

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD

ORDER

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|--|---|---------------------|
| In the Matter of the Administrative Appeal |) | |
| |) | |
| TEMPLE CITY UNIFIED SCHOOL DISTRICT, |) | |
| Employer, <u>APPELLANT</u> |) | |
| |) | |
| and |) | Case No. LA-R-97 |
| |) | |
| TEMPLE CITY EDUCATION ASSOCIATION, |) | |
| Employee Organization |) | EERB Order No. Ad-9 |
| |) | |
| and |) | |
| |) | |
| TEMPLE CITY AMERICAN FEDERATION OF |) | |
| TEACHERS, |) | |
| Employee Organization |) | |
| |) | |
| |) | |

It is the determination of the Educational Employment Relations Board that oral argument not be taken in the above-captioned matter.

The decision of the Los Angeles Regional Director in the above-captioned matter, denying the district's request that the designation "No Exclusive Representation" appear on the ballot, is sustained by the Board itself. The Board finds that the Regional Director has correctly interpreted Section 3544.7(a) of the Act.

The Board itself further denies the appellant's request to stay the pending election.

Educational Employment Relations Board

by



STEPHEN BARBER
Executive Assistant to the Board
5/5/77

Jerilou H. Cossack, Member, dissenting:

On March 10, 1977, the superintendent of the Temple City Unified School District (District) requested of the Los Angeles Regional Director that

the ballot to be used in the forthcoming representation election among the District's certificated employees contain the phrase "no exclusive representation" instead of the phrase "no representation." The Regional Director denied the request, relying on a literal reading of the language of Government Code Section 3544.7. The denial was upheld by the Executive Director. The District then filed an administrative appeal with the Board itself. The majority has sustained the Regional Director. I dissent.

Unlike many other statutes of a similar nature, the EERA permits employees to join and be represented by employee organizations, even where the employees have not chosen to have an exclusive representative. Section 3543.1(a) of the Act gives employee organizations the "right to represent" their members in the absence of an exclusive representative. Section 3543.1(d) permits employee organizations to have dues deductions absent an exclusive representative. The EERA thus recognizes the right of organizations to exist and participate in employer-employee relations where there is no exclusive representative. The majority's narrow, literal interpretation of the "no representation" language of Section 3544.7, in my opinion, frustrates this intent.

Rules of construction require looking to legislative intent and purpose, spirit, objectives and scheme of legislation when interpreting statutory language. The purpose of the act cannot be sacrificed through a literal interpretation of its language.^{1/} Select Base Materials, Inc. v. Board of

^{1/}

One incongruous result from a strict reading of Section 3544.7 would occur in an election in which two employee organizations appeared on the ballot and no choice gained a majority vote in the initial balloting, thus necessitating a run-off election. Section 3544.7 states, "There shall be printed on each ballot the statement: 'no representation.'" Where two employee organizations finished first and second on the initial balloting and "no representation" finished third, a literal reading of Section 3544.7 would require that "no representation" also appear on the run-off ballot, thus rendering the run-off balloting a repeat of the initial balloting. I doubt if that was intended.

Equalization, 51 Cal.2d 640 (1959); Moyer v. Workmen's Comp. Appeals Board, 110 Cal.Rptr. 144, 10 Cal.3d 222 (1973); Cossack v. Los Angeles, 114 Cal.Rptr. 460, 11 Cal.3d 726 (1974).

The Legislature wanted to be sure that employees had the right and opportunity to oppose exclusive representation in general or exclusive representation by the named employee organizations appearing on the ballot. The substitution offered by the District is reasonable and, in fact, more accurate than the literal wording supported by the majority.

By: Jerilou H. Cossack, Member

Dated: May 5, 1977

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3550 Wilshire Boulevard, Suite 1708
Los Angeles, California 90010
(213) 736-3127



March 15, 1977

Dr. Allen E. Rice
Superintendent
Temple City Unified School District
9516 East Longden Avenue
Temple City, CA 91780

Re: LA-R-97

Dear Dr. Rice:

Responding to your letter of March 10, 1977 concerning the District's criteria necessary for a directed election, I have several comments to make.

We have a large number of elections to conduct before the end of this school year and we are scheduling those in which there is no unit dispute for early May. The employee organizations have indicated that any Tuesday, Wednesday or Thursday in May would be acceptable. If you wish to indicate a date that would be preferable in line with this and can let me know no later than March 21, I will consider it.

Concerning your Item 2: We do not "make the sole determination as to who shall be eligible to vote". The District is responsible for providing the list of eligible voters as set forth in EERB Rule 33530. If employees cast a challenged ballot because their names are not on the eligible voter list, we will attempt to resolve those challenges at the time of the ballot count and any unresolved challenges will be handled through a hearing process only if such challenges are determinative.

Concerning your Item 5: EERB Rule 33580 provides for seven calendar days from receipt of the tally of ballots for objections to be filed and Rule 33590 sets forth the grounds for filing such objections.

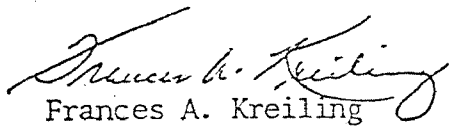
Concerning your Item 6: Section 3544.7(a) of the EERA specifies that the wording on the ballot shall be "no representation" so that your

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request for "No Exclusive Representation" is not possible.

I will be issuing the order for an election on or about March 22, 1977.
Any input you may wish to provide about a desirable polling site, hours,
etc. will be welcome.

Very truly yours,


Frances A. Kreiling
Regional Director

FAK:an