

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN JUAN UNIFIED SCHOOL DISTRICT,)
)
Employer,) Case No. S-S-137
)
and) (S-R-232A)
)
CALIFORNIA SCHOOL EMPLOYEES) PERB Decision No. 1082
ASSOCIATION, CHAPTER 127,)
)
Exclusive Representative,) January 18, 1995
)
and)
)
TEAMSTERS LOCAL 150, AFL-CIO,)
)
)
Petitioner.)
)

Appearances; Diana D. Halpenny, Attorney, for San Juan Unified School District; Arnie R. Braafladt, Attorney, for California School Employees Association, Chapter 127; Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for Teamsters Local 150, AFL-CIO.

Before Blair, Chair; Carlyle and Garcia, Members.

DECISION

GARCIA, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California School Employees Association, Chapter 127 (CSEA) and the San Juan Unified School District (District) to a PERB hearing officer's proposed decision (attached) to grant a severance petition which was filed by Teamsters Local 150, AFL-CIO (Teamsters). After review of the entire record the Board hereby adopts the proposed decision in accordance with the following discussion.

BACKGROUND

On August 31, 1993, Teamsters filed a severance petition with the Board pursuant to PERB Regulation 33700.¹ After a hearing, the case was submitted to the hearing officer for decision. The hearing officer found the proposed bargaining unit to be appropriate.

POSITIONS OF THE PARTIES ON APPEAL

CSEA's Exceptions

CSEA excepted to the proposed decision for many reasons, some of which are nonsubstantive or do not affect the validity of

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 33700 states:

(a) An employee organization may file a request to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a request for recognition in accordance with the provisions of Article 2 (commencing with section 33050). All provisions of Article 2 and Article 4 of this Chapter shall be applicable to a severance request except as provided in this Article 7.

(b) Whenever the conditions of Government Code section 3544.1 (c) exist, a severance request for recognition or intervention must be filed in accordance with section 32135 with the employer during the "window period" as defined by section 33020.

(c) Any amendment to a request for recognition or intervention to add classifications or positions which are included in an established unit must be filed in the manner set out in section 32135 during the "window period" defined by section 33020.

the hearing officer's legal analysis.² The relevant and material exceptions we considered are:

The claim that the hearing officer minimized the disruption to the stable bargaining relationship that would occur in case of severance.³

CSEA's challenge of the Teamsters' qualifications to represent the general unit, citing State of California (Department of Personnel Administration) (1993) PERB Decision No. 1025-S.

The assertion that the hearing officer misinterpreted Livermore Valley Joint Unified School District (1981) PERB Decision No. 165 (Livermore) as requiring minimal deference to negotiating history, by failing to heed Livermore's admonition that ". . . a stable negotiating relationship will not be lightly disturbed."

CSEA's challenge to the hearing officer's conclusion regarding the effect of labor-management boards. CSEA argues that the establishment of a board such as the Food Service Board

²For example, several of the exceptions identify alleged errors of fact or omissions that, even if accurate, are irrelevant to the result. One such exception challenges the hearing officer's statement regarding the precise number of agreements the District and CSEA have negotiated; another urges the Board to note that 8 of the 12 members on the Food Services Board are appointed by CSEA; another seeks an acknowledgment of the satisfactory relationship CSEA has enjoyed with the affected workers; another claims that the proposed decision fails to acknowledge efforts to improve communications with and representation of classified employees in the general unit.

³The exception states that, contrary to language in the proposed decision, the Food Service Board will expire when CSEA is no longer the exclusive representative.

weighs against, rather than for, severance, since it underscores the stability and strength of the negotiating relationship.

CSEA's assertion that the hearing officer's appropriate unit conclusion was in error because the longstanding, productive and stable negotiating relationship between the District and CSEA outweighs the preference for a Sweetwater Union High School District (1976) EERB Decision No. 4 (Sweetwater)⁴ configuration. District's Exceptions

The District filed ten exceptions to the proposed decision, several of which are irrelevant⁵ or repeat CSEA's exceptions. Those we considered are:

The hearing officer's failure to accord adequate consideration to the fundamental purpose of the Educational Employment Relations Act (EERA)⁶ ". . . to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California" (EERA sec. 3540).

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

⁵For example, the District refers to omission of various facts, such as: Teamsters do not currently represent any school employees; facts relating to the circumstances under which the Teamsters circulated authorization cards; an allegation that the Food Services Board deals with non-negotiable issues and that it is composed of both employees subject to the petition as well as employees not subject to the petition; the impact on the District of creating a fifth bargaining unit is insufficiently described.

⁶EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

The hearing officer's conclusion that the proof of support collected and submitted by the Teamsters was adequate.

The petitioned-for unit does not have a distinct community of interest from the remainder of the general unit because, regarding negotiable topics, their interests are very similar. Also, much of the remainder of the unit (like the proposed severed unit) reports through a chain of command that ends with the Associate Superintendent for Business Services.

The hearing officer's failure to give adequate weight to the detrimental effect on District operations that would occur with the creation of another bargaining unit.

Teamsters' Response to Exceptions

Although the Teamsters responded to all exceptions filed by both CSEA and the District, the following summarizes only Teamster responses that bear on the key exceptions listed above.

In response to the claim that they are unqualified to represent school employees, the Teamsters state that they are experienced in representing school employees. Even if not, however, the employees should decide whether that is a concern.

Secondly, Livermore's focus on prior bargaining history is appropriate when there is evidence of dissatisfaction, as there is here.

Finally, the Teamsters respond that the hearing officer's conclusion that the District and CSEA had failed to overcome the preference for a Sweetwater configuration is amply supported by the record.

DISCUSSION

The hearing officer addressed three issues. As a threshold decision, the hearing officer ruled that the 38-month collective bargaining agreement between the District and CSEA did not bar the Teamsters' severance petition. We agree with the hearing officer that under EERA a written agreement that exceeds 36 months does not provide a contract bar against representation petitions.

The hearing officer also addressed the issue of whether the Teamsters had satisfied the proof of support requirement under PERB Regulation 32700 (e). The Board agrees with the hearing officer that the Teamsters complied with this requirement by demonstrating that the employees properly completed cards authorizing the Teamsters to represent them in employment relations with the District, and that there are no further requirements regarding employee intent or state of mind.

The central issue in this case grew out of a decertification effort; it subsequently led to a severance petition challenging the appropriateness of the existing bargaining unit configuration in the District. The petition asserts that a specific group of employees should be carved out of a comprehensive unit for purposes of holding a representation election.⁷ After five days

⁷Even though the signatures were gathered as part of a decertification effort and severance may not have been the focus of the employees at that time, that issue will be brought to their attention during a contested election.

of hearings, the hearing officer concluded that the petitioned-for unit was appropriate.

