

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD



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|------------------------------------|---|----------------------|
| CALIFORNIA SCHOOL EMPLOYEES |) | |
| ASSOCIATION and its SOLANO CHAPTER |) | Case No. SF-R-548 |
| AV-001, |) | |
| |) | |
| Petitioners, |) | EERB Order No. Ad-23 |
| |) | |
| and |) | |
| |) | December 30, 1977 |
| FAIRFIELD-SUISUN UNIFIED SCHOOL |) | |
| DISTRICT, |) | |
| |) | |
| Respondents. |) | |
| <hr/> | | |

ORDER

The decision of the regional director, dismissing CSEA's request for recognition, is vacated and remanded on the ground that the Board is without authority to dismiss requests for recognition. The case shall proceed to a representation hearing in a manner consistent with the Board's rules on representation hearings, including an informal settlement conference.

Educational Employment Relations Board

by

A handwritten signature in cursive script that reads "Stephen Barber".

STEPHEN BARBER

Executive Assistant to the Board

Jerilou Cossack Twohey, Member, dissenting:

I dissent from the majority's decision to vacate the Regional Director's decision and remand this case for further hearings. Although I recognize some procedural problems with this case, in

fairness to the parties the Board should review the merits of the Regional Director's decision rather than delay resolution of the representation issue for additional months.

The facts of this case are straightforward. On February 22, 1977, the California School Employees Association, Solano Chapter AV-00I (CSEA) properly requested exclusive recognition from the Fairfield-Suisun School District to represent approximately 25 classified supervisors. On April 14, 1977, the District rejected CSEA's request for recognition. On April 25, 1977, the District notified the Educational Employment Relations Board (EERB) that recognition was denied on the District's interpretation of Government Code Section 3545(b)(2).¹ The District asserted that the proposed unit would be represented by the same employee organization as the employees whom the supervisory employees supervise.² In response to the District's denial of recognition, the Regional Director requested information from CSEA regarding the proposed supervisory unit. On May 23, 1977, CSEA wrote a detailed letter to the Regional Director outlining its position on the appropriateness of the supervisory unit. Enclosed with the letter were seven "exhibits" to assist the Regional Director in making his decision on whether CSEA could represent the proposed unit. The Regional Director dismissed the request for recognition on the basis of his investigation, the information submitted by the parties and his interpretation of Government

¹Gov. Code Sec. 3545(b) states:

In all cases:

- (2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

²On May 20, 1977, the District granted voluntary recognition to CSEA, Fairfield-Suisun Chapter #302 to represent most of the District's classified employees, excluding management, confidential and supervisory employees.

Code Section 3545(b)(2). On July 15, 1977, CSEA appealed the Regional Director's dismissal to the EERB.

The majority offers little rationale for its order. Presumably, the order is based on the majority view that CSEA never filed the proper petition for an EERB investigation or hearing pursuant to Government Code Section 3544.5(b).³ CSEA probably regarded a formal petition superfluous because the EERB Regional Director, on his own initiative, began an investigation immediately after the District's denial of the request for recognition. However, although not titled a "petition," CSEA's letter of May 23, 1977 to the Regional Director in substance constituted a proper petition pursuant to Government Code Section 3544.5(b), and should be treated as such.⁴ This would allow us to make a decision of the merits of the issue today, instead of making the parties wait nearly a year to learn that they should have filed a different piece of paper.

The majority's order also indicates that this case cannot be resolved without a representation hearing. I disagree. Neither

³Gov. Code Sec. 3544.5(b) states:

3544.5. A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

(b) An employee organization alleging that it has filed a request for recognition as an exclusive representative with a public school employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request; or....

⁴EERB Rule 33230 requires the District be served with an employee organization petition for EERB investigation. CSEA sent a copy of its May 23, 1977 letter to the District, but did not serve it. I would allow CSEA to serve the District to conform the letter to the procedural requirements of a petition.

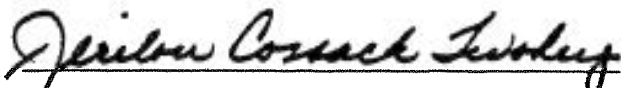
the Educational Employment Relations Act nor our Rules and Regulations require a representation hearing in all cases. Government Code Section 3544.7(a) states, in part:

Upon receipt of a petition filed pursuant to Section 3544.3 or 3544.5, the board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the petition.

Similarly EERB Rule 33270(a) states:

Whenever a petition regarding a representation matter is filed with the Board and a question of representation is determined to exist, the Board shall investigate and conduct a hearing, where appropriate, according to the procedures in this Article.

A hearing in this case is neither necessary nor appropriate. All that would be accomplished by a hearing is to have the same documents now submitted to the Board introduced as exhibits at the hearing. Additionally, the parties will incur additional legal and administrative expenses. The end result would be a recommended decision. The parties could then appeal that decision. We would then make our decision based on the same record that we presently have before us. After twelve months of waiting, the parties deserve more than a bureaucratic shuffle and are certainly entitled, at a bare minimum, to an explanation.⁵


Jerilou Cossack Twohey, Member

⁵Topanga Assn. v. County of Los Angeles, 11 Cal.3d 506, 113 Cal.Rptr. 836 (1974).

