STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

OAKLAND UNIFIED SCHOOL DISTRICT, Employer, and UNITED TEACHERS OF OAKLAND, LOCAL 771, Employee Organization, APPELLANT, and BARBARA BISSELL, Individual Employee, APPELLANT, and OAKLAND EDUCATION ASSOCIATION, CTA/NEA, Employee Organization.	Case Nos. SF-OS-34 SF-OS-37 SF-OS-43 PERB Order No. Ad-48 Administrative Appeal October 19, 1978

Appearances: Michael Sorgen, Legal Advisor for Oakland Unified School District; Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for United Teachers of Oakland, Local 771; Francis R. Giambroni, Attorney (White, Giambroni & Walters) for Oakland Education Association, CTA/NEA.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members.

DECISION

This is an administrative appeal from a determination by a regional director of the Public Employment Relations Board (hereafter PERB or Board) that the United Teachers of Oakland, Local 771 (hereafter UTO), and an employee of the

Oakland United School District (hereafter District), Ms. Barbara Bissell, do not have standing to file objections to certain organizational security elections conducted by the Board.

*****

The Board finds that two issues are raised by this appeal:

(1) Is a nonexclusive employee organization a "group of employees" for the purpose of petitioning for rescission of an organizational security agreement?

(2) Is either UTO or Barbara Bissell a "party to the election" and therefore qualified to file objections to the conduct thereof?

FACTS

On February 22, 1978, the District notified PERB that it had received a request from OEA to hold an election to determine whether present employees in two negotiation units[1] of which OEA is the exclusive representative should be required to pay an agency fee to OEA. The request was made pursuant to a provision in the collective negotiations agreement executed

---

[1]The units consist of "unit A," which includes all certificated employees except for children's center teachers, children's center teacher assistants, children's center assistant supervisors, K-12 and children's center substitute teachers, management, supervisory and confidential employees; and "unit B," which includes children's center teachers, children's center teacher assistants and children's center assistant supervisors, excluding K-12 and children's center substitute teachers, management, supervisory, confidential and all other employees. See Oakland Unified School District (3/28/77) EERB Decision No. 15.

between the District and OEA. The provision stated in pertinent part:

> Article 18. Organizational Security.
>
> Employees within a bargaining unit are free to join or not to join the Association. Neither the Association nor the District shall interfere with an employee's choice in this regard....
>
> All newly hired employees are required either to join the Association as a member, or to pay a service fee equal to but not more than the Association's regular dues. The District agrees that the Association may at any time during the period of this Agreement require an election of all employees in the bargaining unit for the purpose of deciding whether the employees of this unit shall be required to join the organization or pay an agency fee. The Association shall give the District at least 30 calendar days written notice of the intent to request the Educational Employment Relations Board to hold the election. (Emphasis added.)

On March 7, 1978, UTO, which was neither recognized by the District nor certified by PERB as the exclusive respresentative within the District, filed a petition for an election to rescind the agency fee arrangement for newly hired employees contained in the above collective negotiation agreement. The petition was filed pursuant to Board rule 34020,[2] which states:

> (a) A group of employees in an appropriate unit may file with the regional office a petition to rescind an existing organizational security arrangement pursuant to section 3546(b) of the Act;

---

[2]Cal. Admin. Code, tit. 8, sec. 34020.

> (b) The petition shall contain the following information:
>
> (1) The name, address and county of the employer;
>
> (2) The name and address of the petitioner's representative;
>
> (3) The name and address of the employee organization which is the exclusive representative of the employees in the unit;
>
> (4) A description of the established unit;
>
> (5) The language of the organizational security arrangement sought to be rescinded;
>
> (6) The effective date and the expiration date of the agreement containing the organizational security arrangement sought to be rescinded;
>
> (7) Proof that at least 30 percent of the employees in the unit desire to rescind the existing organizational security arrangement.
>
> (c) The petitioner shall serve a copy of the petition, excluding the proof of at least 30 percent support, on the employer and the incumbent exclusive representative. A statement of service shall be filed with the appropriate regional office.

UTO's petition was accompanied by proof of at least 30 percent support of employees in the unit for its petition.

On March 9, 1978, the regional director called a meeting between OEA, UTO and the District. The parties reached the following agreement:

> The undersigned hereby confirm and acknowledge that the effect of the organizational security agreement (Article 18) [of the collective bargaining agreement between OEA and the District] regarding both newly hired employees and current employees shall be determined by the outcome of the organizational security vote on April 6, 1978 in Unit A and Unit B. By this clarification Case #SF-OS-37 [UTO's petition] is hereby closed.

On April 6, 1978, the organizational security election was held in the two negotiation units covered by the agreement. Employees in unit A voted by 1048 to 1035, with 10 challenged ballots, to adopt the organizational security clause. Employees in unit B voted 69 to 82, with 2 challenged ballots, not to adopt the clause.

