

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CAPISTRANO UNIFIED SCHOOL)
DISTRICT,)
)
Employer,) Case No. LA-D-293
)
and) Request for Stay
)
CALIFORNIA SCHOOL EMPLOYEES) PERB Order No. Ad-254
ASSOCIATION, CHAPTER 224,)
)
Exclusive Representative,) May 13, 1994
)
and)
)
GENERAL TRUCK DRIVERS, OFFICE,)
FOOD AND WAREHOUSE LOCAL 952,)
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, AFL-CIO,)
)
Petitioner.)
_____)

Appearances: Rutan & Tucker by L. Ski Harrison, Attorney, for Capistrano Unified School District; A. Alan Aldrich, Senior Labor Relations Representative, for California School Employees Association, Chapter 224; Wohlner, Kaplon, Phillips, Young & Barsh by John A. Siqueiros, Attorney, for General Truck Drivers, Office, Food and Warehouse Local 952, International Brotherhood of Teamsters, AFL-CIO.

Before Caffrey, Garcia and Johnson, Members.

DECISION

CAFFREY, Member: On March 31, 1994, the San Francisco regional director of the Public Employment Relations Board (PERB or Board) issued an administrative determination in Case No. LA-D-293. The regional director concluded that the decertification petition was timely filed and ordered that a representation election be conducted. On April 11, 1994, the California School Employees Association, Chapter 224 (CSEA) filed

an appeal of the administrative determination and a request for stay of the representation election. On April 20, 1994, the General Truck Drivers, Office, Food and Warehouse, Local 952, International Brotherhood of Teamsters, AFL-CIO filed a response, opposing the stay and urging the Board to immediately order the conduct of the election. The Capistrano Unified School District responded on April 21, 1994, supporting CSEA's request for a stay of the election.

The Board, after careful review of this issue and consideration of the positions of the parties, denies CSEA's request for a stay. The Board further orders that the ballots be impounded pending the Board's decision on the merits of CSEA's appeal of the regional director's administrative determination.¹

ORDER

The California School Employees Association, Chapter 224's request for stay of the representation election in Case No. LA-D-293 is DENIED. The regional director is ordered to proceed with the election in accordance with PERB Regulations and thereafter impound the ballots pending the Board's decision on the merits of the appeal.

Member Johnson joined in this Decision.

Member Garcia's dissent begins on page 3.

¹By its ruling on this motion, the majority takes no position on the merits of CSEA's appeal of the regional director's administrative determination.

GARCIA, Member, dissenting: I have reviewed the majority's recommendation and do not agree with its conclusion to hold the election and impound the ballots. My reasons are detailed below.

DISCUSSION

The majority opinion chooses to proceed with the election and impound the results pending a determination on whether a signing is necessary to establish a contract bar to the petition for election. That choice is made to give the Public Employment Relations Board (PERB or Board) time to study the issue. The law is clear and no further study is required to establish the rights of the parties to this dispute. I would stay the election.

Distinction Between the National Labor Relations Board (NLRB) and PERB

NLRB's Authority

The NLRB has extremely broad powers to create rules under the authority given by Congress, in addition to its quasi-judicial powers. PERB does not have such quasi-legislative authority.¹

¹See Apple Valley Unified School District (1990) PERB Order No. Ad-209, pages 9 and 10, which state, in part, that:

The National Labor Relations Act contains no express legislative prescriptions concerning contract bar rules. Therefore, the NLRB may properly develop contract bar rules as a matter of administrative discretion. In contrast, EERA section 3544.7, subdivision (b) (1) contains an express contract bar rule. Therefore, [PERB] does not have the same discretion afforded the NLRB, but instead must follow the prescription of section 3544.7.

.....

It is, of course, not within [PERB's] authority to adopt contract bar rules which are

In 1958 the NLRB developed a policy in Appalachian Shale Products Co. (1958) 121 NLRB 1160 [42 LRRM 1506], that only "signed" agreements could act as contract bars to election petitions. The rule was created by the NLRB to simplify and ascertain when a contract bar existed. It is a rule of evidence that was modified in subsequent NLRB decisions so that initials on other writings also now qualify as a signing.² The rule has been further modified so that no formal document is required and the finality or effectiveness of the contract is not conditional on signing.³ With the passage of time, we can expect further modifications that will establish that the rule is not the determinant of the intent of the parties, but rather a convenience to the NLRB.

PERB's Authority

The contract bar statute that PERB operates under was enacted in 1975 and is a legislatively codified version of some of the rules developed by the NLRB. Educational Employment Relations Act (EERA) section 3544.7(b) provides that:

(b) No election shall be held and the petition shall be dismissed whenever either of the following exist:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any

inconsistent with the express language of the statute. [Citations.]

²See, e.g., Gaylord Broadcasting Co. (1980) 250 NLRB 198 [104 LRRM 1360].

³Farrel Rochester Div. (1981) 256 NLRB 996, 999, footnote 19 [107 LRRM 1358].

employees included in the unit described in the request for recognition . . . [Emphasis added.]

Note that the California Legislature required only a current, written, lawful agreement be in effect to bar petitions.

Although the NLRB signature requirement in Appalachian Shale Products, supra, had been NLRB policy since 1958, the California Legislature chose not to impose a signature requirement.

Instead, existence of a contract bar hinges on whether the agreement is "in effect." The parties to the agreement are free to choose the means by which it becomes effective.

A contract bar gives parties the right to be left alone for a reasonable period of time. That right cannot be taken away by a quasi-judicial agency such as PERB through the adoption of a rule that effectively modifies the statute which grants the right. As the Board recognized in North Orange County Regional Occupational Program (1990) PERB Decision No. 857, page 6 et seq.,⁴ PERB has only such jurisdiction and powers as have been conferred on it by statute. Further, PERB acts in excess of its jurisdiction if it acts in violation of the statutes conferring or limiting its jurisdiction and powers.⁵ The absence of jurisdiction cannot be overcome by the established practices or customs of PERB, nor by PERB regulation.

⁴See also, California State University, San Diego (1989) PERB Decision No. 718-H, page 8 et seq.

⁵See also, 7 Witkin, Constitutional Law (9th ed. 1988) section 114, page 167, discussing the separation of powers doctrine (the power to make and amend laws is in the legislative department; administrative agencies may exercise some judgment in how they carry out their statutory function, but they cannot interpret the statute so as to revise it).

Under the facts of this case, the California School Employees Association, Chapter 224 (CSEA) and the Capistrano Unified School District (District) entered into a lawful agreement that became effective, under its terms, when it was ratified by the parties.⁶ Upon ratification, the agreement became a bar to petitions for election, whether or not the contract was signed.

CONCLUSION

The majority seeks to buy time to determine whether the NLRB rule on signing vitiates the agreement as a contract bar while PERB goes ahead and holds an election and impounds the results pending a decision on the signing issue. That is disruptive to CSEA and the District and violates their right to be left alone. Signing is not required to make the agreement effective, and those Board members with doubts have a better choice: to stay the election and make a timely decision as to whether PERB is bound by the NLRB rule given the wording of our statute.

⁶Article 1, Section 1.3 of the Agreement reads:

Except as noted in Section 1.4 [regarding reopener topics] all articles of this agreement shall remain in full force and effect from the date of ratification of this contract until June 30, 1995, when it shall terminate. [Emphasis added.]