

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JAMESTOWN ELEMENTARY SCHOOL DISTRICT,)
)
Employer,)
)
and) Case No. S-D-118
)
JAMESTOWN TEACHERS ASSOCIATION/) Administrative Appeal
CTA/NEA,)
) PERB Order No. Ad-187
Employee Organization,)
) June 21, 1989
and)
)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION AND ITS TUOLUMNE)
CHAPTER 276,)
)
Employee Organization.)
)

Appearance: Burton Gray, Senior Field Representative, for California School Employees Association and its Tuolumne Chapter 276.

Before Porter, Craib, Shank and Camilli, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (Board) on appeal from the Board agent's refusal to dismiss a decertification petition filed by the Jamestown Teachers Association/CTA/NEA (JTA/CTA/NEA). The California School Employees Association and its Tuolumne Chapter 276 (CSEA) moved to dismiss the petition on the grounds that: (1) JTA, CTA, and NEA are the same organization; and, (2) teachers represented by JTA/CTA/NEA supervise aides who would also be represented by JTA/CTA/NEA if the decertification attempt were successful.

We have reviewed the Board agent's determination and the exceptions thereto filed by CSEA, as well as the entire record in this case. The Board affirms the Board agent's findings and conclusions, set forth in his administrative determination and order to show cause, attached hereto.

ORDER

The Board agent's determination is hereby AFFIRMED and the appeal is DISMISSED. A stay of election is hereby DENIED and the Director of Representation is ORDERED to conduct an election to determine the organization, if any, to be certified as the exclusive representative of the unit of classified employees.

Members Craib and Shank joined in this Decision.

Member Porter's dissent begins on page 3.

Porter, Member, dissenting: This Board is charged with the duty and responsibility of administering and enforcing the provisions of the Educational Employment Relations Act (EERA) and effectuating the purposes and policies thereof. (Banning Teachers Association. CTA/NEA v. Public Employment Relations Board (1988) 44 Cal.3d 799, 804; San Mateo City School District v. Public Employment Relations Board (1983) 33 Cal.3d 850, 855-856; Leek v. Washington Unified School District (1981) 124 Cal.App.3d 43, 48-49, hg. den.; Link v. Antioch Unified School District (1983) 142 Cal.App.3d 765, 768-769; Gov. Code, secs. 3540 and 3541.3, subds. (c), (g), (h), (i), (l) and (n).)

In the instant case, the aforesaid duties and responsibilities arise within the context of a decertification petition whereby the Jamestown Teachers Association/CTA/NEA,¹ which is already the exclusive representative of the certificated bargaining unit in the Jamestown Elementary School District (District), seeks to decertify and supplant the California School Employees Association Tuolumne Chapter 276 as the exclusive representative of the classified bargaining unit in the District.

If successful in its petition and the resultant decertification/representation election, the Jamestown Teachers Association/CTA/NEA will become the exclusive representative for

¹The Jamestown Teachers Association is affiliated with the California Teachers Association (CTA) and the National Education Association (NEA).

both the certificated² and the classified³ bargaining units.

Consistent with PERB's responsibility to administer and enforce EERA's provisions, subdivision (a) of PERB Regulation 32776⁴ prescribes that "(u)pon receipt of a petition for decertification, the Board shall investigate and, where appropriate, conduct a hearing and/or an election or take such other action as necessary." Hence, this Board will investigate and scrutinize the relevant factors pertaining to a decertification petition and will take such action as is appropriate and consistent with EERA.

From the Board agent's investigation and the limited record before us, certain salient factors appear concerning the petitioner, the Jamestown Teachers Association/CTA/NEA:

1. the Jamestown Teachers Association/CTA/NEA is an employee organization whose membership is composed of, and whose officers are, certificated employees of the Jamestown Elementary School District;
2. the constitution and bylaws of the Jamestown Teachers Association, and those of its affiliate California Teachers Association, restrict membership (and, concomitantly,

²The "certificated" are those public school employees employed in positions requiring an appropriate teaching or services credential. (See Ed. Code, sec. 44065.)

³The "classified" are those public school employees employed in positions not requiring a teaching or services credential. (See Ed. Code, sec. 45104.)

⁴PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

voting, office holding, etc.) to certificated employees;⁵
and

3. the Jamestown Teachers Association/CTA/NEA is presently the exclusive representative of and for the certificated employees and the certificated bargaining unit in the Jamestown Elementary School District.

