

Skills Center unit. The regular unit was certified by the Board in Peralta Community College District (1978) PERB Decision No. 77¹ (hereafter Peralta No. 77).

On March 27, 1986, PFT filed a unit modification petition seeking to consolidate the two units (as well as a third group of Accelerated Instructional Program teachers). An amended petition was filed on April 11. On March 31, 1986, the Edith M. Austin Skills Center/CTA/NEA (CTA) filed a decertification petition seeking to represent the Skills Center teachers. The investigation of the decertification petition raised issues which were deemed appropriate for determination by an administrative law judge (ALJ). The unit modification petition was held in abeyance. Before a determination was made by the ALJ, CTA filed a second decertification petition on July 3, 1986, which was timely filed and demonstrated

¹The Board, determined that section 3545(b)(1) of the Educational Employment Relations Act (EERA) (EERA is codified at Government Code section 3540, et seq.) created a "rebuttable presumption" in favor of the inclusion of all classroom teachers in one unit. It then found the presumption to have been rebutted, since the Skills Center teachers lacked a community of interest with the other teachers. Section 3545(b)(1) states:

In all cases:

A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

sufficient proof of support. The first decertification petition was then dismissed as moot.

Concluding that giving either the unit modification or the decertification petition precedence would not adequately address the rights of all parties, the Regional Office ordered a self-determination election in the Skills Center unit. The election was conducted on April 3, 1987, and the ballots were impounded. The ballot read as follows:

- (1) Do you desire to be included with all certificated employees in a District-wide bargaining unit represented by the Peralta Federation of Teachers, Local 1603, CFT/AFT, AFL-CIO?

(Yes/No)

- (2) In the event that a majority of the eligible voters do not wish to be included in the District-wide bargaining unit, do you wish to be represented in the East Bay Skills Center unit by:

- (a) PFT
- (b) CTA

(c) No representative

The administrative decision below was based on the premise that either a consolidated unit or the continuation of the separate units would be appropriate under the circumstances of this case. This was based on two conclusions: 1) the unit modification petition states a prima facie case of changed
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circumstances sufficient to warrant reversal of the Board's

²The Regional Office, in effect, made a finding that the petition is meritorious based on the failure of the opposing

findings in Peralta No. 77, and 2) PERB Regulation 32770³ requires only that a decertification petition seek to decertify an "established" unit, i.e., such a petition does not require any inquiry into the continued appropriateness of the established unit.

The Regional Office's attempt to effectively combine the processing of the two petitions through a self-determination election was motivated by the concern that either petition, if viewed in isolation, was sufficient to warrant its further processing, while allowing either petition to take precedence could (depending on the outcome of the hearing or election) render the other invalid.

On appeal, PFT contends that it was improper to hold a self-determination election. Instead, PFT argues that the Board must determine as a threshold matter the continued appropriateness of separate units of teachers. Thus, PFT

parties to contest the allegations of changed circumstances. Presumably, if the unit modification petition went forward, it would be the Regional Office's position that no facts would be in dispute. Thus, no hearing would be necessary.

³PERB Regulations are codified at California Administrative Code, title 8, part III, section 31001 et seq. Regulation 32770 states, in pertinent part:

(a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office utilizing forms provided by the Board (emphasis added).

claims that the unit modification petition must be processed first. If the unit modification petition is granted, PFT argues, then the decertification petition would no longer be filed for an "established" unit and should therefore be dismissed. Implicit in this argument is that the "Peralta presumption" (as established in Peralta No. 77) does not logically allow for circumstances where either the consolidated unit or separate unit configuration could be "appropriate." PFT also claims that the administrative decision ignored the Accelerated Instructional Program teachers sought to be added to the regular unit.

DISCUSSION

While we believe it may be proper for employees to choose between two otherwise appropriate unit configurations,⁴ that is not the situation presented in this case. We do not agree with the finding of the Regional Office that the allegations of changed circumstances in the unit modification petition were undisputed. In both its original response to the petition on April 23, 1986, and its October 15, 1986 response to the

⁴This is in accord with precedent in the private sector. See, e.g., NLRB v. Underwood Machinery Co. (1st Cir. 1949) 179 F.2d 118 [25 LRRM 2195] (National Labor Relations Board (NLRB) did not improperly delegate unit determination to a group of employees where either of two unit configurations were found to be otherwise appropriate and employee preference was the factor used to "tip the scales"); PSA v. NLRB (9th Cir. 1978) 587 F.2d 1032 [100 LRRM 2566] (NLRB abused its discretion by allowing employees to vote on whether to join an existing unit where consideration of other criteria reflected that such a a configuration would be inappropriate).

Regional Office's September 18, 1986 solicitation of argument, CTA disputes the allegations of changed circumstances, albeit, in conclusory fashion. In its response to PFT's exceptions, CTA claims that it had no effective opportunity to respond to the unit modification petition's factual allegations (i.e., no hearing) and, while not objecting to the self-determination election, CTA expressly reserves the right to dispute the allegations of changed circumstances. The Peralta Community College District's (District) filings⁵ have focused on policy reasons for processing the decertification petition first and claimed that the continued appropriateness of a separate Skills Center unit was irrelevant. Given these responses, we find that the record cannot be fairly read to reflect that the allegations of changed circumstances are undisputed.

Having concluded that the allegations of changed circumstances remain just that, allegations, we find that the inclusion of question no. 1 on the ballot impermissibly delegated to employees the determination of the appropriate unit configuration, a matter, when in dispute, to be determined exclusively by this agency.⁶ While the Board may allow for

⁵We consider only the District's filings submitted prior to PFT's appeal of the administrative decision. The District's response to the appeal was not timely filed and is, therefore, not considered here. The District requests that its filing be accepted, but it puts forth no grounds for excusing the untimely filing.