To make his decision, the hearing officer looked at the EERA "community of interest" standard for determining appropriate units⁸ and the Sweetwater case, in which the Board adopted its policy on appropriate bargaining units. Under that policy, when a petition specifies a unit of employees identical to a Sweetwater unit, the unit is presumptively appropriate and the burden is upon the parties challenging the petition to establish that a different unit is more appropriate. The hearing officer recognized the long and successful negotiating history between CSEA and the District, but concluded that the community of interest existed to create the smaller unit and found that there would be no undue hardship to the District. He also noted that affected employees were dissatisfied with CSEA and wanted an election.

CONCLUSION

A review of the file and the precedents established in the Sweetwater, Compton Unified School District (1979) PERB Decision No. 109, Livermore, and South Bay Union Elementary School District (1990) PERB Decision No. 816 decisions support the decision of the hearing officer. On balance, the long, relatively stable negotiating relationship that exists between CSEA and the District and the added burden to the District of dealing with an additional bargaining unit is not sufficient to

⁸See EERA section 3545(a).

overcome the Sweetwater policy in light of the employees' right to select an exclusive representative for an appropriate unit. Therefore, under the specific facts of this case, the Board finds that a new unit comprised of the specified classifications is an appropriate unit for representation purposes under EERA.

ORDER

Based on the adopted findings of fact, conclusions of law, the discussion herein and the entire record in this case, the Teamsters' petition for severance of a unit consisting of employees working in food services and maintenance and operations is hereby GRANTED.

The Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit Title: Operations Support

Shall Include: The classifications of:

- | | | | |
|-----|--------------------------------|-----|--------------------------------|
| 702 | Nutritionist | 715 | Satellite Cafeteria Worker |
| 712 | Cook Manager II | 724 | Cafeteria Worker |
| 714 | Cook Manager I | 722 | Baker |
| 720 | Cook | 729 | Cafeteria Cashier Helper |
| 605 | Facilities/Environ. Safe.Spec. | 624 | Custodial Equip. Repairer |
| 606 | Construction Inspector | 579 | Telecommunications Sys. Tech. |
| 681 | Electronic Asst. | 609 | Lead Heating & Air Cond. Tech. |
| 663 | Lead Sprinkler Maint. Spec. | 689 | Lead Bldg. Maint. Worker |
| 667 | Stadium Maint. Worker | 611 | Lead Asbestos Inspector/Worker |
| 665 | Lead Gardener | 604 | Heating & Air Cond. Tech. II |
| 664 | Sprinkler Maint. Spec. | 607 | Asbestos Inspector/Worker |
| 666 | Lead Pool Maint. Mech. | 672 | Lead Carpenter |
| 649 | Maintenance Custodian | 616 | Lead Electrician |
| 512 | Senior Warehouse Worker | 586 | Lead Electronic Tech. |
| 691 | Bldg. Maint. Worker | 610 | Lead Plumber |
| 693 | Grounds Maint. Worker | 657 | Lead Planner |
| 696 | Junior Mechanic (M&O) | 674 | Lead Painter |
| 644 | Intermediate Head Cust. | 675 | Lead Glazier |
| 654 | Lead Security Officer | 676 | Lead Welder |
| 615 | Cafeteria Equip. Tech I | 677 | Lead Roofer |
| 660 | Tree Trimmer/Gardener | 690 | Carpenter |
| 668 | Grounds Equip. Oper. | 618 | Electrician |
| 634 | Pool Maint. Mech. | 580 | Electronic Technician |

646	Elementary Head Cust.	612	Plumber
656	Security Officer	686	Locksmith
669	Groundskeeper	661	Ld. Groundworker/Heavy Equip.
518	Warehouse/Delivery Worker		Opr.
684	Painter	582	Mail Processing Spec.
695	Equipment Mechanic (M&O)	636	Lead Custodian
623	Lead Office Machine Tech.	516	Delivery Worker
682	Glazier	648	Custodian
688	Welder	694	Maintenance Helper
681	Roofer	608	Heating & Air Cond. Tech. I
651	Maintenance Helper Asst.	614	Cafeteria Equip. Tech. II
662	Heavy Equipment Operator	679	Lead Equipment Mech. (M&O)

Shall Exclude: All other employees, including management, supervisory and confidential employees.

Within 10 days following issuance of this decision, the San Juan Unified School District (District) shall post on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed, a copy of the Notice of Decision attached hereto as an Appendix. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

The employee organizations whose names shall appear on the ballot are California School Employees Association, Chapter 127, and Teamsters Local 150, AFL-CIO, unless one of these organizations informs the regional director in writing, within 15 days after the employer posts the Notice of Decision, that it does not desire to participate in the election. The regional director shall conduct an election at the end of the posting period in such unit if: (1) both of the above-named employee organizations desire to participate in the election, or (2) only

one organization desires to participate and the employer does not grant voluntary recognition.

The Board hereby ORDERS that this case be REMANDED to the Sacramento Regional Director for proceedings consistent with this decision.

Chair Blair and Member Carlyle joined in this Decision.

APPENDIX



NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

CASE: SAN JUAN UNIFIED SCHOOL DISTRICT
Case No. S-R-137 (S-R-232A)
PERB Decision No.

EMPLOYER: San Juan Unified School District
3738 Walnut Avenue
Carmichael, California 95608
(916) 971-7110

EMPLOYEE ORGANIZATION
PARTIES TO PROCEEDING:

California School Employees Association,
Chapter 127
8217 Auburn Boulevard
Citrus Heights, California 95610
(916) 725-1188

Teamsters Local 150, AFL-CIO
7120 East Parkway
Sacramento, California 95823
(916) 392-7070

FINDINGS:

The Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit Title: Operations Support

Shall Include: The classifications of:

- | | |
|------------------------------------|------------------------------------|
| 702 Nutritionist | 715 Satellite Cafeteria Worker |
| 712 Cook Manager II | 724 Cafeteria Worker |
| 714 Cook Manager I | 722 Baker |
| 720 Cook | 729 Cafeteria Cashier Helper |
| 605 Facilities/Environ. Safe.Spec. | 624 Custodial Equip. Repairer |
| 606 Construction Inspector | 579 Telecommunications Sys. Tech. |
| 681 Electronic Asst. | 609 Lead Heating & Air Cond. Tech. |
| 663 Lead Sprinkler Maint. Spec. | 689 Lead Bldg. Maint. Worker |
| 667 Stadium Maint. Worker | 611 Lead Asbestos Inspector/Worker |
| 665 Lead Gardener | 604 Heating & Air Cond. Tech. II |

664	Sprinkler Maint. Spec.	607	Asbestos Inspector/Worker
666	Lead Pool Maint. Mech.	672	Lead Carpenter
649	Maintenance Custodian	616	Lead Electrician
512	Senior Warehouse Worker	586	Lead Electronic Tech.
691	Bldg. Maint. Worker	610	Lead Plumber
693	Grounds Maint. Worker	657	Lead Planner
696	Junior Mechanic (M&O)	674	Lead Painter
644	Intermediate Head Cust.	675	Lead Glazier
654	Lead Security Officer	676	Lead Welder
615	Cafeteria Equip. Tech I	677	Lead Roofer
660	Tree Trimmer/Gardener	690	Carpenter
668	Grounds Equip. Oper.	618	Electrician
634	Pool Maint. Mech.	580	Electronic Technician
646	Elementary Head Cust.	612	Plumber
656	Security Officer	686	Locksmith
669	Groundskeeper	661	Ld. Groundworker/Heavy Equip. Opr.
518	Warehouse/Delivery Worker	582	Mail Processing Spec.
684	Painter	636	Lead Custodian
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623	Lead Office Machine Tech.	648	Custodian
682	Glazier	694	Maintenance Helper
688	Welder	608	Heating & Air Cond. Tech. I
681	Roofer	614	Cafeteria Equip. Tech. II
651	Maintenance Helper Asst.	679	Lead Equipment Mech. (M&O)
662	Heavy Equipment Operator		

Shall Exclude: All other employees, including management, supervisory and confidential employees.

