STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

OPTIONS FOR YOUTH-VICTOR VALLEY, INC., Employer, and VICTOR VALLEY OPTIONS FOR YOUTH TEACHERS ASSOCIATION, Petitioner.	Case No.LA-RR-1082-E Request for Judicial Review PERB Decision No. 1701 PERB Order No. JR-22 December 27, 2004

Appearances: Silver & Freedman by Andrew B. Kaplan, Attorney, for Options for Youth-Victor Valley, Inc.; California Teachers Association by John F. Kohn, Attorney, for Victor Valley Options for Youth Teachers Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for judicial review by Options for Youth-Victor Valley, Inc. (OFY) of Options For Youth-Victor Valley. Inc. (2004) PERB Decision No. 1701 (OFY).

In OFY, the Board granted Victor Valley Options for Youth Teachers Association's (Association) request for recognition for the certificated unit. OFY had disputed the request on the basis that it was an "employer" under the National Labor Relations Act (NLRA)[1] and the NLRA preempts the Board's jurisdiction under the Educational Employment Relations Act (EERA).[2] The Board found the certificated unit to be an appropriate unit under EERA. In

[1]The NLRA is found at 29 U.S.C. section 151, et seq.

[2]EERA is codified at Government Code section 3540, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

OFY, the Board also explained that, under California Constitution Article 3, section 3.5, it lacks jurisdiction to determine whether the NLRA preempts EERA.

OFY'S REQUEST FOR JUDICIAL REVIEW

In its request, OFY cites language from the Board decision which it claims entitles it to judicial review:

> 'The issue in the case before us, whether the NLRA preempts [PERB's] jurisdiction under EERA pertaining to the definition of "employer" . . . must be left to the appellate courts for determination. We know of no appellate court decisions in which this application of EERA was declared to be unenforceable. However, OFY is not precluded from raising the federal preemption issue before PERB in order to preserve the issue for review in State Court.'
> (OFY's request; emphasis in original.)

OFY justifies its request in one sentence:

> This is a matter of first impression and is of significant public importance since there are now more than 600 charter schools in the State of California and the number continues to increase yearly.

DISCUSSION

EERA section 3542(a) provides, in pertinent part:

> (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review. (Emphasis added.)

PERB Regulation 32500(c)[3] confers on the Board sole discretion to determine whether a case is one of "special importance." (San Diego Community College District (2002) PERB

[3]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

Order No. JR-20 (San Diego.) The Board has developed a long line of case law to determine whether a case is one of "special importance," applying a strict standard of review. The reason for strict review is

> to ensure that the fundamental rights of employees to join and participate in the activities of employee organizations is not abridged. Further, the standard is also employed to prevent employee organizations' rights from being inhibited because if unit determinations by PERB are subject to numerous legal challenges, delays of implementation of the Board's decisions could occur. (San Diego, citing San Francisco Community College District (1995) PERB Order No. JR-16 and State of California (Department of Personnel Administration) (1993) PERB Order No. JR-15-S.)

Therefore, OFY has a heavy burden to meet in order to obtain the Board's consent to join in judicial review. The Board must balance the employer's arguments with the fundamental rights of employees and employee organizations.

To demonstrate "special importance," OFY must show that the Board's order: (1) presents a novel issue; (2) primarily involves construction of an issue unique to EERA; and (3) was likely to arise frequently. (Los Angeles Unified School District/Lynwood Unified School District (1985) PERB Order No. JR-13; Palomar Community College District (1992) PERB Order No. JR-14; San Francisco Community College District (1995) PERB Order No. JR-16; San Diego.)

We agree with the Association that OFY has not met any of the prongs of the test under San Diego and the other cases cited. The mere statement that there are 600 charter schools and the number increases annually is not a sufficient explanation for granting judicial review. This one-sentence explanation does not support the limited circumstances warranting the delay of rights to employees and to the Association that OFY requests. OFY simply has not provided

sufficient information to meet the heavy burden of showing the "special importance" of this matter.[4]

The Board therefore denies OFY's request for judicial review.

ORDER

The Options For Youth-Victor Valley, Inc.'s request for judicial review of the Board's decision in Options For Youth-Victor Valley. Inc. (2004) PERB Decision No. 1701 is hereby DENIED.

Chairman Duncan and Member Neima joined in this Decision.

[4]As noted in California Public Sector Labor Relations. LexisNexis, Matthew Bender, 2004, section 43.02, the normal way of obtaining judicial review is "by raising the propriety of PERB's determination 'as a defense to an unfair practice complaint,' and then appealing the unfair practice case to the courts." (See EERA section 3542(b) and (c).) Direct review of unit determinations are permitted in only very limited circumstances. (Id.)