STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PLUMAS UNIFIED SCHOOL DISTRICT and PLUMAS COUNTY SUPERINTENDENT OF SCHOOLS,	)	Representation Case No. SA-UM-645 (SA-RR-563)
Employers,	)	
and	)	PERB Decision No. 1332
PLUMAS COUNTY TEACHERS ASSOCIATION, CTA/NEA,	)	June 3, 1999
Exclusive Representative.	)	

Appearances: Stroup & de Goede by Bryan G. Martin, Attorney, for Plumas County Superintendent of Schools; California Teachers Association by Ramon E. Romero, Attorney, for Plumas County Teachers Association, CTA/NEA.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on exceptions filed by the Plumas County Teachers Association, CTA/NEA (Association) to a Board hearing officer's proposed decision (attached). In that proposed decision, the hearing officer held that the Plumas County Superintendent of Schools (County Superintendent) and the Plumas Unified School District (District) constituted separate employers within the meaning of the Educational Employment Relations Act (EERA)[1] and granted the County Superintendent's unit modification petition.

The Board has reviewed the entire record in this case,

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

including the hearing transcript, the proposed decision, the Association's exceptions, and the County Superintendent's response thereto. The Board finds the hearing officer's findings of fact and conclusions of law to be free from prejudicial error and adopts them as the decision of the Board itself.[2]

ORDER

Upon the findings of fact, conclusions of law, and the entire record in the case, it is hereby ORDERED that an appropriate unit shall include only those certificated employees who are employed by the Plumas County Superintendent of Schools. Accordingly, the certificated bargaining unit of the Plumas Unified School District shall include only those persons employed in certificated positions by the District.

Chairman Caffrey and Member Amador joined in this Decision.

[2]In so doing, we hold that EERA section 3540.1(k) does not preclude the possibility of two entities acting as a single or a joint employer within the meaning of the EERA. (See United Public Employees v. Public Employment Relations Bd. (1989) 213 Cal.App.3d 1119 [262 Cal.Rptr. 158] [holding that city and school district acted as joint employer under EERA].) In this case, however, the hearing officer properly found that the District and the County Superintendent were separate employers.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

PLUMAS UNIFIED SCHOOL DISTRICT and PLUMAS COUNTY SUPERINTENDENT OF SCHOOLS, Employers, and PLUMAS COUNTY TEACHERS ASSOCIATION, CTA/NEA, Exclusive Representative.	)	Representation Case No. SA-UM-645 (SA-RR-563) PROPOSED DECISION (1/14/99)

Appearances: Stroup & de Goede by Bryan G. Martin, Attorney, for Plumas County Superintendent of Schools; Ramon E. Romero, Attorney, for Plumas County Teachers Association, CTA/NEA.

Before Les Chisholm, Hearing Officer.

PROCEDURAL HISTORY

A bargaining unit established through voluntary agreement includes certificated employees of both the Plumas Unified School District (District) and the Plumas County Superintendent of Schools (County Superintendent), and is represented by the Plumas County Teachers Association, CTA/NEA (Association). On November 24, 1997, the County Superintendent filed the instant unit modification petition with the Public Employment Relations Board (PERB or Board). The petition seeks to modify the unit in order to have those certificated employees employed by the County Superintendent, most of whom are Regional Occupational Program (ROP) teachers, included in a unit separate and apart from a unit including District employees. The petition was filed pursuant to

PERB Regulation 32781 (b) (1).[1] By letter dated December 10, 1997, the Association opposed the petition.

A settlement conference was held with the parties on January 30, 1998, and a formal hearing was conducted on August 18, 1998. Upon the receipt of both parties' briefs on October 5, 1998, the case was submitted for decision.[2]

FINDINGS OF FACT

Governance and Structure

There is only one school district in Plumas County.[3] The County Superintendent has been established as a separate elected office for at least as long as the District has been in existence. The current County Superintendent, William J.

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[1]PERB regulations are found at California Code of Regulations, title 8, section 31001 et seq. Section 32781(b)(1) provides:

> (b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:
>
> (1) To delete classifications or positions no longer in existence or which by virtue of change in circumstances are no longer appropriate to the established unit[.]

[2]While neither party formally sought to reopen the record, the Association wrote on October 20, 1998, concerning alleged factual errors and omissions in the County Superintendent's brief, and the County Superintendent responded to that letter on October 26, 1998. The undersigned has relied upon the hearing record and PERB case files, not the parties' briefs, in summarizing the facts of this case and finds it unnecessary to address the factual accuracy of either party's brief.

