

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

SAN JOAQUIN COUNTY OFFICE OF
EDUCATION,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION,

Petitioner.

Case No. SA-RR-1043-E

Request for Judicial Review and
Reconsideration

PERB Decision No. 1627-E

PERB Order No. JR-21

July 8, 2004

Appearances: Atkinson, Andelson, Loya, Ruud & Romo by Paul M. Loya, Attorney, for San Joaquin County Office of Education; Maureen C. Whelan, Attorney, for California School Employees Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on the San Joaquin County Office of Education's (County) request for judicial review or in the alternative, reconsideration. The County petitions the Board to join in its request for judicial review of San Joaquin County Office of Education (2004) PERB Decision No. 1627 (San Joaquin). In San Joaquin, the Board granted a unit modification petition filed by the California School Employees Association (CSEA) to establish a bargaining unit comprising the classifications of recruiter, migrant services assistant, secondary school advisor, support services facilitator and youth advocate within the County's Migrant Education Program.

After reviewing the County's request for judicial review or in the alternative, reconsideration, and CSEA's opposition to the request and the entire record in this matter, the

Board declines to join in the request for judicial review and denies the request for reconsideration based on the following discussion.

DISCUSSION

In ruling on judicial review requests, the Board's authority is derived from the Educational Employment Relations Act (EERA)¹ section 3542(a) which states, in pertinent part:

No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review.

Under PERB Regulation 32500(c),² the Board has the sole discretion to determine whether a case is one of "special importance." The regulation states, in pertinent part:

(c) The Board may join in a request for judicial review or may decline to join, at its discretion.

The Board's considerable discretion in determining appropriate units is demonstrated by the very limited circumstances in which judicial review of its unit decisions may be obtained. (San Diego Unified School District (1981) PERB Order No. JR-10.)

If unit determinations by PERB are subject to numerous legal challenges then there would be the possibility of significant delay in implementing the Board's decisions.

(San Francisco Community College District (1995) PERB Order No. JR-16 (San Francisco); State of California (Department of Personnel Administration) (1993) PERB Order No. JR-15-S.)

¹EERA is codified at Government Code section 3540, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

The Board will grant judicial review only when it finds “special importance.” For there to be special importance the Board must find: (1) there is a novel issue presented; (2) the issue primarily involves statutory construction unique to EERA; and (3) the issue is likely to arise frequently. (San Francisco; Los Angeles Unified School District (1985) PERB Order No. JR-13.)

The County requests that the Board join in seeking judicial review because of the special importance with respect to San Joaquin diverging from Sweetwater Union High School District (1976) EERB³ Decision No. 4 (Sweetwater) precedent because it forces negotiation with both a Sweetwater unit and a non-Sweetwater unit.

The County also indicates in its petition, concern that the decision will cause “an avalanche of requests to establish or modify units based in large part on the nature of the department or mission.”

CSEA does not believe this case is one of the special importance necessary to warrant judicial review. CSEA points out these are the same arguments used by the County in the underlying case and believes the County really objects to union representation for its employees rather than to the particularities of the unit configuration. CSEA also points out that when, as here, there is no petition on file for a preferred Sweetwater unit, the issue before PERB is limited to whether the unit is an appropriate unit. (Lodi Unified School District (2001) PERB Decision No. 1429 (Lodi)). CSEA argues the sole intent of the petition for judicial review or reconsideration is to delay the implementation of the Board’s decision in San Joaquin.

³Prior to 1978, PERB was known as the Educational Employment Relations Board (EERB).

In San Joaquin the Board utilized a de novo review of the record and reached the same conclusion as the Board agent. The Board applied the facts of this particular case to the criteria for unit determination.

In situations where a Sweetwater unit is not at issue, no presumption applies and the standard remains whether the proposed unit is an appropriate one. (Lodi; Long Beach Community College District (1999) PERB Decision No. 1315.)

The key here is that the Board is not required to establish the “most” appropriate unit. (EERA sec. 3544(a).) The Board found that the proposed classifications share a “community of interest” that is “separate and distinct” from other existing or potential bargaining units and therefore is appropriate.

We do not believe the facts in San Joaquin present a novel issue, primarily involve construction of a statutory provision unique to EERA, or are likely to be raised frequently. The Board has great discretion in these cases. Dissatisfaction with that discretion is not enough. The three prongs of the test for judicial review have not been met.

The Board declines to seek judicial review.

RECONSIDERATION

The County has requested reconsideration⁴ in the alternative to judicial review. The request for reconsideration is based on prejudicial errors of fact and conclusions of law in the decision of the Board and the administrative law judge. PERB does not grant reconsideration based on generic allegations of prejudicial error (Jamestown Elementary School District (1989) PERB Order No. Ad-187).

No specific error of fact or law has been demonstrated. The request for reconsideration is denied.

⁴See PERB Regulation 32410.

ORDER

It is hereby ORDERED that the request for judicial review of San Joaquin County Office of Education (2004) PERB Decision No. 1627 is DENIED.

Members Whitehead and Neima joined in this Decision.