STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

EL CENTRO SCHOOL DISTRICT, Employer, and EL CENTRO ELEMENTARY TEACHERS ASSOCIATION, Employee Organization, APPELLANT.	Case No. LA-R-579 PERB Order No. Ad-51 Administrative Appeal January 2, 1979

Appearances: Christina L. Dyer, Deputy County Counsel (County of Imperial) for El Centro School District; Charles R. Gustafson, Attorney for El Centro Elementary Teachers Association.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on an appeal by the El Centro Elementary Teachers Association (hereafter ECETA) from the Los Angeles regional director's decision to dismiss a portion of its petition for a change in unit determination. The regional director dismissed that portion of the petition seeking addition of the following positions to an existing certificated unit: home teachers, hourly rate teachers, counselors, psychologists, reading coordinators, speech therapy director, and directors.

FACTS

On April 1, 1976, ECETA petitioned for a unit of certificated employees of the El Centro School District (hereafter District). Voluntary recognition was granted by the District on May 12, 1976. On February 23, 1978, ECETA filed with PERB a petition for a change in unit determination. On March 27, 1978, ECETA filed a supplement to that petition. The petition and supplement seek to add certain positions to the existing unit.[1] These are: summer school teachers who are

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[1]The petition described the established unit as:

> ...all classroom teachers, nurses, resource teachers, librarians and speech therapists, excluding those listed by the public school employer as management. This unit will exclude summer school teachers, substitute teachers, home teachers, and hourly rate teachers.
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> The following employees are hereby designated as management:
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> Superintendent, Assistant Superintendents, Coordinator of Special Projects, Principals, Vice-Principals, Assistant Principals, Directors, Counselors, Psychologist, District Librarian, Reading Coordinator, Director of Speech Therapy.
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> Also excluded from representation in this classification are the following positions, which the Board hereby designates as confidential employees:
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> All persons serving on the Boards of Trustees' Negotiating Team as representatives of the Board, as well as all employees privy to or having access to plans, data, and memoranda relating to the negotiating position or employer-employee

regular classroom teachers in the District, psychomotor specialists, language arts specialist, home teachers, hourly rate teachers, counselors, psychologists, reading coordinators, speech therapy director, directors, and bilingual resource specialist. The District agreed to the inclusion of summer school teachers who are regular classroom teachers in the District, psychomotor specialists and language arts specialists. The regional director found that the position of bilingual resource specialist was a newly created classification. The regional director decided to entertain ECETA's petition with regard to this classification and to dismiss the petition with respect to home teachers, hourly rate teachers, counselors, psychologists, reading coordinators, speech therapy director and directors. The regional director's dismissal noted that these positions were originally excluded by the parties from the unit which was established by voluntary recognition. ECETA appeals the dismissal.

> relations of the Board of Trustees. Also specifically excluded from recognition within this contract are all classified positions.

The proposed unit is described as:

> All classroom teachers, nurses, resource teachers, librarians, speech therapists, summer school teachers who are regular classroom teachers in the District, home teachers, hourly rate teachers, counselors, psychologists, reading coordinators, speech therapy director, directors, bilingual resource specialists, psycho-motor specialists, [language art specialist,] and other newly created positions falling into these categories.

DISCUSSION

The regional director based her dismissal on the ground that "the portion of the petition covering these positions does not meet the criteria outlined in Resolution No. 6 and therefore cannot be entertained by the PERB." Resolution No. 6, adopted by the Board at its July 6, 1976, meeting, states:

> Petitions for changes in unit determinations pursuant to Section 3541.3(e) of the Act will be entertained by the Educational Employment Relations Board under the following circumstances:
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> 1. Where both parties jointly file a petition; or
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> 2. Where there has been a change in the circumstances which existed at the time of the initial unit determination.

On July 28, 1976, the Board adopted formal rules, one of which was rule 33260.[2] This provides, in pertinent part:

> (a) An employee organization, an employer, or both jointly, may file with the regional office a petition for a change in unit determination pursuant to section 3541.3(e) of the Act.

