STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

In the Matter of the Administrative Appeal LAFAYETTE UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEE ASSOCIATION, Chapter 134 Employee Organization, APPELLANT.	Case No. SF-R-178 SF-UC-6 EERB Order No. Ad-12 September 28, 1977

ORDER

The dismissal by the San Francisco Regional Director of the petition for a change in unit determination submitted by the California School Employee Association, Chapter 134, in the above-cited case, is sustained by the Board itself.

The Board finds that the Regional Director has correctly applied EERB Resolution No. 6, issued on July 6, 1976.

Educational Employment Relations Board
by
Stephen Barber
STEPHEN BARBER
Executive Assistant to the Board

9/28/77

Jerilou H. Cossack, Member, dissenting:

I disagree with the majority's determination that the request for unit clarification filed by California School Employees Association (CSEA) should be dismissed.

On April 1, 1976 CSEA requested recognition as the exclusive representative of the District's classified employees. On May 17, 1976 the District notified the EERB that it wished to delay recognition in order to meet and confer with CSEA over which job classifications should be excluded from the negotiating unit as confidential, management or supervisory. On June 14, 1976 the District informed the EERB that it had recognized CSEA as the exclusive representative of all classified employees except those "which can lawfully be designated as management, supervisory or confidential." (Emphasis added.) On November 21, 1976 CSEA filed a request for "change in unit determination." CSEA's request reads, in pertinent part,

> On several occasions prior to and subsequent to the granting of voluntary recognition, the District and CSEA have discussed exclusions from the bargaining unit and have been unable to reach agreement on these exclusions. The exclusions designated by the District at the time of granting of voluntary recognition are excessive in the eyes of CSEA, which leads us to seek relief through the Educational Employment Relations Board on this issue through the hearing process, and subsequent rulings on the appropriateness of the bargaining unit and the exclusions from that unit.

Although not disputing the existence of a continuing controversy regarding the placement of some employees, on December 21, 1976 the District moved to dismiss CSEA's request. On April 22, 1977 the Regional Director dismissed the request, concluding that in the absence of a jointly filed petition or changed circumstances EERB Resolution No. 6 foreclosed CSEA's petition. The Regional Director also informed CSEA that if the District refused to negotiate regarding employees believed lawfully within the unit, CSEA could seek recourse through the unfair practice procedures. CSEA filed a timely appeal to the Board itself.

The threshold issue is the validity of EERB Resolution No. 6 as the sole basis for dismissing CSEA's request in this case. This resolution, adopted by the Board at its July 6, 1976 public meeting, provides:

> RESOLVED:
>
> Petitions for changes in unit determinations pursuant to Section 3541.3(e) of the Act will be entertained by the Educational Employment Relations Board under the following circumstances:
>
> 1. Where both parties jointly filed the petition; or
> 2. Where there has been a change in the circumstances which existed at the time of the initial unit determination.

Examination of the minutes of this meeting reveal that it was intended to encourage the parties to reach interim agreements and yet not forestall them from getting a final determination from the EERB. There were reservations expressed about the advisability of incorporating the resolution as a part of the Board's regulations. On July 28, 1976, formal regulations were adopted by the Board, most especially Regulation 33260, which provides in pertinent part,

> (a) An employee organization, an employer, or both jointly, may file with the regional office a petition for a change in unit determination pursuant to Section 3541.3(e) of the Act. (Emphasis added.)

It is significant that the restrictions of Resolution 6 were not incorporated into the Board's formal rules and regulations. Unlike many other resolutions adopted by the Board subsequent to its promulgation of its first rules and regulations, Resolution 6 cannot be construed as the final articulation of the Board's policies regarding unit change petitions. It has simply been superceded by Regulation 33260.

No question has been raised as to the majority status of CSEA. There are merely a handful of employees whose unit placement is disputed. The overriding purpose of the Educational Employment Relations Act is to "promote sound employer-employee relations." By refusing to determine the unit placement of the contested employees the majority is exacerbating a dispute which reached us in the first place because the parties could not settle it themselves.[1]

Selection by the employees of an employee organization to be their exclusive representative symbolizes the commencement of an ongoing cooperative relationship with definite obligations and committments expected of both the District and the exclusive representative. Prior to April 1, 1976 such arrangements did not exist. With the EERA still in its infancy, parties should not be expected to hammer out disputed details of unit composition unaided when they have demonstrated their inability to do so to their mutual satisfaction.

There is no indication that CSEA abandoned its request to include the disputed employees in the negotiating unit in exchange for some concessions from the District.[2] Rather than acquiescing in their exclusion from the unit, CSEA appears

---

[1]See Brotherhood of Locomotive Firemen & Enginemen, 145 NLRB 1521, 55 LRRM 1177 (1964).

[2]See Massey-Ferguson, Inc., 202 NLRB 193, 82 LRRM 1532 (1973).

to have consistently pressed for their inclusion. The District has consistently sought their exclusion. Undoubtedly this prolonged disagreement has placed a great strain upon the ongoing relationship of the parties. Requiring resort to the adversarial unfair practice mechanisms as the only avenue of relief and foreclosing utilization of the unit clarification procedures is needlessly further destructive of the nascent relationship of the parties. Furthermore, resort to the unfair practice mechanisms of the EERB would require that CSEA insist to impasse on negotiating over the disputed employees, thus precluding a contract for the remainder of the classified employees until the EERB rendered its decision. This is hardly conducive to the establishment of sound employer-employee relations, particularly where a viable non-adversarial alternative exists. Accordingly, I dissent.

Jerilou H. Cossack, Member