Pursuant to PERB Regulation section 33450, within 10 days following issuance of this Notice of Decision, the San Juan Unified School District (District) shall post on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed, a copy of this Notice of Decision. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, altered, defaced or covered with any other material.

The employee organization whose names shall appear on the ballot are California School Employees Association, Chapter 127, and Teamsters Local 150, AFL-CIO, unless one of these organizations informs the regional director in writing, within 15 days after the employer posts the Notice of Decision, that it does not desire to participate in the election. The regional director shall conduct an election at the end of the posting

period in such unit if: (1) both of the above-named employee organizations desire to participate in; the election, or (2) only one organization desires to participate and the employer does not grant voluntary recognition.

Dated: _____ SAN JUAN UNIFIED
SCHOOL DISTRICT

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR A MINIMUM OF FIFTEEN (15) WORKDAYS. REASONABLE STEPS SHALL BE TAKEN TO ENSURE THAT THIS NOTICE IS NOT REDUCED IN SIZE, ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN JUAN UNIFIED SCHOOL DISTRICT,)
)
Employer,)
)
and) Representation
) Case No. S-S-137
) (S-R-232A)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION, CHAPTER 127,)
)
Exclusive Representative,)
)
and)
)
TEAMSTERS LOCAL 150, AFL-CIO,)
)
Petitioner.)
)
:)
_____)

PROPOSED DECISION
(7/26/94)

Appearances: Diana D. Halpenny, Attorney, for San Juan Unified School District; Arnie R. Braafladt, Attorney, for California School Employees Association, Chapter 127; Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for Teamsters Local 150, AFL-CIO.

Before Bernard McMonigle, Hearing Officer.

PROCEDURAL HISTORY

On August 31, 1993, Teamsters Local No. 150, AFL-CIO (Teamsters) filed a severance petition with the Public Employment Relations Board (PERB or Board).¹ That petition seeks to sever a group of employees working in food services and maintenance and operations out of an existing general classified unit in the San Juan Unified School District (District) which is currently represented by the California School Employees Association,

¹ See PERB Regulations 33700 and 33710. PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.

Chapter 127 (CSEA). The petition was found to be timely filed and have sufficient proof of support by PERB's Sacramento Regional Director. Both the District and CSEA opposed the petition. A settlement conference was held on October 25, 1993, and was unsuccessful.

Between January 4 and 11, 1994, five days of hearing were conducted. A transcript was prepared.² The last brief was received and the case was submitted for decision on March 3, 1994.

FINDINGS OF FACT

The District has approximately 47,000 students in 75 schools and employs 1,900 to 2,000 non-supervisory classified employees. These employees are represented by CSEA in two bargaining units: the general unit and a transportation unit.

As of December 31, 1993, there were 1,798 employees in the general unit, including 572 employees in the job classifications which are subject to the severance petition.³

² Motions to correct the transcript, received from the District on February 23, 1994 and from CSEA on February 17, 1994, amended February 24, 1994, are hereby granted.

³ The classifications are:

702 Nutritionist	715 Satellite Cafeteria Workers
712 Cook Manager II	724 Cafeteria Worker
714 Cook Manager I	722 Baker
720 Cook	729 Cafeteria Cashier Helper
605 Facilities/Environ. Safe.Spec.	624 Custodial Equip. Repairer
606 Construction Inspector	579 Telecommunications Sys.Tech.
681 Electronic Asst.	609 Lead Heating & Air Cond. Tech.
663 Lead Sprink. Maint. Spec.	689 Lead Bldg. Maint. Worker
667 Stadium Maint. Worker	611 Lead Asbestos Inspector/Work.
665 Lead Gardener	604 Heating & Air Cond. Tech. II
664 Sprinkler Maint. Spec.	607 Asbestos Inspector/Worker •
666 Lead Pool Maint. Mech.	672 Lead Carpenter
649 Maintenance Custodian	616 Lead Electrician
512 Senior Warehouse Worker	586 Lead Electronic Tech.

The District is organized along departmental lines. The job classifications sought to be severed are found within the food services department, the maintenance and operations department and the general business services department. The director of the maintenance and operations department reports to the director of facilities and planning who reports to the associate superintendent of business services. The directors of the food services department and the general business services department both report to the senior director of business operations who also reports to the associate superintendent of business services.

Collective bargaining agreements reflect a practice by CSEA and the District of listing the general unit job classifications in five occupational groupings: food services, computer services, maintenance and operations, office/technical, and

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- | | |
|-------------------------------|----------------------------------------|
| 691 Bldg. Maint. Worker | 610 Lead Plumber |
| 693 Grounds Maint. Worker | 657 Lead Planner |
| 696 Junior Mechanic (M&O) | 674 Lead Painter |
| 644 Intermediate Head Cust. | 675 Lead Glazier |
| 654 Lead Security Officer | 676 Lead Welder |
| 615 Cafeteria Equip. Tech I | 677 Lead Roofer |
| 660 Tree Trimmer/Gardener | 690 Carpenter |
| 668 Grounds Equip. Oper. | 618 Electrician |
| 634 Pool Maint. Mech. | 580 Electronic Technician |
| 646 Elementary Head Cust. | 612 Plumber |
| 656 Security Officer | 686 Locksmith |
| 669 Groundskeeper | 661 Ld. Groundworker/Heavy Equip. Opr. |
| 518 Warehouse/Delivery Worker | 582 Mail Processing Spec. |
| 684 Painter | 636 Lead Custodian |
| 695 Equipment Mechanic (M&O) | 516 Delivery Worker |
| 623 Lead Office Machine Tech. | 648 Custodian |
| 682 Glazier | 694 Maintenance Helper |
| 688 Welder | 608 Heating & Air Cond. Tech.I |
| 681 Roofer | 614 Cafeteria Equip. Tech.II |
| 651 Maintenance Helper Asst. | 679 Lead Equipment Mech (M&O) |
| 662 Heavy Equipment Operator | |

This list resulted from stipulations made by the parties during the hearing.

instructional assistants/educational auxiliary. By its severance petition, the Teamsters seek to represent a unit consisting of employees in the food services and maintenance and operations occupational groupings as listed in the agreements.

District departments typically include employees from more than one contractual occupational grouping. For example, the food services department employs classifications in the food services, maintenance and operations, and office/technical occupational groupings of the collective bargaining agreement. Similarly the maintenance and operations department not only has employees from the maintenance and operations occupational grouping, but also from office/technical.