In a letter dated April 12, 1978, UTO and Barbara Bissell filed objections to the latter organizational security election through an attorney. His letter stated that the objections were being filed pursuant to Board rules 33580 and 33590.[3] The objections alleged five instances of "serious irregularity in the conduct of the election."

---

[3]Cal. Admin. Code, tit. 8, sec. 33580 and 33590.

Section 33580 states:

> (a) Within seven calendar days following the receipt of the tally of ballots, any party to the election may file in the regional office objections to the conduct of the election whether or not any challenged ballots are sufficient in number to affect the results of the election.
>
> (b) The objecting party shall serve a copy of its objections on each party to the election. A statement of service shall be sent to the regional office.

Section 33590 states:

> Objections shall be entertained by the Board only on the following grounds:
>
> (a) The conduct complained of is tantamount to an unfair practice as defined in Article 4 of the Act; or
>
> (b) Serious irregularity in the conduct of the election.

In a letter dated April 28, 1978, the regional director dismissed UTO's objections "due to lack of standing of the petitioner." His letter stated that UTO's petition became moot, and its case had been closed, by the March 9 agreement between UTO, OEA and the District. The regional director's letter did not discuss the standing of Barbara Bissell to file objections to the election.

DISCUSSION

This Board has stated that a cornerstone of the collective negotiations model, designed to enhance employer-employee relations,[4] is a stable relationship between the employer and its employees acting through their freely chosen representative.[5] In furtherance of this objective, the Board has consistently held that the employees' representative must be

---

[4]Section 3540 of the Educational Employment Relations Act, Gov. Code sec. 3540 et seq., (hereafter EERA) states in pertinent part:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy....

Hereafter all references are to the Government Code unless otherwise indicated.

[5]Chula Vista City School District (9/18/78) PERB Decision No. 70.

free from unwarranted interference or harassment by rival organizations.[6]

This view is not unique, having been frequently articulated by the National Labor Relations Board, other public agencies and the courts, which review legislation similar to the Educational Employment Relations Act (hereafter EERA) under which this case arises. More significantly, we believe this was clearly the position taken by the California Legislature when it enacted the EERA. Thus, section 3543.1(a)[7] terminates the right of a nonexclusive employee organization to represent its own members once an exclusive representative has

---

[6]Mt. Diablo Unified School District, Santa Ana Unified School District, Capistrano Unified School District (12/30/77) EERB Decision No. 44; Mount Diablo Unified School District (8/21/78) PERB Decision No. 68.

[7]Section 3543.1(a) states:

> Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

been designated. Section 3544.1(c)[8] sets up a limited bar against decertification of the exclusive representative during the term of a collectively negotiated agreement. Section 3544.1(d)[9] establishes a one-year period of exclusivity for an organization which has been granted voluntary recognition by the employer. By rule,[10] PERB extended to certified representatives the same period of

---

[8]Section 3544.1(c) states:

> The public school employer shall grant a request for recognition filed pursuant to Section 3544 unless:
> . . . . . .
> There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement;...

[9]Section 3544.1(d) states:

> The public school employer shall grant a request for recognition filed pursuant to Section 3544 unless:
> . . . . . .
> The public school employer has, within the previous 12 months, lawfully recognized another employee organization as the exclusive representative of any employees included in the unit described in the request for recognition.

[10]Cal. Admin. Code, tit. 8, sec. 33250(b) states:

> The petition shall be dismissed whenever either of the conditions of section 3544.7(b) of the Act exist or if a representation election has been held within the 12 months immediately preceding the filing of the petition.

protection against challenges by rival organizations to their exclusive representative status.

In keeping with this legislative direction, PERB has denied to nonexclusive organizations, once recognition or certification has occurred, the right to process grievances,[11] file a representation-oriented unfair charge,[12] take a member's case to arbitration under a contract provision negotiated between the District and the exclusive representative,[13] or meet and consult with the employer on wages, hours and terms and conditions of employment.[14]

This Board believes there is ample reason to apply this protective principle of exclusivity to the facts at hand.

The exclusive right to represent employees in a designated unit carries with it concomitant obligations and potential liabilities. These include the duty of conducting good faith negotiations, representing employees in grievances and generally speaking to their interests on all matters within the

---

[11]Mount Diablo Unified School District, Santa Ana Unified School District, Capistrano Unified School District, supra, (12/30/77) EERB Decision No. 44.

[12]Hanford Joint Union High School District Board of Trustees (6/27/78) PERB Decision No. 58.

[13]Mount Diablo Unified School District, supra, (8/21/78) PERB Decision No. 68.

[14]San Dieguito Union High School District (9/2/77) EERB Decision No. 22.

scope of representation.[15] In the exercise of these duties, the exclusive representative may not discriminate among employees because of membership or nonmembership in any employee organization and must "fairly represent each and every employee in the appropriate unit"[16] (emphasis added).

