DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

TAMALPAIS UNION HIGH SCHOOL DISTRICT, Employer	)	
and	)	Case Nos. SF-R-32 and SF-R-352
TAMALPAIS FEDERATION OF TEACHERS CFT/AFT/AFL/CIO; TAMALPAIS DISTRICT TEACHERS ASSOCIATION CTA/NEA, Employee Organizations	)	EERB Decision No. 1

Appearances: Sharrel Wyatt, Attorney, for Tamalpais District Teachers Association, CTA/NEA; Stewart Weinberg, Attorney, for Tamalpais Federation of Teachers; Jane Slenkovich, Deputy County Counsel, for Tamalpais Union High School District.

Before Alleyne, Chairman; Gonzales and Cossack, Members

OPINION

This case involves challenged representation-election ballots and objections to conduct affecting the results of a representation election conducted by the Educational Employment Relations Board (EERB).[1] The parties are the Tamalpais Union High School District, the Tamalpais Federation of Teachers, CFT/AFT/AFL/CIO and the Tamalpais District Teachers Association, CTA/NEA.

Background

On May 20, 1976, agents of the EERB conducted a representation election under the terms of a consent-election agreement signed by all parties in this case and approved by the Executive Director of the EERB. At the conclusion of the election, a tally of ballots signed by authorized agents of

1. Representation elections under the Rodda Act and representation matters preliminary to those elections are governed by Article 5 of the Rodda Act, Government Code Section 3540, et seq., and Chapter 3 of the EERB's Emergency Regulations, Part III, Title 8, Cal. Admin. Code.

the employer, the two employee organizations and the EERB, showed the following results of the balloting:

Approximate number of eligible voters	347
Void ballots	3
Votes cast for Tamalpais Federation of Teachers	161
Votes cast for Tamalpais District Teachers Association	155
Votes cast for no representation	4
Valid ballots counted	320
Challenged ballots	3
Valid votes counted plus challenged ballots	323

One ballot was challenged by the Tamalpais District Teachers Association and two were challenged by the Tamalpais Federation of Teachers. No party to the election received a majority of the total number of ballots counted and challenged. Therefore the three challenged ballots were sufficient to affect the results of the election. Objections to conduct affecting the results of the election were filed by the Tamalpais District Teachers Association. The employer has taken no position on the objections and has taken a position only on the challenged ballot of Max Segar. We consider in order the challenges and the objections.

The Challenges

The Association challenged the ballot of Max Segar on the ground that he was not eligible to be included in the unit on the day of the election. The Federation challenged the ballots of Al Endriss and Deanne Wilson on the ground that they were managers or supervisors who were not eligible to vote because the Rodda Act specifically excludes managers and supervisors from a unit that includes classroom teachers.[2] We first consider the challenged ballots of Endriss and Wilson.

2. See Government Code Sections 3543.4, 3545(a), (b) (1) and (2).

The parties' consent agreement describes the unit of eligible voters as follows:

> All certificated employees, excluding Superintendent, Assistant Superintendent, Directors of Business and Personnel, Coordinator of Instruction, Administrative Assistants of Administration and Public Information, Principals, Associate Principals, Assistant Principals, Deans, Directors of Student Activities, Adult Education Teachers and Substitutes who are employed to serve in an on-call status to replace absent regular employees on day-to-day basis.

The consent-election agreement expressly excludes Deans from the unit. The Tamalpais Union High School District "Management Team" list for the 1975-76 school year describes Endriss and Wilson as Level IV Deans at the Redwood High School. The list was compiled in compliance with the Winton Act,[3] which, among other things, required school boards to identify by position the certificated members of a school district management team for meet-and-confer purposes under the Winton Act. A single position of Dean, Level IV, having been designated by the District School Board as a management-team position at Redwood High School, the Redwood High School Principal divided the one Level IV Dean position into two parts and assigned part of that allowance to Deanne Wilson, and part of it to Al Endriss. To further designate and identify the work assigned to Endriss and Wilson, the Redwood High School Principal also gave them the subtitles Director of Athletics and Director of Student Activities, respectively.

At the hearing, the parties stipulated that at the time of the election, Wilson and Endriss were compensated one-half as Deans and one-half as classroom teachers at the appropriate

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3. Education Code Section 13085.5. Section 1 of the Rodda Act repealed the Winton Act, effective July 1, 1976.

level; that Endriss was employed as a classroom teacher three out of five required teaching periods, and that Wilson was employed as a classroom teacher for two out of five required teaching periods. They further stipulated that the rate of pay for Deans is higher than the rate of pay for classroom teachers.

In the consent-election agreement, the inclusions in the unit are described in general terms as "all certificated employees"; the excluded classes are described in specific terms. Thus, our proper focus here is on the exclusions set out in the consent-election agreement.