Community of Interest Factors

Wages, methods of compensation, fringe benefits, and transfers and promotions are included in the collective bargaining agreement for the general unit. Wages are established by assignment to a pay range and are paid monthly. All unit members are entitled to the same levels of fringe benefits. All classified employees in the District serve a one-year probationary period.

Food Services

The food services department currently employs 9 cooks, 60 satellite workers, 53 cafeteria workers and 73 cafeteria cashier helpers covered by the petition and working at school sites. Also in the petition are two cafeteria equipment technicians Us and four delivery workers. The technicians install and repair the

equipment used in the kitchens and cafeterias. The delivery-workers distribute food from the central warehouse to the nine high school kitchens. Four of the high schools act as distribution points to elementary and middle schools. Cooks prepare hot foods served at the nine high schools and assist at the four distribution centers. Satellite workers are responsible for the elementary and middle schools. They determine food needs, perform paperwork, and deal with the cash collected. Cashier helpers not only perform the role of cashier, but also assist in the kitchen. Cafeteria workers assist the satellite workers in the preparation and serving of the food. At some of the schools, food services workers are assisted by custodians in serving food, maintaining discipline in the cafeteria and cleaning up.

The food services employees generally work from early September until June. While some cooks may work an eight hour day, most food services employees work between three and seven hours. Food services employees wear no District-provided uniforms, however, there is a general dress code which applies to all individuals within the food services department.

The school site operations are supervised by four field supervisors who work out of the District office and have responsibility for between 14 and 21 schools. They are assisted by five supervisor Is and four supervisor IIs.

Food services jobs currently in use by the District require experience in a large scale food services operation and knowledge of general food preparation methods and sanitation.

Maintenance and Operations

The remaining classifications which are contained in the severance petition fall under the contractual grouping maintenance and operations. These employees work in the maintenance and operations department and the general business services department. The maintenance and operations (M & O) department has three sections: housekeeping, electronics and maintenance.

Housekeeping

The housekeeping section is directed by a senior supervisor. Approximately 221 custodians are included in the maintenance and operations budget. One hundred ninety-one custodians report to elementary schools, high schools and one middle school and are supervised by the site administrators with advice on technical and disciplinary matters from three custodial supervisors. The remaining 30 custodians work at the remaining middle schools and other District facilities and are supervised by the custodial supervisors.

Custodians keep school buildings clean and orderly, perform minor maintenance and report the need for repairs. All custodians work 8 hours and are 12-month employees. Custodians and lead custodians must have sufficient education or experience

to perform requisite tasks. Head custodians must also be able to coordinate those tasks.

Electronics

The electronics section has 19 electronic technicians and two lead electronic technicians which are included in the severance petition. They repair all types of electronic equipment including intercoms, computers and copiers. They report to the electronics supervisor and are 12 month-employees. The electronics shop adjoins La Entrada Continuation High School. Electronic technicians must have completed electronics school, an apprenticeship or formal course work.

Maintenance

The maintenance section is also headed by a senior supervisor. Reporting to him are the supervisors of five maintenance groups: gardening, grounds, mechanical, structural and equipment maintenance. The gardening group includes tree trimmers, groundskeepers (formerly called gardeners), asbestos inspectors and a pool maintenance worker. Groundskeepers plant and maintain lawns, shrubs, trees and flowers. Tree trimmers do the same but also prune and trim trees. Asbestos inspectors perform asbestos inspections and repairs. The lone pool maintenance mechanic performs cleaning and repairs.

The grounds group includes grounds maintenance workers, heavy equipment operators, sprinkler maintenance specialists and grounds equipment operators. Grounds maintenance workers install and repair concrete, fences, etc. Heavy equipment operators

operate motorized grounds maintenance and construction equipment such as loaders and backhoes. Grounds equipment operators operate equipment used for moving dirt and transporting materials. Sprinkler maintenance specialists install and maintain sprinkler systems.

The mechanical group includes heating and air conditioning technicians, electricians and plumbers. Heating and air conditioning technicians perform the installation and maintenance of heating, air conditioning and refrigeration equipment. Electricians perform electrical installation and repair. Plumbers install and maintain plumbing systems and related fixtures.

The structural group also consists of building trade crafts including roofers, carpenters, glaziers, locksmiths, painters and building maintenance workers. Roofers replace and repair roofing surfaces. Carpenters construct and repair wood structures and articles. Glaziers remove and replace glass and plastic surfaces. Locksmiths repair and install locks and make keys. Painters perform skilled painting duties. Building maintenance workers perform a variety of semi-skilled tasks in general maintenance and repair of facilities and equipment.

The equipment maintenance group consists of welders who perform skilled welding and mechanics who repair automotive and other equipment belonging to the M & O department.

Working directly for the director of maintenance and operations is one facilities/environmental safety specialist who

inspects facilities and determines need for repairs. There are also several clerical workers in the department who are not subject to the petition.

Most of the maintenance and operations employees are headquartered at the main maintenance yard on Sutter Avenue in Carmichael. From the main yard they are sent out to locations where repairs are required. The roofers, building maintenance workers and painters have their shops at San Juan High School.

Most of the M & O job classifications require a certain level of experience, completion of an apprenticeship or trade school courses rather than a specific educational level. Employees must be skilled in the use of the materials and tools of their trades. Possession of a drivers license is generally required. The promotional track within M & O is initially to a lead position and then to a supervisory position within the craft.

General Business Services

The general business services department is organized into five areas: printing, purchasing, security, warehouse and the director's office. Employees subject to the severance petition are found in security, warehouse and the director's office. Reporting directly to the director are two telecommunications system technicians responsible for the District's telephone system and two maintenance helpers who move equipment and assist the telecommunication system technicians. The technicians must have extensive experience in installation and repair of varied

telecommunications systems. Maintenance helpers are not required to have a specific level of training or education.

Six security officers, two lead security officers and four clerks report to the security supervisor. All but the clerks are covered by the petition. Security officers patrol the school campuses to protect property of the District and work closely with the sheriff's department. Security officers must have a valid security guard card, a Red Cross certificate and experience.

One senior warehouse worker, six warehouse delivery workers, one mail processing specialist and two delivery workers report to the warehouse supervisor. The warehouse workers operate forklifts, load trucks and make deliveries. No specific level of training or education is required. The mail processing specialist and delivery workers operate the District's mail system. The specialist should have experience with postal regulations and/or light delivery work. Delivery workers should have previous experience in similar work.

Bargaining History

In 1976 the District voluntarily recognized CSEA as the exclusive representative for a unit of all non-management, non-supervisory classified employees with the exception of those employed in transportation. In 1977, CSEA won an election and was certified as the exclusive representative of the transportation unit. From 1977 through 1983 the District and CSEA each had one bargaining team which negotiated separate

contracts for both units simultaneously. In 1983 negotiations were separated and have remained so.

