

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT,)
)
Employer,)
) Case No. SF-R-548X
and)
)
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION) PERB Decision No. 121
AND ITS SOLANO CHAPTER 1048,)
)
Employee Organization,)
) March 25, 1980
and)
)
MUTUAL ORGANIZATION OF SUPERVISORS,)
)
Employee Organization.)
)
_____)

Appearances: Ernest Mohr, Personnel Manager for Fairfield-Suisun Unified School District; William B. Jones, Jr., Field Director, and Charles L. Morrone, Attorney for California School Employees Association and its Solano Chapter 1048; Claude Albrecht for Mutual Organization of Supervisors.

Before Raymond J. Gonzales and Barbara D. Moore, Members.¹

DECISION

This case comes before the Public Employment Relations Board (hereafter PERB or Board) on exceptions filed by the California School Employees Association and its Solano Chapter

¹Chairperson Gluck did not participate in this decision.

1048² (hereafter CSEA 1048) to the hearing officer's attached proposed decision. The hearing officer decided that CSEA 1048, which is seeking to represent classified supervisors in the Fairfield-Suisun Unified School District (hereafter District), and California School Employees Association and its Chapter 302 (hereafter CSEA 302), which is the exclusive representative of classified rank-and-file employees of the District, are the same employee organization for purposes of section 3545(b)(2) of the Educational Employment Relations Act (hereafter EERA)³. This section provides:

A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.
[Emphasis added.]

The hearing officer concluded that recognition of CSEA 1048 as the exclusive representative of District supervisory employees would violate this section.

The Board has considered the record and the attached decision in light of the exceptions filed by CSEA and affirms

²This Chapter's name was changed from Chapter No. AV-001 to Chapter No. 1048 between the time it filed its request for recognition and the date of the hearing. The hearing officer refers to the Chapter as AV-001 throughout his decision.

³The EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

the hearing officer's procedural history, statement of facts, and discussion, except as noted below, and to adopt his proposed order.

The hearing officer discusses a number of ways in which CSEA and its chapters are connected. However, he avoids concluding that these connections are sufficient to cause the two chapters to be considered "the same employee organization." Instead, he bases his decision on the fact that the state CSEA is a named party both to the recognition agreement and contract between CSEA 302 and the District and to the request for recognition filed by CSEA 1048. We agree that this fact alone would be sufficient to find that the recognition as requested would violate section 3545(b)(2).

However, the close relationship and many connections between these chapters and the state CSEA convinces us that CSEA and these two local chapters are the same employee organization for purposes of section 3545(b)(2).⁴ Thus, Chapter 1048's recognition as the representative of the supervisory employees in the District would result in those employees being represented by the same employee organization (CSEA) which represents employees whom the supervisory

⁴CSEA apparently acknowledges this on page 5 of its exceptions when it states that "CSEA has long maintained that the local chapter and the state organization are one and the same"

employees supervise, and, therefore, would violate section 3545(b)(2). This would be true even if the state CSEA were not named on the request for recognition in the supervisory unit.

CSEA has requested oral argument in this case. The Board believes that the parties have adequately discussed the issues in their briefs; it therefore denies CSEA's request.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that the petition for Board investigation filed by the California School Employees Association and its Solano Chapter 1048 pursuant to Government Code section 3544.5 is dismissed.

~~By Raymond J. Gonzales, Member~~

~~Barbara D. Moore, Member~~

On May 20, 1976, the District granted voluntary recognition to the California School Employees Association and its Chapter 302 (hereafter CSEA 302) as exclusive representative for the District's classified employees in a unit consisting of the following:

The classified employees of the Fairfield-Suisun Unified School District excluding those positions designated by the Governing Board as management, confidential, and/or supervisory, and also excluding day-to-day substitutes, summer work crews, temporary augmented crews (less than a month) and school bus drivers (Transportation Department).

On February 22, 1977, the District received a request for recognition by the California School Employees Association and its Solano Chapter AV-001 (hereafter CSEA AV-001)² for a unit of supervisors.

The unit requested included:

...all classified supervisory employees employed by the District as reflected by the public records of the District.

The unit excluded:

...certificated personnel, those positions which could lawfully be designated as management, confidential, and all other classified employees who have been designated as members of another recognized certified bargaining unit.

The request for recognition was duly posted by the District.

²The chapter has since been renumbered Chapter 1048, however will be referred to throughout this decision as AV-001.

On April 25, 1977, the District declined to grant recognition to CSEA and its Solano Chapter AV-001. The reason stated was that:

Government Code Section 3545(b)(2) provides that bargaining units of supervisory employees shall not be appropriate and therefore may not be recognized if they are represented by the same employee organization as the employees supervisory employees supervise.