In excluding Deans from the unit, the agreement makes no distinction between full-time and part-time Deans. We conclude that by excluding "Deans" from the unit, the parties intended to exclude all the Deans named on the school district's management-team list for the 1975-76 school year. We note that other than Endriss and Wilson as Level IV Deans, all other job classifications on the district's management team list are not in dispute in this case and are expressly excluded from the unit described in the consent-election agreement. The consent-election agreement also excludes "Directors of Student Activities." Thus Wilson, in addition to her exclusion from the unit as a Dean, is also excluded from the unit as a Director of Student Activities.

The parties to a validly approved consent-election agreement are bound by its terms. In this case, the unit described as appropriate in the consent-election agreement is not inconsistent with a clear and specific mandate in the unit-criteria provisions in the Rodda Act.[4] Accordingly, we decide that the consent-election agreement is controlling in this case,[5] and

4. See Government Code Section 3545.
5. See NLRB v. J.J. Collins' Sons, Inc., 332 F. 2d 523, 56 LRRM 2375 (C.A. 7, 1964); Tidewater Oil Co. v. NLRB, 358 F. 2d 363, 61 LRRM 2693 (C.A. 2, 1966).

that Wilson and Endriss were not eligible to vote under its terms. We therefore need not decide whether Endriss and Wilson were ineligible to vote because they were managers or supervisors within the meaning of the Rodda Act.

The challenges to the ballots of Deanne Wilson and Al Endriss are sustained.

On this disposition of the Endriss and Wilson challenged ballots, the number of valid ballots cast in the election becomes 321; a majority of the valid ballots counted and challenged becomes 161, which is the number of votes received by the Federation. Therefore the remaining challenged ballot of Max Segar is not sufficient to affect the results of the election and we need not decide whether Segar was an employee in the agreed-upon unit on the date of the election.

The Objections

The Association filed objections to conduct affecting the results of the election, later amended at the hearing as follows:

I. That, contrary to the directions given to the parties at the pre-election conference conducted by agents of Educational Employment Relations Board that representatives of the parties should not monitor the voting within the vicinity of the polling places, representatives of the Tamalpais Federation of Teachers did so monitor the polling places in the following schools:

   A. Redwood High School - That, upon the opening of the polling place at Redwood High School, located in the principal's conference room (room 112), representatives of the Tamalpais Federation of Teachers were observed sitting in chairs adjacent to the doorway of the polling place marking cards and papers. That, further, these representatives were cautioned by James Tamm, the election moderator, that their presence in the vicinity of the polling place jeopardized the conduct of the

election and that subsequent to such warning they did not immediately move. That further, during the course of the day, a representative of the Tamalpais Federation of Teachers was seen within sight of the polling place.

B. Drake High School - That representatives of the Tamalpais Federation of Teachers were seen in the vicinity of the polling place at Drake High School marking papers during the polling hours.

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III. That, on Monday preceding the election, May 18, 1976, the Tamalpais Federation of Teachers caused to be placed on the bulletin boards and distributed in faculty lounges, a mechanical duplication of the official ballot contained in the notice of election and had such official ballot marked with an "X" in the space designated Tamalpais Federation of Teachers CFT/AFT/AFL/CIO.

IV. That, in the pre-election conference cited herein, representatives of the Tamalpais District Teachers Association objected to the potential intrusion of media and television cameras into the polling places; that the election moderator refused to sustain the objection of the Association and that upon information and belief, the Association contends that the presence of media and television cameras chilled the free exercise of the balloting process.

In respect to the three incidents alleged in the objections, poll monitoring, television coverage and the reproduced EERB ballot, the essential facts are not in dispute and may be summarized as follows:

Poll Monitoring -- Poll monitoring, as alleged in the amended objections and as supported by the evidence, consisted of two Redwood High School teachers, both members of the Federation, checking off the names of voters. They did this at the request of an agent of the Federation for the purpose of determining which supporters had not voted and to remind nonvoters to vote.

From a distance of about four to six feet from the door leading to the place of balloting at Redwood High School, the two teachers monitored the voting for ten minutes. They could not see voters casting their ballots inside the conference room, nor could voters inside the conference room see the monitors. On being told by an agent of the EERB that "someone might question your being here....", they left and continued their monitoring at a greater distance from the door and at other places outside the area where voters approached the polls. At Drake High School, two members of the Federation who were stationed about 60 feet from the polling site checked off the names of voters on a list of names held on a clipboard.

The News Media -- On three separate occasions during the election, and for durations of not more than twenty minutes at two different schools, there was television coverage of the election by three television stations. At Redwood High School, one television station took moving pictures with floodlights for about ten minutes; at Tamalpais High School, another station took pictures with floodlights for twenty minutes, at most, and another station took motion pictures at Tamalpais High School for not more than twenty minutes and without the use of floodlights.

