

Walker is responsible for opening and screening all incoming mail and, as the receptionist, receives all incoming telephone calls. In addition, she is responsible for maintaining personnel files by filing documents and retrieving information from them. She has regular access to files which maintain grievance and complaint materials.

Government Code Section 3540.1(c) states:

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

In Sierra Sands Unified School District (1976) EERB Dec.

No. 2,⁴ the union questioned the designation of the senior secretary to the assistant superintendent for personnel services as a confidential position. The assistant superintendent was responsible for the development of negotiating positions, consulting with the exclusive representatives regarding matters within the scope of representation, and developing recommendations for the negotiating team to the governing board. Because of her supervisor's activities, the senior secretary frequently, and as a routine matter, handled correspondence and files relating to classified and certificated employees. Because of this, the Board found that the secretary had access or possessed information relating to her employer's employer-employee relations. It summarized the reasons for finding confidential employee status:

Presumably, the Legislature denied certain rights to "confidential" employees for the sole purpose of guaranteeing orderly and equitable progress in the development of employer-employee relations.

The assumption is that the employer should be allowed a small nucleus of individuals who would assist the employer in the

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

development of the employer's positions for the purpose of employer-employee relations. It is further assumed that this nucleus of individuals would be required to keep confidential those matters that if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture.

The underlying assumption then, is that the employer, in order to fulfill its statutory role in its employer-employee relations, must be assured of the undivided loyalty of a nucleus of staff designated as "confidential employees."

In University of California Unit Determination (1983) PERB

Dec. No. 247b-H the Board stated that, at the least, the definition of confidential employee includes the processing of employee grievances and negotiations. The Board continued by finding:

The frequency with which an employee has access to or possesses information of a confidential nature is not controlling. However, it must be in the regular course of the employee's duties and more than a happenstance.

In sum, more than a fraction of the employees' time must be spent on confidential matters. The individual must have access to or possess sufficient information to warrant the conclusion that the employer's ability to negotiate with employees from an equal posture might be jeopardized, and the balance in employer-employee relations distorted, if the information was prematurely made public.

In Campbell Union High School District (1978) PERB Decision

No. 66, the Board found principals' secretaries to be confidential employees. They maintained files and processed

correspondence relating to negotiations and grievances, and were present at management meetings relating to those matters.

In summary, PERB has found that a confidential employee is one of a small nucleus of individuals who, in the regular course of his/her duties, has access to information relating to the employer's employer-employee relations. This primarily means access to negotiating data, information relating to grievances and other employer-employee relations materials.

The receptionist/clerk I maintains files and processes correspondence relating to classified and certificated negotiations in the regular course of her duties. She assists the administrative assistant in researching those matters and is involved in the stream of communication between District school board members and the superintendent's office regarding negotiations.

The receptionist/clerk I works in the District office which is at a physical location relatively isolated from other District facilities and employees. Only the superintendent, the three acknowledged confidential employees and the receptionist/clerk I are assigned to work in the District office.

The performance of the duties relating to employer-employee relations, the physical location of the employee's work station and the nature of the shared assignments with the three confidential employees warrant the receptionist/clerk I's being

designated a confidential employee. Addition of this confidential position to the nucleus of three existing assignments is not extraordinary, but consistent with PERB's previous unit determination in this District. (Imperial USD, supra.)

B. Attendance Security Supervisor

On December 9, 1986, the District created the position of attendance security supervisor and, on January 1, 1987, filled the position with the individual who formerly acted as attendance officer/security chief, George Kemper. The position of attendance officer/security chief remains a vacant classified bargaining unit position. A comparison of the attendance security supervisor and attendance office/security chief duty statements indicates virtually identical duties. The only difference is that the attendance security supervisor is not required to check in at least twice weekly with each of the five school site administrators to report attendance problems and activities and to receive direction from each.⁵

Kemper acknowledged that his job remained the same after the title change. The major difference has been that his release from regularly reporting to the site administrators has allowed him more time to visit students' homes to determine the

⁵See Joint Exhibit #1 and District's Exhibit #1.

nature of their absences from school. The principle duties of the attendance security supervisor are to ascertain and monitor student absence patterns, to act as liaison between the school and parents; to resolve student attendance problems; to act as District security officer at school functions; to deal with disturbances, emergencies, traffic infractions, and crimes; and to patrol sites frequented by truants and apprehend and return truants to their schools. Additional specific special assignments include: coordinating law enforcement protection with local authorities and preparing and presenting truancy cases to the District's School Attendance Review Board (SARB).