[3]However, the Sierra-Plumas Joint Unified School District, which is located in and includes all of Sierra County, also includes a small portion of Plumas County within its boundaries.

Cottini, was elected in 1990. Historically, the offices of County Superintendent and District superintendent were held by the same individual. However, when Cottini assumed office in January 1991, the District Governing Board did not name him as the District superintendent.

The elected members of the District's Governing Board automatically serve as members of the Board of Education (County Board) of the Plumas County Office of Education (COE).[4] The County Board and Governing Board normally meet on the same day, but the two boards convene separately, each with its own distinct agenda.

The County Superintendent's powers include hiring and discipline of COE staff; the County Board has no authority over hiring or discipline.[5] The County Board approves the COE budget and the County Superintendent's salary.

The offices of the County Superintendent are housed in the District's headquarters office in Quincy. In addition to the instructional programs of the COE, the County Superintendent is responsible for reviewing and submitting to the state the attendance reports of the District, and prepares reports to the State Teachers Retirement System and Public Employees Retirement System for the COE, the District and the Feather River Community College District (Community College).

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[4]See Education Code section 1000.

[5]Employer Exhibits 1 and 2; Education Code sections 1240-1271, 1290-1295 and 1040-1110.

The County Superintendent also administers data processing, business, media center and print shop services. The District utilizes the COE's media center and print shop and pays for use of these services. The County Superintendent processes warrants and payroll for both the District and Community College. The District and Community College each pay the COE for these services.

The County Superintendent likewise reimburses the District for personnel services provided by the District's personnel director. The District's personnel office handles the advertising for open positions, helps establish the screening and interview panels,[6] schedules interviews, processes paperwork and such requirements as finger printing for successful candidates, and issues formal employment offers on behalf of the County Superintendent. However, the District personnel director is not involved in grievance administration or discipline issues involving COE staff.

Bargaining

The County Superintendent, not the County Board, has the authority to approve collective bargaining agreements, while the Governing Board must ratify any agreement on behalf of the District. The collective bargaining agreement (Agreement) for the certificated unit is trilateral, identifying the Association, the Governing Board and the County Superintendent as parties.

[6]The personnel director consults with Cottini on the composition of panels. Screening panels involve only COE personnel, but interview panels also often include District employees.

However, the Agreement refers to the Governing Board and County Superintendent collectively therein as "Board." The signatories to the agreement are the Association, the District superintendent, the District's board president and the County Superintendent.[7]

The County Superintendent has had a representative on the District's bargaining team with the Association at least as long as Cottini has held office. Cottini participated initially and is now represented by Larry Champion, Assistant Superintendent/ ROP Director.

The County Superintendent also negotiates with COE classified staff, who are represented by the California School Employees Association (CSEA). The County Superintendent granted voluntary recognition to CSEA in July 1993 (PERB Case No. SA-RR-945). Previously, the classified staff of the District and County Superintendent were included in a single bargaining unit.

The Established Certificated Unit

The most recent Agreement describes the recognized bargaining unit as including

> all certificated employees holding the following job classifications: elementary and secondary teachers; librarians; speech therapists; music specialists; elementary and secondary special education teachers; nurses; continuation education teachers; counselors;

[7]The reference to the Governing Board and County Superintendent collectively as employer in collective bargaining agreements has been followed since at least 1981. However, in the agreement for July 1, 1981 through June 30, 1987, there were only two signatories: One for the Association and one signing for both employers.

school psychologists; and R.O.P. instructors, half-time or more.[8]

The certificated bargaining unit presently includes more than 200 District employees and approximately 22 COE employees.

The existing unit was first established when, by letter dated May 7, 1976, the District and County Superintendent notified PERB of the voluntary recognition of the Association for a unit of all certificated employees, excluding the District management team, full-time vice principals, ROP instructors, substitutes, and county schools.[9] The ROP teachers were later added to the unit through a joint unit modification petition which, inter alia, sought the addition of ROP instructors.[10] PERB approved that petition on December 8, 1980.

COE Budget

ROP funding is based on average daily attendance (ADA). The COE also receives ADA-based funding for a court/community school, and additional monies from forest reserves and from the county superintendent service fund. Other programs and operations of

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[8]An individual employee is considered included in the unit when his or her cumulative appointment(s) with the District and/or County Superintendent equals half-time (.50) or more.

Correspondence related to that petition (PERB Case No. SA-RR-563) and the subsequent recognition sometimes referred only to the District as employer but more often made reference to the District and County Superintendent collectively as the employer.

