STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF TEACHERS GUILD, CALIFORNIA FEDERATION OF TEACHERS, LOCAL 1931, Charging Party, v. SAN DIEGO COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. LA-CE-4217-E PERB Decision No. 1467 November 28, 2001

Appearances: Gattey, Cooney & Baranic LLP by Michael P. Baranic, Attorney, for American Federation of Teachers Guild, California Federation of Teachers, Local 1931; Liebert Cassidy Whitmore by Bruce A. Barsook, Attorney, for San Diego Community College District.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by American Federation of Teachers Guild, California Federation of Teachers, Local 1931 (Guild) of a Board agent's dismissal of its unfair practice charge. The charge alleged that the San Diego Community College District (District) violated the Educational Employment Relations Act (EERA) [1] by prohibiting the use of its employee mail system and other equipment for the distribution of political flyers.

After reviewing the entire record in this matter, the Board dismisses the unfair practice charge based on the following.

[1]EERA is codified at Government Code section 3540 et seq.

BACKGROUND

The Guild's charge alleged that between September 21, 1999 and June 21, 2000, the Guild distributed at least six different publications supporting particular candidates for the District Board of Trustees through the District's mail system.

On June 21, 2001, Wayne Murphy (Murphy), the District's assistant chancellor for human resources, sent a memorandum to all college and continuing education presidents and directors of administrative services. He directed campus mailroom staff not to distribute "clearly political flyers urging the support or defeat of any ballot measure or candidate for election" through the campus mail system. He also directed that mailroom staff remove such materials from campus mailboxes, even if they were placed there by others. Murphy stated that this action was based on the District's interpretation of Education Code section 7054. He sent a copy of the memorandum to Jim Mahler (Mahler), the president of the Guild.

On June 22, Murphy sent an e-mail to Mahler informing him that the prohibition included the use of "District services, supplies and equipment to print political materials, even if you are reimbursing Mesa College."

Education Code section 7054(a) states:

> No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of the urging the support or defeat of any ballot measure or candidate including, but not limited to, any candidate for election to the governing board of the district.

The Board agent based his dismissal of the charge for failure to state a prima facie case on what he deemed to be the persuasive reasoning contained in a non-precedential administrative law judge's (ALJ) final decision in Mt. San Jacinto Community College District (1997) PERB Decision No. HO-U-650 (Mt. San Jacinto). In Mt. San Jacinto, the ALJ

considered the impact of Education Code section 7054 on a union's right to distribute political flyers endorsing candidates for a community college governing board. The ALJ found that the express terms of Section 7054, coupled with legislative intent, indicate that a community college district may not permit its mail box facilities to be used for political activities of the type at issue. The Board agent reasoned in dismissing the instant charge that it concerned the same type of political activities at issue in Mt. San Jacinto and that although the Board has not decided a case on this issue, the ALJ's reasoning in Mt. San Jacinto is persuasive.

The charge additionally alleged that the District violated the rights of the Guild by its decision to no longer print political materials for the Guild, even if reimbursed. The Board agent dismissed this allegation as well, noting that ". . . section 7054 is a blanket prohibition against the use of services and equipment. There is no exception."

The Guild claims on appeal that the Board agent improperly relied upon a non-precedential ALJ decision. The Guild further claims that because the parties offer competing interpretations and theories of law, a complaint should have issued and the matter should have been submitted to a fact-finder for resolution after a hearing.

DISCUSSION

In reviewing an appeal from a Board agent's dismissal for failure to state a prima facie case, the Board assumes that the essential facts alleged in the unfair practice charge are true. (San Juan Unified School District (1977) EERB Decision No. 12.)[2]

In Richmond Unified School District/Simi Valley Unified School District (1979) PERB Decision No. 99, the Board found that EERA section 3543.1(b) grants organizations the right

[2] Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

to use employer mail facilities, subject to reasonable regulation, and that interference with this right constitutes a violation of section 3543.5(a) and (b). In this case, the Board must determine whether and how the access provisions of section 3541.3(b) are affected by Education Code section 7054. Specifically, the Board must determine whether Education Code section 7054 requires the District to refuse to actively distribute union political materials[3] through its mail system, refuse to passively allow its mailboxes to be used to distribute union political materials, and refuse to print union political materials, even if reimbursed.[4]

The Attorney General (AG) has issued an opinion concluding that Education Code section 7054 does not bar a school district or community college district from making employee payroll deductions for a political action committee (PAC) established by the organization representing the employees. (84 Ops.Cal.Atty.Gen. 52 (2001).) Opinions of the AG are not binding, although they are entitled to considerable weight. (Andres v. Young Men's Christian Assn. (1998) 64 Cal.App.4th 85 [74 Cal.Rptr. 2d 788].) While an opinion of the AG is not controlling as to the meaning of a statute, the fact that an opinion of the AG has not been challenged and he is an officer charged by law with advising officers responsible for enforcement of law as to the meaning of it entitle his opinions to great weight. (Smith v. Municipal Court (1959) 167 Cal.App. 2d. 534.)

