STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, AND ITS CHICO CHAPTER 110, Charging Party, vs. CHICO UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. S-CE-41 EERB Decision No. 39 November 23, 1977

Appearances: Robert L. Blake, Attorney, for California School Employees Association and Chico Chapter 110; John W. Schooling, Attorney (Peters, Fuller, Rush, Schooling & Luvaas), for Chico Unified School District.

Before Alleyne, Chairman; Gonzales* and Cossack, Members.

OPINION

The Board has considered the record and the attached hearing officer's decision in light of the charging party's exceptions to the entire decision of the hearing officer. We adopt the findings of fact and order of the hearing officer, but not the hearing officer's rationale in support of the order.

The District's insistence that only "Chico Chapter No. 110, California School Employees Association" sign the negotiated contract had no injurious effect on the administration of that organization. In no way does that preclude members of the statewide employee organization from assisting or supporting the local organization, nor does it bear on who might represent the local organization at the

negotiating table. Negotiating parties are free to select whomever they desire to represent them at the negotiating table. This is an internal decision for both the employer and the employee organization. For these reasons, the District's conduct did not constitute domination or interference with the administration of an employee organization within the meaning of Government Code Section 3543.5(d), and did not violate any other unfair practice provision in the EERA. In light of this disposition of the case, we find it unnecessary to rely, as did the hearing officer, on cases interpreting Section 8(a)(2) of the National Labor Relations Act.

The recommended decision, as modified, and the recommended order are adopted by the Board.

By: Reginald Alleyne, Chairman Raymond Gonzales, Member

Jerilou H. Cossack, Member, dissenting.

Both the hearing officer and the majority have improperly framed the issue in this case. Having incorrectly framed the issue, they have incorrectly resolved the merits. The charge alleged a violation of Section 3543.5 without specifying any sub-section. While it is indeed unfortunate that the charging party has done little to clarify or specify the precise nature of its charge, I think the majority has

incorrectly ascribed the allegation only to sub-section (d) of Section 3543.5.[1]

The full text of the charge is as follows:

> The Board of Education of the Chico Unified School District, while engaged in negotiations with the exclusive representative of classified employees of the Chico Unified School District, between August 1, 1976 and September 23, 1976, did wilfully (sic) violate section 3543.5 of the Government Code, in that they did interfere with the administration of an employee organization through its agent Mr. John W. Schooling, attorney.
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> Between approximately September 20 and September 23, the District through its representatives, including John Schooling, flatly told CSEA that the agreement incorporating employee raises for the 1976-77 school year would not be signed and that the raises delayed so long as CSEA insisted on the language incorporated in the original petition, that is "CSEA and its Chico Chapter #110". (See Attachment #1)
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> The refusal of the Board of Education of the Chico Unified School District to sign a contractual (sic) agreement containing language consistent with that contained in the voluntary recognition of the California School Employees Association and its Chico Chapter #110, made and filed with the EERB on May 6, 1976, is interference in the internal affairs of the California School Employees Association and its Chico Chapter #110.

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[1]Gov. Code Sec. 3543.5(d) states:

> 3543.5. It shall be unlawful for a public school employer to:
>
> ****
>
> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

Adverse effect:

1. Coercion relative to signing the contract due to the language issue.

2. Probable restrictions in the ability of Chico Chapter #110 to obtain all rights and benefits it may be entitled to as an affiliated chapter of the California School Employees Association.

The hearing officer concluded that the charge alleged a violation of sub-section (d) of Section 3543.5 of the EERA, and not any other sub-section. The hearing officer specifically found

of sub-section (c) of Section 3543.5[2]. The majority has likewise concluded that the charge is solely concerned with an alleged violation of Section 3543.5(d). I disagree.

The District admits that it granted voluntary recognition to "California School Employees Association and its Chico Chapter #110" as the exclusive representative of its classified employees. The District further admits that it refused to sign an otherwise agreed-upon contract with Charging Party so long as Charging Party insisted that it was identified in the recognition clause of the contract by the same name as it had sought and obtained voluntary recognition.

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[2]Gov. Code Sec. 3543.5(c) states:

> 3543.5. It shall be unlawful for a public school employer to:
>
> ****
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

It is completely unclear why the District insisted on changing the exclusive representative's designation, just as it is unclear why the exclusive representative resisted the change. Speculating that it was an effort to preclude the state-wide Association from rendering assistance to its local chapter in negotiations and contract enforcement, I agree with the apparent position of the majority that the change in designation in no way modifies the contractual relationship between the Association, the chapter and the chapter members.

