STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ST. HOPE PUBLIC SCHOOLS, Employer, and A GROUP OF EMPLOYEES, Petitioner, and SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA, Exclusive Representative.	Case No. SA-DP-278-E PERB Order No. Ad-511 March 11, 2024

Appearance: Young, Minney & Corr by Roger Scott, Attorney, for St. HOPE Public Schools.

Before Krantz, Paulson, and Nazarian, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by St. HOPE Public Schools (SHPS) from the attached administrative determination (AD) that PERB's Office of the General Counsel (OGC) issued on December 29, 2023. At issue is a decertification petition (Petition) that a group of SHPS teachers filed to decertify Sacramento City Teachers Association (SCTA) as the exclusive representative of their bargaining unit. OGC stayed the Petition in September 2021 based on two unfair practice charges SCTA filed in 2020 and a third charge SCTA filed in July 2021, each alleging conduct tending to influence

employee free choice.[1] No party appealed OGC's 2021 stay order, and it remains in effect, as the parties are still litigating the blocking charge SCTA filed in July 2021.[2]

In October 2023, SCTA filed an additional unfair practice charge claiming that an alleged SHPS agent played one or more roles in originating, supporting, pursuing, and/or leading the Petition.[3] OGC, in the AD it issued in December 2023, found that the 2023 blocking charge is a further, independent basis to stay processing the Petition. SHPS timely appealed.

We have reviewed the record and the arguments SHPS raised on appeal. For the reasons explained below, we affirm the AD and adopt it as a decision of the Board itself, subject to and as amended by the following decision, which expands on the reasons for the stay and provides clarified instructions for further case processing.[4]

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[1] We refer to such charges as "blocking charges," meaning they allege conduct likely to affect employee free choice and therefore allow the charging party to request that PERB stay representation processes pending unfair practice proceedings.

[2] We refer to that charge, Case No. SA-CE-3046-E, as the "2021 blocking charge." It alleges that SHPS unlawfully influenced employee free choice by providing teachers with $2,000 bonuses. SCTA has withdrawn the two blocking charges it filed in 2020, which involved distance learning during the COVID-19 pandemic.

[3] We refer to that charge, Case No. SA-CE-3145-E, as "the 2023 blocking charge."

[4] Although the Petition would remain stayed based on the 2021 blocking charge irrespective of the outcome of this appeal, that circumstance does not render this appeal moot. There are multiple reasons why it is important for the parties and OGC to know whether one charge or two charges are currently blocking the Petition. For instance, the 2021 blocking charge and the 2023 blocking charge are set for separate formal hearings, and it is unknown which will resolve first. If the 2021 blocking charge is the first to resolve, it may be significant whether the 2023 blocking charge also forms a basis for the stay.

FACTUAL AND PROCEDURAL BACKGROUND

In *St. HOPE Public Schools* (2018) PERB Order No. Ad-472, the Board certified SCTA as the exclusive representative of a unit of SHPS classroom teachers, including long-term substitutes but excluding day-to-day substitutes. (*Id*. at p. 11.) While the record does not detail the full nature and extent of collective bargaining negotiations by SHPS and SCTA following certification, as of the time SHPS filed this appeal, the parties had not yet reached a first contract.

In June 2021, a group of individuals (Petitioner) filed the Petition pursuant to the Educational Employment Relations Act (EERA).[5] As noted above, SCTA asked OGC to stay the Petition based on blocking charges. OGC solicited responses from Petitioner and SHPS. Only SHPS responded, opposing the stay request. OGC then issued a stay order. No party appealed that order, and we therefore express no opinion on its analysis or conclusions.

In the fall of 2021, PERB's Division of Administrative Law (DAL) assigned two administrative law judges (ALJs) to hear groups of unfair practice charges between the parties, which included the three blocking charges that were pending at that time as well as five cross-charges that SHPS had filed against SCTA. In December 2021, based on a joint request from SHPS and SCTA, DAL placed in abeyance all pending charges and cross-charges between the parties, to allow time for mediation.

On May 26, 2022, SCTA and SHPS signed a settlement that was conditional on approval by the SHPS Board of Directors, as well as by "OGC and/or PERB." While

[5] EERA is codified at Government Code section 3540 et seq. All further statutory references are to the Government Code.

those conditions never fully materialized (as explained below), and the conditional settlement accordingly never became final, both parties have placed into the record the terms the settlement would have imposed had it become effective. One term was that SCTA and SHPS would withdraw their charges against one another. Another term stated that "SCTA's status as the exclusive representative [of] its bargaining unit shall be extended, as if the initial year after lawful recognition has not expired, for twelve (12) months from the latter of the date the PERB Office of the General Counsel (OGC) and/or PERB approve such an extension, or August 15, 2022."

