

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNITED ASSOCIATION OF CONEJO
TEACHERS,

Charging Party,

v.

CONEJO VALLEY UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. LA-CE-5000-E

PERB Decision No. 2054

July 27, 2009

Appearances: California Teachers Association by Michael D. Hersh, Staff Counsel, for United Association of Conejo Teachers; Liebert Cassidy Whitmore by Didier Y. Reiss, Attorney, for Conejo Valley Unified School District.

Before Dowdin Calvillo, Acting Chair; McKeag and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the United Association of Conejo Teachers (Association) of a Board agent's dismissal of an unfair practice charge. The charge alleges that the Conejo Valley Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by prohibiting the distribution of union newsletters containing information on the union's political recommendations in District mailboxes.

The Board reviewed the entire record, including the unfair practice charge, the warning and dismissal letters, the Association's appeal and the District's response. Based on this review, the Board affirms the Board agent's dismissal of the unfair practice charge.

¹EERA is codified at Government Code section 3540, et seq.

BACKGROUND

On September 8, 2006, the Association attempted to place a newsletter, created entirely at its own expense, into District-owned mailboxes affixed to the walls inside various school sites in the District. The newsletter contained updates on bargaining, Association activities, and school programs as well as a list of Association recommended candidates for the District school board and an endorsement of a particular candidate for California governor.

Specifically, page one of the Association's newsletter included an endorsement of Phil Angelides for Governor. Page three of the newsletter announced the Association Rep Council's "unanimous vote to accept Tim Stephens, Pat Phelps, and John Short as recommended candidates" for the District's governing board. The newsletter explained that it made this endorsement of the candidates on the basis of a recommendation from the Association's interview committee which met with the candidates. The newsletter also mentioned certain characteristics of the recommended candidates, such as "demonstrated support for employees." The newsletter did not list the names or qualifications of any other candidates for the District's governing board.

The District superintendent prohibited the Association from using District mailboxes to distribute the newsletter because it contained political materials. The District issued a follow-up letter referring to Education Code section 7054, subdivision (a) and stating that "school districts may not allow their mailboxes or mail systems to be used to send out materials in support of or in opposition to a political candidate or ballot measure."

The Association filed an unfair practice charge on September 27, 2006. On October 23, 2006, the Board agent issued a warning letter. The Association did not amend its unfair practice charge and, subsequently, the Board agent dismissed the unfair practice charge.

WARNING AND DISMISSAL LETTERS

The Board agent dismissed the unfair practice charge because the Association failed to demonstrate a prima facie case. Relying on *San Leandro Unified School District* (2005) PERB Decision No. 1772 (*SLUSD*) and *San Diego Community College District* (2001) PERB Decision No. 1467 (*San Diego*), the Board agent rejected the Association's argument that Education Code section 7054, subdivision (a) is not controlling because mailboxes are not "services, supplies, or equipment" as the boxes are permanent fixtures to the building walls and do not require specialized maintenance or service.

ASSOCIATION'S APPEAL

On appeal, the Association argues that the Board agent erred in dismissing the unfair practice charge. The Association requests the Board to reconsider and reverse its decisions in *SLUSD* and *San Diego*. The Association contends that Education Code section 7054, subdivision (a) does not preempt a union's right to utilize school mailboxes pursuant to EERA section 3543.1, subdivision (b). Specifically:

- 1) A union informing members of its political recommendations in a union newsletter placed in a school mailbox is not a prohibited use of a school district's "funds, services, supplies or equipment;"
- 2) A union newsletter with political information placed in District mailboxes is not a District expenditure prohibited by Section 7054.
- 3) When a school district bars use of school mail boxes to distribute union newsletters informing members of the union's political recommendations, or other political material, the employees' and Association's rights of free association and free speech, protected by Article 1, section 2 and section 3 of the California Constitution and the First Amendment of the Constitution of the United States have been violated.

