

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



TEMPLE CITY UNIFIED SCHOOL DISTRICT,)
)
 Employer,) Case No. LA-S-122
) (LA-R-236)
 and)
) PERB Decision No. 1110
 CALIFORNIA SCHOOL EMPLOYEES)
 ASSOCIATION AND ITS CHAPTER 105,) June 22, 1995
)
 Exclusive Representative,)
)
 and)
)
 TEAMSTERS LOCAL 495,)
)
 Petitioner.)
)
 _____)

Appearances: Parker, Covert & Chidester by Julie A. McCloskey, Attorney, for Temple City Unified School District; California School Employees Association by Arnie R. Braafladt, Staff Attorney, for California School Employees Association and its Chapter 105; Wohlner, Kaplon, Phillips, Young & Barsh by John A. Siqueiros, Attorney, for Teamsters Local 495.

Before Carlyle, Garcia and Johnson, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Temple City Unified School District (District) and the California School Employees Association and its Chapter 105 (CSEA) to a PERB hearing officer's proposed decision (attached) to grant a severance petition which was filed by Teamsters Local 495 (Teamsters).

The Board has reviewed the entire record in this case, including the proposed decision, transcripts, the District's and

CSEA's appeals, and the Teamsters' response thereto. The Board finds the hearing officer's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

BACKGROUND

The Teamsters seek to carve a group of operations-support services employees from a wall-to-wall unit of approximately 200 classified employees of the District who are currently represented by CSEA. The petition was opposed by both CSEA and the District.

In support of its severance petition, the Teamsters cite PERB precedent and the fact that during the past few years CSEA has not adequately represented these employees' interests. The Teamsters contend that the District's cut backs disproportionately impacted the group of employees. The Teamsters also assert that the District cannot demonstrate by substantial evidence the detrimental effect another bargaining unit would have on the District's efficiency of operations.

In response to the Teamsters, CSEA contends that members of the operations-support services employees actively participate as officers and members of the negotiating team. The Teamsters' petition, according to CSEA, would disrupt a long, stable and productive 17-year negotiating history that exists between them and the District. CSEA asserts that the primary motivator behind the initiation of the severance petition was a disgruntled member, who lost CSEA's presidential election by one vote, and

that person should not be rewarded with the creation of a separate bargaining unit.

The District supports CSEA's position. The District contends that the presumption in favor of the type of units in Sweetwater Union High School District (1976) EERB Decision No. 4¹ (Sweetwater) is rebuttable and has been met. This contention is based on the parties' lengthy negotiating history, the community of interest factors shared between the operations-support services and other employees in the wall-to-wall unit, and the impact another bargaining unit will have on a small school district.

HEARING OFFICER'S PROPOSED DECISION

The hearing officer, addressing the issue of whether the proposed unit should be severed, cited Sweetwater for the establishment of three classified units which PERB now considers "presumptively appropriate." Those three units are: (1) instructional aides, (2) office-technician and business services, and (3) operations-support services.

Relying on PERB precedent, the hearing officer stated that a strong community of interest normally exists among employees in each of these three groups, thus shifting the burden to the party seeking a unit or units different from the Sweetwater unit configuration. Neither party contested the fact that the unit sought by the Teamsters is a type of unit found in Sweetwater.

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

As such, according to the hearing officer, the Sweetwater presumption is applicable and must be rebutted by demonstrating that the wall-to-wall unit is more appropriate than a type of unit found in Sweetwater.

To determine whether the presumption was rebutted, the hearing officer weighed the community of interest, the efficiency of the District's operations and the established practices of the District. In addition, the hearing officer also considered the negotiating history of CSEA and the District. The hearing officer rejected CSEA's disgruntled employee conjecture and granted the Teamsters' severance petition based on CSEA's and the District's failure to overcome the Sweetwater presumption.

APPEAL

On appeal, the District and CSEA raise exceptions previously considered by the hearing officer in the proposed decision. The only relevant exceptions on appeal concern the Sweetwater presumption. Both the District and CSEA contend that the hearing officer erred in finding that the presumption is with the proposed Sweetwater unit. The District contends that it is the Teamsters and not the District and CSEA who must rebut the presumption. The contentions are based on the fact that the existing unit has a long-established history and therefore, the burden is on the proposed unit rather than an existing unit to rebut the Sweetwater presumption.