By e-mail dated June 27, 2023, an attorney for SHPS notified PERB that the SHPS Board of Directors had approved the settlement. It is unclear why 13 months elapsed between the parties' conditional settlement and the date of this e-mail.

On July 7, 2023, OGC issued an Order to Show Cause (OSC) as to why it should not honor the conditional settlement by dismissing the Petition, given that the settlement purported to extend the initial certification bar "as if the initial year after lawful recognition has not expired" until 12 months following the later of August 15, 2022 or the date OGC and/or PERB approved the settlement.[6]

[6] EERA requires PERB to dismiss a representation petition when "[t]he public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition." (EERA, § 3544.7, subd. (b)(2).) This 12-month period is commonly known as the "certification bar" or the "recognition bar." Its purpose is to give the new exclusive representative "breathing room" to bargain a first contract. (*Gompers Preparatory Academy* (2020) PERB Order No. Ad-481, p. 7, fn. 5 (*Gompers*).) PERB commonly extends the bar as a remedy for unlawful conduct impacting the union's strength and/or ability to bargain a contract. (See, e.g., *Alliance Judy Ivey Burton Technology Academy High School et al.* (2022) PERB Decision No. 2809, p. 30.)

On July 28, 2023, SHPS responded to the OSC, asking OGC to either: (1) interpret the settlement to mean that the Petition should remain stayed until August 14, 2024, and to process the Petition at that point; or (2) invalidate the settlement and allow the parties to resume litigating the blocking charges and cross-charges.

On August 9, 2023, Petitioner asked for an extension of time to respond to the OSC because the teacher who had been Petitioner's lead representative no longer worked at SHPS, and Petitioner's new lead representative, Adrianne Hall, needed time to review the matter. On this basis, OGC granted Petitioner additional time to respond. Hall then wrote OGC on August 25, 2023, asking that "the Decertification Petition remain in place for twelve additional months so the SCTA and SHPS can continue bargaining," which Petitioner argued was the purpose and meaning of the conditional settlement.

On September 1, 2023, SCTA responded to the OSC. SCTA argued that if OGC approved the settlement, then OGC must dismiss the Petition, because Petitioner filed it during a period in which the initial recognition bar was in effect by operation of the settlement.

On September 7, 2023, OGC requested information about Hall's work as Chief Operating Officer of an entity known as St. HOPE Academy (SHA), in addition to any work as a bargaining unit teacher. Hall and SHPS both responded with certain information.

On October 5, 2023, SCTA filed the 2023 blocking charge, alleging, among other things, that Hall is not a unit employee and is an SHPS agent whose

involvement tainted the Petition and served as a further basis for OGC to block and/or dismiss the Petition. Eight days later, SHPS and Hall filed letters urging that OGC not stay the Petition based on the 2023 blocking charge, and on October 20, 2023, SHPS responded to the merits of the charge.

On October 27, 2023, OGC issued a complaint based on the 2023 blocking charge. The complaint includes the following allegations, among others: (1) SHA is a non-profit that is closely related to SHPS and an agent thereof; (2) SHPS and SHA have a joint-employer and/or single-employer relationship with unit employees; (3) Hall is an agent of SHPS; (4) Hall is not a unit employee; (5) SHPS engaged in bad faith conduct by adding Hall to the periodic lists of purported unit employees that SHPS provides SCTA, only after Hall's involvement in the Petition, and without disclosing her other role(s); (6) SHPS and Hall interfered with protected rights via Hall's provision of unlawful support to the decertification effort; and (7) through the same conduct, SHPS violated EERA section 3543.5, subdivision (d) and the Prohibition against Public Employers Deterring or Discouraging Union Membership (PEDD; § 3550 et seq.).[7]

On December 18, 2023, SCTA wrote OGC, stating that it had "reluctantly concluded that St. Hope Public School's new, cynical, and inaccurate interpretation of the May 2022 settlement agreement between SCTA and St. Hope (collectively, Parties), coupled with the unique procedural posture of that agreement, leave the Parties without a legally enforceable settlement agreement." SCTA therefore withdrew its prior request

[7] EERA section 3543.5, subdivision (d) forbids, among other things, interfering with the administration of an employee organization by fomenting internal dissent. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 44.) PEDD section 3550 prohibits an employer from deterring or discouraging employees from, among other things, "becoming or remaining members of an employee organization."

that OGC enforce the settlement by dismissing the Petition and instead concurred with the alternative position SHPS had taken, in which it asked OGC to invalidate the settlement and allow the parties to resume litigating the various pending charges.