The relationship between the state-wide Association and its subordinate chapters is determined by the constitution, charter and by-laws. It is essentially a contract between the state-wide Association, local chapters and the members of the local chapter[3]. This relationship exists independent of any control by the District. The District is not privileged to interfere with the internal affairs of the exclusive representative.

Under the EERA, the District is obligated to negotiate collectively with the representative selected by a majority of its employees in an appropriate unit. The District cannot lawfully dictate whom the employee organization's representative at the negotiating table will be.[4] Nor is it free to refuse to negotiate with the Association because it prefers to deal solely with the local chapter.[5]

[3]See Mandracio v. Bartenders Union 41, 41 Cal.2d 81 (1953); DeMille v. American Federation of Radio Artists, 31 Cal.2d 139 (1947); Miller v. International Union of Operating Engineers, 118 Cal.App.2d 66 (1953); DeGonia v. Building Material and Dump Truck Drivers Local Union 420, 155 Cal.App.2d 573 (1957); and Sevey v. American Federation of State, County and Municipal Employees, AFL-CIO, Local 829, et al, 48 Cal.App.3d 64 (1975).

[4]AMF Incorporated, 219 NLRB 903, 90 LRRM 1271 (1975).

[5]Louisville Refining Co., 4 NLRB 844 (1938).

The internal relationship between the state-wide Association and its local chapter is outside of the ambit of subjects about which the exclusive representative is obligated to negotiate. The District's insistence, to the point of refusing to sign the agreed-upon contract, on altering the designation of the duly selected exclusive representative of its employees constitutes an unlawful refusal to negotiate in good faith.

Jerilou H. Cossack, Member

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

ORDER

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, and its Chico Chapter 110, Charging Party, vs. CHICO UNIFIED SCHOOL DISTRICT, Respondent .	Case No. S-CE-41 EERB Decision No. 39 November 23, 1977

The Educational Employment Relations Board directs that:.

The unfair practice charge filed by California School Employees Association and Chico Chapter 110 is hereby DISMISSED.

Educational Employment Relations Board

by

STEPHEN BARBER
Executive Assistant to the Board

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of	)	
	)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, and its Chico Chapter 110,	)	Case No. S-CE-41
	)	RECOMMENDED DECISION
Charging Party,	)	
vs.	)	June 7, 1977
	)	
CHICO UNIFIED SCHOOL DISTRICT,	)	
	)	
Respondent	)	

Appearances: Robert L. Blake, Attorney, for California School Employees Association and Chico Chapter 110; John W. Schooling, Attorney (Peters, Fuller, Rush, Schooling, & Luvaas) for Chico Unified School District.

Before Sharrel J. Wyatt, Hearing Officer.

STATEMENT OF THE CASE

On February 7, 1977, the California School Employees Association and its Chico Chapter 110 (hereinafter referred to as Charging Parties) filed an unfair practice charge against the Chico Unified School District (hereinafter referred to as Respondent) with the Educational Employment Relations Board alleging violation of Government Code Section 3543.5. The charge did not specify which subsection had allegedly been violated.

On March 2, 1977, the Respondent filed a Response to Unfair Practice Charge. On March 18, 1977, a formal hearing was held.

The allegations in the charge state that the Respondent interfered with and attempted to dominate an enployee organization by granting recognition to the California School Employees Association and its Chico Chapter 110 and subsequently refusing to sign a tentative agreement which included

California School Employees Association as a party. When the parties had reached tentative agreement, the Respondent was willing to sign an agreement with Chico Chapter 110 only. Charging Parties assert that Respondent, having recognized California School Employees Association and its Chico Chapter 110, are estopped from raising any issue concerning the recognition.

ISSUE

Whether the Respondent violated Government Code Section 3543.5(d) by granting recognition to a state-wide employee organization and its affiliated local chapter and subsequently taking the position that it would sign an agreement with the local chapter only.

FINDINGS OF FACT

Respondents granted recognition to California School Employees Association and its Chico Chapter 110. The parties met and negotiated and reached tentative agreement. The final agreement presented by the Respondent for signature stated:

> "The CHICO UNIFIED SCHOOL DISTRICT, a public school employer, (hereinafter referred to as "District") acknowledges Chico Chapter #110, California School Employees Association (hereinafter referred to as "CSEA") as the exclusive bargaining representative of the District's classified employees in accordance with Chapter 10.7 of the Government Code."