The Teamsters reject the District's and CSEA's arguments and

supports the hearing officer's findings that there is ample evidence that the District and CSEA failed to overcome the Sweetwater presumption.

DISCUSSION

Section 3545(a) of the Educational Employment Relations Act (EERA)² sets forth the following criteria to be considered in determining the appropriate unit:

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

Sweetwater is a pivotal case to consider when determining the appropriateness of a unit. In Sweetwater the Board established three presumptively appropriate units for classified employees: (1) instructional aides, (2) office-technician and business services, and (3) operations-support services unit. As the hearing officer correctly found, the burden then shifts to the party seeking a unit or units different than the Sweetwater unit configuration. Therefore, either the District or CSEA must overcome the standards articulated in Sweetwater and demonstrate that a wall-to-wall unit is more appropriate than a Sweetwater configuration. (San Juan Unified School District (1995) PERB Decision No. 1082.) They failed to do this. Neither the

²EERA is codified at Government Code section 3540 et seq.

District nor CSEA have overcome the Sweetwater presumption that an operations-support services unit is a PERB-preferred unit as compared to the wall-to-wall unit the District and CSEA voluntarily created.

For essentially the same reasons, we find that the severance petition of the Teamsters should be granted.

CONCLUSION

We find that the District and CSEA failed to show that a wall-to-wall unit of classified employees would be more appropriate than the proposed unit of operations-support services employees and, thus, have failed to overturn the Sweetwater presumption. We also find that the hearing officer was correct in determining that the type of unit in Sweetwater is presumptively appropriate and that the burden is on CSEA and the District to establish that the wall-to-wall unit presently in existence is more appropriate. 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's 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:

Cafeteria Assistant I	Groundskeeper I
Cafeteria Assistant II	Groundskeeper II
Cafeteria Assistant III	Groundskeeper III
Cafeteria Manager I	Groundskeeper/Repairperson
Cafeteria Manager II	Utility Worker
Custodian	Maintenance Worker II/General
Head Custodian I	Food Services Delivery Driver
Head Custodian II	Storekeeper Delivery Driver
Head Custodian III	Head Storekeeper
Athletic Equipment Manager	Facilities Team Leader
Campus Supervisor	

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

Within 10 days following issuance of this Decision, the Temple City Unified School 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 insure that the Notice is not reduced in size, defaced, altered or covered by any material.

The employee organizations whose names shall appear on the ballot are California School Employees Association and its Chapter 105, and Teamsters Local 495, 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 San Francisco Regional Director for proceedings consistent with this decision.

Members Carlyle and Garcia 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: TEMPLE CITY UNIFIED SCHOOL DISTRICT
Case No. LA-S-122 (R-236)
PERB Decision No.

EMPLOYER: Temple City Unified School District
9516 Longden Avenue
Temple City, CA 91780
(818) 285-2111

EMPLOYEE ORGANIZATION
PARTIES TO PROCEEDING:

California School Employees Association
and its Chapter 105
1100 Corporate City Drive
Monterey Park, CA 91754
(213) 881-9333

Teamsters Local 495
1616 W. Ninth Street, Room 206
Los Angeles, CA 90015
(213) 387-6106

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:

Cafeteria Assistant I	Groundskeeper I
Cafeteria Assistant II	Groundskeeper II
Cafeteria Assistant III	Groundskeeper III
Cafeteria Manager I	Groundskeeper/Repairperson
Cafeteria Manager II	Utility Worker
Custodian	Maintenance Worker II/General
Head Custodian I	Food Services Delivery Driver
Head Custodian II	Storekeeper Delivery Driver
Head Custodian III	Head Storekeeper
Athletic Equipment Manager	Facilities Team Leader
Campus Supervisor	

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 Temple City- Unified School 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 insure that the Notice is not reduced in size, defaced, altered or covered by any material.

The employee organizations whose names shall appear on the ballot are California School Employees Association and its Chapter 105 and Teamsters Local 495, 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: _____ TEMPLE CITY UNIFIED SCHOOL DISTRICT

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



TEMPLE CITY UNIFIED SCHOOL DISTRICT,))
Employer,))
and))
CALIFORNIA SCHOOL EMPLOYEES))
ASSOCIATION AND ITS CHAPTER 105,))
Exclusive Representative,))
and))
TEAMSTERS LOCAL 495,))
Petitioner.))