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[2]Cal. Admin. Code, tit. 8, sec. 33260, which was adopted by PERB under the authority conferred by Gov. Code section 3541.3. Sec. 3541.3(e) provides that:

> The Board shall have all the following powers and duties:
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> . . . . . .
>
> (e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

Rules 33260(b) and (c) are procedural.[3]

The Resolution as a bar to the petition. Rule 33260, which was adopted after the promulgation of Resolution No. 6, is controlling. Rule 33260 does not incorporate the limitations found in Resolution No. 6, and therefore does not constitute a

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[3]Cal. Admin. code, tit. 8, secs. 33260(b) and (c) state:

> (b) The petition shall contain the following information:
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> (1) The name, address and county of the employer;
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> (2) The name and address of the employee organization, and the name, address and telephone of the agent to be contacted;
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> (3) A description of the established unit;
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> (4) The approximate number of employees in the established unit;
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> (5) The date voluntary recognition was extended or the existing certification was issued;
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> (6) A description of the proposed unit;
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> (7) The approximate number of employees in the proposed unit;
>
> (8) The name and address of any other employee organization known to claim to represent any employees affected by the proposed change in the established unit;
>
> (9) A concise statement setting forth the reasons for the request to change the unit determination.
>
> (c) A copy of a petition filed by an employee organization or an employer alone shall be concurrently served on the other party. A statement of service shall be sent to the regional office with the petition.

bar to the filing of the petition for change. The Board holds that a unit change petition must therefore be entertained by the regional director when the requirements of Rule 33260 and those imposed by statute have been satisfied.[4] A review of ECETA's petition indicates that it does comply with the requirements of that rule.

The exclusion from the original unit as a bar to the petition. The fact that ECETA did not originally seek to represent certain of the subject employees now sought in its petition should not automatically bar the current petition. At the time the original petition was filed, the Board encouraged voluntary recognition as EERA itself appears to do. ECETA itself asserted that it never intended to forego permanently the opportunity to represent other classifications. Its original filing was designed to expedite arrival at the negotiating table for those employees expressing interest.

More than a year and a half has passed since the original voluntary recognition occurred. The District and ECETA have negotiated two collective agreements since that time. No other employee organization has filed a petition to represent any certificated employees in the District. There is no evidence presented to the Board that either the original petition or the

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[4]While the adoption of Rule 33260 had the effect of superseding Resolution 6, it nevertheless establishes a minimum requirement only. Any requirements imposed by statute, such as that of majority support, infra, must, of course, also be satisfied.

instant petition for change was designed to or does interfere with any employee's right of self organization.

Further, considering all facts in this case, there is no evidence that ECETA was intending to capture small groups of employees not included in the existing unit. On the contrary, it is seeking to add almost all that remain. Under these circumstances, PERB is not encouraging the deliberate piecemeal incorporation of positions by employee organizations and finds ECETA's practice unobjectionable.

To deny ECETA's current petition now would be tantamount to barring the exercise of EERA rights by those employees who up until this time have not been covered by certification or recognition, and to foreclosing them from the opportunity to be represented by an employee organization of their choosing in their employment relations with the District.

Nevertheless, the Board would preclude the possibility that employees may be added to an existing unit without ever having had the opportunity to express their support or opposition, as they would have been able to do had they been included in the original petition.

Such a precaution is easily obtained. Section 3544 assures that an employee organization may not become the exclusive representative, by voluntary recognition or election, unless it can demonstrate that it enjoys majority support among the employees in an appropriate unit.[5] This Board believes that

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[5]This principle is applied by the Board in its Representation Election rules, Cal Adm. Code, tit. 8, sections

this principle is applicable to the circumstances of the present case. A demonstration of majority support will therefore be required before petitioner may become the exclusive representative of any employees who the regional director determines may actually be added to the unit.

However, since this case involves a unit modification and not a petition for a new unit, the requirement for a petitioner to demonstrate majority support to initiate a unit hearing is not applicable here. Unlike a petition for recognition pursuant to section 3544, and Rule 33050, in which an employee organization requests voluntary recognition from an employer, the unit change request is directed to PERB. The function of PERB, in the circumstances of this case, is only to determine the unit appropriateness of certain positions, not, of course, to grant or deny voluntary recognition. In these circumstances, it is sufficient that petitioner furnish a 30 percent showing of support among the positions it seeks to add in order to initiate a PERB unit investigation. This is similar to the 30 percent showing of interest required in an intervention, whereby a competing employee organization may propose a unit including positions additional to those contained in the original petitioner's request. Additionally,

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(Fn 5 con't)

33460 et seq., specifically sections 33480 and 33500. These rules provide for evidence of majority support in a unit different from the one originally proposed by a petitioner, before voluntary recognition may be granted in the unit determined by the Board.

we find that requiring a 30 percent showing of interest is sufficient to ensure that the Board's administrative processes will not be abused by employee organizations with only minimal support.

