

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JEFFERSON ELEMENTARY SCHOOL DISTRICT)
Employer,)
and)
JEFFERSON CLASSROOM TEACHERS)
ASSOCIATION,)
Employee Organization,)
and)
JEFFERSON FEDERATION OF TEACHERS,)
LOCAL 3267, AFT, AFL-CIO,)
Employee Organization,)
APPELLANT.)

Case Nos. SF-D-12; SF-D-41

PERB Decision No. 135

June 19, 1980

Appearances: William F. Kay, Attorney for Jefferson School District;
Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for
Jefferson Federation of Teachers, Local 3267 AFT, AFL-CIO;
Kirsten L. Zerger, Attorney for Jefferson Classroom Teachers
Association.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

Petitioner Jefferson Federation of Teachers, Local 3267,
AFT/AFL-CIO (hereafter AFT) has requested that two Board employees
be directed to testify at a hearing to determine objections to a
decertification election held in the Jefferson Elementary School
District (hereafter District) on May 6, 1980, filed by the

Jefferson Classroom Teachers Association, CTA/NEA (hereafter CTA), the incumbent exclusive representative. CTA alleges, inter alia, that one of the Board employees misled certain voters in the course of furnishing information to a District teacher during a telephone conversation on election day and that the other Board employee permitted certain claimed election conduct irregularities at a polling site to go uncorrected.

Board rule 32150(e)¹ provides:

Upon a finding of the Board itself that a Board agent or a Board document is essential to the resolution of a case and that no rational decision of the Board can be reached without such agent or document the Board itself shall willingly produce the agent or document if subpoenaed to do so by any party to the dispute.

As I understand this rule, I am required to decide whether the hearing officer can make a rational determination of the issues before him without the testimony of either or both of the Board employees involved. The problem I face, beyond that of speculating on the hearing officer's ability to render a rational decision, is created by my obligation to abide by a rule of this agency and my concurrent obligation to refrain from deciding the merits of a case not before the Board itself. I see no way to determine whether a rational decision can be issued without reaching the merits on the basis of the record to date.

¹Codified at California Administrative Code, Title 8, section 32150(e).

By deciding these matters one way or the other, I would, in effect, at least be pointing the hearing officer in the direction that I, myself, would take on the merits. This is true whether the rule requires that I resolve the subpoena request based on my ability to issue a "rational decision" or on my belief that the hearing officer can do so.

In brief, I am convinced that rule 32150(e) is unworkable. Yet, I am required to abide by its mandate. Faced with this dilemma, I would require the appearance of both employees as requested by AFT. There were no witnesses to the telephone statement allegedly made by Ms. Gelt, one of the Board employees. Only Ms. Gelt, therefore, can speak to the matter.

In view of my difficulty in dealing with the rule, I find no basis for denying the request for a subpoena compelling the appearance of Ms. Martinez, the Board agent, who allegedly permitted or failed to correct polling place irregularities claimed by CTA, although witnesses to the circumstances did appear and testify.

/

Member Gonzales concurrence begins on page 4.

Raymond J. Gonzales, Member, concurring:

I consider the testimony of PERB's agents essential to building a complete record on which the Board can reach a rational decision. Therefore, pursuant to PERB rule 32150 (Cal. Admin. Code, tit. 8, sec. 32150), I would issue the subpoenas requested by the Jefferson Federation of Teachers.

~~Raymond~~ J. Gonzales Member

ORDER

It is ORDERED that Public Employment Relations Board employees Gelt and Martinez appear and testify in the matter of objections to the results of the decertification election conducted in the Jefferson Elementary School District to which the Jefferson Federation of Teachers, Local 3267, AFT/AFL-CIO and the Jefferson Classroom Teachers Association, CTA/NEA were parties.

PUBLIC EMPLOYMENT RELATIONS BOARD

Member Moore's dissent begins on page 5.

Barbara D. Moore, Member, dissenting:

I find that neither Board agent Gelt nor Board agent Martinez are essential to the resolution of the case and that there is sufficient evidence in the record from which a rational decision can be reached. Therefore, pursuant to PERB Rule 32150(e), I would recommend that the Board continue its prior refusal to issue the subpoenas in question.

By: Barbara D. Moore, Member