

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)
CHAPTER 495,)
)
APPELLANT,)
)
and)
ALICE JACKSON,)
)
RESPONDENT, PETITIONER,)
)
and)
LEMOORE UNION HIGH SCHOOL DISTRICT,)
)
RESPONDENT.)

Case No. S-R-214
PERB Order No. Ad- 47
Administrative Appeal
September 22, 1978

Appearances: Richard L. Sanchez, Field Representative for California School Employees Association, Chapter 495; Alice Jackson representing herself; Neil N. Nordstrom, District Superintendent for Lemoore Union High School District.

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

OPINION

This is an appeal by California School Employees Association, Chapter 495 (hereafter Association) of the Sacramento regional director's decision that a petition for rescission of an organizational security agreement is timely and supported by sufficient signatures. The Association also appeals the regional director's decision to schedule the rescission election.

FACTS

On March 28, 1977, the Association was certified by the Educational Employment Relations Board¹ (hereafter Board) as the exclusive representative of classified employees of the Lemoore Union High School District (hereafter District). On September 27, 1977, the Association and the District entered

¹Effective January 1, 1978 the Educational Employment Relations Board was renamed the Public Employment Relations Board.

a contract effective from October 1, 1977 to June 30, 1979. The contract contains an article entitled DUES DEDUCTION AND ORGANIZATIONAL SECURITY,¹ and also provides that both the Association and

¹ARTICLE XV - DUES DEDUCTION AND ORGANIZATIONAL SECURITY

- A. The Association shall have the sole and exclusive right to District payroll deduction for membership dues for employees in the bargaining unit. The District shall pay said deducted dues to the Association within a reasonable time thereafter.
- B. Membership dues and service fees as used in this Article shall not include employee contributions for the political activities of the Association, CSEA, or any successor organization.
- C. The District shall deduct membership dues in accordance with the Association dues schedule, contained in Appendix B, from the wages of employees in the unit who are members of the Association on the effective date of this Agreement and who have submitted written dues authorization forms approved by the District. Similarly, the District shall deduct membership dues from the wages of employees in the unit who become members of the Association after the effective date of this Agreement and who submit written dues authorization forms approved by the District. The District shall not be required to make said deductions sooner than thirty (30) days after the submission of the employee authorization form described herein, and said deduction authorization forms shall remain revokable by the employee at any time. The District shall promptly notify the Association if a unit member revokes a dues deduction authorization.
- D. A member of the bargaining unit who does not submit the dues deduction authorization form, as described above, or who cancels a previously authorized deduction authorization, shall be required to pay directly to the Association the amount stipulated in Appendix B.
- E. For a member of the bargaining unit who does not pay the Association the amount described in Appendix B, the District's sole responsibility and obligation shall be to notify said employee, in writing, that he/she is in violation of this Article of the Agreement.
- F. The CSEA agrees to indemnify, defend and hold the District harmless against any claim or suit instituted against the District arising from its compliance with the provisions of this Article.

the District may reopen negotiations on any two articles of their choosing for the 1978-79 school year.

Members of the negotiating unit have never voted to approve or rescind the organizational security article.

In accordance with the contractual provisions, the Association requested to reopen negotiations for the 1978-79 school year on salaries and fringe benefits; the District requested to reopen negotiations on the organizational security clause only. The parties met for negotiations once on May 15, 1978. On May 15 and 16, the District and the Association, respectively, requested that the Board, pursuant to section 3548 of the Educational Employment Relations Act (hereafter EERA),² declare that impasse had been reached, and appoint a mediator. The Sacramento regional director found on May 22, 1978 that the parties were at impasse, and a mediator was appointed.

On June 7, 1978, Alice Jackson, a classified employee of the District, submitted a petition to rescind the organizational security clause. The petition submitted on June 7, 1978 contained a copy of the article entitled DUES DEDUCTION AND ORGANIZATIONAL SECURITY. The Sacramento regional director determined the petition to be timely and supported by sufficient signatures and set the rescission election for September 27, 1978.

The Association appeals that determination, contending that the initial mediation session is scheduled to begin June 26, 1978, and that should the parties reach agreement on the organizational

²The EERA is codified at Government Code sections 3540 et seq. All further references are to the Government Code unless otherwise noted.

security clause prior to the scheduled rescission election and should the election result in a vote in favor of rescission, a question would be raised as to whether the former or any newly negotiated clause had been rescinded.