DISTRICT'S OPPOSITION

The District requests the Board affirm the dismissal because Education Code section 7054, subdivision (a) prohibits the use of District funds, services, supplies or equipment that urge the support or defeat of political candidates or ballot measures. The District argues that the Board correctly decided *SLUSD* and *San Diego* and, as such, should not be overturned. The District also argues that the newsletter's purpose was to urge the members to provide electoral support to the Association's recommended candidates as evidenced by the newsletter not offering a balanced overview of qualifications of the candidates or even list the names of any of the other candidates. The District further argues that EERA entitles districts to restrict a union's access to District mailboxes as long as such restrictions are reasonable.

DISCUSSION

The Association contends that the District unlawfully interfered with Association activity by preventing distribution of the newsletters. The test for whether a respondent has interfered with the rights of employees under the EERA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. (*Service Employees International Union, Local 99 (Kimmett)* (1997) PERB Decision No. 106.) In evaluating the Association's interference allegation, Education Code section 7054, subdivision (a) must be considered. Education Code section 7054, subdivision (a) states:

No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

The Board held that it was not unlawful interference for a school district to prevent the distribution of a union newsletter containing political endorsements in the school district

mailbox because such material is prohibited by Education Code section 7054, subdivision (a).
(*SLUSD; San Diego.*)

The Association argues that the purpose of Education Code section 7054, subdivision (a) is more modest than that which the Board read into it in *San Diego* and *SLUSD*: (1) the legislative history indicates that Education Code section 7054, subdivision (a) “was intended to bar the misuse of public monies by a school district [as opposed to an Associations,] to influence ballot measures and political races in a partisan manner,” and (2) school mailboxes are not equipment. Additionally, the Association argues that the prohibition violates the constitutional right of free speech of its members and the Association. The Board’s reasoning in *San Diego* and *SLUSD*, however, was recently affirmed by the California Supreme Court in *San Leandro Teachers Assn. v. Governing Bd. of San Leandro Unified School District* (2009) 46 Cal.4th 822 (*San Leandro*).²

The issue in *San Leandro* was whether a school district could prohibit a union from using the district’s mail system to distribute political literature. The district asserted that it could prohibit political literature under Education Code section 7054, subdivision (a). The California Supreme Court agreed. The Court found “that the broad term ‘equipment’ [in Education Code section 7054] was intended to encompass mailboxes specially constructed at taxpayer expense to serve as a school’s internal communication channel, which one group may not use to its exclusive political advantage.” The Court further held that “a rule prohibiting candidate endorsement literature in school mailboxes is a ‘reasonable regulation’ within the meaning of [EERA] section 3543.1, subdivision (b) because it enforces the directive of section 7054.” Therefore, the Association’s argument is rejected.

²We note that *San Leandro* is not an appeal of *SLUSD*, but rather a separate and distinct case.

Next, the Association argues that it was simply “informing” members. Specifically:

A key function of an internal union publication is to inform represented employees of actions taken by the union and its committees, officers and activists. Represented employees have a right to know how dues and agency fees are being utilized. Represented employees have a right to know what statements or decisions the union has taken on their behalf.

The newsletter here merely explained the Association’s recommendation process, and the basis for the Association’s recommendation. It did not urge employees to support the recommended candidates, nor oppose other candidates. Employees receiving this newsletter might have as easily decided to voice objections to the recommendations or passively accept the information, as to take any action in support of the recommendations. Because the newsletter did not urge support of candidates, the prohibitions in Section 7054 [were] not applicable.

The Association, however, was not informing members, but rather advocating on behalf of the candidates. The newsletter stated that “[t]he committee found that each one would bring his/her own special knowledge, experience, and qualities to the position that would complete a strong and qualified school board for all of the constituents of the Conejo Valley Unified School District.” Further, the charge states that the purpose of the Association’s newsletter was “to inform its members that it had endorsed candidates for the gubernatorial and school board elections.” In this case, we find that the recommendation was the same as an endorsement and, therefore, is prohibited by Education Code section 7054, subdivision (a).

ORDER

The unfair practice charge in Case No. LA-CE-5000-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Acting Chair Dowdin Calvillo and Member McKeag joined in this Decision.