---

[15]See sec. 3543.1(a), supra at footnote 5.

Section 3543 states, in pertinent part:

> Any employee may at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

Section 3543.6(c) states:

> It shall be unlawful for an employee organization to:
> . . . . . .
> Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

[16]Section 3544.9 states:

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

The fulfillment of these obligations incontestably imposes a substantial financial burden on the exclusive representative. That the Legislature was aware of this fact is evident from two sections of EERA. Section 3543.1(d)[17] authorizes the deduction of organizational dues from payroll for any employee organization until such time as an exclusive representative is named, at which time only that exclusive representative shall have that right. Section 3546[18] authorizes organizational security arrangements in collective agreements which require nonmembers to pay service fees to the exclusive representative.

---

[17]Section 3543.1(d) states:

> All employee organizations shall have the right to have membership dues deducted pursuant to Sections 13532 and 13604.2 of the Education Code, until such time as an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then such deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

[18]Section 3546 states:

> Subject to the limitations set forth in this section, organizational security, as defined, shall be within the scope of representation.
>
> (a) An organizational security arrangement, in order to be effective, must be agreed upon by both parties to the agreement. At the time the issue is being negotiated, the public school employer may require that the organizational security provision be severed from the remainder of the proposed agreement and cause the organizational security

It is immediately apparent that enactment of the latter provision was to serve two purposes. One was simply to make it possible that employees who benefit from the services performed on their behalf by the exclusive representative be required to share the cost of those services with the organization's members. A second, and closely related purpose, was to provide to the exclusive representative a financial quid pro quo for its statutory obligation of fair representation. We believe underlying both purposes, and particularly the second, is the desire to provide the exclusive representative with the financial stability that is likely to be essential to the responsible performance of its duties and, therefore, to the stability of its relationship with the employer.

Were PERB to encourage rival organizations to attack that financial stability by allowing them to file requests for rescission elections, it would be acting in derogation of the perceived statutory purpose. The Legislature has seen fit to

---

provision to be voted upon separately by all members in the appropriate negotiating unit, in accordance with rules and regulations promulgated by the board. Upon such a vote, the organizational security provision will become effective only if a majority of those members of the negotiating unit voting approve the agreement. Such vote shall not be deemed to either ratify or defeat the remaining provisions of the proposed agreement.

> (b) An organizational security arrangement which is in effect may be rescinded by majority vote of the employees in the negotiating unit covered by such arrangement in accordance with rules and regulations promulgated by the board.

close the main gates of representational activity to nonexclusive employee organizations. It would be an error to open a side door to intruders whose only purpose might be the harassment of their successful competitors.

We are mindful that in so deciding we do not foreclose relief from an organizational security provision opposed by the affected employees. Section 3546(b) was designed for that purpose.

Board Rule 34020 allows a group of employees to file a petition to rescind an existing organizational security agreement. While employee organizations necessarily include groupings of employees, it does not follow that a "group of employees" is synonymous with an "employee organization." An organization may have no members affected by the organizational security agreement, and the statute and PERB rule contemplate that affected employees may initiate the rescission process.

For the foregoing reasons, the Board finds that UTO did not have standing to request a rescission election.

UTO and Ms. Bissell also have filed objections to the organizational election conducted by the regional director. However, the Board further concludes that in the context of organizational security elections under Board rule 34000,[19] a

---

[19]Cal. Admin. Code, tit. 8, sec. 34000, which states:

> (a) Pursuant to section 3546(a) of the Act, an employer may serve written notice on an exclusive representative that a proposed organizational security provision shall be voted upon separately from the remainder of

"party" eligible to file objections to the conduct thereto is the employer or the employee organization that would benefit from the implementation of the organizational security provision. Only the employer has a right under section 3546(a) to cause an election to be held to determine whether the collective negotiations agreement between the employer and the exclusive representative should contain an organizational security agreement. The employer, as petitioner, clearly has

---

the proposed agreement by the members of the unit.

(b) The notice to the exclusive representative shall be made only after agreement has been reached on an organizational security arrangement and prior to ratification of the entire proposed agreement.

(c) The employer shall concurrently send a copy of the notice to the regional office.

(d) The notice shall contain the following information:

(1) The name, address and county of the employer;

(2) The name and address of the employee organization which is the exclusive representative of the employees in the unit;

(3) A description of the unit;

(4) The proposed organizational security arrangement;

(5) The date agreement was reached on the proposed organizational security agreement;

(6) The date agreement was reached on the proposed agreement.

standing to object to alleged irregularities in the conduct of such an election. Further, the exclusive representative which the organizational security clause would benefit similarly has standing to object to alleged irregularities in the conduct of an election.