Since July of 1983 there have been three complete agreements signed for the general unit. The most recent was a 38-month contract effective October 1, 1990 to November 30, 1993.

On August 30, 1993, District and CSEA negotiators agreed to a contract with a term of December 1, 1993 through November 15, 1996. The agreement was adopted by the District and ratified by CSEA despite the fact that approximately one-third of the articles subject to negotiation remained open. The agreement provided that the parties would reopen negotiations in November 1993 on salary, hours, leaves, transfers, safety, lay-offs and professional growth.

In bargaining during 1986 and 1987 CSEA negotiated range increases for a number of the classifications subject to the petition, as well as many of the other classifications in the general unit. These range increases were to be effective by March of 1990. All employees in the general unit received their last pay increase in 1990, a 6 percent general increase. Since that time, CSEA has negotiated health benefits payment increases for its benchmark health care plan.

In 1989 the general unit was the subject of a decertification effort by an affiliate of the California Teachers Association. CSEA won the election.

In 1990 CSEA and the District participated in a PERB-sponsored training program in interest-based bargaining. After

that training, CSEA and the District created the Classified Labor Management Advisory Counsel (CLMAC). The CLMAC is a forum for discussion of issues of mutual concern, including topics not generally subject to negotiations. CSEA members of the CLMAC currently number six and include two employees from transportation, one from food services, one from maintenance and operations, one instructional assistant and one clerical/technical employee. District members of the CLMAC include the superintendent and other high level administrators.

Chapter 127 of CSEA receives support from the state organization through the assignment of two field representatives to service the chapter. Chris Neihaus spends approximately 80 to 90 percent of his time on issues related to the District. Jim Knox has devoted approximately 50 to 75 percent of his time to Chapter 127 over the past five years.

It was through the efforts of Knox that the District and CSEA established a joint management-supervisor-employee Food Services Board in 1988, a time when the District was considering contracting food services with outside vendors. As recently as 1989, the food services program was operating at a deficit of about \$824,000. Food services projects a net profit for the 1993-94 school year of approximately \$300,000. Since its inception, Knox has devoted much of his time to working with the Food Services Board on which he serves as an ex-officio member. Numerous changes have been made in the food services program, including closing the bakery/commissary operations and

implementing changes in the preparation of foods and menus.⁴ Most of the changes were initiated by the Food Services Board. Recently, the board asked the CSEA and District negotiating teams to consider range increases for food services employees. CSEA and the District have been discussing the possibility of a similar board for M & O and/or transportation.

The special interests of the maintenance employees have also been brought to the employer's attention. In recent years, CSEA has represented M & O employees in negotiations with the District over what is termed "self-help" and the use of volunteers to perform bargaining unit work. CSEA has processed grievances and filed unfair practice charges with PERB over the issues. In January of 1992, the parties reached a settlement on grievances and an unfair practice charge regarding self-help projects which resulted in cash payments to maintenance and operations employees. Also in 1992, the parties agreed to the restoration of nine full-time gardening positions in exchange for allowing the District the use of sheriff's work release personnel. CSEA also worked to restore painter and media tech positions. The problems of self-help and the use of volunteers are the subject of ongoing discussions between CSEA and the District.

CSEA has used various forums in representing the classifications included in the severance petition. Of the 74 grievances filed in the general unit from the 1991-92 school year

⁴When the Food Services Board recommended closure of the bakery and commissary, CSEA requested to negotiate the effects thereof. One outcome was an early retirement option.

through the 1992-93 school year, 50 involved employees in the maintenance and operations contractual job grouping. In the summer of 1991 when custodians and other workers were exposed to asbestos, CSEA requested that the California Occupational and Health Administration investigate the matter to determine whether there had been criminal negligence. CSEA was successful in its efforts to have the District's Board of Trustees rescind a planned ten day furlough for classified employees.

Union Participation

Of the 572 employees subject to the severance petition, 244 are members of CSEA, 33 are agency fee payers, and 295 are non-members who do not pay fees.⁵ This compares to 304 members, 219 agency fee payers and 703 non-members who do not pay fees in the remainder of the general unit.

CSEA bylaws require that the negotiating committee for the general unit consist of an elected chief job steward and one other elected representative and alternates from the clerical/technical, food services, instructional aides, maintenance and operations, and custodial work classifications. Six of the ten members of the negotiating committee then become members of the unit negotiating team. That team must include at least one member from each group. Accordingly, at least six of the ten members of the general unit negotiating committee and three of the members of the bargaining team are from the

⁵Effective July 1, 1992 agency fees were required of new employees who did not join CSEA. Individuals employed as of that date are not required to pay agency fees.

occupational groupings which are subject to the severance petition. The current bargaining team includes the CSEA chapter president who is a custodian.

Other employees from the job groups subject to this petition are also represented among CSEA elected officers. The first vice-president is from maintenance and operations. The second vice-president is also a custodian. The immediate past president is from food services.

CSEA also has groups of work site representatives who distribute information and job stewards who assist employees in resolving problems and processing grievances.

District Negotiations

The District employs a director of employer-employee relations who represents the District in negotiations over the four existing bargaining units: general and transportation classified units, a supervisory unit and a certificated unit. The current bargaining team for general unit negotiations includes the director of employer-employee relations, the director of classified personnel, the director of food services, the director of business services, a high school vice-principal, an elementary school principal and the director of maintenance and operations. Management representatives participating on the negotiating team, with the exception of the director of employer-employee relations and the director of classified personnel, are paid a stipend which depends on the number of hours required.

For the 1992-93 school year three individuals received \$580.00 and two received \$296.00.

POSITIONS OF THE PARTIES

Teamsters

The Teamsters cite the Board's decision in Sweetwater Union High School District (1976) EERB Decision No. 4 (Sweetwater),⁶ in which the Board found three appropriate units of classified employees. One of those groups was an operations support unit which included transportation, custodial, gardening, maintenance, cafeteria employees, warehousemen and delivery employees. With the exception of transportation employees the subject unit is analogous to the operation support unit found appropriate in Sweetwater. As a result of Compton Unified School District (1979) PERB Decision No. 109 (Compton), such units are presumptively appropriate. Additionally, the severance petition for operations and food services employees, and the factors considered, are nearly identical to the case in Livermore Valley Joint Unified School District (1981) PERB Decision No. 165 (Livermore), wherein the severance petition was granted.

Referring to PERB's publication "Units in Place" the Teamsters give examples of school districts which have bargaining units similar to that requested.

The Teamsters also contend that the limited extent of union membership favors severance, that the existence of the Food

⁶Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

Services Board demonstrates the inadequacy of a general unit, and that the number of grievances filed by maintenance personnel demonstrates dissatisfaction. In addition, the District failed to demonstrate that an additional bargaining unit would adversely affect its efficiency of operations.

CSEA

According to CSEA, granting the severance petition would unduly disrupt the stable and productive bargaining relationship that currently exists between CSEA and the District. PERB sponsored training led to the establishment of the CLMAC and a much fuller discussion of issues. CSEA believes that the Food Services Board has become a "mainstay" of the San Juan negotiating relationship and would be jeopardized by the severance of food workers from the general unit.