In the attached AD, OGC adopted the above-described overlap in positions between SHPS and SCTA, thereby rejecting the settlement agreement and freeing the parties to litigate all pending charges between them. The AD also found cause to add the 2023 blocking charge as a further basis for the existing stay order.

The 2021 blocking charge, together with five cross-charges filed by SHPS, are set for a consolidated formal hearing in April 2024. The 2023 blocking charge is set for a formal hearing the same month in front of a different ALJ.[8]

SHPS timely appealed OGC's conclusion that the 2023 blocking charge is a further basis for staying the Petition. In contrast, both parties accede to OGC's decision not to approve the conditional settlement—the final condition that would have made it operative—given the parties' disagreement about its meaning. We thus express no opinion on the settlement's potential meaning had it taken effect, or whether OGC should have enforced it.

DISCUSSION

PERB Regulation 32752 provides, in pertinent part:

> "The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct

[8] SCTA filed additional blocking charges in December 2023 and February 2024. Those charges, designated as Case Nos. SA-CE-3156-E and SA-CE-3164-E, are currently under investigation before OGC. We do not discuss them further, as it is OGC's role to decide initially whether to issue complaints and whether either of the recent charges is a further, independent basis to stay processing the Petition.

> would so affect the election process as to prevent the employees from exercising free choice."[9]

The purpose of this regulation is to help PERB insulate elections from unfair practices that may influence the outcome. (*Gompers*, *supra*, PERB Order No. Ad-481, p. 3; *Imagine Schools at Imperial Valley* (2016) PERB Order No. Ad-431, p. 9.)

I. Stay Analysis

In deciding whether to stay an election, the question is whether the alleged unfair practices, if proven, would be likely to affect employee free choice. (PERB Reg. 32752; *Gompers*, *supra*, PERB Order No. Ad-481, p. 3.) When a union argues that a decertification election should be stayed because unfair practices may have eroded employee support for the union, a stay is warranted if the conduct alleged is "of such character and seriousness that, if it were proven to have occurred, it would be reasonable to infer that it would contribute to employee dissatisfaction and hence prevent a fair election." (*Children of Promise Preparatory Academy* (2015) PERB Order No. Ad-428, p. 9.) Notably, if unfair practices are alleged during first contract negotiations after recognition or certification (or following a successorship), a lower bar applies in ascertaining the potential for deleterious effects on employee support for the emerging union, because law-breaking in such a timeframe is especially likely to leave employees with an unlawfully jaundiced view on the benefits of having an exclusive representative. (*Gompers*, *supra*, PERB Order No. Ad-481, pp. 5-7.)

SHPS argues that the 2023 blocking charge is not a valid basis for a stay, absent more evidence that Hall was an SHPS agent who took an active role with

[9] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

respect to the Petition. This argument fails for multiple independent reasons. First, in the current procedural posture, we must assume SCTA will prove the complaint's allegations—the same assumption OGC was required to make in deciding on the stay request. (*Gompers*, *supra*, PERB Order No. Ad-481, p. 4.) Second, SHPS fails to acknowledge that our inquiry on appeal is whether OGC abused its discretion. (*Ibid*.) Third, SHPS also does not acknowledge the lower bar for a stay during first contract negotiations. (*Id*. at pp. 5-7.)

Moreover, SHPS disregards the varied means by which the complaint's multiple claims may establish a tendency to influence employee free choice. For instance, SHPS focuses on the few private sector interference decisions the AD cited, even though the complaint includes multiple theories beyond interference (see *ante* at p. 6).[10] The appeal similarly ignores certain factual allegations and their potential to establish one or more of the complaint's claims, including: (1) the fact that, since at

[10] Although California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent governing private sector labor relations, PERB considers federal precedent for its potential persuasive value. (*Operating Engineers Local Union No. 3 (Wagner et al.)* (2021) PERB Decision No. 2782-M, p. 9, fn. 10; *City of Santa Monica* (2020) PERB Decision No. 2635a-M, p. 47, fn. 16; *City of Commerce* (2018) PERB Decision No. 2602-M, pp. 9-11; see also *Social Workers' Union, Local 535 v. Alameda County Welfare Dept.* (1974) 11 Cal.3d 382, 391 [when interpreting California public sector labor relations laws, federal precedent is a "useful starting point," but it does "not necessarily establish the limits of California public employees' representational rights"]; *County of San Joaquin* (2021) PERB Decision No. 2761-M, pp. 24, 33, 45-48 & fn. 19 [considering private sector labor law precedent for its persuasive value while noting certain differences in California public sector labor law precedent]; *City of Bellflower* (2020) PERB Order No. Ad-480-M, p. 11 [both "statutory differences and distinct principles relevant to agencies serving the public have frequently led the Board to craft sui generis precedent"].)