⁶Section 3541.3 states, in pertinent part:

stipulated unit configurations, it must make a formal determination as to a proposed unit (or modification thereof) where the appropriateness of the unit is in dispute.

Having determined that the competing claims represented by the unit modification and decertification petitions cannot be resolved through a self-determination election such as that devised by the Regional Office, we now turn to the critical issue in this case – which petition should take precedence?

The merits of the unit modification petition have yet to be properly determined. Absent such a determination by this agency, the present unit configuration is presumptively appropriate. Thus, the decertification petition was properly filed in an "established" unit (as determined in Peralta No. 77⁷). Therefore, we now focus upon the policy considerations implicated in giving priority to either the decertification or unit modification petition.

The Board shall have all of the following powers and duties:

- (a) To determine in disputed cases, or otherwise approve, appropriate units.

⁷We do not address the propriety of the Board's decision in Peralta No. 77. It is relevant here only insofar as it represents a prior adjudication which established the existing unit configurations. Our decision today does not require us to necessarily agree or disagree with the Board's approach in Peralta No. 77. Should we differ with the Board's prior interpretation of section 3545(b)(1), we shall reach that issue in another case when the matter is squarely before us.

We conclude that a decertification petition which is properly filed in an established unit and contains the requisite proof of support should be given priority over a unit modification petition, so long as no formal determination on the merits of the unit modification petition has been made at the time the decertification petition is filed. This approach has precedent in the private sector. NLRB Rules and Regulations, at 29 CFR, section 102.60(b) states:

A petition for clarification of an existing bargaining unit, or a petition for amendment of certification, in the absence of a question concerning representation, may be filed by a labor organization or by an employer. . . (emphasis added).

While a balance must be struck between issues of unit clarification and questions concerning representation, preservation of the integrity of the statutory scheme of the EERA can best be achieved by recognizing the paramount right of public school employees to select an exclusive representative of their own choice. The free choice of an exclusive representative is a cornerstone of the EERA⁸, as it is in all

⁸The EERA begins by stating, at section 3540:

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, . . .

analogous collective bargaining schemes. Not only is free choice crucial to protecting the individual rights bestowed by the statute, but it is also critical to stable and efficient labor relations. For collective bargaining to work, an exclusive representative must fairly and effectively represent the interests of the members of the bargaining unit. The best guarantee of such a result is the free and democratic selection of such representatives by unit members. Further, giving precedence to a unit modification petition when a valid decertification petition has been filed carries with it the potential for abuse. An incumbent union, when threatened by a decertification effort, need only file a unit modification petition that would alter the unit configuration so as to prevent the decertification petition from being filed in an "established" unit.⁹ This would preclude a decertification election if the petition was eventually granted, and would unduly delay such an election even if the unit modification petition was denied. Giving precedence to a decertification petition, on the other hand, does not hold the same potential for abuse. A decertification petition requires proof of

⁹CTA claims that this is exactly what transpired in the instant case. As this reflects a factual dispute upon which there has been no hearing, we have no basis upon which to decide the merits of this allegation, and we, of course, decline to do so. Nevertheless, the potential for such abuse is a relevant consideration in deciding, as a general matter, which type of petition should take precedence.

employee support before it may be processed.¹⁰ Proof of employee support acts as an inherent check upon the filing of frivolous petitions.

There is the remaining question of whether we must order a new election or can rely upon the results of question no. 2 on the ballot to determine the merits of the decertification petition. While the presence of question no. 2 surely affected the employees' response to question no. 1 (for their views on decertification would logically control their choice of unit configurations), we find no reason to believe that the inverse is true. Question no. 2 was carefully phrased to make it clear that the choice of representatives was based on the assumption that the Skills Center would remain as a separate unit. Therefore, the issue voted on by the employees was identical to that which would have been presented by a decertification election alone. Under these circumstances, we find no reason to conclude that the employees were misled or otherwise

¹⁰Regulation 32770 states, in pertinent part:

(b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:

(1) No longer desire to be represented by the incumbent exclusive representative; or

(2) Wish to be represented by another employee organization.

affected by the appearance on the ballot of the unit configuration question (question no. 1).

Lastly, we agree with PFT that the administrative decision fails to adequately determine the status of the Accelerated Instructional Program teachers. While the administrative decision notes that there is no official record of a unit of Accelerated Instructional Program instructors, it acknowledges that PFT amended its petition to alternatively seek consolidation of that unit with the larger unit or simply the addition of the relevant classifications to the larger unit. There is no further mention of these employees in the administrative decision. As the record is insufficient to allow us to make any determination with regard to these employees, we remand this issue to the Regional Office. We note that there is no conflict between this portion of the unit modification petition and the decertification petition; thus, this aspect of the petition need not be held in abeyance should PFT desire to go forward on that limited basis.

ORDER

The Public Employment Relations Board hereby ORDERS that the decertification petition filed by the Edith M. Austin Skills Center, CTA/NEA in Case No. SF-D-156 (R-501) be processed forthwith and that the responses to question no. 2 on the ballots cast in the self-determination election of April 3, 1987 be counted and used to determine whether the petition is granted or denied. Responses to question no. 1

shall not be counted. The unit modification petition filed by the Peralta Federation of Teachers, Local 1603, CFT/AFT, AFL-CIO in Case No. SF-UM-385 shall be held in abeyance pending the outcome of the ballot count ordered above. The issue of the status of the Accelerated Instructional Program teachers is hereby REMANDED to the San Francisco Regional Director of the PERB for determination consistent with the discussion above. The San Francisco Regional Director is ORDERED to take other appropriate action consistent with this DECISION.

Chairperson Hesse and Member Porter joined in this Decision.