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, Ninth Floor
San Francisco, California 94108
(415) 557-1350



July 7, 1977

California School Employees Association
and its Solano Chapter AV-001
791 Laguna Court
Fairfield, California 94533

Mr. E. Tom Giugni, Superintendent
Fairfield-Suisun Unified School
District
1025 Delaware Street
Fairfield, California 94533

California School Employees Association
and its Solano Chapter AV-001
2350 Paragon Drive, P. O. Box 640
San Jose, California 95106
Attention: Charles L. Morrone

RE: SF-R-548

Gentlemen:

After a review of the February 22, 1977 request for recognition by the California School Employees Association and its Solano Chapter, AV-001 for a unit of supervisory employees in the Fairfield-Suisun Unified School District I find that it must be dismissed.

On May 20, 1976 the Governing Board of the Fairfield-Suisun Unified School District granted voluntary recognition to the California School Employees Association and its Fairfield-Suisun Chapter #302 to represent the classified employees of the Fairfield-Suisun Unified School District.

The Unit excluded those positions designated as management, confidential and/or supervisory and also excluded day-to-day substitutes, summer work crews, temporary augmented crews and school bus drivers. Voluntary recognition was granted to the Mutual Organization of School Bus Drivers on May 27, 1976 to represent the school bus drivers excluded from the unit represented by the California School Employees Association and its Fairfield-Suisun Chapter #302.

On February 22, 1977 the Fairfield-Suisun Unified School District received from the California School Employees Association and its Solano Chapter, AV-001 a request for recognition as exclusive representative of a unit consisting of all classified supervisory employees employed by the District. The Governing Board of the Fairfield-Suisun Unified School District, at its April 14, 1977 meeting, declined to grant voluntary recognition to the California School Employees Association and its Solano Chapter, AV-001.

Section 3545 (b)(2) of the Educational Employment Relations Act states that supervisory employees "...shall not be represented by the same employee organization as employees whom the supervisory employees supervise." The issue in this instance therefore is whether the Solano Chapter, AV-001 and the Fairfield-Suisun Chapter #302 are the same employee organization. From the material provided to this office by the local chapters and the state organization I find the following:

- (1) It is not contested that members of the Solano Chapter, AV-001 directly supervise employees in the classified unit represented as the exclusive representative by the California School Employees Association and its Fairfield-Suisun Chapter #302.
- (2) The California School Employees Association is currently a party to the recognition in the classified unit and seeks to be a party to any recognition or certification in the supervisory unit.
- (3) The vast majority of dues paid by each member of both the Fairfield-Suisun Chapter #302 and the Solano Chapter, AV-001 goes to the California School Employees Association and is not retained at the local level.

- (4) While the Solano Chapter, AV-001 and the Fairfield-Suisun Chapter #302 have different field representatives, both field representatives are employees of and are paid by the California School Employees Association. Therefore, much of the representation of employees in both units is controlled by the California School Employees Association.
- (5) Employees in both chapters contribute to a special building fund for the construction, furnishing, maintenance, repair, and other costs of the California School Employees Association's headquarters complex.
- (6) Employees of both chapters appear to be eligible for the same internal benefit package (insurance, economic discounts, and liability benefits) provided by the state organization to its members.
- (7) Members from both chapters are eligible to attend any annual or special conference of the California School Employees Association, and have equal voting eligibility.
- (8) In choosing area directors each chapter has one vote determined by a plurality of the qualified membership.
- (9) Article VII of the California School Employees Association by-laws page 30 provides the following:

"Concerted Activities:

Whether the bargaining representative in any bargaining is the Association, a chapter, or the Association and a chapter jointly, no concerted action shall be instituted by, or at the instance of the bargaining representative unless. . .

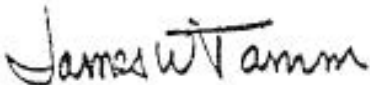
- (c) approval shall have been granted by the Board of Directors of California School Employees Association."

The board of directors of the California School Employees Association therefore has ultimate control over any concerted activities of either chapter. Furthermore, the board of directors is composed of the elected officers of CSEA and any CSEA member can run for elected office. Thus, supervisory members as well as the employees they supervise may become members of the board of directors.

Because of the above, I therefore find that both chapters are not separate employee organizations under section 3545 (b)(2) of the act, but are in fact only sub-divisions of a single employee organization, the California School Employees Association. Your petition is therefore hereby dismissed.

An appeal to this decision may be made within ten calendar days of receipt of this letter, stating the facts upon which the appeal is based and filed with the Executive Director, Mr. Charles Cole, at 923 12th Street, Suite 200, 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.

Your very truly,



James W. Tamm
Regional Director

JWT:ma