

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



CHILDREN OF PROMISE PREPARATORY
ACADEMY,

Employer,

and

GROUP OF EMPLOYEES,

Petitioner,

and

INGLEWOOD TEACHERS ASSOCIATION,

Exclusive Representative.

Case No. LA-DP-403-E

Administrative Appeal

PERB Order No. Ad-470

November 29, 2018

Appearance: Bartsch Law Group, by Duane Bartsch, Attorney, for Children of Promise Preparatory Academy.

Before Banks, Shiners, and Krantz, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Children of Promise Preparatory Academy (Academy) of the attached administrative determination by PERB's Office of the General Counsel (OGC).¹ In the administrative determination, the OGC dismissed a decertification petition on the ground that the Academy failed to show the unfair practices it was found to have committed in *Children of Promise Preparatory Academy* (2018) PERB Decision No. 2558 would not affect employee free choice in a decertification election.

¹ In its appeal, the Academy also requests that the dismissal of the petition be stayed pending the Board's decision on the merits of the Academy's appeal.

We have reviewed the case file in its entirety in light of the issues raised in the Academy's appeal. Based on this review, we find the administrative determination to be well reasoned and in accordance with applicable law. Accordingly, we adopt the administrative determination as the decision of the Board itself, subject to the discussion below.

FACTUAL AND PROCEDURAL BACKGROUND

On January 29, 2015, a group of Academy employees (Petitioner) filed a petition to decertify the Inglewood Teachers Association (Association) as the bargaining unit's exclusive representative. On March 25, 2015, the Association filed an unfair practice charge against the Academy alleging various acts of misconduct that interfered with the Association's ability to effectively represent bargaining unit employees and thus also interfered with the election process. The Association requested a stay of the decertification election, citing the Academy's alleged interference and additional claims of bad faith bargaining alleged in a pending unfair practice charge filed by the Association in 2014.

On May 12, 2015, the OGC issued an administrative determination granting the Association's request to stay the decertification election. The OGC found that a fair election would be impossible because the Academy's alleged unlawful conduct, if true, would negatively impact the Association's relationship with its bargaining unit members, undercut support for the Association or unions in general, and so affect the election process as to prevent employees from exercising free choice. On appeal, the Board affirmed the administrative determination, thereby staying the decertification election while the blocking

charges were adjudicated.² (*Children of Promise Preparatory Academy* (2015) PERB Order No. Ad-428.)

Formal hearings on the Association’s unfair practice charges were conducted by two separate administrative law judges. Each issued a proposed decision finding that the Academy violated the Educational Employment Relations Act (EERA).³ The Academy appealed the proposed decisions to the Board itself, which consolidated the two cases. On March 27, 2018, the Board affirmed both of the proposed decisions, concluding that the Academy did in fact engage in the alleged unlawful conduct. (*Children of Promise Preparatory Academy, supra*, PERB Decision No. 2558.)

The Academy’s alleged unlawful conduct having been proven, on August 9, 2018, the OGC issued an order to show cause (OSC) as to why the decertification petition should not be dismissed. Specifically, the OGC requested that the parties address “whether the *actual* unlawful conduct of the Academy would likely have an effect on the vote of the employees and, therefore, influence the outcome of the election.” (Emphasis in original.)

The Academy responded by letter dated August 28, 2018, providing five sworn declarations from teachers “who were present during the Decertification Petition.”

Summarizing the declarations, the Academy argued:

The teachers themselves state via declarations that their vote in the Decertification Petition was free, fair, and without influence from [the Academy] [¶. . .¶] [B]y their own words, [they] were

² A “blocking charge” serves to delay a decertification election “in circumstances in which the employees’ dissatisfaction with their representative is in all likelihood attributable to the employer’s unfair practices rather than to the exclusive representative’s failure to respond to and serve the needs of the employees it represents.” (*Jefferson School District* (1979) PERB Order No. Ad-66, pp. 5-6.)

³ EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise indicated.

not influenced or swayed by any [Academy] conduct. The teachers asserted their free will in voting for the Decertification Petition and that free will should not be ignored.

On September 11, 2018, the OGC issued an administrative determination dismissing Petitioner's decertification petition. The OGC noted that the teachers' declarations addressed conditions allegedly in existence when they originally decided to pursue decertification in January 2015 or other conditions unrelated to a future election. Because none of the declarants attested to current facts demonstrating that the neutral conditions required for a fair election presently existed, the OGC rejected the Academy's assertions.

On September 20, 2018, the Academy appealed the OGC's decision to dismiss the decertification petition, and requested a stay of that dismissal during the pendency of the appeal.

DISCUSSION

In an appeal from an administrative determination, the appellant must demonstrate how or why the challenged decision departs from the Board's precedents or regulations. (*Regents of the University of California* (2016) PERB Order No. Ad-434-H, p. 8; *County of Santa Clara* (2014) PERB Order No. Ad-411-M, p. 5.) The appeal also "must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal."

(PERB Reg. 32360(c).)⁴

The Academy's appeal is virtually identical to its response to the OSC, adding only the conclusion that "the Determination has no factual basis and the Decertification Petition should not be dismissed." The appeal does not identify any factual or legal errors in the administrative determination. Nonetheless, by claiming there is no factual basis for the OGC's

⁴ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

dismissal of the petition, the appeal adequately provides notice of the issues on appeal, viz., whether the dismissal is supported by the factual record. (*Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 15.)

Based on our review, we find the dismissal is supported by the factual record and consistent with Board precedent. In determining whether to grant a stay of a representation election, the OGC looks to “whether the facts alleged in the unfair practice charge, if true, would likely affect the vote of employees, and, thus, the outcome of the election.” (*Children of Promise Preparatory Academy, supra*, PERB Order No. Ad-428, p. 9; *Pleasant Valley Elementary School District* (1984) PERB Decision No. 380, p. 5 (*Pleasant Valley*).) In response to the Association’s request for a stay in this matter, the OGC found that if the allegations in the Association’s unfair practice charges were true, the Academy’s conduct would likely affect employee free choice in a decertification election. (*Children of Promise Preparatory Academy, supra*, PERB Order No. Ad-428, adopting administrative determination at p. 20.) On appeal, the Board affirmed that finding. (*Id.* at p. 10.) In a later decision, the Board affirmed findings that the Academy did engage in the unlawful conduct alleged in the unfair practice charges. (*Children of Promise Preparatory Academy, supra*, PERB Decision No. 2558, p. 37.)

Here, the OGC relied on the Board’s findings in *Children of Promise Preparatory Academy, supra*, PERB Decision No. 2558 to determine that the Academy’s unlawful conduct would likely affect a decertification election, and offered the Academy an opportunity to show that any adverse effects of that conduct on employee free choice no longer exist. When the Academy failed to produce such evidence, the OGC properly dismissed the petition.

The gravamen of the Academy's appeal is that the OGC failed to properly consider the five declarations attached to the Academy's OSC response. The administrative determination discussed the declarations in some detail but found they did not satisfy the Academy's burden to show currently neutral conditions, as they related to the time period in 2015 when the decertification petition was filed, and not to conditions as they exist in 2018. Simply put, the declarations proffered by the Academy do not provide any evidence that conditions are now neutral as required for a fair election. Accordingly, the Academy has not presented facts to overcome the likelihood that its unlawful conduct has affected voter choice.⁵ (See *Children of Promise Preparatory Academy, supra*, PERB Order No. Ad-428, p. 9, citing *Pleasant Valley, supra*, PERB Decision No. 380, p. 5; cf. *Jefferson School District* (1980) PERB Order No. Ad-82, pp. 4, 10-12, 15-17 (*Jefferson School District*) [stay of decertification petition properly dissolved where circumstances changed such that pending unfair practice charges would no longer have tendency to interfere with free choice].) Unlike in *Jefferson School District*, the parties here provided insufficient facts to warrant proceeding with an election. We therefore reject the Academy's argument that the OGC did not give proper weight to the declarations.

