



STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD

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|--------------------------------------------|---|-----------------------|
| FREMONT-NEWARK COMMUNITY COLLEGE DISTRICT, |) | |
| |) | |
| Employer, |) | |
| |) | |
| and |) | Case No. SF-UC-33 |
| |) | |
| CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION |) | PERB Order No. Ad-31 |
| AND ITS OHLONE CHAPTER 409, |) | |
| |) | Administrative Appeal |
| Employee Organization, <u>APPELLANT</u> . |) | |
| <hr/> | | May 15, 1978 |

Appearances: Paul Gygax, Secretary, Board of Trustees, for Fremont-Newark Community College District; Robert L. Blake, Attorney, for California School Employees Association and its Ohlone Chapter 409.

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

OPINION

This is an appeal from a dismissal of a petition for the consolidation of two negotiating units of classified employees.

FACTS

The facts are not in dispute. On April 2, 1976, the California School Employees Association (CSEA) filed a request with the Fremont-Newark Community College District (District) for voluntary recognition in a "wall-to-wall" representation unit. On April 14, 1976, the Ohlone Classified Employees Association intervened seeking establishment of a unit of office and technical aides employees. On April 28, 1976, the District filed a position statement indicating both units were deemed appropriate and requesting that an election be held. On April 27, 1977, pursuant to a hearing conducted by a

Board agent, an informal settlement was reached by the parties in accordance with which CSEA split its original petition and was to be granted voluntary recognition in an operations/support services unit and a representation election was to be conducted among employees in an office/technical/business services unit. On May 27, 1977, CSEA was certified as the exclusive representative of the contested unit as a consequence of having received a majority of the votes cast. On June 15, 1977, the District and CSEA joined in a petition for consolidation of the two units. The regional director dismissed the petition on the grounds that rule 33260,¹ under which the petition

¹Cal. Admin. Code, tit. 8, sec. 33260, which provides:

33260. Petition.

- (a) An employee organization, an employer, or both jointly, may file with the regional office a petition for a change in unit determination pursuant to Section 3541.3(e) of the Act.
- (b) The petition shall contain the following information:
 - (1) The name, address and county of the employer;
 - (2) The name and address of the employee organization, and the name, address and telephone of the agent to be contacted;
 - (3) A description of the established unit;
 - (4) The approximate number of employees in the established unit;
 - (5) The date voluntary recognition was extended or the existing certification was issued;
 - (6) A description of the proposed unit;
 - (7) The approximate number of employees in the proposed unit;
 - (8) The name and address of any other employee organization known to claim to represent any employees affected by the proposed change in the established unit;
 - (9) A concise statement setting forth the reasons for the request to change the unit determination.
- (c) A copy of a petition filed by an employee organization or an employer alone shall be concurrently served on the other party. A statement of service shall be sent to the regional office with the petition.
- (d) The employer shall post a copy of the notice conspicuously on all employee bulletin boards in each facility of the employer in which members in the established unit and in the unit claimed to be appropriate are employed. The notice shall remain posted for at least five workdays.

had been filed, was not applicable. The parties were informed in the letter of dismissal that "to achieve consolidation ... required that a new petition for recognition be filed pursuant to section 33050 of the EERB Rules and Regulations." Subsequently, the executive director of the Board affirmed the action of the regional director.

DISCUSSION

In dismissing the petition under rule 33260 and suggesting the alternative procedure under rule 33050,² the regional director may

²Cal. Admin. Code, tit. 8, sec. 33050, effective April 1977,* which provides:

33050. Request for Recognition.

(a) An employee organization may file with the employer a request for recognition as the exclusive representative of an appropriate unit. The request shall contain the following information:

- (1) The name and address of the employee organization requesting recognition, and the name, address and telephone number of the employee organization agent to be contacted;
- (2) The name, address and county of the employer;
- (3) The date the request is filed with the employer;
- (4) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate;
- (5) The approximate number of employees in the unit claimed to be appropriate;
- (6) A statement that a majority of the employees in the unit claimed to be appropriate wish to be represented by the employee organization;
- (7) The name and address of any other employee organization which, within the 12 months preceding the request for recognition, either is known to have been recognized by the employer as the exclusive representative of any employees included in the unit described in the request, and the date of such other recognition, or is known to have demanded recognition as the exclusive representative of any employees in the unit described in the request;
- (8) The effective date and expiration date of any known written agreement between the employer and another employee organization covering any employees included in the unit described in the request for recognition and the name and address of such other employee organization;

(b) Proof of majority support in the unit claimed to be appropriate, or a verified copy thereof, shall be filed with the employer concurrent with the request.

(c) The employee organization shall concurrently send a copy of the request, excluding the proof of majority support, to the regional office.

