

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA TEACHERS ASSOCIATION,)
)
 Employee Organization,) Case No. LA-R-109A
 APPELLANT,) LA-AC-17
)
 and) PERB Order No. Ad-127
)
 POWAY FEDERATION OF TEACHERS)
 LOCAL 2357, AFT/AFL-CIO,) Administrative Appeal
 Exclusive Representative,)
 and) April 30, 1982
)
 POWAY UNIFIED SCHOOL DISTRICT,)
)
 Employer.)
)

Appearances: James M. Gattey, Attorney for Poway Federation of Teachers Local 2357, AFT/AFL-CIO; Michael R. White and A. Eugene Huguenin, Jr., Attorneys for California Teachers Association.

Before Gluck, Chairperson; Jaeger, Moore and Tovar, Members.

DECISION

The California Teachers Association (CTA) requests that it be allowed to participate in an appeal of the Los Angeles Regional Director's determination that the certification of the exclusive representative in the Poway Unified School District (District) should be amended to reflect a purported coalition between the American Federation of Teachers (AFT) and CTA affiliates in the District. For reasons that are discussed below, we accept CTA's motion to intervene in this matter and

reverse the regional director's proposed amendment of certification.

FACTS

The Poway Federation of Teachers, CFT/AFT (PFT) has been the exclusive representative of teachers in the District for about six years and is party to a collective bargaining agreement currently in effect. Throughout the events relevant here, the United Teachers of Poway, CTA/NEA (UTP) has had about 80 dues-paying members.

Pursuant to discussion among officers of both of these local organizations, a "Coalition Agreement" was drawn up and ratified by the executive boards of UTP and PFT on November 30, 1981. The agreement provided that a new organization was to be formed, the United Educators of Poway (UEP), which was to be affiliated with both AFT and CTA.¹ It further provided that individual members could choose to pay per capita dues either to CTA/NEA or CFT/AFT.

In early December, the leadership of both UTP and PFT took the Coalition Agreement to their memberships and campaigned for a vote favoring the coalition proposal. The literature

¹Section II.B of the Coalition Agreement reads:

UEP shall be affiliated with the California Teachers Association and the National Education Association and the California Federation of Teachers, the American Federation of Teachers, AFL-CIO . . ."

distributed during this campaign, as well as the Coalition Agreement itself, indicated that the new organization would be affiliated with both CTA and CFT and their respective national parent organizations. For example, one flyer indicated that the coalition would "permit teachers a choice in state and national affiliation" and that it "[would] be a CFT/AFT and CTA/NEA bargaining agent." Another pro-coalition document asserts that "[w]e need affiliation with the state organizations" to assure strength in the legislative arena, financial assistance in the event of a strike, and the legal support the statewide organizations could provide.

In a document entitled "Coalition Issues and Questions," proponents of the coalition conceded that "CTA has been against these kinds of local coalitions in the past and [has] threatened to take away the charter of the local chapter." It further mentioned that "all documents have been checked over by an attorney to insure that they are consistent with the constitutions of both NEA and AFT," and that, if CTA opposed the coalition, "a challenge in court of their position would take place."

In a secret ballot election held on December 17, 1981, the members of both locals voted overwhelmingly in favor of forming the coalition. According to CTA's uncontroverted declaration, it was not aware of this campaign or the December 17 election, although it received an anonymous call from a Poway teacher who was concerned about the coalition drive.

On December 17, PFT filed a request, pursuant to PERB rules 32760 and 32761,² to amend the certification so as to reflect the outcome of the election. The name of the exclusive representative was to be changed to "United Educators of Poway (CFT/AFT affiliate, CTA/NEA affiliate)." On February 1, 1982, PFT amended its request to drop the designation of affiliations. On February 8, 1982, the Los Angeles regional director notified the District and PFT that she intended to grant the request and amend the certification so as to designate UEP as the exclusive representative of the bargaining unit.

²PERB rules are codified at 8 California Administrative Code Section 31000 et. seq. 32760 and 32761 read in pertinent part:

Article 3. Merger, Amalgamation or Transfer of Jurisdiction

32760. It is the policy of the Board that in the event of a merger, amalgamation, affiliation or transfer of jurisdiction affecting an exclusive representative recognized or certified under EERA, SEERA or HEERA, the exclusive representative shall file a request with the Board, utilizing the procedures described in this Article 3.

32761. (a) A recognized or certified employee organization shall file with the regional office a request to reflect a change in the identity of the exclusive representative in the event of a merger, amalgamation, affiliation or transfer of jurisdiction affecting said organization.