On May 23, 1977, CSEA AV-001 petitioned the Regional Director stating its position was that recognition of CSEA AV-001 would not violate Government Code section 3545(b)(2).³

On July 7, 1977, the Regional Director reviewed the case and upheld the District finding that CSEA 302 and CSEA AV-001 were not separate employee organizations under Government Code section 3543(b)(2), but were in fact subdivisions of a single employee organization, the California School Employees Association (hereafter CSEA) and therefore the petition should be dismissed.

On July 15, 1977, CSEA AV-001 filed an appeal to the Regional Director's decision. On January 2, 1978, the EERB vacated the Regional Director's decision and remanded it for a hearing (EERB Order No. Ad. 23).

³It was unclear at that time whether the May 23d letter constituted a petition pursuant to section 3544.5 of the Act. However, the Regional Director treated it as such. Because of the confusion CSEA asked on February 17, 1978, that the May 23, 1977 letter be considered a petition for a Board investigation pursuant to Government Code section 3544.5(b) and Cal. Admin. Code, title 8, section 33230.

On January 17, 1978, prior to the time that the hearing could be held, another employee organization, the Mutual Organization of Supervisors (hereafter MOS), filed a new request for recognition for a unit identical to the February 22, 1977 request from CSEA AV-001. The request was duly posted by the District.

A formal hearing was held on February 10, 1978 with the District, CSEA AV-001, and the MOS being parties to the hearing.

ISSUE

Are CSEA AV-001 and CSEA 302 the same employee organization within the meaning of Government Code section 3545(b)(2)?

STATEMENT OF FACTS

Both CSEA AV-001 and CSEA 302 "are employee organizations" within the meaning of section 3540.1(d) of the Educational Employment Relations Act (hereafter EERA). The Fairfield-Suisun Unified School District is a public school employer within the meaning of section 3540.1(k) of the EERA.

The parties stipulated that the appropriate negotiating unit for classified supervisory employees is described as follows:

The unit shall include the following job positions: Purchasing Supervisor, Programmer Analyst, Assistant to the Director of Food Services, Operations Assistant, Maintenance Foreman, Transportation Assistant, Head Custodian, Food Services Supervisor, Warehouseman, Cafeteria Managers, Data Processing Production Coordinator, and Accounting Supervisor; and excluding all other employees.

The parties also stipulated that members of the proposed supervisory unit directly supervise members of the unit represented by CSEA 302.

None of the employees requested in the proposed supervisory unit are included in the classified employee unit represented by CSEA 302.

Members of the proposed supervisory unit possess the authority to adjust the grievances of members of the unit represented by CSEA 302. The contract between the District and CSEA 302 contains a five step grievance procedure. At both the informal step and the first formal step, members of the proposed supervisory unit have authority to adjust grievances. Two grievances have been filed pursuant to the grievance procedure. One grievance was resolved by a supervisor at the informal step. The second grievance, dealing with computation of overtime, proceeded through the informal level and the first step of the formal level. That grievance is currently pending at step two of the formal level.

CSEA 302 and CSEA AV-001 have different offices, different telephone numbers, different officers and hold separate membership meetings. Also, the two chapters have separate records for financial transactions.

Representatives from the state CSEA are members of the local bargaining teams and provide direct assistance to local chapters during negotiations, processing of grievances and contract administration. Although the chapters are serviced by different representatives from the state CSEA, the current representative for CSEA 302 is supervised by the state CSEA Field Director who is the current representative for the proposed supervisory unit. On one occasion, the representative

for CSEA AV-001 substituted for the representative for CSEA 302 during contract negotiations with the District.

The state CSEA provides some special services. Members of both CSEA 302 and CSEA AV-001 are eligible for these special services which include: discounts on merchandise, life insurance, homeowners insurance, income protection plan, on the job liability insurance, and legal protection plans.

Each chapter is required to adopt a constitution and by-laws that conform to and are approved by the state CSEA.⁴ The state constitution and by-laws also require that all members of CSEA 302 and CSEA AV-001 become members of the state CSEA.⁵ The dues schedule of both local chapters indicates that the great majority of dues paid by members goes to the state CSEA and is not retained by the local chapter.⁶

All concerted activities by the chapters must conform with the state constitution and by-laws, which requires a formal approval, by the state CSEA Board of Directors before the chapter may commence concerted activities.

