

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



DAVID W. LINK,	)	
	)	
Charging Party,	)	Case No. SF-CO-134
<u>APPELLANT</u>	)	SF-CE-494
	)	
v.	)	PERB Order No. Ad-123
	)	
CALIFORNIA TEACHERS ASSOCIATION	)	Administrative Appeal
AND NATIONAL EDUCATION	)	
ASSOCIATION,	)	December 29, 1981
	)	
Respondent.	)	
	)	

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Appearances: A. Roger Jeanson, Attorney (Haas & Najarian) and David T. Bryant, Attorney (National Right to Work Legal Defense Foundation) for David W. Link.

Before Gluck, Chairperson; Jaeger, Moore, and Tovar, Members.

DECISION

David Link, a nonmember of the Antioch Education Association (hereafter AEA) appeals a determination by the San Francisco regional director that he is not entitled to the financial statements of the California Teachers Association (hereafter CTA) and the National Education Association (hereafter NEA) for the fiscal year ending August 31, 1980, on the grounds that only members of the exclusive representative may allege noncompliance with Government Code section 3546.5.1

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1Section 3546.5 states:

Every recognized or certified employee organization shall keep an adequate

We find that Link, a nonmember of the exclusive representative who is, nevertheless, obligated by the existing agreement to pay a service fee to that organization, does have standing to petition to compel compliance with section 3546.5. In our perception, Link is an "employee within the organization."

The phrase is ambiguous. To decide its meaning requires both the comparison of the phrase with other terms used in the Educational Employment Relations Act (hereafter EERA or the Act)<sup>2</sup> to identify employees and an examination of the Act as a whole to discover the underlying legislative intent.

There appears throughout EERA at least six different references to employees. Section 3546(a), in setting forth procedures for establishing organizational security arrangements, uses the expression "members in the appropriate

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itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, signed and certified as to accuracy by its president and treasurer or corresponding principal officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

<sup>2</sup>EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise noted.

negotiating unit," and "members of the negotiating unit." Section 3546(b) uses the term "employees in the negotiating unit." In the provision for intervention in representational elections (sec. 3544.1(b)) both "employees in the unit" and "members of an appropriate unit" are used. In section 3543, the term "public school employees" is used. Section 3546.5, under which this action is brought, uses both the phrase "employees who are members of the organization" and "any employee within the organization." Thus, while the statute is less than consistent in its reference to employees, the phrase in question, "employees within the organization," is unique to the compliance section at issue here.

Differences in statutory language are presumed to have a different meaning. What different meaning, if any, is intended here? We think it is the inclusion, in the latter term, of nonmembers who are obligated to make service fee contributions to the exclusive representative. Service fee payors, who have no express statutory rights to direct access to the organization's records (including financial statements), would thus have some opportunity to become aware of the use to which the organization's funds and their fees are put.

Section 3546.5, itself, entitles members of the organization access to the financial statement. Yet, the Act does not expressly limit pursuit of compliance to members. Had the Legislature so intended, it could have repeated the earlier phrase. By choosing "employees within the organization" rather than the narrow term "members of the organization" or the broad term "employees in the unit"<sup>3</sup> the Act evidences a legislative intent that employees who have some intermediate connection with the exclusive representative be allowed to petition for compliance. Agency fee payors, of course, have such a connection in that they are nonmembers who are forced to contribute financially to the organization.

Since agency fee payors are not expressly entitled to direct access afforded to members, compliance with section 3546.5 ensures that they will have access to this agency's copy of the financial statements required by its rule 32125.<sup>4</sup> Where the organization has not voluntarily submitted the

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<sup>3</sup> "Employees in the unit" undoubtedly includes nonmembers who are not subject to a security arrangement.

<sup>4</sup> PERB rules and regulations are codified at California Administrative Code, title 8, section 31000 et seq.

Pursuant to the California Public Records Act, Government Code Section 6250 et seq., the public is entitled, with limited exceptions, to records kept by a public agency.

documents to the agency, and compliance has not been otherwise obtained, the service fee payor should be allowed to seek such relief. While it is possible that a nonmember could discover the organization's expenditures through alternate sources, the union's own financial statement filed with PERB is likely to be the most immediate and complete source of such information.

We conclude, therefore, that in attempting to assure nonmembers the right to know how their forced contributions are being utilized, the Legislature intended the phrase "employees within the organization" to mean members of the organization and nonmembers who are obligated to pay a fee under an organizational security arrangement.

However, we dismiss the petition for other reasons.<sup>5</sup>

Section 3546.5 requires only "recognized or certified employee organizations" to keep and make available an itemized record of its financial transactions. The petition for recognition filed by respondent in the Antioch Unified School District (hereafter District) reads: "Antioch Education Association/California Teachers Association/National Education Association." The school board's official notice to the PERB that it granted recognition refers to the "Antioch Education

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<sup>5</sup> Link's petition before this Board does not seek the Antioch Education Association's financial statements because he has already been provided a copy of that document filed with the regional director in compliance with section 3546.5.

Association/CTA/NEA." While AEA is clearly affiliated<sup>6</sup> with both the CTA and the NEA, neither of the latter two organizations is recognized or certified as an exclusive representative in the District. Neither, therefore, is required by the EERA to keep or make available a record of its financial transactions.

~~By: Harry Gluck, Chairman~~

~~John W. Jaeger, Member~~

Moore and Tovar, Members:

We join in the result reached by Chairperson Gluck and Member Jaeger, but for a different reason. We find that Link does not have standing to petition for compliance pursuant to section 3546.5 and would therefore affirm the regional director's decision.

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<sup>6</sup> The identification of organizations with which an exclusive representative may be affiliated is a common practice in PERB's proceedings. For example, "AFL-CIO" generally follows the designation of exclusive or recognized representatives who are affiliated with that organization. Similarly, certified and recognized chapters of the California Teachers Association invariably indicate their affiliation with the California Teachers Association and the National Education Association in the same manner.

Section 3546.5 requires a recognized or certified employee organization to make available to employees who are members of the organization a financial report itemizing its financial transactions. It then provides that if the organization does not provide the information to its members, " . . . any employee within the organization may petition . . . " for compliance [emphasis added.] PERB rules, at California Administrative Code section 32125, essentially track the statutory language on petitioning for compliance.

Taken together, the requirements that the financial report be provided to members of the organization and that employees within the organization may petition for compliance dictate a finding that under section 3546.5 and PERB rules, only employees who are members of the organization have standing to file a petition for compliance.

We base this conclusion on several factors. First, the literal language of section 3546.5 indicates that it refers to organization members. Second, to read the statute to provide that nonmembers may petition to require the organization to supply the report to its members seems anomalous. Third, since EERA refers in numerous places to employees within the unit,<sup>7</sup> as opposed to members, if the Legislature by section 3546.5 had meant to authorize any employee in the unit to seek compliance, it would likely have used such language.

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<sup>7</sup> See, e.g., procedures for filing unfair practices, section 3541.5(a) and rights of employees, section 3543.

Petitioner argues that to allow only the members of organizations to seek compliance is discriminatory since nonmembers may be paying an agency fee to the organization and therefore should have access to financial data of the organization. The fallacy of this argument is that section 3546.5 applies whether or not nonmembers are contributing support to the recognized or certified representative.

For the foregoing reasons, we would affirm the regional director's decision that Link, as a nonmember of the Antioch Education Association, is not entitled to petition for compliance pursuant to section 3546.5 and Board rule 32125(b).

Barbara D. Moore, Member

Irene Tovar, Member

ORDER

David W. Link's appeal of the regional director's determination is therefore DENIED.

PER CURIAM