[10]While the County Superintendent was not separately listed as a petitioning party, the petition (PERB Case No. SA-UM-105) did include references to the District and County Superintendent collectively as employer. At that time, the positions of District superintendent and County Superintendent were held by the same person.

the COE are funded based on grants or from billings for services such as data processing.

The funding of the COE is distinguished from the District in several ways. The ADA for ROP is based on hour by hour attendance records (actual "seat time"), while K-12 attendance is only taken once per school day. The District receives additional funding from sources such as mentor teacher, school improvement (SIP), and incentive grants. Some years the ROP is treated as a categorical program and thus does not receive a cost of living adjustment, even in years that the District does. The ROP is restricted in terms of the amount of reserves it may carry.

COE Programs

The ROP was established in the early 1970's as a COE program and was initially created as a three-county program including Plumas, Sierra and Lassen.[11] Lassen County later formed its own program, but the COE still provides the ROP for Plumas and Sierra counties, with the bulk of the attendance being in Plumas. Nurses training programs of the ROP are offered in Plumas,

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[11]Education Code section 52301 provides in part that the

> county superintendent of schools of each county, with the consent of the State Board of Education, may establish and maintain, or with one or more counties may establish and maintain, at least one regional occupational center, or regional occupational program, in the county to provide education and training in vocational courses. The governing boards of any school districts maintaining high schools in the county may, with the consent of the State Board of Education and of the county superintendent of schools, cooperate in the establishment and maintenance of a regional occupational center or program[.]

Sierra, Shasta and Nevada[12] counties; school to work programs in Plumas, Modoc and Lassen counties; and various grant-funded programs, such as Computers in Our Future and AmeriCoach, in Plumas County.

In addition to nursing programs, the ROP offers instruction in computer applications, administration of justice, computer assisted drawing, forestry, TV production, computer accounting, mechanical drawing, welding, bus driver training, and construction, automotive, food service, restaurant, agriculture, computer, medical and business occupations.

Approximately 20 percent of the ROP students, including all in the nursing programs, are adult learners, and the balance are regular high school students (16 or older). Most regular students served by the ROP program attend a class at their school site. Most ROP instruction, in fact, takes place in classrooms located at high schools and continuation schools of the District or the Sierra-Plumas Joint Unified School District. The major exceptions involve the nursing programs (classroom and clinical/hospital settings), construction occupations (job sites and classroom) and bus driver training (maintenance yard).

COE Workforce

Initially, the ROP hired all of its own teachers. However, in the early 1980's, the District laid off teachers and cut many vocational programs. The ROP picked up some of the laid off

[12]References to a certified nursing aid program in Truckee sometimes placed it in El Dorado County and other times in Nevada County. Truckee is located in Nevada County.

teachers and the County Superintendent and District began a practice of sharing individual teacher contracts.

Presently, several different employment arrangements are utilized for persons delivering instruction for the County Superintendent.[13] For example, the ROP has two instructors located at Loyalton High School in Sierra County. One is a full-time employee of the Sierra-Plumas Joint Unified School District. The County Superintendent contracts with that district to pay for half of the salary and other costs. The other is a full-time employee of the County Superintendent, and the Sierra-Plumas Joint Unified School District pays half of that cost.

Many more such arrangements are found between the District and County Superintendent. While the status quo is fluid, approximately 11 bargaining unit members teach for both the District and County Superintendent. Where an employee holds multiple positions with both the District and COE, the employee receives a payroll warrant from each but is issued only one employment contract. The County Superintendent's agreement is with the District in that case, not with the employee. Describing this type of arrangement, Larry Champion testified:

> At present we contract with the District for a portion of that time, but we do not contract with the individual.

[13]The COE projected filling the full-time equivalent (FTE) of 18.12 positions for 1998-1999, involving up to 42 separate appointments.

The County Superintendent directly employs approximately 11 certificated employees who are not also employed by the District.[14]

The credentialing requirements for ROP teachers differ from those of most classroom teachers by emphasizing work experience over academic achievement. However, many ROP teachers have been or are regular classroom teachers and many, if not most, meet both types of credential requirements.

Terms and Conditions of Employment

Under the Agreement, the type of credential held does not affect placement on the salary schedule. In fact, the rights and benefits of unit members generally apply equally to employees of both the District and COE.[15] The Agreement specifies that COE and District employees can mutually donate sick leave hours for catastrophic leave benefits. The Agreement further provides for a common seniority pool for COE and District employees, based on the employee's first date of paid service in a probationary status with either employer. There was unrebutted hearing testimony that ROP teachers cannot achieve tenure or permanent status as ROP teachers and, thus, the process involved in any disciplinary issue would be different for them. However, these distinctions are not reflected in the Agreement.

