

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SACRAMENTO CITY TEACHERS ASSOCIATION,)
CTA/NEA,)
Charging Party,) Case No. S-CE-1566
v.) Administrative Appeal
SACRAMENTO CITY UNIFIED SCHOOL)
DISTRICT,) PERB Order No. Ad-252
Respondent.) March 4, 1994

DENNIS MAH and BOWLING GREEN CHARTER)
SCHOOL,)
Applicants for Joinder.)

Appearances: California Teachers Association by Diane Ross, Attorney, for Sacramento City Teachers Association, CTA/NEA; Kay & Stevens by M. Carol Stevens, Attorney, for Sacramento City Unified School District; Griffin & Cochrane by Nancy C. Cochrane, Attorney, for Dennis Mah and Bowling Green Charter School.

Before Blair, Chair; Carlyle and Garcia, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Dennis Mah (Mah) and Bowling Green Charter School (Bowling Green) of an administrative law judge's (ALJ) denial of an application for joinder of party.

BACKGROUND

This case began on July 21, 1993,¹ when the Sacramento City Teachers Association, CTA/NEA (Association) filed an unfair practice charge with PERB against the Sacramento City Unified School District (District). The allegations of the charge grew

¹All dates herein refer to 1993, unless otherwise indicated.

out of activities connected to the establishment of a charter school. After an investigation by PERB's Office of the General Counsel, a complaint issued on October 28, alleging violations of section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).² The complaint generally alleges that in the spring of 1993 the District, through its agent Bowling Green Elementary School Principal Mah, negotiated directly with employees over matters within the scope of bargaining and covered by the collective bargaining agreement between the District and the Association. In addition, it alleges that the District unilaterally changed policies covering transfer rights, student-to-teacher ratio, use of volunteers and the evaluation program for teachers.

²EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

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

On November 23, Mah filed an application for joinder as an individual and as a representative of the Bowling Green Steering Committee. After reviewing the application for joinder and the oppositions filed by both the Association and the District, the ALJ denied the application on December 10. On December 30, Mah sought appeal of that order pursuant to PERB Regulation 32200.³ The ALJ issued an order certifying this appeal to the Board on January 10, 1994.

DISCUSSION

Mah filed his application for joinder pursuant to PERB Regulation 32164 arguing that, as representative of the staff of the charter school and author of the charter, he has a substantial interest to protect which is different from the

³PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32200 reads:

A party may object to a Board agent's interlocutory order or ruling on a motion and request a ruling by the Board itself. The request shall be in writing to the Board agent and a copy shall be sent to the Board itself. Service and proof of service pursuant to section 32140 are required. The Board agent may refuse the request, or may join in the request and certify the matter to the Board. The Board itself will not accept the request unless the Board agent joins in the request. The Board agent may join in the request only where all of the following apply:

- (a) The issue involved is one of law;
- (b) The issue involved is controlling in the case;
- (c) An immediate appeal will materially advance the resolution of the case.

interests of the Association or District. PERB Regulation 32164(a) reads:

Any employee, employee organization or employer may file with the Board agent an application for joinder as a party in a case. Service and proof of service of the application pursuant to section 32140 are required.

An employee is defined in EERA section 3540.1(j) as:

[A]ny person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

Mah is employed as a principal in the District and is described in the complaint as an agent of the District. The collective bargaining agreement and a declaration of the District interim superintendent both describe a principal as a management employee. In Mah's response to the District and the Association's oppositions to his application for joinder, he asserts that he is an "employee," but does not provide any factual basis for this determination. Based on the information contained in the record before us, Mah is a management employee and lacks standing to file a request for joinder. Accordingly, his application is denied.

However, PERB Regulation 32164(d)⁴ allows the Board, on

⁴PERB Regulation 32164(d) states:

The Board may order joinder of an employer, employee organization or individual, subject to its jurisdiction, on application of any party or its own motion if it determines that:

its own motion, to order joinder of individuals in specific situations. Charter schools are a relatively new innovation in California and this is the first case involving a charter school that has come before the Board. Important questions are certain to arise with respect to the relationship of EERA to the charter schools' legislative scheme.

Mah has made a compelling argument that he represents certain interests at Bowling Green. Due to the unique character of this charter school and the alleged violations in the unfair practice complaint, these interests are related to the subject of this unfair practice charge. Mah is situated so that the disposition of this case in his absence may, as a practical matter, impair or impede his ability to protect that interest. Accordingly, the Board, on its own motion, orders that Mah be joined as a party to this case to insure all interests are represented.

(1) In the absence of the employer, employee organization or individual, as a party, complete relief cannot be accorded; or

(2) The employer, employee organization or individual has an interest relating to the subject of the action and is so situated that the disposition of the action in their absence may:

(A) As a practical matter impair or impede their ability to protect that interest; or

(B) Leave any of the parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of said interest.

ORDER

Mah's appeal to an order denying application for joinder of party is GRANTED and he is hereby afforded party status in Case No. S-CE-1566. The administrative law judge is hereby ordered to grant the party status consistent with this Decision.

Members Carlyle and Garcia joined in this Decision.