CSEA also contends that it has represented the special interests of food services and maintenance and operations workers. It has committed significant time and resources advancing the interests of those groups at the bargaining table and in other forums.

In the area of grievance handling, much of CSEA's efforts in recent years have been to address complaints from the maintenance and operations unit regarding self-help violations. Further, CSEA advances the grievances of non-members as well as members.

CSEA also notes that food services and maintenance and operations employees have a long history of actively participating as officers and members of the negotiating team and

other committees of CSEA. Other union practices including site representatives, surveys, a newsletter and site visits from CSEA representatives give bargaining unit members an opportunity to be heard.

CSEA also contends that maintenance and operations workers including custodians and food services workers do not share a community of interest distinct from instructional assistants and the clerical/technical employees which constitute the remainder of the general classified unit.

According to CSEA, there has been no demonstration that Teamster's Local 150 could effectively represent M & O and food services employees. Local 150 currently does not represent any school employees. Teamster representation of school employees statewide is minimal.

CSEA argues that for severance to be appropriate, PERB precedent requires that a proposed unit must be more appropriate than the existing unit. According to CSEA, the unit included in the severance petition is not presumptively appropriate under Sweetwater, because the petition does not include transportation workers.

District

Initially the District contends the severance petition should be denied because it was not timely filed. The petition was filed on August 31, 1993 during the pendency of a contract between the District and CSEA which was effective October 1, 1990 through November 30, 1993, a 38-month agreement.

EERA section 3544.7⁷ which relates to representation proceedings, states in pertinent part:

(b) No election shall be held and the petition shall be dismissed whenever either of the following exist:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

Section 3540.1(h) states in relevant part that a collective bargaining agreement "may be for a period not to exceed three years." The District argues that because section 3540.1(h) only permits collective bargaining agreements of three years or less, the period for filing this petition should have been measured from September 30 rather than November 30, 1993, thus creating a window period in June rather than August.⁸ The District would have PERB adopt a rule that the window period for a contract exceeding three years is measured from the last day of the third year, rather than the actual contract expiration date. Under such a rule, the subject petition would be deemed untimely.

The District also contends that the petition should be dismissed because it lacks adequate proof of support. According

⁷EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

⁸The thirty day period for filing a petition is generally referred to as the "window period."

to the District, the Teamsters initially attempted a decertification effort rather than a severance of only part of the general unit. Campaign literature and authorization cards signed by employees did not mention severance. Employees were thus misled into signing authorization cards.

As does CSEA, the District argues that under PERB precedent there exists a rebuttable presumption in favor of existing units and that, because transportation workers are not included in the petition, severance would not be presumptively appropriate under Sweetwater. Alternatively, the District argues that any presumptive appropriateness under Sweetwater must "give way to a fresh examination of appropriateness in the context of an 18 year bargaining history within a wall to wall unit."

According to the District, it has not been demonstrated that there is a separate community of interest existing within the group subject to the petition. Wages, methods of compensation, fringe benefits, transfers, and promotions are all included within the contract for the general unit. Further, the interests of the subject employees have been aggressively pursued by CSEA which has an organizational structure which assures the opportunity to participate by all employees.

The District also contends that creation of another bargaining unit would have a detrimental effect on its efficiency of operations. District negotiators would have a new set of negotiations and managers would have to administer an additional labor agreement.

ISSUES

1. Was the severance petition timely filed?
2. Was adequate proof of support provided with the petition?
3. Should the proposed unit be severed from the existing general unit?

DISCUSSION

Timeliness of the Severance Petition

Both EERA and PERB regulations permit severance petitions to be filed during a window period which is less than 120 days and more than 90 days prior to the expiration of a "lawful written agreement." (Sec. 3544.7, PERB Regulation 33020.) At the time this petition was filed, no party challenged its timeliness under the window period requirement. It was not disputed that the petition was filed more than 90 and less than 120 days prior to the expiration of the CSEA/District agreement. The petition was determined to be timely filed. The District now argues that because the agreement it entered into with CSEA was for 38 months, two months longer than permitted by section 3540.1(h), it was not a lawful written agreement for contract bar purposes. The District contends that the window period for a contract exceeding three years in duration should be measured from the last day of the third year, rather than the actual contract expiration date.

The contract bar doctrine is an attempt to strike a balance between the twin objectives of a stable labor relations

environment and freedom of choice for employees to select a new bargaining representative. (Centralia School District (1985) PERB Decision No. 519.) In Government Code section 3544.1(c) the Legislature determined that where there is a "lawful written agreement" negotiated between a public school employer and an employee organization, those two parties are entitled to a period of stability. Accordingly, a valid contract will normally prevent the filing of a petition for decertification or severance unless the petition is submitted to PERB during the specified window period. However, such labor stability is only granted to an employer and a union if they are parties to the requisite "lawful written agreement." In this case CSEA and the District were not parties to a lawful agreement pursuant to Government Code section 3540.1(h) which limits collective bargaining agreements to three years. As the Board determined in San Benito Joint Union High School District (1984) PERB Decision No. 406, a contract more than three years in duration is an illegal agreement.⁹ Accordingly, in this case the District and CSEA did not enjoy the stability of a contract bar at any time during the 38 months of the agreement.¹⁰

⁹ In San Benito the Board recognized the National Labor Relations Board's (NLRB) policy of limiting a contract bar to three years. However, the Board noted that under EERA, unlike the National Labor Relations Act, the duration of the contract bar is statutorily imposed.

¹⁰The only issue determined here is that a contract over three years duration is not a "lawful written agreement" for contract bar purposes. There is no intent to rule on the validity of the agreement for any other purpose.

A rule that a contract must be of legal duration is consistent with prior Board determinations establishing minimum requirements for a contract to act as a bar to an election petition. A contract must be evidenced by a writing, signed and contain substantial terms and conditions. (State of California (Department of Personnel Administration) (1989) PERB Order No. Ad-191-S.) Such a rule is also consistent with the NLRB policy of rendering a contract with an unlawful provision incapable of barring an election petition. (See, e.g. Paragon Products Corp. (1962) 134 NLRB 662 [49 LRRM 1160], unlawful union-security provision; Gary Steel Supply Co. (1963) 144 NLRB 470 [54 LRRM 1211], unlawful dues checkoff provision.)

Finally, the application of a rule that a contract of illegal duration may not bar an election petition prevents certain inequities. A petitioning union will not have to wait three years to file a petition because it relied to its detriment on the expiration date of a 38-month agreement. An incumbent union and employer will not be granted a contract bar and dismissal of a petition as a benefit derived from a violation of EERA.

The petition was timely filed.

Adequacy of Proof of Support

The District also contends that the severance petition was not accompanied by adequate proof of support. According to the District, there is evidence that the Teamsters initially attempted a decertification effort of the entire general unit and

that campaign literature reflected that effort. Thus, employees were misled into signing authorization cards.