In sum, we affirm the OGC's determination that the Academy's unfair practices would affect employee free choice if a decertification election were conducted based on the petition in this matter. Accordingly, the OGC properly dismissed the petition.

⁵ This finding is consistent with our decisional law holding that the proper inquiry in a blocking charge situation is not the employees' motivation for filing the decertification petition but whether the employer's alleged unlawful conduct would prevent bargaining unit employees from exercising free choice in an election. (*Imagine Schools of Imperial Valley* (2015) PERB Order No. Ad-431, p. 10; *Grenada Elementary School District* (1984) PERB Decision No. 387, p. 11; *Regents of the University of California* (1984) PERB Decision No. 381-H, p. 6.)

ORDER

The Children of Promise Preparatory Academy's administrative appeal of the Office of the General Counsel's dismissal of the group of Academy employees' decertification petition is DENIED. The Board further DENIES the Children of Promise Preparatory Academy's request to stay the dismissal of the decertification petition.

Members Banks and Krantz joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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September 11, 2018

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Re: Children of Promise Preparatory Academy
Case No. LA-DP-403-E
ADMINISTRATIVE DETERMINATION

Dear Interested Parties:

On August 9, 2018, the undersigned Board agent sent an Order to Show Cause (OSC) to Petitioner(s) and the Children of Promise Preparatory Academy (Academy or COPPA) affording each the opportunity to show cause as to why the Decertification Petition should not be dismissed.

The OSC set forth the procedural and factual background of the Petition. It also described the recent March 27, 2018 Decision—*Children of Promise Preparatory Academy* (2018) PERB Decision No. 2558— where the Board concluded that the Academy engaged in unlawful conduct. The Board agent stated that the question raised as to the Decertification Petition is “whether the actual unlawful conduct of the Academy would likely have an effect on the vote of the employees and, therefore, influence the outcome of the election.” The undersigned Board agent posited:

[T]he Academy’s refusal to provide names and contact information may have alerted employees to a contentious relationship between the employer and the exclusive representative which may have disrupted employee morale and deterred employees from participating in union activity. It is also likely that the Association was forced to attempt other, more intrusive, means of communication with its bargaining unit members which could negatively impact the relationship between the Association and its members. All this would hamper the

Association's ability to represent the unit and negotiate on its behalf.

The undersigned Board agent concluded that “[a]n election cannot be held because it appears that the neutral conditions required for a fair election were tainted by the Academy’s illegal conduct.”

On August 31, 2018, the Academy filed a response to the OSC¹ which stated that “[t]he Board determined that COPP A influenced the outcome of the election, and therefore the Board agent issued the August 9, 2018, OSC as to why the teachers’ Decertification Petition should not be dismissed.” The Academy contended that the Decertification Petition should not be dismissed because “[t]he teachers themselves state via declarations that their vote in the Decertification Petition was free, fair, and without influence from COPPA.” The Academy submitted statements from five teachers “who were present during the Decertification Petition.” The statements contain the exact same preprinted language, which includes:

1. During my employment as a Teacher at COPPA, a group of teachers sought to decertify the Union (the Inglewood Teachers Association.)

Mechele Yerima’s statement is signed and dated August 23, 2018 and contains the following handwritten statement:

2. The teachers at COPPA met, the teachers decided on their own – no administrators were involved. Teachers wanted to be able to make [their] own decisions without union representation.

Colbey Waggoner’s statement is undated and fails to describe where it was signed. It contains the following printed statement:

2. I do not wish to join the union at any time. Although I shared this information with the union, representatives from the union still came to my classroom during my lunch break to continually urge me to join.

Nicole Lusk’s statement is signed and dated August 27, 2018 and contains the following handwritten statement:

2. The teachers met, discussed and decided we wanted to make our own decisions. No union was needed. This was a teacher choice. Administration had nothing to do with it.