least August 9, 2023, Hall has served as Petitioner's sole designated representative; and (2) the claim that SHPS began placing Hall on the unit employee list for the first time in July 2021 (despite Hall's own assertion that she has been employed as a part-time teacher at SHPS since March 2020), thereby affording her a role in the decertification debate and in eventually becoming Petitioner's representative. Based on the AD and these further considerations, we reject SHPS's appeal.

II. Applicable Standards After Resolution of Blocking Charges

Once PERB has issued a final order regarding the blocking charges supporting a stay, the question becomes whether fair representation proceedings can resume. If the charging party did not establish an unfair practice, and there are no other pending allegations of unfair practices warranting a stay, fair representation proceedings can go forward.

In contrast, if the charging party prevailed in its charges in whole or in part, and there are no other pending allegations of unfair practices warranting a stay, PERB must assess whether to proceed with the pending petition or dismiss it. Normally, there are three potential bases for dismissal: (1) the proven conduct materially tainted solicitation of employee support or employees' decision to sign the petition, such that there is a legitimate question whether the petition would have reached the requisite threshold absent unfair practices; (2) the conduct occurred while an emerging union was negotiating for a first contract after recognition, certification, or successorship, thereby warranting retroactive extension of the certification or recognition bar;[11] or

[11] Because it is particularly difficult to restore a newly recognized or certified union's standing with its members after early unlawful conduct (see, e.g., *Gompers*, *supra*, PERB Order No. Ad-481, pp. 5-7; *Small v. Avanti Health Systems, LLC* (9th Cir.

(3) the conduct has a continuing prospective tendency to harm employee free choice that PERB's remedies are unlikely to fully address, even in conjunction with the passage of time and any other relevant factors. (Compare *City of Long Beach* (2021) PERB Decision No, 2771-M, pp. 17-19 [Board rejected most claims alleged in blocking charges and found that the limited proven unfair practices would not prevent a fair election from going forward given the passage of time and PERB's remedies] with *Children of Promise Preparatory Academy* (2018) PERB Order No. Ad-470, p. 6 & adopting administrative determination at p. 4 [unfair practices shown required OGC to dismiss decertification petition after resolution of blocking charges].)

Accordingly, we provide the following clarified order covering proceedings once all blocking charges are resolved.

ORDER

The administrative determination dated December 29, 2023, in Case No. SA-DP-278-E is AFFIRMED. Pursuant to both that administrative determination and the administrative determination dated September 15, 2021, case processing of the decertification petition (Petition) in this matter remains stayed pending final orders resolving the claims alleged in the operative complaints in Case Nos. SA-CE-3046-E and SA-CE-3145-E.[12] At that point, consistent with this decision, the Office of the General Counsel (OGC) shall proceed as follows.

2011) 661 F.3d 1180, 1191-1193), absent unusual circumstances it is proper to extend the recognition bar or certification bar and dismiss the petition altogether based on proven unfair practices during first contract negotiations.

[12] Pursuant to PERB Regulation 32147, subdivision (b)(1)(B), every PERB division must expedite Case Nos. SA-CE-3046-E and SA-CE-3145-E at each stage.

A. If Sacramento City Teachers Association (SCTA) fails to establish an unfair practice in either Case No. SA-CE-3046-E or Case No. SA-CE-3145-E, and there are no pending allegations of unfair practices warranting a stay, then OGC shall process the Petition.

B. If SCTA prevails in whole or in part in either Case No. SA-CE-3046-E or Case No. SA-CE-3145-E, then OGC shall dismiss the Petition if the proven conduct: (1) materially tainted solicitation of employee support or employees' decision to sign the Petition, such that there is a legitimate question whether the Petition would have reached the requisite threshold absent unfair practices; (2) warrants retroactive extension of the certification bar based on SCTA's status as an emerging union negotiating for a first contract; or (3) has a continuing prospective tendency to harm employee free choice that PERB's remedies are unlikely to fully address, even in conjunction with the passage of time and any other relevant factors. If none of these three circumstances are present, and there are no pending allegations of unfair practices warranting a stay, OGC shall process the Petition after PERB's remedies are fully in place and enough time has elapsed such that fair proceedings can go forward.