The presence of such factors in the instant decertification petition--whereby the Jamestown Teachers Association/CTA/NEA seeks to decertify and supplant the incumbent exclusive representative of the classified bargaining unit--calls into consideration certain EERA provisions, including Government Code sections: 3543 (right of public school employees to join and to participate in the activities of an employee organization for the purpose of representation); 3540.1. subdivision fd) (defining "employee organization" as "any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer") (emphasis added); 3543.1. subdivision (a) (rights of employee organizations to represent their members and "to establish reasonable restrictions regarding

⁵There are references in the limited record before us that the Jamestown Teachers Association "may" have voted to allow some type of membership for classified employees, but that the California Teachers Association has repeatedly rejected membership for classified employees. No evidence was submitted by the Jamestown Teachers Association and/or the California Teachers Association showing that noncertificated employees may become members, vote and/or hold office in the organizations. Moreover, the record does not show that the Jamestown Teachers Association/CTA/NEA has established "reasonable restrictions" regarding who may join. (See Gov. Code, sec. 3543.1, post.)

who may join" and/or "reasonable provisions for the dismissal of individuals from membership") (emphasis added); and 3545, subdivision (b)(3) (classified employees and certificated employees may not be in the same negotiating unit).

In connection with the Board agent's investigation of the instant petition, the current exclusive representative of the classified bargaining unit, California School Employees Association Tuolumne Chapter 276 (CSEA Tuolumne Chapter 276), raised the contention that the Jamestown Teachers Association/CTA/NEA "does not qualify as a bona fide employee organization under the meaning of the Act [EERA]" in that the constitution and bylaws of the Jamestown Teachers Association and its affiliate California Teachers Association bar noncertificated employees (i.e., the classified employees) from membership and from participating in voting matters and holding office. CSEA Tuolumne Chapter 276 asserted that such prohibitions do not comport with the classified employees' rights to join and to participate in the activities of an employee organization representing them, and that the classified employees will be "dominated and totally controlled by the Jamestown Teachers Association and the California Teachers Association."

The Board agent, citing State of California (Department of Developmental Services) (1982) PERB Decision No. 228-S and Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106, opined that the "internal" organizational structure of an entity is not dispositive of its status under

EERA as an employee organization, but that what is determinative is whether the entity has, as a central purpose, the representation of employees. Finding that the filing of the decertification petition evinced such a central purpose, the Board agent concluded that the petitioner qualified as an employee organization, and thus ordered a decertification/representation election in the classified bargaining unit.

Developmental Services appropriately set forth that, to qualify as an employee organization under EERA, an entity must have as one of its primary purposes the representation of employees. (See Gov. Code, sec. 3540.1, subd, (d).) The case, however, involved an employee who had organized a group of employee/tenants to represent their fellow employees in dealing with their employer on employee housing matters. It did not involve a situation where the entity seeking to represent the employees was one which barred those employees from joining or participating in its activities. Likewise, Kimmett was a "duty of fair representation" case brought by a union member which dealt with "internal" union procedures such as the scheduling of chapter meetings. The facts presented in Kimmett did not involve any prohibition on joining the union, voting or holding union office. Accordingly, Developmental Services and Kimmett did not reach the particular issues presented in this case. Noteworthy is this Board's keen observation in its subsequent decision in Teachers United Uniserv Unit. CTA/NEA (1983) PERB Decision No. 349, page 7, emphasis added:

TU's identity: TU's bylaws provide that members of the various locals, as well as the locals themselves, can have membership in the new organization. There is nothing in the record to indicate that the bylaws include restrictions or limitations on membership which might arguably remove TU from coverage of EERA's definition of an employee organization. There is no dispute, nor could there be, that TU has as its primary purpose, the representation of public school employees in their relationship with their public school employers. We conclude, accordingly, that TU is an employee organization within the meaning of the Act.

Critical to a resolution of whether Jamestown Teachers Association/CTA/NEA qualifies as an employee organization under EERA, with respect to a decertification/representation petition concerning the classified employees and the classified bargaining unit of the Jamestown Elementary School District, is Government Code section 3543. This EERA provision prescribes that public school employees—which includes classified employees--"shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations." (Gov. Code, sec. 3543, emphasis added.) This EERA provision confers on public school classified employees the right to become regular, full members of the employee organization along with the right to participate in the concomitant membership privileges of voting, holding office, etc. (Union of American Physicians and Dentists (Stewart) (1985) PERB Decision No. 539-S, pp. 4-5; California Association of Psychiatric Technicians (Long) (1989) PERB Decision No. 745-S, pp. 8-9; California State Employees'