The Board, however, draws the line at this point, and declines to extend either to nonexclusive employee organizations or to individual employees in the negotiations unit a right to file objections to the conduct of organizational security elections.[20] To permit rival organizations to object to the conduct of organizational security elections would encourage the same mischief that the Board seeks to prevent above in disallowing nonexclusive employee organizations from petitioning to rescind organizational security arrangements in effect between the exclusive representative and the employer.

In addition, to allow individual employees to object to the conduct of organizational security elections could cause

---

[20]The Board takes cognizance of cases decided by the National Labor Relations Board (hereafter NLRB) in analogous areas of law. Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [87 LRRM 2453]. Sweetwater Union High School District (11/23/76) EERB Decision No. 4. In the context of NLRB representation elections, the NLRB has held that the term "party" for the purpose of filing objections to representation elections includes only the employer, the petitioner, and any labor organization whose name appears on the ballot as a choice. See NLRB Casehandling manual, Representation Proceedings, sec. 11392.3; Nashville Corp. (1948) 77 NLRB 145 [21 LRRM 1334]; Celanese Corp. of America (1949) 87 NLRB 552 [25 LRRM 1144]. Also see United Faculty of Florida v. Branson (Fla. Dist.Ct.App. 1977) 350 So.2d 489 [96 LRRM 2948].

endless challenges to valid election results, either because of an employee's personal distaste for mandatory payment, dissatisfaction with the exclusive representative or because of an employee's desire to aide a rival organization in frustrating the exclusive representative's relationships with the employees and the employer. The least consequence of these occurrences would be a substantial delay in the implementation of the organizational security arrangement or an intimidating effect on the use of disputed funds by the exclusive representative while the objections are being resolved by hearing and appeal. The Board firmly believes that these consequences are to be avoided.

The Board therefore concludes that in the context of organizational security elections arising under Board rule 34000, a "party" eligible to file objections is either the employer or the exclusive representative favored by the organizational security clause in question. Accordingly, we find that neither UTO nor Ms. Bissell is a "party" for the purpose of filing objections to the election in this case.

Since there was no valid petition to rescind an organizational security arrangement under Board rule 34020 present in this case, the Board reserves ruling on the question of who may object to the conduct of elections to rescind organizational security elections held under that rule.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

(1) The United Teachers of Oakland did not have standing to petition for rescission of the organizational security arrangement in effect between Oakland Unified School District and Oakland Education Association, CTA/NEA.

(2) The regional director's determination that United Teachers of Oakland and Ms. Barbara Bissell were without standing to file objections to the organizational security election conducted by the Board is sustained.

(3) The results of the organizational security election shall be certified by the regional director in accordance with the tally of the ballots cast.

By: Harry Gluck, Chairperson Raymond J. Gonzales, Member

Jerilou Cossack Twohey, Member

STATE OF CALIFORNIA — EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post St., 9th Floor
San Francisco, California 94108
(415) 557-1350

April 28, 1978

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Stewart Weinberg
Van Bourg, Allen, Weingerg & Rogers
45 Polk Street
San Francisco, CA 94102

Re: Organizational Security Election, Oakland Unified School District
Case No. ~~SF-OS-34~~, SF-OS-37, 0543

Dear Mr. Weinberg:

On April 13, 1978 we received your objections to the conduct of the April 6, 1978 organizational security election which was held in the certificated unit of the Oakland Unified School District.

The election was conducted pursuant to a request of the District made to PERB on February 17, 1978 and was not established pursuant to a petition (SF-OS-37) filed by the United Teachers of Oakland on March 7, 1978. There were conflicting views by the Oakland Education Association and the United Teachers of Oakland regarding the coverage of the election. Therefore, a meeting was held at PERB offices on March 9, 1978. At this meeting, it was the stated position of the Oakland Education Association that all employees were covered by the election which was requested on February 17 by the District. This would include newly hired employees which were the subject of the United Teachers of Oakland March 7 petition.

With that understanding, the United Teachers of Oakland petition became moot and Case No. SF-OS-37 was closed by the mutual agreement of Oakland Education Association, United Teachers of Oakland and the District. The United Teachers of Oakland therefore did not gain standing to become a party to the April 6 election pursuant to the March 7 petition. The objections are therefore dismissed due to lack of standing of the petitioner. The results of the election shall be certified, pending an appeal to this Administrative Ruling.

An appeal to this decision may be made within ten calendar days of service of this action, stating the facts upon which the appeal is based and filed with the Executive Director, Mr. Charles Cole, at 923 12th Street, Suite 201, Sacramento, California 95814. Copies of any appeal must be served upon all other parties to this action with an additional copy to the San Francisco Regional Office.

Very truly yours,

James W. Tamm
Regional Director

JWT:rcd
Enclosures

cc: Oakland Education Association
Oakland Unified School District