CTA takes the position that its bylaws unambiguously prohibit one of its local affiliates from participating in a coalition of this sort. Section 6 of CTA's bylaws, entitled "Restrictions Upon Merger" provides:

No chapter affiliated by the Association as a governance affiliate shall enter into a merger requiring affiliation with any other organization or the payment of dues either by individual members or by the chapter to any other organization, whenever such other organization is not affiliated with or by the Association.

According to the declaration of CTA, neither the regional director nor any agent of PERB notified it of the existence of PFT's request for the amendment of certification during the pendency of the Board's investigation. Moreover, CTA has not received an application for affiliation from UEP.

DISCUSSION

As a threshold matter, AFT objects to CTA's participation in this proceeding. It claims that CTA has no standing to appeal the regional director's decision since it is not the exclusive representative of bargaining unit members and did not participate in the proceedings before the regional director.

PERB rule 32763(a) requires the regional director to

. . . conduct such inquiries and investigations or hold such hearings as deemed necessary in order to decide questions raised by the request.

Despite the fact that the regional director was in receipt of both the "Coalition Agreement" purporting to affiliate UEP with

CTA and documents suggesting that CTA might disapprove of the coalition, she granted the request for a change of certification without holding a hearing and without notifying CTA. We find that the existence of these documents should have placed the regional director on notice that CTA was a necessary party to these proceedings, and that she should have joined CTA in the proceeding, required PFT to serve CTA, or otherwise notified CTA of PFT's request. As a result of this lack of notice, CTA was unaware of the purported merger or coalition until sometime after the regional director's decision.

In order to cure this defect in the regional director's investigation of PFT's request, and pursuant to the power vested in the Board by subsections 3541.3(m) and (n),³ we grant CTA's petition to participate in these proceedings and consider its brief on the merits.

³Subsections 3541.3 (m) and (n) state:

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

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter . . .

Turning to the substantive issue before us, we note that we have never had to consider a request for a change of certification in which a party affected by the certification opposes it. CTA alleges that the material distributed by supporters of the coalition prior to the December 17, 1981 election "blatantly and materially misrepresented" the policy of CTA with regard to coalitions or mergers and falsely represented that UEP would be affiliated with CTA. In response, AFT claims that the pre-election materials made it clear to bargaining unit members that CTA had opposed such coalitions in the past and might try to revoke UTP's charter were the coalition to come into being. In addition, AFT argues that the term "affiliation" used in the coalition agreement means no more than "the ability [by an employee] to designate the state or national organization which will receive a percentage of the dues paid to UEP."

We find that the proposed amendment of certification is inappropriate. In the first place, the request of PFT, as amended to drop the designation of affiliations, does not reflect the intent of bargaining unit members in voting to alter the certification. The ballot which bargaining unit members marked when voting to approve or reject the merger indicated that UEP would "be formed according to the

Coalition Agreement . . . and Constitution." That agreement clearly indicated that UEP would be affiliated with both CTA/NEA and CFT/AFT. It would be incongruous for the Board to approve a change of certification which so clearly inconsistent with the expressed goal of bargaining unit members.

Second, while the coalition's pre-election materials acknowledged the possibility that CTA might oppose the coalition, they failed to disclose the fact the CTA had never been contacted concerning the possible coalition and that CTA's bylaws prohibited such a coalition. Moreover, these materials give the impression that CTA could be forced, by legal action if necessary, to accept the coalition when there appeared to be no such basis for that contention. In short, if the coalition's pre-election materials did not go so far as to materially misrepresent CTA's policy concerning mergers, they failed to inform bargaining unit members fully as to available and legally relevant information.

Finally, we note that, even if the request for the change of certification had not been amended so as to drop the designation of affiliations, the contemplated change would not have been appropriate. The Board has no power to compel an unwilling state or national employee organization to accept the affiliation of a local exclusive representative through the amendment of certification process.

The net effect of the misinformation was that the organization proposed for certification by the regional director was not what the employees were voting for. It would therefore be inappropriate for the Board to grant the amendment of certification in these circumstances.

ORDER

Upon the foregoing decision and the entire record in this matter, the Public Employment Relations Board ORDERS that:

The regional director's proposed amendment of certification is hereby REVERSED and no amendment shall issue.

By: ~~John W. Jaeger, Member~~

~~Harry Gluck, Chairman~~

The concurrence of Members Barbara D. Moore and Irene Tovar begins on page 10.

Members Moore and Tovar, Concurring.

We concur in the result reached in the lead opinion and with the bulk of the reasoning expressed therein. Thus we agree with the lead opinion's conclusion that the proposed amendment of certification should not be approved. However, in reaching this conclusion, we do not rely on the notion that voters were misinformed or less than fully informed as to relevant information. Rather, we base our decision on the fact that the coalition could not deliver what it promised and thus, as the lead opinion states, the organization which the regional director proposed to certify could not be what the employees were voting for.

Barbara D. Moore, Member

Irene Tovar, Member