*Subsequently amended January 16, 1978.

have been concerned that a question of the appropriateness of the resulting new unit would be presented which should properly be considered by the Board. In addition, an election had been held in one of the units and there would be reason to wonder if the results of that election would have been the same had the employees voted in the proposed consolidated unit. While the letter of dismissal is silent on these matters, these are not unreasonable inferences to draw in light of the nature of the proceedings the regional director would have required the parties to pursue.

Be that as it may, the Board does conceive of rule 33260 as an appropriate vehicle for any change in a unit, at least until such time as it may decide to establish more specific procedures to accommodate requests for the variety of unit alterations that may be anticipated. Nevertheless, we affirm the dismissal of the petition for consolidation, though for the different reasons that follow.

In its joint request, the District and CSEA argue that consolidation of the two units would provide "optimum representational support for the entire range of classified employees in ... this district." The time to raise such an argument was during the hearings on the original requests of

CSEA and the intervenor, Ohlone College Classified Employees Organization. To raise it just 19 days after the election and certification of CSEA in a unit found by the Board to be appropriate is to seek to relitigate issues already resolved. For the Board to accept a petition under these conditions would be to place itself at the disposal of any party who finds it advantageous to alter the unit configuration established by the Board.

Beyond that, the possibility that full-scale hearings on the appropriateness of the proposed new unit might have to be conducted and new elections held evokes prospects of additional expenses, further interruptions of work in the District and onerous administrative burden imposed on Board staff that would be totally unwarranted absent, at the very least, a clear showing of a major and material change in the circumstances which were dispositive when the units were originally established.

At best, the request in this case is untimely. There could not have been an accumulation of sufficient experience for the parties to form a clear opinion of the efficacy of future negotiating in the existing units. The stated belief in the "optimum" possibilities of a consolidated unit is both without foundation in fact and contrary to the basic and consistent approach taken by the Board since Sweetwater Union High School District (11/23/76) EERB Decision No. 4. Quite clearly, the employees who now comprise the operations/support services unit could have significantly less influence on the outcome of

negotiations in the proposed consolidated unit in which they would constitute only about one-quarter of the total unit. Further, for the Board to accept a petition under the circumstances in this case would be adverse to the statutory desire to provide for a minimum period of stability in which collective negotiations may take place.


Furthermore, to permit consolidation so soon after the election of an exclusive representative would be to inadvertently encourage a strategy designed to dilute the ability of employees who have become disenchanted with the quality of representation to exercise their statutory freedom of choice through the decertification process, though we imply no such purpose underlying the joint petition before us.

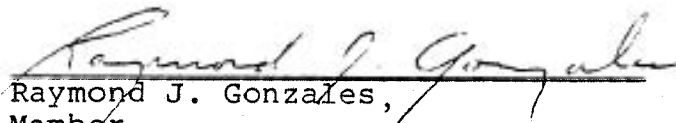
The entire matter of unit changes, and most particularly that of consolidation, demands careful evaluation by the Board. Pending such action, the Board, as a matter of policy, will not accept petitions for consolidation of two or more established negotiating units into a single unit absent a prima facie showing of overriding need.

ORDER

The action of the executive director affirming the regional director's dismissal of a petition for consolidation filed jointly by the Fremont-Newark Community College District and the California School Employees Association, is affirmed.


By: Harry Gluck, Chairperson


Jerilou Cossack Twohey,
Member


Raymond J. Gonzales,
Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

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

December 9, 1977



Mr. William B. Richter, Superintendent
Fremont-Newark Community College District
P. O. Box 909
Fremont, California 94537

Ms. Betty Boykin, Field Representative
California School Employees Association
333 Hegenberger Road, Suite 413
Oakland, California 94621

Re: Fremont-Newark Community College District
SF-R-379

Dear Interested Parties:

On June 15, 1977 we received your joint request for consolidation of the Office, Technical and Business Services unit and the Maintenance/Operation and Support unit.

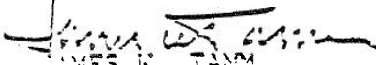
The EERB issued a certification to California School Employees Association and its Ohlone Chapter 490 (CSEA) on May 27, 1977 for the Office, Technical and Business Services unit. This resulted from an election conducted May 19, 1977, in which the employees' vote reflected their wishes concerning representation within a prescribed unit. The District granted voluntary recognition to California School Employees Association and its Ohlone Chapter 490 (CSEA) on April 27, 1977 for the Maintenance/Operation and Support unit. This resulted from a settlement reached at an informal hearing conducted by an EERB hearing officer. Your petition must therefore be denied. Joint negotiations for all employees represented by CSEA and its Ohlone Chapter 490 is not precluded by these factors, however.

To achieve consolidation of these units requires that a new petition for recognition be filed pursuant to Section 33050 of the EERB Rules and Regulations. Any bars to such a filing must, of course, also be met (see Section 3544.7(b) of the EERA and Section 33250(b) of the EERB Rules and Regulations.

If you have any questions concerning this matter, please let me know.

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.

Very truly yours,


JAMES W. TAMM
Regional Director

JWT:BCE:ma