

DECISION

The Board finds no prejudicial error concerning the request by the Executive Director for and the submission by the District of the Job Description and Evaluation Instruments Manuals. The manuals were requested on the record at the close of the hearing. Their receipt and a request for response was personally communicated to Ms. Linda James, DSEA UniServ Director, who initially filed the petition. An adequate opportunity for response was offered by Ms. Murray-Sheppard after Ms. James discussed the matter with Mr. Maher, if she chose to do so. (Affadavit of Ms. Murray-Sheppard).

Nor does the Board find prejudicial error to the Association by the submission of post-hearing briefs without benefit of a transcript of the hearing. The Hearing Officer neither suggested nor required that briefs be submitted in the absence of an official transcript. In fact, the parties' agreement to do so resulted from a request initiated by the Association. (Transcript, p. 116). The Association cannot now claim that the agreement of the District to its offer constitutes prejudicial error.

Nor does the PERB agree that the post-hearing comments offered by the Executive Director in response to specific arguments raised in the appeal constitute prejudicial error. The Board is primarily concerned with the creation of a complete and factual record developed without infringement on the procedural due process rights of the parties. We believe this to be the case here. The Executive Director's comments addressed, in part, matters not known by the District and to which it could not, therefore, respond. Secondly, neither the Executive Director nor any other third party participates in the deliberations of the Board upon matters raised on appeal. The Board believes it has not only a right but also an obligation to provide the opportunity for individuals who do not participate in the decision-making process at that or any subsequent level of appeal to present and support their positions, whenever necessary, to assure a consideration of all relevant facts.

The Association raises other issues concerning the record below. After reviewing the record of this proceeding, the Board denies the Association's request to submit additional briefs and oral arguments. Both parties were provided with a full and complete opportunity to present their respective facts, arguments and conclusions. The submission of additional briefs and oral arguments are not required for the Board to reach its decision.

The Board hereby upholds the decision of the Executive Director dated July 2, 1991.

The issue in this proceeding, as stated in the aforementioned decision (p. 653) was:

...Whether the combined bargaining unit proposed by the Petitioner constitutes an appropriate unit as required by §4010(d) of the Act...

We think it does not. The criteria for determining an "appropriate bargaining unit" is found at §4010 of the Act and provides:

In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider such factors as the similarity of duties, skills, and working conditions of the employees involved; the history and extent of organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and other such factors as the Board may deem appropriate.

We do not see the statute requiring that the unit designated as appropriate be the only appropriate unit, nor do we see a petition to redefine, modify or combine an existing unit or units as requiring that PERB first find the existing unit to be inappropriate or to otherwise rule on the appropriateness of the existing unit.

The record clearly establishes significant differences exist between the professional and classified employees of the Lake Forest School District - in particular, the differences in duties, skills and qualifications required of professional versus classified employees. These differences are critical in the determination of an appropriate unit question. The professional employees primarily instruct students and are regulated by the State Board of Education and its certification process. The custodians and secretaries duties are outside of the realm of student instruction. In addition, the level of education and the specific courses required of the

professional employees is much different than the skills and educational requirements of the custodians and secretaries. While acknowledging that some similarities exist between the two groups, the differences in duties, skills and qualifications far outweigh the similarities. Because the petition requested the inclusion of all employees in both existing units (professional, clerical, custodial and aides) within one bargaining unit, the determination that custodians and secretaries are incompatible for inclusion within a unit including professional employees is sufficient to sustain rejection of the petition.

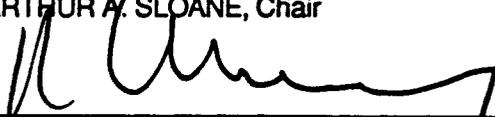
The Executive Director's statement at the bottom of page 665, concisely states the Board's conclusions:

Many factors impact the determination of an appropriate bargaining unit and none alone is determinative. Of particular importance when grouping employees together into an appropriate bargaining unit is that they share similar responsibilities, duties and skills. These factors are entitled to even greater weight when the issue involves the intermingling of professional and non-professional employees in one bargaining unit. It is these considerations which are critically lacking when comparing the professional and classified employees whom the Association seeks to combine into one bargaining unit.

IT IS SO ORDERED.



ARTHUR A. SLOANE, Chair



R. ROBERT CURRIE, JR., Member



HENRY E. KRESSMAN, Member

DATED: August 15, 1991