¹ Petitioner(s) did not submit a response to the OSC.

Isabelita N. Bustamante's statement is signed and dated August 23, 2018 and contains the following handwritten statement:

2. It was my own decision not to give my phone # and not to disclose any information about me, [be]cause I don't want the union.

Elvira C. Jumawan's statement is signed and dated August 23, 2018 and contains the following handwritten statement:

2. I decertify without the schools interference or coercion.

The Academy's contention that "[t]he Board determined that COPPA influenced the outcome of the election ..." is incorrect. The Board *did not* determine that COPPA influenced the outcome of the election. There was no election. What occurred here, and as set forth in the OSC, was that after Petitioner(s) filed a Decertification Petition in January 2015, the Inglewood Teachers Association (Association) filed two blocking charges alleging that a number of unfair labor practices by the Academy required that the decertification election be stayed, the undersigned Board agent determined the election should be stayed pending the outcome of the blocking charges, and the Board affirmed. (*Children of Promise Preparatory Academy* (2015) PERB Order No. Ad-428.) On March 27, 2018, the Board issued a decision on the blocking charges and found that the Academy's conduct violated the EERA.² (*Children of Promise Preparatory Academy* (2018) PERB Decision No. 2558.)

Because the blocking charges were resolved, the undersigned Board agent sent the August 9, 2018, OSC to the parties and expressly defined the question at issue as "whether the actual unlawful conduct of the Academy would likely have an effect on the vote of the employees and, therefore, influence the outcome of the election." The Academy's response does not address the question at issue and instead asserts that "[t]he teachers themselves state via declaration that their vote in the Decertification Petition was free, fair, and without influence from COPPA." Again, there was no election and, therefore, no vote. The Academy's assertion that the teachers' votes were free, fair and without influence, does not make sense.

Perhaps the Academy and declarants meant to assert that the teachers' support of the 2015 Decertification Petition was free of employer influence. If so, the Academy's response speaks to the conditions that allegedly existed when the Decertification Petition was filed in January 2015:

- Two of the declarants refer to meetings and decisions in the past tense, apparently referring to the conditions leading to the filing of the Decertification Petition;

² EERA is codified at Government Code section 3540 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

- One declarant, who failed to date and identify the location where he signed the affidavit, simply expresses his opposition to joining the union and the union's continued visits to his classroom to persuade him to join;
- One declarant states that it was her own decision not to share her contact information because she does not want the union;
- The final declarant seems to be attempting to cast a vote, stating her opposition, and/or asserting that she has not been coerced by the employer.

None of the declarants attest to facts that might demonstrate that an election may now be held on the Decertification Petition because the "neutral conditions required for a fair election" are present. To the contrary, the Academy's conduct in procuring its five declarations from teachers is the type of conduct that in and of itself tends to show that teachers remain aware that the Academy still opposes unionization. The Academy's conduct would likely affect the vote of employees, and, thus, the outcome of the election. (*Children of Promise Preparatory Academy* (2015) PERB Order No. Ad-428, p. 9, citing *Pleasant Valley Elementary School District* (1984) PERB Decision No. 380.) However, the Academy's conduct with respect to its response to the OSC is not determinative. What is determinative is the lack of any facts to demonstrate that the conditions now are neutral as required for a fair election. Therefore, the Decertification Petition is dismissed.

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. (Cal. Code Regs., tit. 8, § 32360.) To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (Cal. Code Regs., tit. 8, § 32360, subd. (c)). 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 (Cal. Code Regs., tit. 8, § 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (Cal. Code Regs., tit. 8, § 32375).

Service

All documents authorized to be filed herein must also be “served” upon all parties to the proceeding and on the Los Angeles Regional Office regional office. A “proof of service” must accompany each copy of a document served upon a party or filed with the Board itself (see Cal. Code Regs., tit. 8, § 32140 for the required contents). The document will be considered properly “served” when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Sincerely,

Mary Weiss
Supervising Regional Attorney

MW