PERB Regulation 32700(a) requires that adequate proof of support be submitted along with a severance petition. In pertinent part, PERB Regulation 32700 sets forth the requirements for proof of support as follows:

32700. Proof of Support.

(a) Except as required in section 32770(b)(1) and section 34020(c), proof of employee support for all petitions requiring such support shall clearly demonstrate that the employee desires to be represented by the employee organization for the purpose of meeting and negotiating or meeting and conferring on wages, hours and other terms and conditions of employment.

(b) The proof of support shall indicate each employee's printed name, signature, job title or classification and the date on which each individual's signature was obtained. An undated signature or a signature dated more than one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this section shall be considered valid even though the signator has executed authorizations for more than one employee organization. . . .

(e) Subject to subsections (a), (b), (c) and (d) of this section, proof of support may consist of any one of the following original documents or a combination thereof:

- (1) Current dues deduction authorization forms;
- (2) Membership applications;
- (3) Authorization cards or petitions signed by employees. The purpose of the petition shall be clearly stated on each page thereof; . . .

The District contends that under the second sentence of

subsection (e)(3), the proof of support must demonstrate employee knowledge that the Teamsters were attempting to sever part of the unit.

The District's challenge to the proof of support is without merit. The authorization card submitted by the District which was used in the organizing campaign was in compliance with subsections (a) and (b).¹¹ That card states that an employee filling out the card authorizes the Teamsters to represent him or her in employment relations with the District. The card requires the employee's printed name, signature, job title and the date on which the signature was obtained. Because the cards were properly completed (administrative determination of September 22, 1993), the proof of support meets all of the requirements of PERB Regulation 32700. There are no further requirements regarding employee intent or state of mind. Accordingly, the proof of support is valid.

Applicability of Sweetwater

The EERA requires that employees be grouped into an appropriate unit for purposes of collective bargaining. (Sec. 3540). The standards for determining an appropriate unit are set forth in EERA at section 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

¹¹The District did not submit a copy of a petition, to which the second sentence of (e)(3) clearly refers. In any case, the language relied on by the District merely requires that subsection (a) be met on every page of a petition.

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.

In Sweetwater, the Board found three appropriate classified units. The three units were instructional aides, office technical/business services and an operations-support services unit. The Sweetwater units were later determined to be presumptively appropriate. (Foothill-DeAnza Community College District (1977) EERB Decision No. 10 (Foothill-DeAnza); Compton.)

In Compton, the Board stated:

By creating three "presumptively appropriate units" for the classified service, the Board determined that a strong community of interest generally exists among employees in each of these groups. The Board further determined that those units "reflect a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of an insufficiently divided negotiating unit or units." (Antioch Unified School District, supra, EERB Decision No. 37 at p. 7.)

More recently in South Bay Union Elementary School District (1990) PERB Decision No. 816 (South Bay) the Board reiterated its preference for Sweetwater units and reversed an administrative law judge who had deemed a single comprehensive or "wall to wall unit" appropriate for a school district with only 37 classified employees. In South Bay, as it had in Sweetwater, the Board relied heavily on the different types of functions performed by the three presumptively appropriate groups of employees.

Thus, if the petition reflects a unit of classified employees determined to be one of the three Sweetwater units, it is presumptively appropriate and the burden is upon CSEA and the District to establish that the general unit presently in existence is more appropriate.¹²

One of the units found appropriate by the Board in Sweetwater is the operations/support services unit. That unit typically includes custodial, food services, grounds, maintenance and transportation employees. In this case both the District and CSEA argue that the unit sought does not meet the Sweetwater presumption because it does not include transportation workers. However, the fact that the transportation workers are not available due to the actions of CSEA and the District does not make Sweetwater inapplicable.¹³ With the exception of transportation workers, the other work groups which make up an

¹² Citing State of California (Department of Personnel Administration) (1993) PERB Decision No. 1025-S and State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S, cases which arose under the Ralph C. Dills Act, CSEA and the District unpersuasively argue that there is a rebuttable presumption in favor of an existing unit. Unlike the existing unit in this matter, the bargaining units for state employees were determined by PERB after extensive hearings on the matter. Additionally, nothing in those cases reflects a reversal of Sweetwater and its progeny. The District also contends that in Los Angeles Unified School District (1993) PERB Order No. Ad-250 the Board ruled that severance requires a determination that the proposed unit is more appropriate than the existing unit. However, in that case the Board merely determined that a unit of bus drivers did not meet the Sweetwater criteria.

¹³The contract between CSEA and the District for the transportation unit is effective July 1, 1992 through June 30, 1995. Accordingly, a contract bar existed at the time the Teamsters filed their severance petition in August of 1993.

operations/support services unit are included in the severance petition. Such groups usually have a strong community of interest which continues to exist despite the fact that one segment may not be available to be included in the petition. That a separate bargaining unit will generally reflect the proper balance between excessive fragmentation and the harmful effects of a wall to wall unit continues to be true.

Not all units approved under Sweetwater are the same. For example, the Board followed Sweetwater in Foothill-DeAnza, but created an operations/support unit that did not include food services workers. As the Board stated in Compton:

the Sweetwater decision did not establish the "only appropriate units," nor even the "most appropriate units."

However, Sweetwater did establish a guideline which is to be followed to the extent possible.¹⁴

Accordingly, the Sweetwater presumption is applicable in this case. However, the Sweetwater presumption is rebuttable. (Compton at p. 7). To rebut that presumption in this case, it must be demonstrated that the general unit is more appropriate than a Sweetwater unit configuration. (South Bay at p. 7). To determine whether the burden has been met requires weighing the community of interest among employees, the efficiency of employer operations and established practices. Additionally, a request

¹⁴A rule requiring a more rigid application of Sweetwater would permit an employer and an incumbent union to avoid the application of Sweetwater merely by creating a separate unit for a small segment of a presumptively appropriate unit.

for severance, unlike a determination of an initial unit, requires consideration of the negotiating history. (Livermore at p. 5).

Community of Interest

The petition seeks a separate unit for those who paint, weld, repair, prepare meals and generally provide a proper physical environment and support services. They do not perform clerical or record keeping duties. They do not perform paraprofessional instructional activities nor do they provide computer services. These functional distinctions are highly similar to those noted and relied upon by the Board in Sweetwater and in South Bay. In South Bay the Board stated,

The remaining employees in the operations-support services group (custodial, maintenance, transportation and food services employees) are responsible for providing a proper physical environment and support services for students. These duties include cleaning and repairing District facilities as well as providing food, preparing meals and providing transportation.

A finding of similarity in job duties is consistent with the treatment of these job classifications in the collective bargaining agreement. All of the job classifications in the petition are drawn from the contractual job groupings of "food services" and "maintenance and operations." None of them are included in "office/technical", "computer services" or "instructional assistants and educational personnel."

The vast majority of maintenance employees are supervised on a common scheme by the senior supervisors for maintenance,

housekeeping and the electronics section all of whom report to the director of maintenance and operations. The director of maintenance and operations reports to the director of facilities and planning who in turn reports to the associate superintendent for business services.¹⁵ The director of food services and the director of business services report to the senior director of business operations who also reports to the associate superintendent for business services. The food services employees are supervised by the director of food services assisted by food services supervisors. Operations workers under the director for general business services include warehouse workers, who report initially to the warehouse supervisor, and security workers who report to the security supervisor who then in turn report to the director of business services.