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[14]The numbers addressed in this paragraph concern only those persons in positions included in the certificated bargaining unit and not those working less than half-time.

[15]The Agreement, at Section 2.03, states that references to "unit member" include all represented employees unless specified otherwise.

As noted previously, certain ROP teachers work in non-classroom settings and their hours, particularly for those in nursing programs, are quite different than those of classroom teachers. Both the District and County Superintendent employ individuals in itinerant teaching positions.

Whether employed solely by the County Superintendent or by the District as well, the majority of ROP teachers are located at District schools and are well integrated into the work environment. For example, Wes Stoddard has been continuously employed both as an ROP teacher and a "regular" teacher at Quincy High School since 1983. He currently teaches metal and wood shop for the District and welding for the ROP, and uses the same classroom for all courses. Stoddard and other ROP teachers at Quincy, including two who are full-time employees of the County Superintendent, attend faculty meetings at their school and in the District; use the same faculty lounge and parking lot as other teachers; are supervised and evaluated by the same site administrator; and perform extra duty assignments such as class advisor, coaching, and bus and dance duty. Stipends are paid for extra duty assignments, just as the County Superintendent pays extra duty stipends to certain District teachers who perform duties under its AmeriCoach grant.

This seamless integration of ROP and regular teachers has been accomplished by design. Larry Champion described the plan as follows:

> We have an agreement with the sites, and it is one that has evolved, our intent is that the ROP teacher be an inclusive part of every

> staff, that the part that they serve is seamless, that no one knows the difference, they're a teacher on the site and that is a good thing.

Nevertheless, the County Superintendent has not ceded control over his programs to the District. While the site administrator evaluates ROP teachers, Champion would be involved if there were problems identified by the evaluation and Cottini must approve any adverse action or discipline. Also, in addition to attending site staff meetings, ROP teachers attend ROP staff meetings, including ones held in conjunction with District-wide meetings. Champion meets with ROP teachers individually on a regular basis as well. Finally, ROP teachers initiate contacts to make requests for money and supplies for programs with both their site administrators and Champion.

POSITIONS OF THE PARTIES

District

The District did not appear at the hearing, nor state a position on the County Superintendent's petition at any time.

County Superintendent

The County Superintendent's argument is organized into three parts: The separate and distinct status of the County Superintendent as a public school employer, the adverse impact that the established bargaining unit has on COE operations, and community of interest considerations.

Concerning status as a separate employer, the County Superintendent cites Education Code sections 1240 et seq., which authorize the county superintendent of schools to conduct

operations as a distinct employer, including the hiring and discipline of both classified and certificated staff. The County Superintendent also cites 72 Ops.Cal.Atty.Gen. 25 and Alameda County Board of Education and County Superintendent of Schools of Alameda County (1983) PERB Decision No. 323 (Alameda).[16]

The County Superintendent further argues that separate employer status is evidenced by the fact that the County Superintendent has fewer and different funding sources than the District. In addition, the County Superintendent operates under a limitation not applicable to the District since the law allows no more than a 15 percent ROP reserve and requires that any funds in a ROP reserve be used only for capital outlay.

The final point regarding separate employer status is that the County Superintendent has authority to approve, or withhold approval from, a collective bargaining agreement. This authority is exercised on an equal basis with the District's Governing Board.

The second argument made by the County Superintendent concerns the adverse impact of the current unit configuration on the COE, as evidenced by the effect of a retroactive salary payment negotiated in a prior year. Night school programs of the County Superintendent had to be reduced, as well as expenditures for supplies and equipment, in order to meet the requirements of the salary increase. The ability of the County Superintendent to

[16]Both the Attorney General's Opinion and Alameda addressed the relative authority of the county superintendent and a county board of education over employer-employee relations issues.

plan and administer programs would be enhanced if the County Superintendent had autonomy to bargain based on the revenue stream and budget of his office.

Finally, since the County Superintendent is a separate and distinct employer, traditional community of interests factors have limited application in this case. However, viewed in their totality as required by Monterey Peninsula Community College District (1978) PERB Decision No. 76, these factors also support approval of the requested unit modification. The geographical area in which County Superintendent employees work is far broader than Plumas County; the working sites and conditions for many employees, especially those in nursing programs, are quite different than those of regular classroom teachers; their training and backgrounds are different than District teachers; and the educational mission is directed toward vocational skills rather than fundamental academic skills.