Association (Fry) (1986) PERB Decision No. 604-S, p. 4; State of California (Dept. of the Youth Authority) (1985) PERB No. 535-S, p. 30; Directors Guild of America, Inc. v. Superior Court (1966) 64 Cal.2d 42, 51-54; International Association of Fire Fighters v. County of Merced (1962) 204 Cal.App.2d 387, 390; James v. Marinship Corp. (1944) 25 Cal.2d 721, 726, 730-731, 737-739; Endler v. Schutzbank (1968) 68 Cal.2d 162, 173; Professional Fire Fighters, Inc. v. City of Los Angeles (1963) 60 Cal.2d 276, 289; 49 Ops.Cal.Atty.Gen. 1 (1967) pp. 2-5; see also Gov. Code, sec. 3540.1, subd. (i)(1); San Lorenzo Education Association v. Wilson (1982) 32 Cal.3d 841, 843; Pasillas v. Agricultural Labor Relations Board (1984) 156 Cal.App.3d 312, 331, 339, hg. den.; Radio Officers' Union v. National Labor Relations Board (1953) 347 U.S. 17, 40-42 [98 L.Ed. 455, 477-478].) Employees who do not become members of the employee organization may be barred from voting on or participating in policies, contract proposals in negotiations, contract ratification, and other employment matters. (El Centro Elementary Teachers Association (Willis) (1982) PERB Decision No. 232, pp. 6-7, 15-17; Fontana Teachers Association, CTA/NEA (Alexander) (1984) PERB Decision No. 416; and see Rio Hondo College Faculty Association. CTA/NEA (Furriel) (1986) PERB Decision No. 583, pp. 3-5, 7.)

In Directors Guild of America, Inc. v. Superior Court (1966) 64 Cal.2d 42, our Supreme Court set forth:

We shall explain that a union cannot arbitrarily exclude from membership a person employed in the craft or industry whose employees are represented by the union even

when the union does not have a union shop contract. . . .

.

In the landmark case of James v. Marinship Corp., supra, 25 Cal.2d 721, this court enjoined the enforcement of a union shop contract under which the union required Negroes to become members of an "auxiliary" local but denied them full membership in the "white" local which negotiated the contracts, handled grievances and dispatched employees to their jobs. Holding that since the union controlled a "monopoly" of jobs through its closed shop contract, it occupied a "quasi public position similar to that of a public service business and (had) . . . corresponding obligations" (p. 731), Chief Justice Gibson prophetically stated, "It is difficult to see how a union can fairly represent all the employees of a bargaining unit unless it is willing to admit all to membership, giving them the opportunity to vote for union leaders and to participate in determining union policies." (P. 735.)

In Williams v. International etc. of Boilermakers (1946) 27 Cal.2d 586, the court held that the principle of James applied not only in the case of a "monopoly" control of jobs but in any situation of a denial of employment because of arbitrary exclusion from a union. . . .

The philosophy of these cases finds its ultimate application in the ruling of Thorman v. International Alliance etc. Employees, supra. 49 Cal.2d 629, which upheld a writ of mandamus directing a union to admit to membership a motion picture projectionist whom it had arbitrarily excluded. Plaintiff, a member of an "auxiliary" union, subject to displacement from his job by senior members of the "main" local, could not participate in the affairs of the main local or negotiation of contracts; he could become a member of that local only by a two-thirds vote, a requirement which the court apparently held to be arbitrary. As one commentator points out, "It is difficult to explain such an order except on the theory that an individual

within a bargaining unit represented by a union has a right, quite apart from his right to work, to participate in that union's affairs. Indeed, in the case of a union operating as a statutory bargaining representative, under state or federal legislation, that theory would seem to follow from the position of the United States Supreme Court that such a union has a statutory, if not constitutional, obligation to represent fairly all employees within the bargaining unit." (Grodin, *Union Government & the Law: British and American Experiences* (1961) 179.)

The decisions of this court thus recognize that membership in the union means more than mere personal or social accommodation. Such membership affords to the employee not only the opportunity to participate in the negotiation of the contract governing his employment but also the chance to engage in the institutional life of the union. Although in the case which involves interstate commerce the union must legally give fair representation to all the appropriate employees, whether or not they are members of the union, the union official, in the nature of political realities, will in all likelihood more diligently represent union members, who can vote him out of office, than employees whom he must serve only as a matter of abstract law.

Our decisions further recognize that the union functions as the medium for the exercise of industrial franchise. As Summers puts it, "The right to join a union involves the right to an economic ballot." (The Right to Join a Union (1947) 47 Colum. L.Rev. 33.) Participation in the union's affairs by the workman compares to the participation of the citizen in the affairs of his community. The union, as a kind of public service institution, affords to its members the opportunity to record themselves upon all matters affecting their relationships with the employer; it serves likewise as a vehicle for the expression of the membership's position on political and community issues. The shadowy right to "fair representation" by the union, accorded by the Act, is by no means the same as the hard concrete ability

to vote and to participate in the affairs of the union.⁵

The above grounds for condemnation of arbitrary rejection from membership apply as forcefully to the situation in which the union does not have a union shop contract as to that in which it does. The need of the worker for union participation is not reduced because the union does not enjoy a union shop; the basis for membership lies in the right and desirability of representation, not in the union's economic control of the job. (64 Cal.2d at pp. 51-53, emphasis added 2d par., fns. omitted except fn. 5.)