There exists a basic functional community of interest within the group of job classifications subject to the severance petition which is not erased by the fact that there may be some functional and supervisory overlap with other classified employees. That community of interest is consistent with Board precedent and with criteria stated in section 3545(a) of the EERA.

¹⁵It is true that a majority of the custodians are supervised by school principals advised by a supervisory custodian. However, this is similar to the arrangement in Sweetwater wherein the Board found "the custodians and gardeners are supervised by the school principal as well as the supervisor of maintenance."

Efficiency of Operations

Absent concrete evidence that a school district's operational efficiency will be unduly impaired by an additional series of negotiations, operational efficiency will not be considered a factor which militates against the establishment of another unit. (Livermore at p. 8) In this case, insufficient evidence was presented to conclude that the establishment of another bargaining unit would have a detrimental effect on the District.

Of course, the District will have another set of negotiations and another contract to administer if an operations-support services unit is created. However, it has not been demonstrated that an undue burden would result. That principals and managers are capable of administering two or three classified collective bargaining agreements is well established by current practices in school districts throughout the state. Similar arguments, that another bargaining unit would burden a school district, have been previously considered.

. . . While we are not unsympathetic to the District's concern that negotiating in more than one unit may burden its staff, the assertion of such a concern, without more, is not sufficient to establish an undue impediment to District efficiency. The fact that negotiating may impose a burden on the employer was undoubtedly considered by the Legislature but found not to outweigh the benefits of an overall scheme of collective negotiations. . . [Fn. omitted.]
(Livermore at p. 8.)

The District is also concerned that granting severance "will have an unknown but potentially destructive impact on the Food

Services Board." CSEA has similar concerns. However, it cannot be assumed that any entity which provides the benefits claimed by both the District and CSEA will cease to exist if a separate unit is created. Rather, if the board benefits both employees and employer as described, it may well continue regardless of the outcome of an election.

Established Practices and Negotiations

In Livermore the Board recognized that a request for severance is factually different from an initial unit determination because negotiating history must be considered as an important factor in determining the appropriateness of the severed unit. However, it is also clear from Livermore that where a wall to wall unit is created by voluntary recognition, the negotiating history will not be granted the deference to which it might otherwise be entitled. In this case, the general unit was the result of a voluntary recognition which was never reviewed or approved by the Board. The Board generally finds such single comprehensive units of classified employees to be inappropriate. (South Bay).

There exists an eighteen year negotiating history between CSEA and the District during which they have successfully negotiated collective bargaining agreements covering the general unit. During that time, the interests of the employees subject to the petition have not been ignored. Those employees have actively participated in negotiations and have held other positions of influence in the union. The majority of the

grievances pursued by CSEA in recent years have been over issues concerning employees in maintenance and operations. As described, CSEA has used its resources to communicate with and represent all employees in the general unit.

The negotiating relationship between CSEA and the District has been an innovative one. In 1990 they underwent training to improve bargaining techniques and communications. Afterwards, they created the CLMAC which, composed of the top representatives of management and the union, discusses a variety of topics on an ongoing basis. The Food Services Board has given employees a direct voice in running food services and has been a major factor in increasing profitability, a development that should help protect jobs. The District and CSEA are currently considering creating a similar board for maintenance and operations. However, the creation of separate labor-management boards indicates that the proper balance between 'excessive fragmentation and effective representation may not exist with a general unit. Rather, such action supports a finding that these groups have separate interests which may not be effectively addressed as part of a general unit.

The importance of the extent of membership in CSEA among the approximately 572 maintenance, custodial, food services and security personnel subject to the petition is difficult to assess. There are 244 members, 33 service fee payers, and 295 non-members. While the percentage of members is higher than in the rest of the general unit, it is not 50 percent and cannot be

considered a factor in favor of overturning the Sweetwater presumption. Also, the fact that at least 30 percent of the employees in the entire unit signed authorization cards to replace CSEA in 1989 and that at least a majority of employees subject to this severance petition have now requested an election cannot be overlooked.

In sum, the District and CSEA have not overcome the Sweetwater presumption as they argue to maintain a wall to wall unit of the variety which this Board has repeatedly rejected. Given the current state of the law and weighing the facts presented, I conclude that the petition should be granted.

PROPOSED ORDER

Accordingly, the following unit is found to be appropriate for meeting and negotiating provided an employee organization becomes the exclusive representative:

Nutritionist, Satellite Cafeteria Worker,
Cook Manager II, Cafeteria Worker,
Cook Manager I, Baker, Cook, Cafeteria
Cashier Helper, Facilities/Environmental
Safety Spec, Custodial Equipment Repairer,
Construction Inspector, Telecommunications
System Tech., Electronic Assistant, Lead
Heating & Air Cond. Tech., Lead Sprinkler
Maintenance Spec, Lead Building Maintenance
Worker, Stadium Maintenance Worker, Lead
Asbestos Inspector/Worker, Lead Gardener,
Heating & Air Cond. Technician II, Sprinkler
Maintenance Specialist, Asbestos
Inspector/Worker, Lead Pool Maintenance
Mechanic, Lead Carpenter, Maintenance
Custodian, Lead Electrician, Senior
Warehouse Worker, Lead Electronic Technician,
Building Maintenance Worker, Lead Plumber,
Grounds Maintenance Worker, Lead Planner,
Junior Mechanic (M&O), Lead Painter,

Intermediate Head Custodian, Lead Glazier, Lead Security Officer, Lead Welder, Cafeteria Equipment Technician I, Lead Roofer, Tree Trimmer/Gardener, Carpenter, Grounds Equipment Operator, Electrician, Pool Maintenance Mechanic, Electronic Technician, Elementary Head Custodian, Plumber, Security Officer, Locksmith, Groundskeeper, Lead Groundworker/Heavy Equip. Opr., Warehouse/Delivery Worker, Painter, Mail Processing Specialist, Equipment Mechanic (M&O), Lead Custodian, Lead Office Machine Technician, Delivery Worker, Glazier, Custodian, Welder, Maintenance Helper, Roofer, Heating & Air Cond. Technician I, Maintenance Helper Assistant, Cafeteria Equipment Technician II, Heavy Equipment Operator, Lead Equipment Mechanic (M&O).

The employee organizations whose names shall appear on the ballot are California School Employees Association, Chapter 127, and Teamsters Local 150, AFL-CIO, unless one of said organizations informs the regional director in writing, within 15 workdays after the employer posts the Notice of Decision, that it does not desire to participate in the election. The regional director shall conduct an election at the end of the posting period in such unit if: (1) both of the above-named employee organizations desire to participate in the election, or (2) only one organization desires to participate and the employer does not grant voluntary recognition.

Right of Appeal

Pursuant to California Code of Regulations, title 8, 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

citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 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 Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

Bernard McMonigle
Hearing Officer