The Association also notes that it obtained a number of judgments against several employees of the District in the Small Claims section of the Justice Court due to their failure to pay representational fees directly to the Association. Four of these employees have appealed to the Superior Court of Kings County arguing that the contract does not provide for agency shop. The Association contends that the rescission election should be held in abeyance pending the court decision as, if the court holds in favor of the employees and finds that the contract does not establish an agency shop, the question of rescinding the article would be rendered moot.

DISCUSSION

Section 3546(b) of the EERA states:

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.

Pursuant to section 3546(b), the Board's regulations provide that the petition for rescission submitted by an employee shall specify:

...the language of the organizational security arrangement sought to be rescinded.³

³Cal. Admin. Code, tit. 8, sec. 34020(b)(5).

Accordingly, the petition submitted on June 7, 1978 contained a copy of the article entitled DUES DEDUCTION AND ORGANIZATIONAL SECURITY. The Association speculates that the current negotiations may raise confusion on what clause is being voted on in the rescission election, but no possible factual situation in which confusion would demonstrably result has been described by the Association. To avoid just such confusion, the text of the clause being voted on appears on each ballot in organizational security elections.

The Association also argues that future judgments in the pending cases in Superior Court may render moot the petition for rescission. The Board construes the Association to be arguing that should the Superior Court, prior to the election for rescission, hold that the clause in question is unenforceable against the unit members, there would be no "organizational security arrangement... in effect"⁴ and an election for rescission would then be inappropriate. For PERB to accept the argument of the Association we would have to anticipate that the Superior Court will find for the appellants, speculate that the rationale of the court will be that the clause is not a valid agency shop arrangement, and render an advisory opinion that under the EERA such a clause does not constitute an organizational security arrangement "in effect." But the Board will not speculate on what the Superior Court may hold, nor will we render an advisory opinion on the requirements of the EERA.

⁴Section 3546(b).

The employees of the negotiating unit have a statutory right to pass on the desirability of the organizational security agreement in effect between the exclusive representative and the employer. A sufficient number of them⁵ have chosen this occasion to avail themselves of that right. We are not disposed to forestall expeditious satisfaction to members of the unit simply because they might receive satisfaction in some other forum at some other time.

ORDER

The Public Employment Relations Board ORDERS that:

The action of the Sacramento regional director directing that an election on rescission of the organizational security arrangement in effect between Lemoore Union High School District and California School Employees Association and its Lemoore Union High School Chapter #495 be held on September 27, 1978 is affirmed.

By: Jerilou Cossack Twohey, Member

Harry Gluck, Chairperson

Raymond J. Gonzales, Member

⁵Cal. Admin. Code, tit. 8, sec. 34020(b)(7) requires proof that at least 30 percent of the employees in the unit desire to rescind the existing organizational security arrangement.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
23 12th Street, Suite 300
Sacramento, California 95814
(916) 322-3198



June 9, 1978

Mr. Neil N. Nordstrom
District Superintendent
Lemoore Union High School District
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Lemoore, CA 93245

Mrs. Alice Jackson
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Hanford, CA 93230

Mr. Richard Sanchez
Field Representative
C.S.E.A., Lemoore Chapter #495
1490 W. Shaw Avenue, Suite B
Fresno, CA 93705

Dear Interested Parties:

Please be advised that pursuant to Article 2, Section 34020, Chapter 8, California Administrative Code, the Regional Director has made an administrative determination on a petition for Recision of an Organizational Security Arrangement in the Lemoore Union High School District (Classified Employees Unit), and directs that an election be held.

The petition filed is timely and is supported by at least thirty percent (30%) of the employees in the established unit. The date of the election is September 27, 1978.

Further election details will be forthcoming from the Sacramento Regional Office in the month of August.

Should you have any questions regarding this matter, please contact Joe Basso at (916) 322-3198.

Notice is also given that any party may obtain a review of this action by filing an appeal with Mr. Charles Cole, Executive Director, 923 - 12th Street, Suite 201, Sacramento, CA 95814. The appeal must be filed within ten calendar days ending on June 21, 1978. The appeal should contain a complete

Alice Jackson
Richard Sanchez

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statement setting forth the facts and reasoning upon which the appeal is based. Copies of any appeal must be served upon all other parties to the action.

Sincerely,

WEB
WILLIAM E. BROWN
Regional Director

By _____

W
Sacramento Regional Representative

WEB/JB/dc