EERA also prescribes that "(e)mpleado organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership." (Gov. Code, sec. 3543.1, subd, (a), emphasis added; California School Employees Association (Parisot) (1983) PERB Decision No. 280, pp. 5-6, 8-11; California Association of Psychiatric Technicians (Long), supra, PERB Decision No. 745-S, p. 8, fn. 8; Union of American Physicians and Dentists (Stewart),

⁵"(E)xclusion from the union may deprive the individual of various social benefits provided by the organization. . . . For example, pensions or medical insurance may be difficult to obtain through other channels, and strike benefits are provided only by the union. . . . Denial of membership (also) bars the individual from any participation in the union's decisions which affect his welfare. Thus, he cannot speak at union meetings; he cannot vote in a union referenda; and he cannot be a candidate for union office. Where the union exercises substantial control, the individual's right to participate may be considered the most important interest involved, especially where power has been allocated to the union for the purpose of strengthening the democratic process." [Citations.]

supra, PERB Decision No. 539-S, pp.4-5 and fn. 8; and see James v. Marinship Corporation, supra, 2 5 Cal.2d 721, 736; Pinsker v. Pacific Coast Society of Orthodontists (1969) 1 Cal.3d 160, 166; Cason v. Glass Bottle Blowers Association (1951) 37 Cal.2d 134, 143-145; Colgate-Palmolive-Peet Company v. National Labor Relations Board (1949) 338 U.S. 355, 361-362 [94 L.Ed. 161, 168-169].) Thus, for example, it may be reasonable for an employee organization's constitution or bylaws to prohibit supervisory employees from membership and holding office where the organization represents the nonsupervisory employees' bargaining unit. (California School Employees Association (Parisot): supra, PERB Decision No. 280a, pp. 2-3; and see Gov. Code, sec. 3545, subd. (b)(2).)

In the instant case, the record before us does not reveal why it would be reasonable to prohibit the classified employees from membership and office in an employee organization which seeks not only to represent said classified employees but to be the exclusive representative of the classified employees' bargaining unit. One might surmise that the Jamestown Teachers Association/CTA/NEA's prohibition on noncertificated membership and office holding is to keep classified employees from having a vote or input on any of the policies, negotiating positions, educational policy consultations, etc., of the employee organization. Insofar as the Jamestown Teachers Association/CTA/NEA would seek to be--or is--the exclusive representative solely for the certificated employees and the certificated

bargaining unit, such a restriction would appear to be reasonable. (See Gov. Code, secs. 3543.2 and 3545, subd. (b)(3); California School Employees Association (Parisot), supra, PERB Decision No. 280a, pp. 2-3.) But, by the instant petition, Jamestown Teachers Association/CTA/NEA seeks also to represent the classified employees while still barring them from membership and holding office. Common sense suggests that, not only is such a blanket restriction on classified employee membership unreasonable, but it is also totally antithetical to the very nature and purposes of an employee organization petitioning under EERA to become the exclusive representative of the classified employees.

There is no question that the Jamestown Teachers Association/CTA/NEA is an employee organization qualified under EERA to represent the certificated employees and the certificated bargaining unit. However, its prohibition against uncertificated employees being members and holding office disqualifies it under EERA from representing the classified employees and the classified bargaining unit. (Gov. Code, secs. 3540 and 3543; Directors Guild of America, Inc. v. Superior Court, supra; 64 Cal.2d 42, 51-54; Union of American Physicians and Dentists (Stewart), supra, PERB Decision No. 539-S, pp. 4-5; California State Employees' Association (Fry), supra, PERB Decision No. 604-S, p. 4; and see California School Employees Association (Parisot), supra, PERB Decision No. 280, pp. 8-9; Teachers United Uniserv Unit, CTA/NEA, supra, PERB Decision No. 349, p. 7.)

A related but independent qualification inquiry arises from

the facts surrounding the instant petition. The Jamestown Teachers Association/CTA/NEA is an employee organization composed of certificated employee members, and is the exclusive representative of the certificated negotiating unit in the District. It now seeks also to represent the classified employees and supplant CSEA Tuolumne Chapter 276 as the exclusive representative of the classified negotiating unit in the District. If successful on the petition and in the election, the Jamestown Teachers Association/CTA/NEA would become the exclusive representative for both the classified and the certificated employees. The same employee organization, therefore, would negotiate the wages, hours, and terms and conditions of employment in the District for both the classified and the certificated employees.

EERA prescribes, with respect to the negotiating process involving public school employees, that "(c)lassified employees and certificated employees shall not be included in the same negotiating unit." (Gov. Code, sec. 3545, subd. (b)(3).) In fulfilling its responsibility to oversee and enforce this separate negotiating unit process established by EERA (San Mateo City School District v. Public Employment Relations Board, supra, 33 Cal.3d 850, 856; Banning Teachers Association. CTA/NEA v. Public Employment Relations Board, supra, 44 Cal.3d 799, 804), may this Board authorize a single employee organization which is composed of certificated employee members, whose officers are certificated employees, which allegedly is thus "wholly dominated

and controlled" by the certificated employee members and officers, and which is the present exclusive representative of the certificated negotiating unit, to become also the exclusive representative for the classified employees and the classified negotiating unit as well?