Association

The Association argues that the parties' stable bargaining relationship (Los Angeles Unified School District (1998) PERB Decision No. 1267) and the community of interest shared by the District's and County Superintendent's certificated staff require finding the existing unit appropriate. The Association relies on statutory criteria (EERA section 3545(a))[17] and PERB precedent. (Kings County Office of Education (1990) PERB Decision No. 801.)

"The Educational Employment Relations Act (EERA) is codified at Government Code section 3540 et seq.

The Association contends that the teachers at issue are on the same salary schedule, receive the same benefits, share common supervision, have frequent interaction, and often work on similar extra duty assignments such as coaching or serving as class advisor. The teachers also share many goals, as educators and as employees, and belong to the same employee organization.

Further, the credentialing differences between ROP and regular teachers are not significant and any difference is rendered moot under Stanislaus County Office of Education (1993) PERB Decision No. 1022 (Stanislaus). In Stanislaus, the Board approved the addition of a certificated naturalist position to the teachers unit despite differences in working conditions, funding source and other community of interest indicia.

The second prong of the Association's argument relies on National Labor Relations Board (NLRB) precedent for the concept of a "single employer" relationship between the District and County Superintendent. Under federal precedent, according to the Association, two or more ostensibly separate entities may be found to constitute a "single employer" for bargaining and representation purposes based on consideration of four factors: (1) Functional integration of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control. If the "single employer" analysis is not found persuasive, the Association offers a "joint employer" theory in the alternative.[18] A "joint employer"

[18]The Association also suggests, alternatively, use of a "dual" employer concept, but does not further define it. The

relationship can be found in the absence of common ownership where two employers share in the control of labor relations and working conditions of employees. (W.W. Grainger, Inc. v. NLRB (1988) 860 F.2d 244 [129 LRRM 2718].) The bottom line for the Association is that many COE employees are also employed by the District and are, in both capacities, supervised by District administrators.

Finally, the Association, relying on State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S (State of California), argues that the County Superintendent has failed to carry the requisite burden of demonstrating the proposed unit modification is more appropriate than the existing unit configuration.

ISSUE

Should the existing certificated bargaining unit be modified to remove those employees employed by the County Superintendent? If so, should those employees be placed in a separate unit with continued representation by the Association?

DISCUSSION

Jurisdiction

Both the District and the County Superintendent are public school employers within the meaning of the EERA, the Association is a recognized employee organization within the meaning of the

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Board, in San Francisco Community College District (1986) PERB Order No. Ad-153, rejected adding a third concept to the "single or joint" employer equation.

EERA, and the employees who are the subject of this petition are employees within the meaning of the EERA..

Single v. Joint Employer

Both the Board[19] and federal courts[20] have observed that the distinct concepts of "single employer" and "joint employer" are often used incorrectly as interchangeable terms. In Browning-Ferris, the court held:

> [A]s the Supreme Court itself has recognized, the two concepts approach the issue of "who is the employer," from two different viewpoints. As such, different standards are required for each[.]

The Browning-Ferris court, citing Radio and Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc. (1965) 380 U.S. 255 [58 LRRM 2545] (Broadcast Service), defined the "single employer" concept as follows:

> A "single employer" relationship exists where two nominally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a "single employer." The question in the "single employer" situation, then, is whether the two nominally independent enterprises, in reality, constitute only *one integrated enterprise.* [Italics in original.]

The Browning-Ferris court also noted that, under Broadcast Service, four factors are examined to answer whether a "single employer" relationship is present under the particular facts of a case: (1) Functional integration of operations; (2) centralized

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"Turlock School Districts (1977) EERB Order No. Ad-18 (Turlock). (Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).)

[20]NLRB v. Browning-Ferris Industries of Pennsylvania, Inc. (CA 3, 1982) 691 F.2d 1117 [111 LRRM 2748] (Browning-Ferris).

control of labor relations; (3) common management; and (4) common ownership or financial control.

Citing NLRB v. Greyhound Corp. (1964) 376 U.S. 473 [55 LRRM 2694] as the lead case, the Browning-Ferris court held that the "joint employer" concept

> does not depend upon the existence of a single integrated enterprise and therefore the above-mentioned four factor standard is inapposite. Rather, a finding that companies are "joint employers" assumes in the first instance that companies are "what they appear to be" -- independent legal entities that have merely "historically chosen to handle jointly . . . important aspects of their employer-employee relationship." NLRB v. Checker Cab Co., 367 F.2d 692, 698, 63 LRRM 2243 (6th Cir. 1966).
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> In "joint employer" situations no finding of a lack of arm's length transaction or unity of control or ownership is required, . . . "[i]t is rather a matter of determining which of two, or whether both, [employers] control, in the capacity of employer, the labor relations of a given group of workers." NLRB v. Condenser Corp. of America [128 F.2d 67]. . . . Thus, the "joint employer" concept recognizes that the business entities involved are in fact separate but that they *share* or co-determine those matters governing the essential terms and conditions of employment. [Citations omitted; italics in original.]