Each chapter has a right to send delegates to the state annual conference and has equal voting rights based upon the size of the chapter. At the conference the delegates select officers for the state CSEA. All members of any local chapter are eligible for office.

⁴Article III, sections 4 & 8, CSEA constitution, August 1977.

⁵Article II, section 2, CSEA constitution, August 1977.

⁶Appendix and article VII, sections 1 & 2, CSEA constitution, August 1977.

The state CSEA has authority to expel from membership any member for "conduct detrimental to the Association".⁷ If the Board of Directors for the state CSEA finds reasonable cause to believe such a charge to be true they may direct the Executive Director to appoint a trial committee of three members who are not members of the Board of Directors. The decision of the trial committee may be appealed to the Board of Directors. The decision of the Board of Directors is conclusive.

Local chapters are empowered by the state CSEA to adopt provisions which provide disciplinary resources short of expulsion; however, the Board of Directors of the state CSEA may adopt a policy governing disciplinary actions of members by chapters. If it does so, the policy shall prevail over any chapter constitution, by-law or policy provision. Any such policy adopted by the state CSEA must be presented at the next succeeding annual conference for ratification.⁸ No evidence was presented at the hearing to show whether this had ever been done.

Members of all chapters contribute to a special building fund for the construction, furnishing, maintenance, repair and other costs of the state CSEA's headquarters complex.⁹

⁷Article II, section 6, CSEA constitution, August 1977.

⁸Article III, section 9, CSEA constitution, August 1977.

⁹Article VII, section 3, CSEA By-Laws, August 1977.

In choosing Area Directors each chapter has one vote determined by a plurality of the membership.¹⁰

DISCUSSION

Section 3545(b)(2) is intended to prevent any conflicts of interest that might arise where one employee organization attempts to represent supervisors as well as the employees they supervise. It is arguable that the conflicts of interest sought to be avoided by requiring a separation of representation would surely arise if CSEA AV-001 represented supervisors and CSEA 302 represented the remainder of the classified employees.

For instance, the facts presented in the case show that the Board of Directors for the state CSEA is elected from all members of both the non-supervisory unit and the proposed supervisory unit. Therefore, both supervisors and the employees they supervise vote on issues which influence their conflicting needs. The Board of Directors exercises a great deal of practical control over the local chapters since the great majority of dues reverts to the state CSEA and is not retained by the local chapter.

Local chapters receive significant assistance from the state CSEA through the services of salaried field representatives. The field representatives are members of the bargaining team and provide, among other duties, help in

¹⁰Article IV, section 2, CSEA Constitution, August 1977.

negotiations with the employer, grievance handling and contract administration. Although CSEA 302 and CSEA AV-001 are assigned a different field representative, both are hired by, and on the payroll of, the state CSEA and therefore ultimately controlled by the state CSEA, not the local chapter. It is further noted that in this case the field representative assigned by the state CSEA to CSEA 302 reports directly to the State Association Field Director who also serves as the field representative for the proposed supervisory unit. On at least one occasion the field representative for the proposed supervisory unit has even substituted for the field representative of CSEA 302 during negotiations. A potential conflict is evident when the representative negotiating a supervisory contract has direct control over the representative negotiating a contract for the employees whom the supervisory unit employees supervise. The potential conflict is even greater when the same representative negotiates on behalf of the supervisors as well as the employees they supervise.

Another area of conflict may arise if a chapter wishes to engage in concerted activities. Prior to any concerted activities a chapter must obtain, among other things, approval by the Board of Directors of the state CSEA. Thus, if members of the supervisory unit were elected to the Board of Directors, they could be voting to approve or disapprove concerted activities of the very employees they supervise, and vice versa.

Grievance processing presents more problems. The state CSEA must decide how to spend money to process grievances.

Therefore, supervisory members of the Board of Directors could be voting on the allocation of funds to pursue or reject grievances against themselves. The field representative assigned to CSEA 302 is in the position of processing grievances against supervisors who are represented by that field representative's own supervisor. Furthermore, given the grievance procedure established in the District, supervisors have authority and have exercised the authority to adjust grievances of the employees they supervise. If both the supervisors and the employees they supervise are members of the same employee organization, a supervisor is in the awkward position of ruling on a grievance of the same employee organization that has the authority to expell or otherwise discipline that supervisor. The supervisor would therefore have to choose between potentially competing interests of the employer and the employee organization.