While there would not be a direct inclusion of the classified employees into the certificated unit, the realities of the situation would be that a single employee organization would become the exclusive representative for both the classified employees and the certificated employees, would be determining the negotiating policies and proposals for both the classified and the certificated employees, and thence negotiating the same with the District employer on behalf of both the classified and the certificated employees. Such a single exclusive representative for both the certificated and the classified negotiating units would circumvent or breach the statutory "wall of separation" between the classified and certificated negotiating units in the negotiation process and would, in effect, constitute an indirect violation of subdivision (b)(3) of Government Code section 3545. (Banning Teachers Association. CTA/NEA v. Public Employment Relations Board, supra, 44 Cal.3d 799, 805-806; California State Restaurant Association v. Whitlow (1976) 58 Cal.App.3d 340, 347, hg. den.)

This breach of the statutory "wall of separation" between the classified and certificated employees and their respective negotiating units, with the resultant intrusion or mingling of

certificated employee interests into those of the classified employees, is exacerbated in the instant case wherein the classified employees are barred from membership, voting and holding office in the proposed single exclusive representative employee organization. In a "logical projection from known facts," the negotiating policies and proposals concerning wages, hours, and terms and conditions of employment in the District for both the classified and the certificated employees may thus become subject to the dictates and control of the certificated employee members and officers of the proposed single exclusive representative.⁶ (See Los Angeles Unified School District v. Public Employment Relations Board (1986) 191 Cal.App.3d 551, 557-558.) Moreover, it must be recognized with respect to the negotiating process in the public schools that as to the so-called "big ticket" negotiating item of wages (including health and welfare benefits), the certificated employees and their certificated negotiating unit already have a significant preferential negotiating advantage over the classified employees because, in an elementary school district (as in the instant case), the Education Code mandates that a public school district must expend at least sixty percent of its "current expense of

⁶But even if the classified employees could become full members, vote, hold office, etc., that would still not remedy the Government Code section 3543, subdivision (b)(3), problem. Furthermore, if the classified employees were to obtain such rights in the Jamestown Teachers Association/CTA/NEA, they could then be in a position to have a voice in or influence educational objectives and policies, another matter which the statutory "wall of separation" was designed to avoid. (See Gov. Code, sec. 3543.2, subd. (a).)

education" on the salaries of the certificated classroom teachers. (Ed. Code, sec. 41372.)⁷

Lastly, even assuming that the Jamestown Teachers Association/CTA/NEA qualified as an employee organization to exclusively represent the classified employees and their negotiating unit--notwithstanding Government Code sections 3543 and 3545, subdivision (b)(3)--there is still a further issue raised by the incumbent exclusive representative of the classified negotiating unit. CSEA Tuolumne Chapter 276 contends that the certificated employees in the District who are represented by Jamestown Teachers Association/CTA/NEA are the supervisors of the classified employees. Thus, it is claimed, Government Code section 3545, subdivision (b)(2),⁸ bars the Jamestown Teachers Association/CTA/NEA from being the exclusive

⁷The reverse side of such a collective bargaining coin would picture an employee organization composed of classified employee members and officers which was the exclusive representative of the classified bargaining unit and whose constitution and/or bylaws prohibited certificated employees from membership, voting, officership, etc. Could this Board sanction such an employee organization becoming the exclusive representative of the certificated employees and their bargaining unit, being able to control the negotiations for both the classified and the certificated negotiating units, and having the exclusive representative of the certificated personnel's right to consult with the public school employer on educational objectives, content of courses and curriculum, and the selection of textbooks? (See subd. (a) of Gov. Code, sec. 3543.2; and see fn. 6, supra.)

⁸Government Code section 3545, subdivision (b)(2), prescribes, with respect to the negotiating and contract administration processes, that the same employee organization shall not represent both the supervisory employees and the employees whom the supervisory employees supervise. (See Los Angeles Unified School District v. Public Employment Relations Board, supra, 191 Cal.App.3d 551, 555-558.)

representative of both the supervisors (certificated) and the supervised (classified). The Board agent rejected this contention, citing Redlands Unified School District (1982) PERB Decision No. 235. In the Redlands Unified School District case, the hearing officer found, from the facts presented at the hearing, that the classroom teachers were not supervisory-employees because their supervision of aides was minimal and only incidental to their professional duties. CSEA Tuolumne Chapter 276 asserts that certain elements of the relationship between the teachers (certificated) and the aides (classified) in the Jamestown Elementary School District differ significantly from such relationships as existed in Redlands Unified School District, including the teachers effectively recommending the hiring or the disciplining of aides, and contends that a hearing on the petition (PERB Reg. 32776) would enable it to demonstrate that Redlands Unified School District is not controlling on this issue.