PERB Precedent

The Board has twice directly addressed the question of whether two school districts could be considered, for purposes of collective negotiations and representation, a "single employer."

In Turlock, the essential facts before the Board were as follows. The Turlock Joint Union High School District and Turlock Joint Union School District had operated for over 10

years as a common administration school district; shared seven high level administrators, including the superintendent; maintained largely common terms and conditions of employment, including salary and policies facilitating interdistrict hiring for certificated staff; shared some facilities, equipment and student transportation arrangements; had a common telephone number, letterhead and post office box; and had acted jointly in employer-employee relations matters prior to EERA's enactment. However, the Turlock districts had different boundaries, separately elected boards of trustees which acted independently of one another, and separate budgets and tax bases.

Applying the facts of the case to the federal doctrines of "single employer" and "joint employer," the Board held that neither concept was applicable in Turlock. Even more important, though, was the Board's discussion of the applicability of NLRB precedent to the issues in that case:

> This case warrants the [Board's] consideration of a system of personnel management that, it is argued, would favor a holding that the Turlock School Districts are one employer. Yet by simply applying controlling language found in Government Code Section 3540.1(k) . . . the Turlock School Districts cannot be viewed as one employer. . . . [Id.]

Following a review of both the definition of "public school employer" found at EERA section 3540.1(k) and Education Code provisions defining "governing board" of a school district, the Board's decision continues:

> Thus it is obvious that both the Turlock Joint Union High School District and the Turlock Joint Union School District must be

> viewed as separate employers under the plain meaning of the Act. Where the language of a statute is clear, there is no room for interpretation; it must be followed and effect must be given its plain meaning. The Turlock School Districts are clearly separate legal entities with separate governing boards. The fact that they have chosen to share some administrators and a small number of certificated and classified personnel can hardly lead one to conclude that they are one employer. In fact, since the certificated and classified employees customarily receive separate checks from each school district, that is evidence of the separate status of each governing board. Any other arrangements made mutually and cooperatively by the two boards seem more a matter of convenience than the result of any compelling legal authority to do so. [Id.; fn. omitted.][21]

In Paso Robles Union School District, et al. (1979) PERB Decision No. 85 (Paso Robles), the "central issue before the Board" was whether two school districts constituted "a single public school employer or two separate employers." The Board held that each district was a separate employer within the meaning of EERA:

> We are mindful that [NLRB] case law would favor finding these districts to be a single employer in both cases. However, we do not view NLRB decisions as appropriate guidelines in this area. . . .

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[21]The Board similarly relied on the "clear and unambiguous" language of EERA's definition of "public school employer" in North Orange County Regional Occupational Program (1990) PERB Decision No. 857 (NOCROP). In NOCROP, the Board determined that a joint powers agency is not a public school employer and that PERB lacks jurisdiction under EERA where several school districts form a joint powers authority in order to operate a regional occupational program, even though each participating entity is itself a public school employer. In doing so, the Board specifically overruled an earlier contrary ruling found in Joint Powers Board of Directors, Tulare County Organization for Vocational Education, Regional Occupational Center and Program (1978) PERB Decision No. 57.

. . . . . .

> In determining appropriate negotiating units we must always bear in mind the stated purpose of the EERA to foster harmonious employee-employer relations through collective negotiations. Meaningful negotiation can only occur where the employer has the authority and ability to reach agreement with the duly selected representative of its employees about those matters within the scope of representation. In the instant cases, each district is confined to the framework of its own tax base, budget and revenue limits. The budgets of each district are kept strictly separate and there is no commingling of funds. In each case, where the districts share staff, facilities or equipment, there is a strict apportionment of the expense between them. Each governing board is a separate policy-making body responsible to different constituencies. Moreover, and while not dispositive, voters in both cases have repeatedly rejected unification of the districts.
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> In the final analysis it is this separate economic status of each district coupled with the exclusive policy-making authority of each district which determines its ability to negotiate about those matters within the scope of negotiations. . . . [Id.; fn. omitted.]

The Board has also considered the "single employer" concept in the context of determining whether an employer falls under the Board's jurisdiction. In Fresno Unified School District and Abbey Transportation System, Inc. (1979) PERB Decision No. 82, the Board held that Abbey Transportation System, Inc., a privately held corporation which relied upon Fresno Unified School District for nearly half of its business, was not a public school employer and not covered by EERA even if the single and joint employer definitions were applied.