Members Paulson and Nazarian joined in this Decision.

Moreover, under PERB Regulation 32147, subdivision (b)(1)(A), every PERB division must expedite this case as soon as the stay ends. Finally, PERB Regulation 32147, subdivision (c)(2) requires all parties to prominently display the words "EXPEDITED CASE" on the first page of every document filed in any of the three cases.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ST. HOPE PUBLIC SCHOOLS, Employer, A GROUP OF EMPLOYEES, Petitioners, and SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA, Exclusive Representative.	REPRESENTATION CASE NO. SA-DP-278-E ADMINISTRATIVE DETERMINATION December 29, 2023

Appearances: Adrianne Hall for a Group of Employees; Roger L. Scott, Attorney, for St. HOPE Public Schools; Jacob Rukeyser, Attorney, for Sacramento City Teachers Association.

Before Brendan P. White, Senior Regional Attorney

This matter is before the Office of the General Counsel (OGC) of the Public Employment Board (PERB or Board) for an administrative determination of two issues concerning the above-referenced decertification petition: (1) whether the petition should be dismissed pursuant to a settlement agreement between St. HOPE Public Schools (St. HOPE or employer) and Sacramento City Teachers Association (SCTA or Union), the exclusive representative of St. HOPE's teachers, that resolved certain unfair practice charges, and (2) whether any decertification election should be stayed for a second time pending resolution of PERB Unfair Practice Charge (UPC) No. SA-CE-3145-E, which SCTA filed against St. HOPE on October 5, 2023.

For the following reasons, it is determined that the petition should not be

dismissed at this time, but that further processing should be stayed pending resolution of UPC No. SA-CE-3145-E and any other blocking charges. Therefore, SCTA's request to stay the petition is GRANTED.[1]

PROCEDURAL HISTORY

Petition for Recognition

St. HOPE has operated a public charter school system since 2003. It enrolls approximately 2,000 students in its elementary school (PS7 Elementary School), two middle schools (Oak Park Prep and PS7 Middle School), and high school (Sacramento Charter High School). In 2017, St. HOPE's approximately 96 regular classroom teachers began organizing with SCTA and their efforts culminated in the filing of a request for recognition with PERB on April 28, 2017. On December 6, 2018, in *St. Hope Public Schools* (2018) PERB Order No. Ad-472, the Board certified SCTA as the exclusive representative for the certificated bargaining unit at St. HOPE. Since that time, the parties have engaged in negotiations but thus far failed to reach a first contract.

Petition for Decertification and First Round of Blocking Charges

On June 25, 2021, a group of employees filed the underlying decertification petition. However, further processing of the petition was stayed pursuant to a September 15, 2021 administrative determination (AD) in which OGC concluded that the allegations contained in various unfair practice charges would, if proven, "so affect the election process as to prevent the employees from exercising free choice." (PERB

[1] All further dates occur in 2023 unless otherwise noted.

Reg. 32752.) Among the various allegations, SCTA claimed in UPC No. SA-CE-3046-E, that St. HOPE awarded $2,000 bonuses to unit employees in March 2020, i.e., a few months before the filing of the decertification petition, without first providing SCTA with notice and an opportunity to bargain. In its answer to the resulting PERB complaint, St. HOPE admitted that it awarded the bonuses without bargaining, but denied that such conduct was unlawful under the circumstances. In light of this and other allegations, OGC determined that it could not "conduct an election [because] there is a likelihood that alleged unlawful conduct by St. HOPE has affected voter choice."[2]

St. HOPE and SCTA's Settlement Agreement

Rather than proceed to formal hearings on the underlying blocking charges, St. HOPE and SCTA engaged in settlement discussions with the assistance of a PERB Administrative Law Judge. Those discussions resulted in a May 22, 2022 settlement agreement, which purported to resolve all then-pending charges in exchange for the following:

> "1. Extension of Bar. The Parties agree that is just and proper under the circumstances that SCTA's status as the exclusive representative [of] its bargaining unit shall be extended, as if the initial year after lawful recognition has not expired, for twelve (12) months from the latter of the date [OGC] and/or PERB approve such an extension, or August 15, 2022."