I believe that the incumbent exclusive representative is entitled to such a hearing so that it may show, if, it can, that the supervisory situation in Jamestown Elementary School District differs from that in the Redlands Unified School District case to the extent that a different result would be required.

Upon the present record, I would dismiss the decertification petition on two independent grounds: (1) the Jamestown Teachers Association/CTA/NEA is not qualified to be the exclusive representative for the classified negotiating unit, and (2) one

employee organization may not exclusively represent both the certificated and the classified negotiating units. (Gov. Code, secs. 3543, 3543.1, subd. (a) and 3545, subd. (b)(3); Banning Teachers Association. CTA/NEA v. Public Employment Relations Board, supra. 44 Cal.3d 799, 805-806; Directors Guild of America, Inc. v. Superior Court, supra. 64 Cal.2d 42, 51-54.) If the petition was not to be so dismissed, I would, at a minimum, afford the incumbent exclusive representative of the classified negotiating unit a hearing on the petition with respect to its Government Code section 3545, subdivision (b)(2) contention. (PERB Reg. 32776.)

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMESTOWN ELEMENTARY SCHOOL DISTRICT,)	
)	
Employer,)	Case No. S-D-118
)	(S-R-807)
and)	
)	
JAMESTOWN TEACHERS ASSOCIATION/CTA/NEA,)	ADMINISTRATIVE
)	DETERMINATION
Employee Organization,)	FINDING PETITION
)	VALID
and)	
)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION)	
AND ITS TUOLUMNE CHAPTER 276,)	
)	
Employee Organization.)	

On September 19, 1988, the above-referenced decertification petition was filed with the Public Employment Relations Board (PERB) by the Jamestown Teachers Association/CTA/NEA (JTA), which is seeking to become the exclusive representative of an established unit of classified employees represented by the California School Employees Association and its Tuolumne Chapter 276 (CSEA). On October 11, 1988, the CSEA filed a motion to dismiss the petition on the grounds that the JTA is not an employee organization within the meaning of the Educational Employment Relations Act (EERA),¹ and further, that the JTA is precluded by section 3545(b)(2) from representing the classified employees because it currently represents the teachers who, the CSEA alleges, are the supervisors of the classified employees.

¹EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code, unless otherwise specified.

By order dated December 7, 1988, the CSEA was afforded the opportunity to show cause why its motion to dismiss should not be dismissed. That order, a copy of which is attached, is expressly incorporated within this administrative determination.

On December 21, 1988, the CSEA timely filed a response to the order to show cause. In its response the CSEA argues that, notwithstanding the fact that the JTA may have extended membership rights to classified employees, such membership rights have not been granted those employees by the JTA's affiliate, the California Teachers Association (CTA). The CSEA argues, as it did in its motion to dismiss, that this denial of membership rights is violative of the EERA. However, the CSEA has offered no additional facts or legal argument which alter the conclusion reached in the December 7 order, which was that there was no factual or legal basis upon which to grant the motion to dismiss.

The attached order to show cause sets forth reasons why the JTA's alleged policy of restricting membership to certificated employees does not require dismissal of the petition. For identical reasons, the CTA's membership restriction likewise does not require dismissal of the petition. Indeed, because the CTA is merely an affiliate of the JTA and not seeking to become the exclusive representative,² its membership requirements are even

²Board decisions have clearly indicated that the legal status of an affiliate is not equivalent to that of the exclusive representative. In Washington Unified School District (1985) PERB Decision No. 549 the Board noted "that the mere affiliation of the local organization with CTA was insufficient to make CTA the exclusive representative...." The Board cited Fresno Unified School District (1982) PERB Decision No. 208, where it had

less germane to the validity of this decertification petition than are the membership requirements of the JTA.

The CSEA also reiterated its argument that sufficient facts exist to demonstrate that teachers in the Jamestown Elementary School District supervise classified employees, precluding the JTA from representing both teachers and classified employees. The CSEA argues that a formal hearing is necessary to elucidate the relationship between the teachers and classified employees. However, as noted in the order of December 7, PERB has held as a matter of law that teachers are not supervisors, therefore, a hearing to take evidence on that issue would serve no valid purpose.

Accordingly, the CSEA having failed to show sufficient cause why its motion to dismiss should not be denied, the motion to dismiss the decertification petition is hereby denied.

Investigation of the decertification petition has established that the CSEA was certified as the exclusive representative on June 11, 1986, and that no written agreement currently exists between the Jamestown Elementary School District and the CSEA. This investigation has resulted in the administrative determination that the limitations expressed in PERB regulation 32776(b) do not exist in this case. The

concluded that the affiliate of the exclusive representative

could not request or be required to participate in the statutory impasse procedures. Therefore, it cannot be held liable for a violation of subsections 3543.5(c) or (d), which obligate only the exclusive representative.

decertification petition is therefore determined to be timely filed. Further, review of the proof of support submitted by the JTA in this case has resulted in the administrative determination that it is sufficient to meet the requirements of regulation 32770(b)(2).