Likewise, in San Diego Community College District (1988) PERB Decision No. 662, the Board determined the San Diego Community College District Foundation, Inc., a non-profit corporation, was not itself an EERA-covered employer, nor an alter ego of the district. The Board also held that "because of the lack of common ownership," the district and foundation could not be considered a single employer. (Id., citing Broadcast Service.)

The Board has relied upon a finding of "joint employer" status in the context of determining its jurisdiction over an employer. In San Francisco Community College District (1989) PERB Decision No. 688b, the Board held, pursuant to United Public Employees v. PERB (1989) 213 Cal.App.3d 1119 [262 Cal.Rptr. 158], it has jurisdiction over a community college district and its employees where the district and the City of San Francisco operate as joint employers of classified employees of the district. In addition, in a case involving a dispute over the designation of confidential positions of the employer, the Board let stand without comment a stipulation that the two school districts involved had chosen to operate as a "joint employer" for "the purpose of negotiations" with classified employees. (Dinuba Public Schools (1979) PERB Decision No. 91.)[22]

Analysis

If the certificated employees of the District and County Superintendent are held to be employed by a single employer, the

[22]The "single employer" concept, as used both by PERB and the NLRB, may have been more apt under the facts of that case.

rationale for their inclusion in a single unit would be well-founded and in accord with PERB precedent. (Peralta Community College District (1978) PERB Decision No. 77 (Peralta).[23]

The County Superintendent's employees share a community of interest in many respects with District employees, including common supervision, teaching mission, salary and benefits, work-related interaction and extra duty assignments. The differences highlighted by the County Superintendent (including funding, credentialing, geographic location and, for some, hours of work) are not sufficient to rebut the Peralta presumption. Nor is the "adverse impact" argument of the County Superintendent sufficient to overcome the community of interest finding in this case. All that being said, a finding of community of interest is not determinative of this matter.

Reading Turlock and Paso Robles together, the inescapable conclusion is that the District and County Superintendent are two separate public school employers and do not constitute a single employer for purposes of representation under EERA. As in Turlock, the District and County Superintendent are separate legal entities with separate governing boards or authority who

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[23]In Peralta, the Board held that EERA sections 3545(a) and 3545(b), read together, form a rebuttable presumption that all certificated employees should be included in a single representation unit. See, for example, Hartnell Community College District (1979) PERB Decision No. 81 (part-time faculty), Rio Hondo Community College District (1979) PERB Decision No. 87 (summer session teachers), Glendale Community College District (1979) PERB Decision No. 88 (adult education teachers), Dixie Elementary School District (1981) PERB Decision No. 171 (substitute teachers), Kings County Office of Education (1990) PERB Decision No. 801 (nurses), and Stanislaus County Office of Education (1993) PERB Decision No. 1022 (naturalist).)

have chosen to share some personnel, but shared personnel receive separate checks from each entity. As in Paso Robles, the two governing authorities (Governing Board and County Superintendent) have separate and exclusive policy-making authority and the funding sources and budgets of the two entities are separate, distinct and not commingled. These factors, under Turlock and Paso Robles, require finding that the District and County Superintendent do not constitute a single employer.

Further, application of the four factors utilized by the NLRB does not result in a finding of single employer status. While there is some evidence of functional integration of operations, it is also true that at least half of the programs of the County Superintendent take place separate and apart from operations of the District. More importantly, the separate and exclusive policy-making authority of the District's Governing Board and the County Superintendent, combined with the separately maintained budgets of the two, defeat a finding of the other three factors (centralized control of labor relations, common management and common financial control).

The Association's urging of application of the joint employer concept is also unpersuasive. While it is clear that the District, through its site administrators, exercises some control over approximately one-half of the County Superintendent's certificated work force, this factor is insufficient to find a single representation unit of the District's and County Superintendent's employees appropriate. In Jewish Hospital Association of Cincinnati (1976) 223 NLRB 614 [91

LRRM 1499] (Jewish Hospital), the NLRB rejected a hospital employer's argument that employees of an auxiliary gift shop should be included in the same unit as hospital employees because the hospital and gift shop shared premises and the hospital had "substantial authority in determining labor relations policy." In that case, the NLRB found that auxiliary employees were on the hospital payroll, were recruited and screened by the hospital personnel office, went through the same orientation and security check as hospital employees, were included in hospital insurance plans, and used the same cafeteria and parking lot as hospital employees. (ID.) However, the NLRB ruled the hospital and auxiliary gift shop were not joint employers of the gift shop employees because the auxiliary "independently and autonomously determines wages and terms and conditions of employment" for its employees. (Id.) Likewise, in the instant case, the County Superintendent and District each "independently and autonomously" control their own labor and employee relations policies.