Representation
Case No. LA-S-122
(LA-R-236)

PROPOSED DECISION
(12/16/94)

Appearances; Parker, Covert & Chidester by Mark S. Williams and Julie A. McCloskey, Attorneys for Temple City Unified School District; Arnie Braafladt, Attorney, for California School Employees Association and its Chapter 105, Chapter 105; Wohlner, Kaplon, Phillips, Young & Barsh by Pamela Ann Conley, Attorney for Teamsters Local 495.

Before Roger Smith, Hearing Officer.

PROCEDURAL HISTORY

On March 22, 1994, Teamsters Local 495 (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, grounds, maintenance, custodial and security out of an existing wall-to-wall classified

¹See 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.

unit at the Temple City Unified School District (District). This unit is currently represented by California School Employees Association and its Chapter 105 (CSEA). The petition was found to have been timely filed and have sufficient proof of support by PERB's San Francisco Regional Director. CSEA opposed the petition. The District initially took no position as to the petition, but later also opposed the petition. A settlement conference held on July 14, 1994, was unsuccessful.

A hearing was conducted on September 13, 14 and 15, 1994. A transcript was prepared. Briefs were submitted and the case was submitted for decision on November 7, 1994.

FINDINGS OF FACT

The District is a public school employer within the meaning of section 3540.1(k) of the Educational Employment Relations Act (EERA).² CSEA is the exclusive representative within the meaning of EERA section 3540.1(e) and the Teamsters is an employee organization within the meaning of EERA section 3540.1(d).

The District has an average daily attendance of approximately 4,700 students at seven schools. The District employs approximately 200 classified employees in the unit represented by CSEA. The Teamsters petition seeks to carve out a unit of 56 employees in the job classifications which are subject to the severance petition.³

²EERA is codified at Government Code section 3540 et seq.

³Initially there was a dispute as to the exact number of employees in the job classifications subject to the severance petition due to the creation of a new classification "facilities team leader" in May 1994. The severance petition seeks the following classifications:

The job classifications sought through this petition are found within the cafeteria services department, maintenance and operations department, warehouse and delivery department and instructional assistance/media department. No employees from the business services, secretarial/clerical or child care departments are involved in the request. The District provides transportation through a private sub-contract service.

The cafeteria services department is headed by Carol Vasquez, (Vasquez) food services supervisor. Vasquez supervises 13 cafeteria assistant I employees, 8 cafeteria assistant II employees, 1 cafeteria manager I and 1 cafeteria manager II. She reports to the business manager who in turn reports to the superintendent. Cafeteria services employees are responsible for the preparation and service of food to students at the school sites and the cleanup and maintenance of the kitchens. Vasquez does not supervise any other employees.

Cafeteria Assistant I	Groundskeeper I
Cafeteria Assistant II	Groundskeeper II
Cafeteria Assistant III	Groundskeeper III
Cafeteria Manager I	Groundskeeper/Repairperson
Cafeteria Manager II	Utility Worker
Custodian	Maintenance Worker II/General
Head Custodian I	Food Services Delivery Driver
Head Custodian II	Storekeeper Delivery Driver
Head Custodian III	Head Storekeeper
Athletic Equipment Manager	Facilities Team Leader
Campus Supervisor	

CSEA stipulated that the position of facilities team leader is in the unit they represent but would not stipulate to an amendment to the petition to include this position in the proposed severed unit. Based on the nature of the duties performed by the facilities team leader, that classification is considered herein as part of the petitioned for unit.

The maintenance and operations department has two divisions: custodial services and maintenance. The maintenance and operations department is currently being run without a permanent manager. The director of facilities position is vacant, but the District has employed an interim manager, Frank Butler. Butler's assignment is to assist the District with two major constructions involving air-conditioning at two schools. The day-to-day responsibility of running the department is being shared between Jon Harris, facilities team leader, who coordinates assignments and makes sure maintenance work is being completed, and Jim Johnson, director of classified personnel/child welfare/attendance/alternative education. Johnson is responsible for classified personnel actions District-wide, but is acting with specific authority in the maintenance operations department due to the lack of a manager/supervisor.