Because the requirements for a decertification petition have been met, an election shall be conducted to determine the organization, if any, to be certified as the exclusive representative of the unit of classified employees. A PERB representative will be contacting the parties shortly to discuss the mechanics of the election.

Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision (PERB regulation 32360). To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Members, Public Employment Relations Board
1031 18th Street, Suite 200
Sacramento, CA 95814-4174

A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (regulation 32135). Code of Civil Procedure section 1013 shall apply.

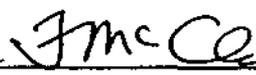
The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (regulation 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justification for the request (regulation 32370).

If a timely appeal is filed, any other party may file with
«
the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (regulation 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Los Angeles Regional Office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see regulation 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Dated: January 3, 1989



Charles F. McClamma
Labor Relations Specialist

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

Jamestown Elementary School District,)
Employer,) Case No. S-D-118
) (S-R-807)
and)
)
Jamestown Teachers Association/CTA/NEA,)
Employee Organization,) ORDER TO SHOW
) CAUSE
and)
)
California School Employees Association)
and its Tuolumne Chapter 276,)
Employee Organization.)
_____)

On September 19, 1988, the above-referenced decertification petition was filed with the Public Employment Relations Board (PERB) by the Jamestown Teachers Association/CTA/NEA (JTA) pursuant to PERB regulation 32770.¹ The JTA is seeking to become the exclusive representative of an established unit of classified employees represented by the California School Employees Association and its Tuolumne Chapter 276 (CSEA).

The CSEA filed a motion to dismiss the petition on October 11, 1988, alleging that the JTA is not an employee organization within the meaning of the Educational Employment Relations Act (EERA).² CSEA further alleges that the JTA currently represents the supervisors of the classified employees and, therefore, the

¹PERB' PERB's regulations are codified at title 8 of the Administrative Code, commencing at section 31001.

²EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code, unless otherwise specified.

JTA is precluded from also representing the classified employees by Government Code section 3545(b)(2).³

Central to the CSEA's allegation concerning the JTA's status as an employee organization is the CSEA's assertion that the constitution and by-laws of the JTA and its affiliate, the CTA, prohibit non-certificated employee membership. According to the CSEA, the classified employees which JTA here seeks to represent will be unable to vote on the use of dues, will be ineligible to hold elective office in either the JTA or the CTA, and will, therefore, be "dominated and totally controlled by the Jamestown Teachers Association, and the California Teachers Association." CSEA argues that this exclusion and consequent domination of these classified non-members violates Government Code section 3543, which provides, in part, that "...employees shall have the right to form, join and participate in the activities of employee organizations." Although unstated by the CSEA, the implied conclusion to its syllogism is that an entity which denies employees such rights cannot be an employee organization within the meaning of the EERA.

³The provision reads, in pertinent part, as follows:

(b) In all cases:

.
(2) Except as provided in subdivision (c), 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.

The CSEA cites to neither PERB nor National Labor Relations Board(NLRB) decisions in support of its contention that the JTA is not an employee organization.⁴ The CSEA does note, however, that Congress enacted the Landrum-Griffin Act, one of the essential purposes of which was the strengthening of internal union democracy.

The lead case in the application of the term "employee organization" is State of California (Department of Developmental Services) (1982) PERB Decision No. 228-S, in which the Board found it "unnecessary for a group of employees to have a formal structure, seek exclusivity, or be concerned with all aspects of the employment relationship in order to constitute a statutory labor organization." The Board observed that the NLRB, when faced with the same issue, focused upon "whether the group has, as a central purpose, the representation of employees on employment-related matters." Having filed a decertification petition pursuant to Board regulations along with proof of support, the JTA has evinced such a central purpose, and therefore, meets the test stated in Developmental Services.

⁴The CSEA anticipates that the JTA will seek to apply the Board's decision in Redlands Unified School District (1982) PERB Decision No. 235, and argues that it is factually distinguishable from this case. Redlands concerns the question of the supervisory status of teachers, and thus is highly relevant to the consideration of the CSEA's other point, i.e., that the JTA is improperly seeking to represent employees who are supervised by employees whom it already represents. It provides no guidance on the question of whether the JTA is an employee organization.

While Developmental Services is the Board's clearest pronouncement on the meaning of the term "employee organization," Developmental Services dealt with markedly different facts in key respects. First, in Developmental Services the organization was in its formative stage and lacked formal structure. Here, the JTA is a fully developed organization with a constitution, officers, and affiliated organizations. Further, in Developmental Services there was no issue concerning whether the individuals proposed to be represented had membership rights. Nevertheless, Developmental Services suggests that it is the organization's purpose, not the content of its constitution and by-laws which will determine its status as an employee organization. Developmental Services provides no basis upon which to conclude that the extent to which employees are entitled to participate in the internal functions of the organization is relevant to, much less dispositive of, the question of the status of that organization.