In light of Turlock, Paso Robles and Jewish Hospital, the Association's community of interest argument is unpersuasive. Since the employees of the District and County Superintendent are found to be employees of two separate public school employers, not a single or joint employer, it is not possible to find that they comprise a single appropriate bargaining unit. (Paso Robles.)

The remaining argument offered by the Association, that the District failed to demonstrate its proposed unit modification is more appropriate than the existing unit configuration, misstates

PERB precedent. In State of California, the Board held that "presumptive validity" attached to units established by its earlier unit determination decision (Unit Determination for the State of California (1979) PERB Decision No. 110-S) and, thus, the petitioner was required to show that its proposed unit modification was more appropriate. However, no such "presumptive validity" attaches to voluntary units. For example, in Livermore Valley Joint Unified School District (1981) PERB Decision No. 165 (Livermore), it was the parties defending the established wall-to-wall classified unit against the proposed severance of operations and support employees who were required to overcome the presumption favoring such a proposed unit under Sweetwater Union High School District (1976) EERB Decision No. 4.[24] As previously discussed, the established unit in the instant case was created through mutual agreement of the parties. Therefore, no "presumptive validity" attaches to the existing unit and the Association's contention regarding the burden of proof in this matter is rejected.

Effect of Approval of the Requested Unit Modification

As noted, this petition comes before PERB under section 32781(b)(1) of PERB's regulations. This section allows consideration of petitions to delete positions or classifications where the positions are "no longer appropriate to the established unit." This regulation section is most often used concerning

[24]In Livermore, the petition seeking the severance of a Board-preferred operations and support unit from the established wall-to-wall unit was approved.

positions which are alleged to involve confidential or supervisory duties (see, e.g., Chowchilla Union High School District (1994) PERB Decision No. 1040), or are otherwise prohibited by statute from inclusion in the same unit. (Modesto City Schools (1991) PERB Decision No. 884 (Modesto).) The "normal" outcome of approval of such a petition results in the employees at issue no longer being represented. For example, in Modesto, the district sought removal of a non-certificated position from the certificated bargaining unit, and its inclusion in the classified unit, where the classified and certificated units were represented by different employee organizations. The Board held in that case that the question before it was limited to whether the position should be excluded from the certificated unit. However, the instant case is distinguished from the facts in Modesto, in part, by the fact that the Association currently represents both groups of employees at issue and would have standing to request division of the existing unit. (See PERB Regulation 32781(a)(2).)

The instant case involves the question of whether two groups of employees, employed by two different employers but currently represented by the same employee organization, form a single appropriate unit. While an employer lacks standing under PERB regulations to petition for the division of a bargaining unit, the County Superintendent does not seek a result where his employees would lose their current, lawfully-obtained representation, nor has the Association indicated it would

disclaim interest in representing the employees if placed in separate units.

PERB regulations provide extensively for procedures whereby a group of employees may seek to remove or change their current representative. (See PERB Regulations 32770 et seq.) The record here is devoid of any indication that such an outcome is desired by the affected employees in this case. Thus, it would be inconsistent with PERB regulations and precedent to hold that approval of the County Superintendent's unit modification petition removes the County Superintendent's employees from representation by the Association.

CONCLUSION AND ORDER

Having concluded that the Plumas Unified School District and the Plumas County Superintendent of Schools do not constitute a single or joint employer, it is necessary to find that inclusion of the employees of both employers in a single unit is not appropriate under the Educational Employment Relations Act. The unit modification requested by the County Superintendent, removing the certificated employees of the County Superintendent from the unit of District employees, therefore is APPROVED.

For the reasons discussed above, and in consideration of the entire record of this proceeding, it is hereby ORDERED that an appropriate unit shall include only those certificated employees who are employed by the Plumas County Superintendent of Schools. The certificated bargaining unit of the Plumas Unified School

District shall thus include only those persons employed in certificated positions by the District.[25]

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 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 Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5 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 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

[25]It is recognized that this order results in a number of individual employees occupying positions in two represented bargaining units. Such dual representation in separate bargaining units of separate employers is in accord with EERA and PERB precedent. (See San Francisco Community College District (1994) PERB Decision No. 1068.)

filed with the Board itself. (See Cal. Code Regs., tit. 8, secs, 32300, 32305 and 32140.)

Les Chisholm
Hearing Officer