

FACTS

Appellants filed a timely decertification petition on May 20, 1983, seeking to decertify the Statewide University Police Association (SUPA), the exclusive representative in the peace officer unit at UC. On June 8, 1983, SUPA requested that action on the petition be stayed pending resolution of outstanding unfair practice charges against UC. On June 17, 1983, Appellants expressed their opposition to a stay. They contended that their dissatisfaction with SUPA did not result from any potential or actual effects of the conduct alleged in SUPA's unfair practice charges against UC in Case No. SF-CE-144-H. Those charges alleged that UC discriminated against peace officer employees by failing to afford them benefit increases granted other, nonrepresented employees, unilaterally changed working conditions within scope, and generally engaged in bad-faith surface bargaining.¹

Appellants allege that such conduct, if it occurred, did not affect their dissatisfaction with SUPA. They contend that they are generally opposed to collective negotiations as a

¹The charges allegedly blocking the instant petition are described in greater detail in the regional director's letter staying proceedings on the decertification petition dated September 23, 1983, attached hereto and incorporated by reference herein. The Administrative Law Judge (ALJ) subsequently issued a decision in SF-CE-144-H (Regents of the University of California (SUPA), HO-U-214-H), dismissing many of the charges but finding some violations. Neither party excepted to the ALJ's findings and the decision became final on March 13, 1984.

vehicle for dealing with UC. Further, they contend that, apart from general opposition to collective bargaining, they were motivated to decertify SUPA by SUPA's alleged failure to represent officers on their particular campuses. They allege that SUPA has failed to hold meetings, elect or provide a shop steward, circulate a newsletter or otherwise contact or inform police officers on the UC Berkeley campus, who allegedly formed the core of those signing the petition. It is this lack of contact or representation, and not a lack of satisfaction with SUPA's general effectiveness as collective bargaining representative, which Appellants allege to have motivated the filing of the decertification petition.

DISCUSSION

In Jefferson School District (6/29/79) PERB Order No. Ad-66, at pp. 5-6, PERB adopted its standard regarding blocking charges, finding it appropriate to stay a decertification election:

. . . in circumstances in which the employees' dissatisfaction with the representative is in all likelihood attributable to the employer's unfair practice rather than the exclusive representative's failure to respond to and serve the needs of the employees it represents.

Accordingly, the Board there instructed the regional director to:

. . . conduct an investigation to determine whether a danger remains that the District's alleged unlawful conduct will so affect the

election process as to prevent the employees from freely selecting their exclusive representative. (P. 7.)

The Board went on to note that it will not invoke the blocking charge rule mechanically.

Subsequently, PERB codified its practice in PERB rule 327522 following the practice of the National Labor Relations Board in the private sector:

The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. . . .

The regional director here conducted an investigation as contemplated by the regulation, including an opportunity for all parties to present their position regarding the blocking charge issue.³ she analyzed various recent charges filed against the University and their disposition, as well as the then-outstanding complaint in SF-CE-144.

That case involved charges that the University denied to employees represented by SUPA certain benefits given to other unrepresented employees, such as a life insurance "premium holiday", increased University contributions to employee health

²PERB rules are codified at California Administrative Code, title 8, section 31001 et seq.

³The University took no position in these proceedings, believing the matter properly resolved between PERB and the other parties.

insurance and retirement, increased per diem rates, and an increased lunch and entertainment allowance, and that the University refused to bargain about the retroactive extension of these benefits to members of the SUPA unit. SUPA also charged that the University made unlawful changes in working conditions, including discontinuing the "Medmobile", implementing light duty assignments, and making additional payroll deductions from the paychecks of SUPA unit members. The charges further alleged that the University engaged in bad-faith bargaining by failing to meet and confer about matters within scope, making regressive proposals, engaging in unlawful post-impasse procedures, and refusing to give its negotiator sufficient authority to conduct meaningful negotiations.

The regional director noted that this Board has found that conduct such as that alleged has a destabilizing effect on collective bargaining generally and derogates the representative in the eyes of the employees, citing San Mateo County Community College District (6/8/79) PERB Decision No. 94. She therefore found that employees could well have been induced to withdraw their support for SUPA by the University's alleged actions. For that reason, she found that the University's conduct could prevent employees from exercising free choice, thus affecting the decertification election.

The regional director did not purport to prejudge the merits of the charge in Case No. SF-CE-144. Rather, she correctly analyzed whether such conduct is of such character and seriousness that, if it were proven to have occurred, it would be reasonable to infer that it would contribute to employee dissatisfaction and hence prevent a fair election.