Kemper also acknowledged that he recently acted as chief author of a District drug policy. He began work on the draft in November or December 1986. The policy was awaiting final approval by the District school board at the time of hearing in this case.

Kemper is also called upon to investigate allegations of misconduct against all District employees. His review of any allegations is preliminary to local law enforcement being contacted. His reports have had no binding effect in connection with disciplinary action or the filing of criminal charges against any employee. He has conducted two investigations against District employees since 1985.

Kemper is responsible for helping to complete a grant proposal for \$15,000 through a state-funded program managed

by the Imperial County Probation Department. The money, if approved, will be used for purchasing a computer to assist in keeping accurate attendance records for students at all five schools and a portable radio for the attendance security supervisor's vehicle so that he could readily contact the Imperial Police Department if the need arises. The proposal, when finally completed, will be reviewed by the superintendent and the District school board for their approval and submission.

Finally, Kemper indicated that he acted independently in most of his assignments. He has no support staff to supervise and no other security officers to assist him in securing safe school sites. He stated that he runs a one-person department that is occasionally understaffed, yet he attempts to perform his job in a professional but not formal manner befitting a small rural town's schools. He will be expected to supervise any employee hired to fill the vacancy of attendance officer/security chief.⁶

Government Code Section 3540.1(g) states:

"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 Public Employment Relations Board.

⁶Kemper clearly indicated that he has no supervisory duties at the present time.

In applying this definition PERB has relied on National Labor Relations Board (NLRB) case law to support its findings. See Lompoc Unified School District (1977) EERB Decision No. 13 citing Flintkote Co. (1975) 217 NLRB No. 85 [LRRM 1295, 1297]; General Dynamics Corporation, Convair Aerospace San Diego Operations (1974) 213 NLRB 851 [87 LRRM 1705]; Palace Laundry Dry Cleaning Corp. (1947) 75 NLRB 320 [21 LRRM 1039]; Eastern Camera and Photo Corp. (1963) 140 NLRB 569 [52 LRRM 1068]; and NLRB v. Bell Aerospace Company (1974) 416 U.S. 267 [85 LRRM 2945]. The NLRB in Flintkote Co., *supra*, defines managerial employees:

. . . as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policies.

In applying the NLRB finding to the public school sector the Board in Lompoc USD, *supra*, found that a vocational education coordinator and a Title I, Early Childhood Education Coordinator acted as "experts in their particular field", rather than as managers, and determined that, due to the fact their recommendations needed the approval of at least two higher levels, they were not managers. This conclusion was reached in spite of the fact that the vocational education coordinator wrote proposals and represented the employer at funding negotiations. Thus, in order to be designated a management position, the employee must have significant responsibility for formulating and administering the employer's program. (See Los Rios Community College District 1977 EERB Decision No. 18).

In Marin Community College District (1978) PERB Decision No. 55, and Franklin-McKinley School District (1979) PERB Decision No. 108, the Board held that the authority to implement the employer's policy, not the ability to draft and/or create policy, is the test of management employee status.

When the Board's rationale is applied to the instant case, it cannot be found that the attendance security supervisor is a management employee. It is clear that the incumbent acts as an expert in his field but that his policy recommendations and policy plans are reviewed by the superintendent and the District school board before any action is taken.

The attendance security supervisor's recommendations on truancy problems go to the school principal before going to the SARB, a panel of 13 community members, for action. The SARB has met five times during Kemper's tenure, first as truant officer/security chief, then as attendance officer/security chief and finally as attendance security supervisor, from March 1985 through the time of the hearing.

Kemper's recommendations on the purchase of radio equipment and a computer will require the approval of the superintendent and school board before action can be taken. The drug policy, which Kemper has been working on with a committee, will be reviewed by the superintendent and school board before it will be implemented.

CONCLUSION

Based on the entire record in this case, it is found that the position of receptionist/clerk I is confidential as defined within the meaning of EERA and the attendance security supervisor is not a management employee as defined within the meaning of EERA.

PROPOSED ORDER

The unit modification petition filed by CSEA to add the receptionist/clerk I to the classified unit is hereby DENIED due to her confidential status.

The unit modification petition filed by CSEA to add the attendance security supervisor to the classified unit is hereby GRANTED.

Pursuant to California Administrative Code, title 8, part III section 32305, this proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any relied upon for such exceptions. See California Administration Code, title 8, part III, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, . . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." See

California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300, 32305 and 32140.

DATED: June 30, 1987

Roger Smith
Hearing Officer