Custodial services are coordinated by head custodians who report to school site principals. There are 10 custodians, 3 head custodian Is, 3 head custodian IIs and 1 head custodian III. Head custodians act as lead workers; principals or their designees are the supervisors of the custodial services employees.

The maintenance division employees consist of an athletic equipment manager, two groundskeeper IIs, two groundskeeper IIIs, one groundskeeper/repair person, two maintenance worker IIs (general) and one facilities team leader. As discussed above, the facilities team leader acts as a coordinator but also

performs regular maintenance duties 80 percent of the time. The duties and responsibilities of the maintenance operations department are to clean and maintain the physical plants of the District. The maintenance department employees and warehouse employees report to work at a District warehouse and maintenance yard, which is physically separate from school sites.

The warehouse and delivery department is a two-person operation that includes a delivery driver and a head storekeeper. These two positions report to the purchasing assistant. Their responsibility is to maintain and assess inventory and deliver supplies and equipment throughout the District.

The instructional assistance/media department is supervised at each school site by the principal. This department provides instructional support to the classroom teacher through instructional aide classifications. In addition, the department is responsible for the security and safety of young people while on campus through the campus supervisor classification. Campus supervisors report to the assistant principals at the high school and middle school. There are two seven-hour and one three-and-one-half-hour campus supervisors at the high school and one three-and-one-half hour campus supervisor at the middle school.

Community of Interest Factors

Wages, methods of compensation, fringe benefits, transfers and promotions are included in the written collective bargaining agreement covering all classified employees. Wages are established by assignment to a pay range, and are paid biweekly.

All unit members are entitled to the same fringe benefits provisions. There is a variety of 9-, 10- and 12-month assignments. Uniforms are not worn or provided to any employees except for the campus supervisors.

The organizational structure of the District is such that employees from varying departments and job functions may report to the same supervisor. This is particularly true where the supervisor is the school principal, who is responsible for supervising custodial, office-technical, campus supervisors and instructional aide classifications on his/her campus.

The cafeteria services department and warehouse and delivery departments are organized along separate lines of supervision. The food services supervisor runs that department and is ultimately responsible for personnel actions in that area. Likewise, the purchasing assistant is responsible for the warehouse personnel supervision.⁴

The absence of a permanent director of facilities has laid the temporary responsibility for the maintenance division at the feet of the director of classified services and the lead worker, the facilities team leader. The facilities team leader coordinates assignments of the maintenance employees.

Employees who report to school sites have day-to-day contact with other classified and certificated employees who also report to that school. Secretaries may pass messages to custodians; instructional aides may assist children in the cafeteria with

⁴This includes the supervision of one clerical position.

food service workers; campus supervisors may be called to assist a teacher if there is a student disturbance, but assignments and duties do not overlap. Likewise, there is no evidence that employees promote into or out of one group to another in any career advancement or departmental ladders.

There was no evidence to demonstrate that employees from operations support classifications take breaks, eat lunches or engage in social functions separate or apart from other employees of the District. The District attempts to include all employees in either District-wide or individual school site social functions.

Bargaining History

In July 1977 the District voluntarily recognized CSEA as the exclusive representative for a unit of all classified employees excluding management, supervisory and confidential employees. In September 1993 PERB approved a unit modification request to add the classification of "child care instructor" to the wall classified unit. There have been no other alterations of the unit.

Since 1977 there have been a series of collective bargaining agreements, often renewed every year. The most recent contract was entered into on March 23, 1994, and has effective dates of July 1, 1993 - June 30, 1996. There was no written agreement in effect between July 1, 1993 and March 23, 1994.

There have been no attempts to decertify CSEA in its 17 years as exclusive representative. Neither the District nor CSEA

has filed for an impasse determination in the contract negotiations involving this unit. No grievances filed pursuant to the CSEA-District contracts have advanced to the arbitration level.

Chapter 105 of CSEA receives support from the statewide organization through the assignment of a labor relations representative. Ron Azlin (Azlin) serves as CSEA's labor relations representative to Chapter 105. He has served this chapter since June 1993. He is assigned seven other units in addition to Chapter 105. Azlin devotes approximately 15 to 20 percent of his time servicing this chapter.