The Appellants here contend that, in filing the decertification petition, they were not motivated by SUPA's failure to reach agreement with UC, but rather were opposed to collective bargaining generally. They further allege dissatisfaction with communications received or not received from SUPA.

Initially we note that Appellants' position is undercut by its own circular distributed to unit employees complaining about SUPA's inability to reach agreement with UC.

Moreover, we find that the motivation of the individual petitioners in seeking a decertification election is not determinative. As noted in PERB rule 32752 above, the regional director is directed to investigate whether the alleged unlawful conduct "would so affect the election process as to prevent the employees from exercising free choice." Her inquiry here was therefore properly limited to the potential impact of the alleged conduct on all of the employees in the unit, rather than the actual motivation of those filing the petition for decertification.

The Board will defer to an agent's determination that an election should be blocked pursuant to PERB rule 32752 when that order is the result of a sufficient investigation and analysis of the allegations of the complaint and its potential impact on the employees in the unit, and the regional director's conclusions are amply supported by the record. Pleasant Valley Elementary School District (2/28/84) PERB Decision No. 380. Here we find both adequate investigation and a result with ample support in the record, and we therefore affirm the order of the regional director. We note, however, that since the ALJ's decision in SF-CE-144 has now become final, re-investigation by the regional director will be appropriate when compliance with that decision has been achieved.

ORDER

Based on the foregoing, and on the record as a whole, the Public Employment Relations Board hereby DENIES the appeal of the regional director's order staying the decertification election in Case No. SF-D-109-H, and AFFIRMS that order.

Members Tovar and Morgenstern joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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Re: Case No. SF-D-109-H
Regents of the University of California

Dear Interested Parties:

On June 9, 1983, the Statewide University Police Association (SUPA) requested that the Public Employment Relations Board (PERB or Board) stay further processing of the decertification petition filed on May 20, 1983, pending the resolution of multiple unfair practice charges involving the Regents of the University of California (University or employer). Because of the following reasons, the request to block the decertification election is granted.

Background

On August 19, 1980, SUPA was certified as the exclusive representative of University employees classified as peace officers.¹ No collective bargaining agreement has been

¹Until this summer, when other exclusive representatives for various University units were certified, only two exclusive representatives - SUPA and the Faculty Association at Santa Cruz - existed within the University system.

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reached between the parties.

In the past two years, SUPA has filed six separate unfair practice charges against the University. Three of those charges are currently outstanding (Case No. LA-CE-47-H, Case No. S-CE-6-H, and Case No. SF-CE-144-H, discussed infra). Of the remainder, one charge has become final resulting in a finding of unlawful conduct (Case No. LA-CE-53-H, (HO-U-177H) discussed infra); another has become final with the charges dismissed (Case No. SF-CE-130-H (HO-U-187-H); and a refusal to issue complaint resulted in the dismissal of the last charge (Case No. SF-CO-3-H). The latter two charges have no bearing on the instant determination.

Discussion

The Board may stay a decertification election "upon an investigation, and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice." (Board Rule 32752.)² A stay is appropriate

. . . in circumstances in which the employees' dissatisfaction with their representative is in all likelihood attributable to the employer's unfair practices rather than to the exclusive representative's failure to respond to and serve the needs of the employees it represents. Jefferson School District (6/29/79) PERB Decision No. Ad-6& at pp. 5-6.

Resolving blocking charges requires an investigation of "each case on its own facts" to determine whether the stay would further the purposes of the Act. Jefferson School District (3/7/80) PERB Decision No. Ad-82, reconsideration denied (7/17/80) PERB Order No. 82-A. As the Fifth Circuit Court stated in Bishop v. NLRB:

²PERB Regulations are codified at California Administrative Code, Title 8.

If **the** employer has . . . committed **unfair** labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert **the** spirit of the Act to allow the **employer** to profit by his own wrongdoing. Bishop v. NLRB (5th Cir. 1974) 502 F.2d 1024 [87 LRRM 2524 at 2527].³

In the instant case, a number of factors arising from pending charges suggest that the employees' apparent dissatisfaction may be attributable to employer unfair practices and make a fair election impossible at this time.

A. Case No. LA-CE-53-H (HO-U-177-H)

Statewide University. Police Association v. Regents of the University of California, PERB Decision No. HO-U-177-H, became final on April 25, 1983. In that decision, the ALJ found that a statement made by a University police chief in 1981 constituted an unlawful threat of reprisals against rank-and-file members of the UCLA Police Department, thereby violating Government Code section 3571(a).⁴ The University was ordered to cease and desist from this unlawful activity and to post a notice to the employees acknowledging the violation and the University's compliance with the order. In light of the passage of time and PERB's resolution of the controversy, this charge would not appear to be a critical factor in this determination.