For guidance in defining Government Code section 3545(b)(2), it is appropriate to look to section 9(b)(3) of Labor Management Relations Act as amended.¹¹ Both sections are intended to prevent any conflicts of interests that might arise where one employee organization attempts to represent groups of employees with conflicting interests, i.e. guards and the employees whom they guard against, supervisors and the

¹¹Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, cited by Sweetwater, EERB Decision No. 4, (1976). Section 9(b)3 of the LMRA as amended is similar in some respects to Government Code section 3545(b)2.

employees whom they supervise. Section 9(b)(3) of the LMRA provides:

...That the Board shall...decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises;...

The National Labor Relations Board, in order to determine whether the employee organization seeking a unit of guards is a separate employee organization, had sought to find whether the union formulates its own policies and decides its own course of action independently from any organization that has non-guards as members.¹² In determining that independence, the NLRB looked closely at whether the petitioner receives, directly or indirectly, financial or organizational assistance from a union representing non-guards [emphasis added].¹³

In the present case, the evidence demonstrates that CSEA AV-001 receives, indirectly, organizational assistance and financial aide from CSEA 302. Members of CSEA 302 contribute dues to the state CSEA. The state CSEA in turn supplies organizational and financial assistance to CSEA AV-001. Thus, members of CSEA 302 would indirectly aid the organization representing their supervisors and vice versa creating

¹²International Harvester Co. (1964) 145 NLRB 1747 [55 LRRM 1227].

¹³Philadelphia College of Osteopathic Medicine (1974) 213 NLRB 259 [87 LRRM 1182].

potential conflicts of interest within the employee organizations. Therefore, should NLRB precedent be controlling, the petition of CSEA AV-001 would be dismissed.

CSEA contends, however, that section 9(b)(3) is not applicable. It argues that Government Code section 3545(b)(2) is substantially narrower in its prohibitions than section 9(b)(3) in that 9(b)(3) prohibits mere affiliation between guard and non-guard organizations while section 3545(b)(2) prohibits only the "same" organizations from representing supervisors as represents employees whom the supervisory employees supervise and does not prohibit mere affiliation. CSEA bases this construction of section 3545(b)(2) on the fact that the authors of the EERA had the LMRA as amended before them when drafting the EERA and that had they intended to preclude mere affiliation, they would have used language like that found at section 9(b)(3). Therefore, it is argued that since the authors did not include this language, they did not intend to prohibit the affiliation of one organization that represents the District's supervisors with the organization that represents the District's non-supervisory employees. Without specifically concluding, CSEA implies that CSEA AV-001 and CSEA 302 are only affiliated and thus not the "same" employee organization within the the meaning of section 3545(b)(2).

Were CSEA AV-001 and CSEA 302 merely affiliated with the state CSEA this argument might prevail. It is, however, clear from the face of the request for representation that the state

CSEA as well as Local AV-001 would also be recognized as representing the District's supervisors. In addition, the state CSEA is a party to the recognition agreement and the contract between the District and Chapter 302. Therefore, if the petition is not dismissed the state CSEA, in addition to the two local chapters, would be recognized as the exclusive representative for the supervisory and non-supervisory employees of the District. In that the state CSEA obviously remains the same employee organization within the meaning of section 3545(b)(2) and would be a party to the recognition in both units, there is clearly a violation of section 3545(b)(2).

It is therefore unnecessary to the holding of this case to decide whether CSEA AV-001 and CSEA 302 are functionally so closely related that they should be considered the same employee organization within the meaning of section 3545(b)(2).

The petitioner argues two additional points. First, that California School Employees Association has represented supervisors and rank and file members within the same chapter for years and that it would be unfair to the supervisory employees to interpret Government Code section 3545.(b)(2) in such a way as to prohibit them from any longer being affiliated with CSEA in any form. Second, that there are a limited number of employee organizations in the education sector.

The first argument carries little weight in that the prior dual representation was under a statute containing no prohibition to such representation. The second point is also not persuasive because CSEA is clearly not the only employee

organization in the education sector, and in light of the request for recognition filed by another employee organization, MOS, the supervisory employees will not necessarily go unrepresented.

Based upon the above, it is found that CSEA 302 and CSEA AV-001 are the same employee organization for the purpose of Government Code section 3545(b)(2). The request for recognition filed by CSEA AV-001 on February 22, 1977, was therefore properly denied by the District.

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record of this case, and pursuant to Government Code section 3541.3, the petition of California School Employees Association and its Solano Chapter AV-001 filed pursuant to Government Code section 3544.5 is dismissed.

The parties have 20 calendar days from receipt of this decision in which to file exceptions in accordance with section 32300 et seq of the PERB's rules and regulations. If no party files timely exceptions this decision will become final on July 31, 1978.

Dated: July 7, 1978

JAMES W. TAMM
Hearing Officer