



STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD

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| JEFFERSON SCHOOL DISTRICT, |) | |
| |) | |
| Employer, |) | |
| |) | |
| and |) | |
| |) | Case Nos. SF-D-12; SF-D-41 |
| AMERICAN FEDERATION OF TEACHERS, |) | (SF-CO-6; SF-CE-33) |
| LOCAL 3267, |) | |
| |) | PERB Order No. Ad-66 |
| Employee Organization, |) | |
| <u>APPELLANT,</u> |) | Administrative Appeal |
| |) | |
| and |) | |
| |) | June 29, 1979 |
| JEFFERSON CLASSROOM TEACHERS |) | |
| ASSOCIATION, |) | |
| |) | |
| Employee Organization. |) | |
| |) | |
| |) | |

Appearances: William F. Kay, Attorney for Jefferson School District; Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for American Federation of Teachers, Local 3267; Duane Beeson, Attorney (Beeson, Tayer & Kovach) for Jefferson Classroom Teachers Association.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on a motion by the American Federation of Teachers, Local 3267 (hereafter AFT) to set aside an executive director's order staying a decertification election pending the resolution of mutual refusal to negotiate charges filed by and against the Jefferson School District (hereafter District) and the Jefferson Classroom Teachers

Association (hereafter JCTA).¹ For the reasons discussed below, the Board remands this case to the San Francisco regional director to conduct an investigation to determine whether a continued stay is appropriate or whether the election should proceed.

FACTS

Following a consent election, on June 21, 1976 JCTA was certified as the exclusive representative of certificated personnel in the District. The unfair practice charges involved in this case were filed some five months later by the District on November 2, and JCTA on November 15, 1976. A consolidated hearing on these charges was held in the spring of

¹The District alleged that JCTA had violated Government Code section 3543.6(c), which makes it unlawful for an employee organization to:

Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

JCTA in turn alleged that the District had violated Government Code section 3543.5(c), which makes it unlawful for a public school employer to:

Refuse or fail to meet and negotiate in good faith with an exclusive representative.

All section references herein are to the Government Code unless otherwise noted.

1977, and the hearing officer's proposed decision issued on July 13, 1978.²

In the meantime, on September 23, 1977, AFT filed its first petition to decertify JCTA.³ The San Francisco regional director directed a decertification election. This decision was appealed by JCTA, and PERB's executive director stayed the election pending resolution of the unfair practice charges. In Jefferson School District (12/30/77) EERB Order No. Ad-22, the Board itself sustained the executive director's decision.

A few weeks later, on February 6, 1978, the District and JCTA entered into a written agreement which will expire on June 30, 1979.

AFT's second decertification petition⁴ was filed on March 29, 1979. Although the petition was timely filed as

²The hearing officer sustained charges that the District had refused to negotiate on 27 items. The charges against JCTA were dismissed. Both the District and JCTA have filed exceptions to the proposed decision.

³SF-D-12. Decertification petitions are authorized by section 3544.5 which provides in pertinent part:

A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

.
An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative,

⁴SF-D-41.

required by section 3544.7(b)⁵ and was accompanied by more than the requisite showing of support,⁶ the San Francisco regional director informed the parties that the stay of election ordered by the executive director in 1977 would remain in effect "until resolution of the pending unfair practice charges."

DISCUSSION

Section 3544.7(a) of the Educational Employment Relations Act⁷ prescribes in pertinent part:

Upon receipt of a petition filed pursuant to Section 3544.3 or 3544.5, the board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the petition. The determination

⁵Section 3544.7(b) provides in pertinent part:

No election shall be held and the petition shall be dismissed whenever:
(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

⁶Section 3544.5(d) requires decertification petitions to be:

. . . supported by evidence of support such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative.

⁷EERA is codified at Government Code section 3540 et seq.

of that board may be based upon the evidence adduced in the inquiries, investigations, or hearing; provided that, if the board finds on the basis of the evidence that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 3544.1, it shall order that an election shall be conducted by secret ballot and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast.

There are two statutory exceptions to this provision.

Representation and decertification petitions are barred when the employer and the incumbent exclusive representative have negotiated a written agreement (except during a specified open period in the last year of the agreement).

(Sec. 3544.7(b)(1).) Such petitions are also barred during the year immediately following the recognition of an employee organization as the exclusive representative.

(Sec. 3544.7(b)(2).)