The District and CSEA have been involved in training to improve the working relationship between the employee organizations representing the employees and District management. The training was focused on interest-based approaches that help focus parties on improving communications and confronting issues, not personalities. This training has occurred over the past three to four years.

Union Participation

Chapter 105 has had officers and team members from all occupational groupings. The current officers are all from white collar classifications and for the past three years all significant officers have come from white collar ranks. In CSEA's 17 years as exclusive representative, blue collar employees have served in all internal union offices, but with the death of Chapter President and Custodian Jim Snow (Snow) in 1991

there has been less participation by blue collar employees in union offices.⁵ The negotiating team, however, has always had representation by blue collar workers, and as recently as 1989-90, was composed entirely of three blue collar employees.

District Negotiations

The current District classified bargaining team includes the director of classified personnel, the superintendent, two school site principals and the business manager. Support services for the District's team is provided by two confidential employees. The District spent approximately four hours in preparation for the recent classified negotiations and 15 hours in recording the minutes and preparing responses from the eight sessions of meeting and negotiating. The current agreement took 24-26 hours of face-to-face negotiations to resolve a three-year agreement. These negotiations require District management to expend time away from regular assignments.

The District also negotiates with a certificated employee unit represented by the Temple City Education Association/CTA/NEA. The negotiations between the District and classified and certificated units have been competitive in that the two employee organizations each attempt to negotiate a better deal for their members. The District's policy has been to try to be

⁵There was substantial testimony relating to the Chapter 105 officers which demonstrated that, but for the grievance chair position currently held by Cathy Sandford, head custodian, the local chapter has had difficulty recruiting officers from the blue collar ranks since Snow's death.

consistent with the employee organizations to avoid later problems or criticism of playing favorites.

ISSUE

Should the proposed unit be severed from the existing unit?

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 for classified employees. The operations support unit was one of those units. It included custodial, gardening, maintenance, cafeteria, warehouse, delivery and transportation employees. But for the lack of transportation employees, which the District does not have, an analogous unit is sought here.

The Teamsters also rely on a hearing officer's proposed decision currently before the Board in PERB Case No. S-S-137, San Juan Unified School District (issued 7/26/94), in which Teamsters Local 150 is seeking to carve an operations support unit from a general classified unit represented by CSEA, Chapter 127. That decision finds that a similar unit as petitioned for here may be severed from an existing unit based on community of interest arguments enunciated in Sweetwater despite a long and successful bargaining relationship.

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

The Teamsters also contend that CSEA has not adequately represented the interests of blue collar employees over the past three to four years and points to the disparate effects District cutbacks have had on blue collar versus white collar classified employees. The Teamsters also contend that the sheer number of white collar employees (approximately 140) as compared to blue collar (approximately 60) does not allow adequate representation at the bargaining table or in the operation of the local CSEA chapter. The Teamsters also contend that the District failed to demonstrate that the addition of another bargaining unit would adversely affect its efficiency of operation.

CSEA

CSEA argues that PERB's granting the severance request would disrupt a long, stable and productive bargaining relationship that exists between CSEA and the District. The District and CSEA have invested time and money in improving their relationship by attending joint training classes in interest based and "win-win" bargaining. CSEA argues that the absence of the filing of any impasse requests and grievance arbitration is evidence of a healthy working relationship that should not be tampered with.

CSEA also contends that the primary motivation for the filing of this severance petition was a disgruntled member seeking recourse outside its internal processes. Jon Harris, facilities team leader, lost by one vote to incumbent Chapter President, Marlene Van De Car in an election in December 1993.

CSEA argues that PERB should not reward a disgruntled employee and his co-workers with a separate unit because of sour grapes.

CSEA argues that it has expended much effort in making sure all employees' needs are presented at the bargaining table. CSEA points to the number of complaints and grievances in which it has represented blue collar employees as being more than proportional. CSEA also notes maintenance operations employees have a long history of actively participating as officers and members of the negotiating team.

District

As does CSEA, the District argues that the presumption in favor of Sweetwater type units is rebuttable. In Livermore Valley Joint Unified School District (1981) PERB Decision No. 165 (Livermore), the District argues that PERB created a rebuttable presumption by stating in a severance case that:

This is not to say that, in a different factual setting, the existence of a long and stable negotiating relationship in combination with the existence of other statutory unit determination indicia would not tip the balance in favor of a wall-to-wall classified unit. [p. 15.]