Additionally, the settlement agreement was expressly "conditioned on the

[2] The September 2021 AD also considered two other charges, SA-CE-3007-E, SA-CE-3024-E, both of which SCTA subsequently withdrew on December 18.

approval, by [OGC] and/or PERB, of the Parties' agreement to extend the recognition year," and the approval of St. HOPE's Board of Directors. More than a year later, on June 27, St. HOPE notified PERB that it had approved the settlement agreement.

Order to Show Cause (OSC)

On July 7, the undersigned issued the now pending OSC, in which OGC "preliminarily determined to honor and give effect to the settlement agreement." In sum, the OSC concluded that the petition was subject to dismissal under EERA section 3544.7p(b)(2) because it was filed during, and therefore barred by, the retroactively extended certification year.[3] Thus, OGC gave the petitioning employees an "opportunity to show cause why the decertification petition should not be dismissed as barred by the settlement agreement's extension of the certification year."

On July 28, St. HOPE, asserting it was a "real party in interest," filed its opposition to the OSC, and stated:

> "the intent of the Settlement Agreement was to extend the certification bar so that the Decertification Petition on file would be tolled for approximately one (1) year, delaying the election requested by the employees and precluding the filing of any further petitions during that time period. In the settlement, the parties did not agree to the dismissal of the properly and timely filed Decertification Petition at issue. If the parties had desired the dismissal of the previously filed Decertification Petition, the Settlement Agreement would have stated such, rather than leaving such a critical issue open to the interpretation of PERB. The parties to the Settlement Agreement intended only to

[3] EERA section 3544.7(b)(2) requires dismissal of a petition if "[t]he public school employer has, within the previous 12 months, lawfully recognized an employee organization…."

stipulate to the continued stay of the Decertification Petition (as previously determined by PERB)."

Around this point in time, the original employee-representative that filed the decertification petition, Patricia Burks, notified OGC that she was no longer employed by St. HOPE, and that she wished to find another bargaining unit member to assume her duties as proponent of the decertification effort. OGC subsequently granted Burks an extension of time to permit a new unit employee to act as petitioner's representative. On August 9, Adrianne Hall, a "teacher at Sacramento High School who previously signed the decertification petition," took on that role. Hall, whose disputed employment at St. HOPE will be more fully discussed below, filed an opposition to the OSC on August 25, for reasons largely identical to those offered by St. HOPE.

On September 1, SCTA filed its response to the OSC, urging OGC to dismiss the petition based on the settlement agreement's retroactive extension of the certification bar. The undersigned then took the matter under submission.

Hall's Alleged Role at St. HOPE Academy

On September 7, after having received information that she might be employed in a management position at St. HOPE, OGC requested more information from Hall to clarify her employment status. On September 11, Hall filed a sworn declaration in which she stated that, in addition to working as a teacher for one partial day per week, she was also the full-time Chief Operating Officer (COO) for St. HOPE Academy, a position she has held since 2017.[4] According to Hall, St. HOPE Academy provides

[4] The declaration was erroneously dated August 25.

"back-office operational services" for St. HOPE, including payroll, recruitment and hiring, and so-called "human capital operations." Hall averred that she did "not have a relationship with [St. HOPE] in [her] current role as COO for St. HOPE Academy."

According to a September 12 declaration from St. HOPE's Director of Operations, Elisha Ferguson Parsons, St. HOPE pays St. HOPE Academy approximately $1.1 million a year for "contracted back office operational support services." The "Statement of Work" between St. HOPE and St. HOPE Academy defines the scope of the services to include a variety of administrative and employment-related tasks, including payroll, legal compliance, recruitment, hiring, salary adjustments, and the responsibility to provide "the St. HOPE culture on-boarding to introduce staff to the St. HOPE history." Parsons declared that Hall "does not provide any services to [St. HOPE] as an employee of [St. Hope Academy]."

On October 5, SCTA filed an unfair practice charge against St. HOPE, PERB UPC No. SA-CE-3145-E, in which it alleged that, by virtue of her role as Chief Operating Officer of St. HOPE Academy, Hall is not a bargaining unit teacher but an agent of St. HOPE. The charge also alleges that St. HOPE included Hall on its roster of bargaining unit employees only after she signed the decertification petition, and that through her it unlawfully participated in the campaign to decertify SCTA as the exclusive representative of certificated employees. SCTA requested that OGC stay further processing of the decertification petition in light of these allegations.

The same day, OGC notified the parties of SCTA's request. On October 13, Hall and St. HOPE filed separate oppositions. Hall asserted that the petition had already been blocked and the Union had "plenty of time" to show its commitment to

the teachers. St. HOPE asserted that SCTA failed to provide sufficient detail to support its allegations, and that the petition had already been stayed.