The representatives in negotiations for the Charging Parties, after attempting to have the Respondent change the recognition language in the agreement, signed the agreement with the language "Chico Chapter #110, California School Employees Association" still intact and filed an unfair practice charge alleging domination and interference with an enployee organization.[1]

[1] There is no allegation of failure to meet and negotiate in good faith under Gov. Code Section 3543.5 (c) and this decision does not address itself to that issue.

CONCLUSIONS OF LAW

The Respondent, in its response, indicates that the reason it altered the recognition language in the final agreement was because it had a good faith belief that the language of Government Code Section 3544 "an enployee organization may become the exclusive representative..." was in the singular and recognition of two employee organizations would, therefore, be unlawful. Further, Respondents urge that Government Code Section 3544.1(b) would require an election if more than one employee organization claimed representation of a unit of employees.

It is not necessary to reach the issue of whether two or more employee organizations can seek joint certification or recognition under the Act because the only issue raised by Charging Parties in the charge or by way of brief is whether or not the change in recognition language constitutes domination or interference with the formation or administration of any employee organization under Government Code Section 3543.5(d)[2]

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[2] The issue of whether joint recognition or certification is permissible under the Act could have been raised by the Charging Parties by refusing to sign to proffered agreement and filing a charge under Government Code Section 3543.5(c) for refusal or failure to meet and negotiate, or by the respondent had it filed a charge under Government Code Section 3543.6(a) alleging that the Charging Parties had violated Government Code Section 3543.5. The parties have not elected to bring the issue before the Board in this case.

Government Code Section 3543.5(d) provides:

> "(d) Dominate or interfere with the formation or administration of any enployee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another."

The relevant language of the Educational Employment Relations Act (EERA)[3] is identical to that contained in the Labor Management Relations Act, as amended.[4] Therefore, cognizance of interpretations of that Act is taken[5] in determining violation of the EERA.

The concept of domination or interference in the formation or administration of an employee organization has a long, well-developed history dating to the passage of the Wagner Act of 1935. The wording of Section 8 (a) (2) of the Wagner Act has not been amended in some 42 years.

This section has been held to prohibit the participation of an employer, financial or otherwise, in the formation of an employee representative organization,[6] participation by employer representatives in the internal activities of an employee organization,[7] and recognition

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[3] Gov. Code. Sec. 3540 et seq.

[4] 29 USC 156 (a)(2).

[5] Fire Fighters Union v. City of Vallejo, 12 Cal. 3rd 608 (1974).

[6] NLRB v. Jack Smith Beverages Inc. (6th Cir. 1953) 31 LRRM 2366; Weirton Ice and Coal Supply Co., (1953), 107 NLRB No. 76, 31 LRRM 1582; Sears Roebuck and Co., (1954) 7 110 NLRB No. 30, 34 LRRM 1630; NLRB v. Haspel (2nd Cir. 1955) 37 LRRM 2218; NLRB v, Summers Fertilizer Co. (1st Cir. 1958) 41 LRRM 2347.

[7] Battfield-Refractories Co. (1960) 127 NLRB No. 28, 45 LRRM 1522; NLRB v. Employing Bricklayers' Association (3rd Cir. 1961) 48 LRRM 2460; Local 636 Plumbers v. NLRB (DC Cir, 1961) 47 LRRM 2457; Employing Bricklayers Association (1961) 134 NLRB No. 145, 49 LRRM 1377.

by an employer of an employee organization that does not represent a majority of the employees[8].

Charging Parties have not called attention to a single NLRB decision that is analogous to the charge herein. With identical wording and well-developed case law over a long period of time, "domination or interference with the formation or administration of an employee organization" is a firmly established concept. The facts in this case do not support extending the established interpretation of domination or interference under the Educational Employment Relations Act to mean something more than it has been held to mean under the Labor Management Relations Act, as amended.

The doctrine of estoppel raised by the Charging Parties may be related to a charge of failure to meet and negotiate, but it is not an element of a charge of domination or interference.

ORDER

The unfair practice charge filed by California School Employees Association and Chico Chapter 110 is hereby DISMISSED.

Pursuant to Title 8, Cal Adm. Code Section 35029, this recommended decision and order shall become the final decision and order of the Board itself on June 24, 1977, unless a party files a timely statement of exceptions. See Title 8, Cal Adm. Code Section 35030.

Dated: June 7, 1977

Sharrel J. Wyatt
Hearing Officer

[8] Garment Workers' Union v. NLRB (U.S.S.C. 1961), 366 U.S. 731, 48 LRRM 2251.