The District argues that PERB acknowledged that it did not grant the negotiating history between the employer and the incumbent organization in Livermore great deference in the face of a severance petition, because it had been just a two-and-one-half-year period. The District contends that the Livermore Board was referring to a situation similar to the instant petition, where the parties have a 17 year stable negotiating history, and that

this fact pattern warrants a ruling against the severance request.

The District argues that there is not a separate community of interest among the maintenance operations employees to distinguish them from all other classified employees. The District also contends that CSEA has aggressively pursued all classified employee interests and provided for participation by all employees irrespective of job classification.

The District believes the creation of an additional bargaining unit will have a negative impact on the efficiency of operations. District negotiators would have a whole new set of negotiations, which would require additional managerial time away from regular assignments. The District contends the relative burden of collective bargaining is greater in a small school district.

DISCUSSION

EERA requires that employees be placed into an appropriate unit for purposes of collective bargaining. (Sec. 3540.) The standards for determining an appropriate unit are set forth in EERA, 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 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; Compton Unified School District (1981) PERB Decision No. 165 (Compton.)

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 (1977), 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. In this case no party contests that the unit sought does not meet the definition of a unit falling under the Sweetwater presumption.

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 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 employees who clean, repair, prepare meals and generally provide a safe and proper physical environment. They do not perform clerical or record keeping duties. They do not perform paraprofessional instructional activities, nor do they provide accounting or 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. [p. 9.]

The lines of supervision involving the petitioned for unit are not all distinct and separate from other employees, but there exists sufficient similarity to disregard any disparity. Food services has a separate supervisor, maintenance has a separate, albeit, acting supervisor and warehouse/delivery has a separate supervisor. Custodial services and campus supervisors report to the site administrator or his/her designee for supervision.

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.

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. Jim Johnson, the District's chief classified

negotiator, indicated he would do what it took to get the job done in negotiating with another unit.

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 negotiation. . . [Fn. omitted.]
(Livermore, at p. 8.)

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 wall

classified 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 a 17 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 in recent years have been over issues concerning employees in maintenance and operations. Despite efforts by the Teamsters to demonstrate that there was disproportionate influence by white collar employees or that blue collar workers were not adequately represented by CSEA, the record demonstrates that CSEA has attempted to communicate with and represent all employees in the unit.⁷

CSEA relies on a hearing officer decision in Placer Hills Union Elementary School District (1983) PERB Decision No. HO-R-104 to support its argument that PERB should not bow to the whims of a disgruntled employee and his/her cohorts in

⁷There was substantial testimony from blue collar employees and CSEA Chapter 105 officers as to the effort expended and quality of the effort expended by CSEA as relates to issues important to blue collar workers. Suffice it to say, there are distinct and differing perceptions of the effectiveness of CSEA representation.

granting a severance request. Hearing officer decisions cannot be relied upon as precedent,⁸ particularly where there is ample case law following the decision to demonstrate PERB's preference for three classified bargaining units (i.e., South Bay).

The District and CSEA have not overcome the Sweetwater presumption that an operations support unit is a PERB-preferred unit as compared to the wall-to-wall unit the District and CSEA voluntarily created. Given the current state of the law, and the weighing of the facts presented, I conclude that the petition should be granted.

PROPOSED ORDER

The following unit is found to be appropriate for meeting and negotiating:

Title: Operations Support

Shall Include:

Cafeteria Assistant I	Groundskeeper I
Cafeteria Assistant II	Groundskeeper II
Cafeteria Assistant III	Groundskeeper III
Cafeteria Manager I	Groundskeeper/Repairperson
Cafeteria Manager II	Utility Worker
Custodian	Maintenance Worker II/General
Head Custodian I	Food Services Delivery Driver
Head Custodian II	Storekeeper Delivery Driver
Head Custodian III	Head Storekeeper
Athletic Equipment Manager	Facilities Team Leader
Campus Supervisor	

The employee organizations whose names shall appear on the ballot are California School Employees Association, Chapter 105, and Teamsters Local 495, AFL-CIO, unless one of said organizations informs the San Francisco regional director in

⁸See Regulation 32215.

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 the unit if: (a) 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.

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 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 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.)

Roger Smith
Hearing Officer