Although not directly on point, the Board's decision in Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106, is highly instructive because it addresses two issues which are implicit to the question raised by the CSEA here: The first is the obligation imposed upon the employee organization to fairly represent all members of a bargaining unit; and the second is the right of an employee organization to control its own internal affairs.

Kimmett involved, in part, the question of whether the employee organization breached its duty of fair representation by

holding monthly membership meetings at times at which certain members were unable to attend because of conflicting working hours. In concluding there was no breach of the duty of fair representation, the Board looked to whether the activities of the organization "have a substantial impact on the relationships of unit members to their employers," Kimmett at p.8, and noted that

[t]he duty of fair representation implies some consideration of the views of various groups of employees and some access for communication of those views, but there is no requirement that formal procedures be established.

Kimmett at p.11(footnote omitted).

In Kimmett the Board concluded that it "must decide whether employees have any rights under sections 3540 and 3543 to have an employee organization structured or operated in any particular way." Kimmett at p.15. Section 3540 recognizes "the right of public school employees to join organizations of their own choice." Section 3543 states:

Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation....

It is the latter provision upon which the CSEA chiefly relies for support of its argument. What the Board said concerning the effect of these provisions is, therefore, especially pertinent:

Read broadly, these sections could be construed as prohibiting any employee conduct which would prevent or limit employee's participation in any of its activities. The internal organization structure could be scrutinized as could the conduct of elections for union officers to ensure conformance with an idealized participatory standard. However laudable such a result might be, the Board finds such intervention in union affairs to be beyond the legislative intent in enacting

the EERA....We cannot believe that by the use of the phrase "participate in the activities of employee organizations... for the purpose of representation on all matters of employer-employee relations" in section 3543, the Legislature intended this Board to create a regulatory set of standards governing the solely internal relationship between a union and its members. Rather, we believe that the Legislature intended in the EERA to grant and protect employees' rights to be represented in their employment relations by freely chosen employee organizations.

Kimmett at pp.15-17 (footnote omitted). The Board clearly indicated that section 3543 was intended to be a grant of the right of employees to have a free choice in choosing their representative and not a limitation on the nature of such representative.

As previously noted, the second ground for the CSEA's motion to dismiss is its contention that because the JTA currently represents teachers, and because teachers supervise classified employees, the JTA may not also represent the classified employees because to do so would violate section 3545(b)(2).

The issue as to whether classroom teachers are supervisors was decided by the Board in Redlands Unified School District (1982) PERB Decision No. 235a. In Redlands the Board said that teachers do perform supervisory functions as outlined by section 3540.1(m) but found

that such authority was exercised incidentally to the performance of teachers' professional duties, and not as agents of the employer. Thus, as a matter of law, we [hold] teachers not to be supervisors of aides, based upon our review and endorsement of a well-established line of cases decided by the National Labor Relations Board.

Redlands at p.3 (citations omitted).

The CSEA contends that the facts in this case can be distinguished from those in Redlands. CSEA argues that the teachers sit on interview panels considering classified applicants and effectively recommend the hiring and firing of classified employees. Even if the CSEA could demonstrate that teachers have a substantive role in hiring and firing classified employees, such facts would require the same result. Redlands stands for the proposition that, while teachers may perform supervisory duties as envisioned by section 3540.1(m), the authority is not exercised in the interest of the employer, but is part and parcel of a teacher's professional duties. Because teachers, as a matter of law, are not supervisors, the possibility of a violation of section 3545(b)(2) does not exist.

The CSEA has failed to allege facts that would, even if true, demonstrate that the JTA is not an employee organization, or that the JTA is seeking to represent employees who are supervised by employees already represented by the JTA. Further, a preliminary investigation has revealed that, as to the CSEA's first point, the JTA has voted to extend membership rights to classified employees. If such were proven to be the case, the CSEA's argument on that issue would be moot.

In light of the above, CSEA is afforded the opportunity to SHOW CAUSE by facts and legal argument why its motion to dismiss the decertification petition should not be denied. Factual assertions by CSEA must be supported by declarations under penalty of perjury, by witnesses with personal knowledge, and

should indicate that the witness, if called, could competently testify about the facts asserted. If the facts asserted are reliant on a writing, the writing must be attached to the declaration and authenticated therein. CSEA's statement and supporting materials must be filed with PERB's Los Angeles Regional Office, 3530 Wilshire Blvd., Suite 650, Los Angeles, CA 90010-2334, no later than December 21, 1988. Service and proof of service pursuant to PERB regulations are required.

Dated: December 7, 1988

Charles F. McClamma
Labor Relations Specialist