B. Case No. LA-CE-47-H and Case No. S-CE-6-H

These unfair practice charges filed by SUPA alleged that the University had unilaterally increased parking fee rates in violation of the Higher Education Employer-Employee Relations

³NLRB and federal court precedent are relevant guides for interpreting California labor legislation when the statutory provisions are similar or identical. Firefighters Union v. City of Vallejo, 12 Cal. 3d 608 (1974).

⁴All references are to the Government Code unless otherwise indicated.

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Act (HEERA).⁵ Complaints issued on these allegations on January 15, 1982, reflecting a determination that the facts alleged a prima facie case. These cases were consolidated for hearing and the ALJ formally determined that the University made unlawful unilateral increases in parking fees, thereby violating Government Code sections 3571(a), (b), and (c). The University has filed exceptions and the case is currently on review before the Board. The ALJ's proposed order required, inter alia, the University to rescind the parking fee increase and return the increased portion of the fee, including interest from July 1, 1981, to the bargaining unit employees. Due to the appeal, the University has not complied with the proposed Order.

C. . Case No. SF-CE-144-H

SF-CE-144-H, the most critical of the unfair practice charges filed against the University, involves allegations that the University has violated Government Code sections 3571(a), (b), and (c). (The specific allegations in the charge are described infra.) On February 22, 1983, the General Counsel determined that the allegations constituted a prima facie case and a complaint was issued. An evidentiary hearing has been held on all issues and the ALJ's proposed decision is pending.

In the charge, SUPA maintains that the University illegally discriminated against SUPA-represented employees by refusing to extend to them the same benefits given unrepresented employees. These monetary benefits include a life insurance premium "holiday", increased University contributions to employee health insurance and retirement, increased per diem rates and an increased lunch and entertainment allowance. Furthermore, the University allegedly refused to bargain regarding the retroactive extension of the above benefits to employees in SUPA's bargaining unit. The University also allegedly made several other changes in working conditions, including discontinuing the "Medmobile", implementing light duty assignments, and taking additional payroll deductions from the paychecks of SUPA bargaining unit employees. SUPA also asserts that the University engaged in bad faith bargaining by failing to meet and confer about matters within the scope of representation, by making regressive proposals, by engaging in unlawful post-impasse procedures, and by refusing to give its negotiator sufficient authority to conduct meaningful negotiations.

⁵The Higher Education Employer-Employee Relations Act is codified at Government Code section 3560 et seq.

While **the** critical unfair practice charges have not yet been resolved, SUPA has made a colorable claim that the University's **conduct is** both violative of HEERA and likely to have **contributed** to employee dissatisfaction. Jefferson School District, supra. Bargaining unit employees were forced to pay **increased parking** fees while being denied benefits bestowed **on non-unit employees** covering a wide range of negotiable **matters.** The Board has held that such conduct, when proven, **not only has a** destabilizing and disorienting impact on collective bargaining affairs generally, but also "derogates the representative's negotiating power and ability to perform **as an effective** representative in the eyes of the employees," and "unfairly shifts community and political pressure to **employees and their organizations"** San Mateo Community College District (6/8/79) PERB Decision No. 94. Such conduct **may well also** create in the minds of employees the belief that **the collective bargaining system does not work.**

For these reasons, employees could well have been induced to **withdraw their** support for SUPA as a result of the University's **actions.** **Indeed,** the alleged bargaining conduct of the **University** apart from the unilateral changes described above **may well have** exacerbated unit members' losses, and thus may **have been** a further cause of diminution in SUPA's support **within the unit.** From the foregoing, it may be inferred that **the University's** conduct may prevent employees from exercising **free choice** without restraint or coercion in a decertification **election.** (Board Rule 32752, Jefferson School District, supra, and Bishop v. NLRB, supra.) Accordingly, while not purporting **to resolve the** ultimate merits of the charges, the undersigned **directs that the** decertification election be stayed pending the **resolution of the** outstanding charges discussed above.

An appeal to this decision pursuant to PERB Regulations 32350 **through 32380 may** be made within 10 calendar days following the **date of service** of this decision by filing a statement of the **facts upon which** the appeal is based with the Board itself at **1031 18th Street, Suite 200, Sacramento, California 95814.** Copies of any appeal must be concurrently served upon all other **parties and** the San Francisco Regional Office. Proof of

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service pursuant to Regulation 32140 is required.

Very truly yours,

Anita I. Martinez
Regional Director

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cc: Leroy Pereira