PERB has broad powers over representation matters,⁸ and is charged to use its powers to effectuate the purposes of the Act.⁹ A primary goal of EERA is to "provid[e] a uniform basis for recognizing the right of public school employees to join organizations of their own choice." (Sec. 3540, emphasis added.) It is therefore appropriate for PERB to delay decertification elections in circumstances in which the employees' dissatisfaction with their representative is in all likelihood attributable to the employer's unfair

⁸E.g., sections 3541.3(a), (c), (e), (h), (l). See also sections 3544, 3544.3, 3544.5, 3544.7, 3545.

⁹Section 3541.3(n).

practices rather than to the exclusive representative's failure to respond to and serve the needs of the employees it represents.¹⁰

This same principle (called the "blocking charge rule") is used by the National Labor Relations Board (hereafter NLRB) in the private sector. Courts have held that the NLRB must examine each case to determine whether applying the rule will serve or deter the purposes of the National Labor Relations Act (29 U.S.C. sec. 151 et seq.) to protect:

. . . the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. (29 U.S.C. section 151.)¹¹

The NLRB may not invoke the blocking charge rule mechanically.¹² Similarly, PERB's discretion to stay decertification elections when unfair charges are pending will not be exercised by rote. In this case, the most recent determination to stay the decertification election simply renewed the executive director's 1977 order. It appears that no new investigation was undertaken to ascertain if changed circumstances have removed any impediments to employee free

¹⁰See NLRB v. Big Three Industries, Inc. (5th Cir. 1974) 497 F.2d 43 [86 LRRM 3031]. Also see Bishop v. NLRB (5th Cir. 1974) 502 F.2d 1024 [87 LRRM 2524].

¹¹Templeton v. Dixie Color Printing Co. (5th Cir. 1971) 444 F.2d 1064 [77 LRRM 2392].

¹²Id.

choice which may have been present when the stay was first ordered.

Therefore the Board orders that this case shall be remanded to the San Francisco regional director who shall 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.

ORDER

Based on the foregoing Decision and the entire record in this case the Public Employment Relations Board ORDERS that this case be and hereby is remanded to the San Francisco regional director to conduct an investigation and determine whether the decertification election in this matter shall continue to be stayed.

By:

Barbara D. Moore, Member

Harry Gluck, Chairperson

Raymond J. Gonzales, Member

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post St., 9th Floor
San Francisco, California 94108
(415) 557-1350



May 8, 1979

Certified Mail
Return Receipt Requested

Peter Hansen, Superintendent
Jefferson Elementary School District
101 Lincoln Avenue
Daly City, California 94015

Jefferson Classroom Teachers Association,
CTA/NEA
151 87th Street, Suite 11
Daly City, California 94015

Re: SF-D-41 (R-130-A)
Jefferson Elementary School District

Dear Interested Parties:

The decertification petition filed by American Federation of Teachers Local 3267 for the established certificated unit was received by this office on March 29, 1979.

Investigation of this matter established the following facts:

- 1) The current exclusive representative of the unit in question is the Jefferson Classroom Teachers Association, CTA/NEA, which was certified as the exclusive representative of the employees in the claimed unit on June 21, 1976.
- 2) A written agreement currently exists between that exclusive representative and the employer. This agreement expires June 30, 1979.

This investigation has resulted in the administrative determination that the limitations expressed in §33250 (b) of the PERB Rules and Regulations do not exist in this case. The decertification petition is therefore determined to be timely filed. Review of the showing submitted by the American Federation of Teachers Local 3267 in support of that petition has resulted in the administrative determination that it is sufficient to meet the requirements of §33240 (c) of the Rules and Regulations.

As you are no doubt aware, a valid decertification petition is currently pending in the District. On September 23, 1977, the American Federation of Teachers Local 3267 filed a decertification for the certificated unit (SF-D-12). On October 18, 1977, an election was directed to be held on November 17, 1977. The decision to direct the election was appealed by

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the Jefferson Classroom Teachers Association. On November 10, the Executive Director found that resolution of pending unfair practice charges, SF-CE-33 and SF-CO-6, might significantly influence the outcome of the election and therefore ordered a stay of all further proceedings in the representation case until resolution of the pending unfair practice proceedings. The Board subsequently upheld the stay on December 30, 1977 (EERB Order No. Ad-22).

Because the unfair practice charges are still pending, the stay is still operative. Any election pursuant to SF-D-12 or SF-D-41 will continue to be stayed until resolution of the pending unfair practice charges.

An appeal to this decision may be made within 10 calendar days of service of this decision by filing a statement of the facts upon which the appeal is based with the PERB Executive Assistant to the Board, Mr. Stephen Barber, at 923 12th Street, Suite 201, Sacramento, CA 95814. Copies of any appeal must be served upon all other parties to this action with an additional copy to this Regional Office.

Very truly yours,

James W. Tamm
Regional Director

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