On October 27, OGC issued a complaint alleging, inter alia, that Hall's dual roles as COO of St. HOPE Academy and proponent of the decertification effort constituted unlawful employer interference with protected employee rights and a violation of the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD).[5]

Subsequent Events

On December 18, SCTA filed a further response to the OSC, withdrawing its prior response and urging OGC to set aside the settlement agreement in light of the parties' disagreements as to its meaning and effect on the underlying decertification petition. Additionally, PERB's Division of Administrative Law has resumed processing UPC No. SA-CE-3046-E (alleging that St. HOPE awarded $2,000 bonuses to unit employees shortly before the filing of the petition), and a formal hearing is scheduled to occur in 2024.

DISCUSSION

As explained above, the OSC gave the petitioning employees an "opportunity to show cause why the decertification petition should not be dismissed as barred by the settlement agreement's extension of the certification year." Additionally, the charge filed by SCTA on October 5 (UPC No. SA-CE-3145-E) asserts that the petition should be blocked because of Hall's status as COO of St. HOPE Academy and proponent of

[5] PEDD is codified at Government Code section 3550 et seq.

the decertification effort. In light of the peculiar procedural posture of this case and considering the oppositions filed by Petitioners and St. HOPE on October 13, OGC has determined for the following reasons that the petition should not be dismissed at this time, but instead must be blocked pending the resolution of UPC No. SA-CE-3145-E.[6]

If Hall is an agent of St. HOPE as SCTA alleges in the October 5 blocking charge, then Hall should have had no role whatsoever in the decertification effort. The Board has interpreted EERA section 3543.5(d) as imposing "an unqualified requirement of strict neutrality" on public school employers during a decertification campaign. (See, e.g., *Clovis Unified School District* (1984) PERB Decision No. 389.) Hall's alleged dual roles as high-level manager and leader of the decertification effort would constitute a violation of St. HOPE's duty of strict neutrality. And should the evidence establish as much, the petition would be subject to dismissal regardless of the meaning of any prior agreement between the parties, at least absent an affirmative showing that this unfair conduct could not affect employee choice or otherwise taint the election process. (*Children of Promise Preparatory Academy* (2018) PERB Order No. Ad-470, p. 1.)

To safeguard the right of employees to participate in employee organizations of their own choice, PERB must investigate these allegations and determine their veracity. As such, it is not possible to dismiss the petition absent a complete

[6] Because processing of the petition must be stayed for the time being, OGC need not, and does not, determine at this time whether the parties' settlement agreement requires dismissal of the petition. Any unresolved charges identified in the September 21, 2021 AD, including SA-CE-3046-E, remain pending and continue to block the petition.

investigation of the charge, which may include a formal hearing to determine the nature of Hall's employment and role in the decertification effort.

PERB Regulation 32752, "Stay of Election" provides: "The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice…."

In "determining whether an election stay is warranted, PERB does not resolve factual disputes [but rather] assumes that the essential facts alleged in the charge are true." (*Consolidated Irrigation District* (2023) PERB Decision No. Ad-504-M, p. 5 (*Consolidated*), citing *Children of Promise* (2015) PERB Order No. Ad-428.) Thus, while St. HOPE denies the allegations of the blocking charge and contends that Hall is merely a teacher so far as it is concerned, it is not OGC's role at this stage to weigh the evidence or decide conflicting issues of fact. Rather, "the only relevant issue is whether the employer's conduct, as alleged in the complaint, will so taint the election process as to interfere with employee free choice." (*Id*. at p. 7.) Therefore, the question here is whether Hall's active participation in the decertification campaign while serving as a putative agent of St. HOPE could interfere with employee free choice. If there is good cause to believe such conduct would undermine the integrity of an election, the petition must be stayed.

PERB has not issued a decision on facts like these, i.e., where an agent of the employer is accused of playing a leading role in a decertification effort to the point of signing the petition and acting as the employees' representative. However, many decisions by the National Labor Relations Board (NLRB) hold that agents of the

employer may not participate in or provide more than ministerial aid to decertification campaigns. (See, e.g., *SKC Electric, Inc*. (2007) 350 NLRB 857 [interference found where employer-agent circulated and filed decertification petition]; *Central Washington Hospital* (1986) 279 NLRB 60, affd. (9th Cir. 1987) 815 F.2d 1493 [employer's involvement in circulation of decertification petition constituted interference]; *Hearst Corp.* (1986) 281 NLRB 764, enfd. mem. (5th Cir. 1988) 837 F.3d 1088 [employer tainted petition by its agent's direct solicitation of signatures on petition].)[7] In all such cases, the NLRB has uniformly concluded that an employer-agent's active involvement in a decertification campaign undermines the possibility of a free election and taints the entire process.

