

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



TURLOCK UNIFIED SCHOOL DISTRICT,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES  
ASSOCIATION & ITS CHAPTER 56,

Petitioner,

and

TURLOCK CLASSIFIED AFT,

Petitioner.

Case No. SA-RR-1057-E

Administrative Appeal

PERB Order No. Ad-345

January 26, 2005

Appearance: California School Employees Association by Madalyn J. Frazzini, Deputy Chief Counsel, for California School Employees Association & its Chapter 56.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeals filed October 5, 2004, and October 21, 2004, by the California School Employees Association & its Chapter 56 (CSEA) to administrative determinations related to the representation election for a bargaining unit at the Turlock Unified School District (District). CSEA has appealed the determination by the Board agent to proceed with a consent election over its requests for a stay and the determination of the Appeals Assistant that the October 5, 2004, appeal was not proper.

The other parties declined to join CSEA in asking for a stay to allow time for the internal American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) process related to a violation of Article XX of the AFL-CIO constitution.

The Board has reviewed the entire record in this case and finds the Board agent and Appeals Assistant determinations were correct and denies the appeals as set forth in the discussion below.

### DISCUSSION

Prior to November 2003, Turlock had two school districts. One was for elementary schools and one was for high schools. In November 2003 the voters consolidated the districts.

CSEA represented four units at the elementary and high school districts, a unit of operations support at each district, an instructional assistants unit at the elementary district and an office technical unit at the elementary district. The Turlock Classified AFT (AFT) represented a unit of office technical and paraprofessional employees at the high school district. AFT and CSEA petitioned to represent their same units at the new employer, the consolidated school district. They proposed five bargaining units. The District did not agree and proposed three bargaining units following the presumptively appropriate Sweetwater<sup>1</sup> district. On May 27, 2004, PERB issued an administrative determination finding the Sweetwater units more appropriate than the five units proposed by CSEA and AFT.

Both CSEA and AFT petitioned to be placed on the ballot and submitted the requested proof of support. Consent elections were scheduled. The issue here is related only to the election for the office technical/business support services unit. The election was scheduled for October 14, 2004.

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<sup>1</sup>Sweetwater Union High School District (1976) EERB Decision No. 4 (Sweetwater). (Prior to 1978, PERB was known as the Educational Employment Relations Board (EERB).)

## Request for Stay

On September 7, 2004, a request for a stay of the election was sent to PERB by the president of the AFL-CIO. He indicated that two AFL-CIO affiliates were in a dispute over representation in the clerical unit. He requested that any PERB action related to the scheduled election be held in abeyance.

The Board agent contacted the parties indicating that neither the Educational Employment Relations Act (EERA)<sup>2</sup> nor PERB regulations<sup>3</sup> provided for an election to be held in abeyance as a result of deferral to the internal dispute resolution procedures of unions or their affiliates. He advised a stay could be granted only if all parties agreed. Only CSEA wanted a stay. Both AFT and the District would not agree to a stay.

The Board agent, citing International Union of Operating Engineers, State of California Locals 3, 12, 39 and 501, AFL-CIO (California State Employees' Association, SEIU, AFL-CIO) (1984) PERB Decision No. 390-S (IUOE), advised the AFL-CIO and the parties that the election would not be stayed as the parties did not agree to do so.

## Appeal Filed on October 5, 2004

On October 5, 2004, CSEA appealed the determination to proceed with the election and requested a stay, asking that the ballots not be counted. This request was based on action by an AFL-CIO executive council subcommittee being in the process of reviewing the internal union issue of the representation dispute.

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<sup>2</sup>EERA is codified at Government Code section 3540, et seq. Unless otherwise noted, all statutory references herein are to the Government Code.

<sup>3</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

The appeal was denied as not in line with PERB regulations noting that PERB Regulation 32752 (Stay of Election), provides for a stay only when there is an unfair practice charge pending.

Appeal Filed on October 21, 2004

CSEA sent a second appeal to PERB on October 21, 2004. This appealed the determination of October 6, 2004, and was based on Section 3541.3(n) which allows the Board to "take any other action . . . necessary to discharge its powers and duties." It was CSEA's position that a stay could be granted on this basis not just on PERB Regulation 32752.

The election was held, the results were certified on October 26, 2004, and AFT prevailed. There are no objections to the elections process itself.

The Board agent was correct in going forward with the election and denying the request for a stay. In the case cited by the Board agent, IUOE, the AFL-CIO requested a stay to allow for the internal procedures of the union. It was also pending completion of the AFL-CIO Article XX "no raiding" procedures. There, CSEA appealed an administrative decision denying its request to place a decertification petition in abeyance pending completion of the Article XX no raiding proceedings. In denying that appeal, the Board stated, "The Board finds it is neither necessary nor wise to establish in this case a finite policy on deferral to such external proceedings." (IUOE, at pp. 3-4.)

CSEA also urged that the National Labor Relations Board (NLRB) example be followed. We note that the NLRB has specific procedures in place related to AFL-CIO constitution Article XX proceedings and PERB does not.<sup>4</sup>

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<sup>4</sup>The NLRB delays action on petitions for 30 days if one of the petitioners is an affiliate of the AFL-CIO. The NLRB adopted these procedures under the rationale that it avoids unnecessary case processing by allowing time for operation of the no-raid provisions of the AFL-CIO. (IUOE, Board agent's determination incorporated as the decision of the Board itself, May 23, 1984, p. 4.)

As to the appeal of October 5, 2004, we believe it is not proper to grant a stay here also because the regulation addressing stay of election only involves stays in light of pending unfair practice charges. (PERB Reg. 32752.)

In Robert L. Mueller Charter School (2003) PERB Order No. Ad-320, there was a question regarding the correct make up of a unit. The Board determined it was appropriate to go forward with the election and said, "[t]he Board therefore allows the election to take place in the certificated unit as described in [the association's] original request for recognition. This order to proceed with the election renders [the charter school's] request for a stay moot." The Board noted that the association opposed a stay because, under Board precedent, absent an unfair practice charge the election should occur and any representation issues be decided after the election. (Capistrano Unified School District (1994) PERB Order No. Ad-254; Long Beach Community College District (2000) PERB Order No. Ad-301 (Long Beach).)<sup>5</sup>

The request for stay is moot based on the certification of the election results.

It is not appropriate to grant a stay based on deferral to an outside entity's internal procedures and therefore, the appeals are denied.

#### ORDER

The appeals filed by the California School Employees Association & its Chapter 56 on October 5, 2004, and October 21, 2004, to PERB administrative determinations are hereby DENIED WITHOUT LEAVE TO AMEND.

Members Whitehead and Shek joined in this Decision.

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<sup>5</sup>In Long Beach, the Board determined it would not effectuate the purposes of EERA to stay the election, but they did impound the ballots pending determination of the administrative appeal.