As noted above, however, actual recognition or certification may not be granted until it has been demonstrated that petitioner enjoys majority support among employees who may actually be added.

Finally, the Board notes that this decision is limited to the facts presented in this case and is not intended to establish precedent for all future unit change requests.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

(1) The decision of the Los Angeles regional director dismissing a portion of a petition for change of a certificated unit submitted by the El Centro Elementary Teachers Association is reversed.

(2) Further, that the entire petition is remanded to the Los Angeles regional director for a determination of whether the addition of all or any of the employees petitioned for is appropriate under the provisions of section 3545 of the Educational Employment Relations Act and rule 33260 of the Public Employment Relations Board, provided, however, that the El Centro Elementary Teachers Association shall first furnish the regional director with a 30 percent proof of interest among the employees sought to be added.

The regional director shall conduct an election among any employees who may actually be added to the existing unit, provided that ECETA has satisfied the regional director that it has evidenced at least 30 percent support among the employees who may be appropriately added;

Provided further, however, that if ECETA has satisifed the regional director that it has evidenced majority support among the employees appropriately added to the unit, the regional director shall notify the parties that he will issue an order amending the negotiating unit to reflect the addition of the employees unless within 10 days of notification either of the parties requests an election. The regional director shall conduct an election if one is so requested.

By: Harry Gluck, Chairperson

Jerilou Cossack Twohey, Member

Raymond J. Gonzales, Member

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
Los Angeles Regional Office
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April 25, 1978

Mr. Charles R. Gustafson, Attorney for
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Ms. Christina L. Dyer, Deputy
County Counsel, Attorney for
El Centro School District
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El Centro, CA 92243

Re: LA-R-579, UC-44

Dear Parties:

The following papers and opposing papers have been received by this office:

Petition for Change in Unit Determination filed on February 23, 1978, by the El Centro Elementary Teachers Association; Opposition to Petition for Change in Unit Determination filed on March 15, 1978, by the El Centro School District; Supplement to Petition for Change in Unit Determination filed on March 27, 1978, by the ECETA; Opposition to Supplement to Petition for Change in Unit Determination filed on April 6, 1978, by the District.

After a careful analysis of these documents, the following findings and determinations are made: The petitioner seeks to include in the currently established unit the following positions:

> Summer school teachers who are regular classroom teachers in the District, Psycho-motor Specialists, Language Arts Specialist, Home Teachers, Hourly Rate Teachers, Counselors, Psychologists, Reading Coordinators, Speech Therapy Director, Directors, and Bilingual Resource Specialist.

Board Resolution #6 (copy enclosed), adopted by the EERB in July, 1976, outlines the circumstances under which the Board will entertain a petition for change in a unit. The Parties' position papers indicate they join in requesting the inclusion of three of the positions supra., in the established unit. Resolution #6 clearly permits such a request and therefore, by this letter, the PERB acknowledges the agreement of the parties to include the positions of: Summer School Teachers who are regular classroom teachers in the District, Psycho-motor Specialists, and Language Arts Specialist, in the established unit.

The position of Bilingual Resource Specialist appears to be a newly created position and therefore falls under Item 2 of Resolution #6. A Board Agent will be contacting the parties regarding the scheduling of an informal conference to discuss this position.

The remaining positions of Home Teachers, Hourly Rate Teachers, Counselors, Psychologists, Reading Coordinators, Speech Therapy Director and Directors, were specifically excluded by the parties from the agreed upon unit. The portion of the petition covering these positions does not meet the criteria outlined in Resolution #6 and therefore cannot be entertained by the PERB.

You may request a review of this decision within ten calendar days of receipt of this letter by filing a request addressed to the PERB Executive Director in Sacramento. This request shall state fully the facts upon which the appeal is based. Copies of any appeal must be served upon all other parties to the action with a copy to this office.

Very truly yours,

Frances A. Kreiling
Regional Director

FAK:rjw

Enclosure