Petitioners and St. HOPE assert that the petition had already been blocked, the Union had "plenty of time" to show its commitment to the teachers, and that SCTA failed to provide sufficient detail to support UPC No. SA-CE-3145-E. But these arguments do not address the critical inquiry in a blocking charge: whether the employer's conduct, as alleged in the complaint, will so taint the election process as to interfere with employee free choice. (*Children of Promise Preparatory Academy*, *supra*, PERB Order No. Ad-470, p. 1.)

Here, if Hall is indeed an agent of St. HOPE, there can be little doubt that her active leadership in the decertification campaign would taint the petition and any resulting election. Indeed, it must be unlawful for an agent of the employer to actively

[7] Federal judicial and administrative precedent is not binding on PERB, though such precedent may be persuasive in construing California's public sector labor relations statutes. (See, e.g., *Gompers Preparatory Academy* (2020) PERB Order No. Ad-481, p. 5, fn. 4 [citing NLRB decisions to block a decertification petition].)

superintend a decertification effort because such conduct necessarily deters or discourages employees "from becoming or remaining union members," in violation of both EERA 3543.5(a) and the PEDD. Thus, given the nature of the allegations, it is appropriate to stay further processing of the petition to permit a full investigation of the blocking charge and, if necessary, a proper remedy. (See *Consolidated*, *supra*, PERB Decision No. Ad-504-M at pp. 9-10 [conduct that arguably violates PEDD "is especially likely to impact an election and thus necessitates a stay"].)

CONCLUSION

Based on the foregoing reasons, SCTA's request to stay further processing of the petition is GRANTED. Additionally, the petition remains blocked by any unresolved charges identified in the September 21, 2021 AD. It is hereby ORDERED that Case No. SA-DP-278-E be placed in abeyance pending the resolution of all blocking charges including PERB UPC No. 3145-E.

RIGHT OF APPEAL

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision. (PERB Reg. 32360(a) & (b).) The appeal must be in writing and state the specific issues of procedure, fact, law, or rationale being appealed, as well as the grounds for the appeal. (PERB Reg. 32360(c).)[8] Within ten (10) calendar days following the date an appeal is served, any other party may file with the Board itself a response to the appeal. (PERB Reg.

[8] An appeal will not automatically prevent the Board from proceeding in this case; a party seeking a stay of any activity may file such a request with its administrative appeal and must include all pertinent facts and justifications for the request. (PERB Reg. 32370.)

32375.)

A. Electronic Filing Requirements

Except as specified below, documents filed with the Board itself must be filed electronically. (PERB Reg. 32110(a).) Parties filing electronically must create an account and submit documents through the "ePERB Portal," accessible from PERB's website (www.perb.ca.gov). All electronically filed documents must be in PDF format and, to the extent possible, text searchable. (PERB Reg. 32110(d).) A document submitted through ePERB after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed filed the next regular PERB business day. (PERB Reg. 32110(f).) A filing party must adhere to the service requirements described below.

B. Filing Requirements for Unrepresented Individuals

Individuals not represented by an attorney or union representative, are encouraged to electronically file their documents as specified above; however, such individuals may submit their documents to PERB for filing via: in-person delivery, US Mail, or other delivery service. (PERB Reg. 32110(a) & (b).) All paper documents are considered "filed" when the originals, including proof of service (see below), are actually received by PERB's Headquarters during a regular PERB business day. (PERB Reg. 32135(a).) Documents may be double-sided, but must not be stapled or otherwise bound. (PERB Reg. 32135(b).)

The Board's mailing address and contact information is as follows:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124

Telephone: (916) 322-8231

C. Service and Proof of Service

Concurrent service of documents on the other party and proof of service are required. (PERB Regs. 32360(d), 32375, 32140, & 32093.) Proof of service forms are located on PERB's website: www.perb.ca.gov. Electronic service of documents through ePERB or e-mail is authorized only when the party being served has agreed to accept electronic service in this matter. (See PERB Regs. 32140(b) & 32093.)

D. Extension of Time

A request for an extension of time in which to file an appeal or an opposition to an appeal with the Board itself must be in writing and filed with the Board. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (PERB Reg. 32132.)