The Ballot Duplication -- Two days before the election, agents of the Federation placed in prominent places at two district high schools a duplication of the EERB's official sample ballot. The reproduced ballot was marked with an "X" in the space for a Federation vote. The words "vote TFT" and a large "X" were printed on the bottom of the reproduced ballot and the date "May 20" was printed at the top in large boldface letters; no date appeared on the official sample ballot. The reproduced ballot was printed on yellow paper; the official sample ballot was printed on blue paper. The word

"sample" was printed in block letters across the face of the reproduced ballot while it was handwritten across the face of the official sample ballot.

This is the Board's first decision on representation-election objections. The Board's published Emergency Regulations, effective since April 1, 1976, contain governing criteria. Section 30076 of the regulations provide:

> Grounds for Objections. Objections will be entertained by the Board only on the following grounds:
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> (a) The conduct complained of is tantamount to an unfair practice as defined in Article 4 of the Act; or
>
> (b) Serious irregularity in the conduct of the election.

In adopting Rule 30076, it was the intent of the EERB to overturn representation-election results only when conduct affecting the results of the election amounts to an unlawful practice under Article 4 of the Rodda Act[6] or constitutes "serious irregularity in the conduct of the election."

We first note the Association's admission at the hearing that no evidence was introduced in support of a finding that any voter was discouraged from voting or misled because of the conduct alleged in the amended objections. While acknowledging the absence of such evidence, the Association's position is that discouragement from voting should be inferred from the undisputed fact that poll watching and television coverage took place; and that from the admitted reproduction and marking of the EERB sample ballot, we should infer that some voters were led to believe that the EERB supported the Federation in the representation election. Neither party contends, and we

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6. Unlawful practices by employee organizations are defined in Government Code Section 3543.6. The single subsection arguably applicable in this case is Government Code Section 3543.6(b), which provides: "It shall be unlawful for an employee organization to *** Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter."

do not find, that any of the conduct objected to was tantamount to an unlawful practice as defined in Article 4 of the Rodda Act. Thus the only question before us concerns the application of the "serious-irregularity" portion of Rule 30076.

In the absence of evidence that voters were discouraged from voting, we would sustain the Association's poll-monitoring and television-coverage objections only on finding that those events had the natural and probable effect of discouraging voter participation in the representation election. We find instead that they did not have that effect. We are unable to conclude that a voter in this election would be dissuaded from casting a ballot because a fellow employee unobtrusively checked off names of voters as they entered the balloting room, or because of the presence of television cameras for brief periods during the all-day balloting. The Association's brief concedes that the "presence of the media, taken alone and without proof of chilling effect, may not be enough to justify setting this election aside...." Absent evidence of discouragement, or facts from which discouragement might be inferred, we decide that the poll monitoring and television coverage, either alone or in combination, did not constitute "serious irregularity in the conduct of the election" within the meaning of EERB Rule 30076.[7]

The record does not support the Association's position that eligible voters could have been misled to believe that the EERB was a supporter of the Federation rather than a neutral

7. The NLRB overturns representation elections on finding that a list of the names of persons voting was kept by someone other than those maintaining the official eligibility list. The NLRB infers coercion from the list-keeping itself and does not rely on actual evidence of coercion. E.g., Piggly-Wiggly Eagle Food Centers, Inc., 168 NLRB 792, 66 LRRM 1360 (1967); International Stamping, Inc., 97 NLRB 921, 29 LRRM 1158 (1951). These decisions are not consistent with our Rule 30076 and we decline to follow them.

government agency responsible for conducting the representation election. Instead, the inference to be drawn from the undisputed facts is that the reproduced ballot could only have been regarded as an election-campaign tactic conceived and implemented by the Federation.[8] We accordingly conclude that the Federation's reproduction and marking of the ballot was neither tantamount to an unlawful practice under Article 4 of The Rodda Act nor a "serious irregularity in the conduct of the election" within the meaning of EERB Rule 30076.

The amended objections are overruled.

ORDER

Two challenged ballots having been sustained and the objections having been overruled, the Educational Employment Relations Board's Executive Director will issue a revised tally of ballots consistent with this decision and certify the Tamalpais Federation of Teachers CFT/AFT/AFL/CIO as exclusive representative of the employees in the unit described in the parties' consent-election agreement.

Reginald Alleyne, Chairman

Raymond Gonzales, Member

Jerilou Cossack, Member

Dated: July 20, 1976

8. Allied Electric Products, Inc., 109 NLRB 1270, 34 LLRM 1538 (1954); Custom Molders of P.R., 121 NLRB 1007, 42 LRRM 1505 (1958), and Superior Knitting Corp., 112 NLRB 984, 36 LRRM 1133 (1955), cited in the Association's brief, are National Labor Relations Board decisions holding that a nearly exact reproduction and marking of an NLRB sample ballot is a ground for setting aside an election, even in the absence of evidence that voters were misled to believe that the NLRB supported the union that reproduced the ballot. Our rule 30076 requires that we not follow the strict per-se rule of Allied Electric Products, Inc.