The basis of the AG's opinion is that the "funds, services, supplies or equipment" of a school district or community college district would not "be used for the purpose of urging the

[3] For purposes of the memorandum at issue, union political materials are defined as materials "urging the defeat or support of any ballot measure or candidate."

[4] It should be noted that the Board is neither statutorily nor constitutionally permitted to pass on the constitutionality of Education Code provisions. (Cal. Const., art. III, sec. 3.5.)

support or defeat of any ballot measure or candidate." Rather, it would be employees' funds that might be so used by the union's PAC. According to the AG's opinion:

> [T]he district's resources would only be affected to transfer the employees' funds to the employees' designated recipient. The district would have no control over the employees' funds other than to act as the agent of the employees' in making the transfer of the employees' funds. This is not the type of 'political activity' to which section 7054's prohibition is directed. [See Stanson v. Mott (1976) 17 Cal.3d 206 [130 Cal.Rptr. 697]; County of Ventura v. State Bar (1995) 35 Cal.App. 4th 1055 [41 Cal.Rptr. 2d 794]; (73 Ops.Cal.Atty.Gen. 255 (1990).]

According to the opinion, the AG examined in detail the legislative history of Education Code section 7054, particularly with respect to its amendments in 1995 (Stats. 1995, ch. 879, sec. 2 (Sen. No. 82)). The AG concluded the evident purpose of the statute is to prevent partisan campaigning by a district and that a district's resources are not to be used for campaigning. In this context, the opinion concludes:

> It would be unreasonable to apply section 7054 where the school district or community college district is merely transmitting a portion of the employee's salary as directed by the employee. This would be especially so here in light of the Legislature's express protection of the political rights of school employees, including the right to contribute political funds to their employee organizations. (§ 7056.) The legislative history of section 7054 contains no indication that it is to be interpreted to prohibit employee payroll deductions as directed and controlled by the employee. In such circumstances the district itself cannot be said to be 'campaigning' in a 'partisan' manner.

It appears that the AG's opinion reads "services" right out of the statute. There is not too much room to argue that payroll deduction is not a "service". Nor is there too much room to argue that use of the District's mail system is not use of a "service" or that use of the District's mail boxes is not a use of "equipment."

If the Board substituted in "mail service" for "payroll deduction service" and adopted the rationale of the AG, the dismissal would be reversed and a complaint would issue. However, the express words of Education Code section 7054 prevent such an action.

The legislative analysis for the version of Senate Bill 82 which was eventually enrolled provides that then existing law (in 1995):

> . . . generally prohibits the use of public funds for the purpose of supporting or opposing local district ballot measures or candidates.

It is also noted that:

> [E]xisting law, however, exempts from this blanket prohibition the preparation or dissemination of information by school or community college governing boards (or their individual members) which urges the passage or defeat of certain local ballot measures or which supports the candidacy of individuals for election as district trustees.

Further, the analysis notes that:

> Existing law permits a school or community college administrative employees to advocate on behalf of certain ballot measures, and permits any district employee to solicit or receive campaign funds related to measures that affect their compensation or working conditions, subject to optional district-imposed limitations regarding such activities during working hours and use of district facilities.
>
> This bill would prohibit district employees from using working hours or district facilities to solicit or receive funds to support or defeat ballot measures that affect their compensation or working conditions.

The elimination of these exemptions appeared to be a major component of Senate Bill 82.

The analysis further states the bill would conform the rule on the use of public funds by school or community college districts with the rule on the use of public funds by a city, county or the state.

While the legislative analysis and the AG's opinion indicate that the Legislature attempted to conform the rule on the use of public funds to the Supreme Court's decision in Stanson v. Mott, the words chosen by the Legislature are not the same as those used by the court. In Stanson v. Mott, the court held that at least in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign. (17 Cal.3d 206.) If Education Code section 7054 merely prohibited an expenditure of funds, it would have only used the term "funds." If the Legislature was concerned about governing boards or employees circumventing the prohibition of expenditure of "funds" it could have said funds include "in-kind" contributions and expenditures. Instead, the Legislature chose the specific words of ". . . district funds, services, supplies, or equipment." It is entirely plausible that the Legislature found this language as an appropriate restriction on political speech in the school setting in an effort to disassociate schools from matters of politics and political controversy.

Despite the AG's opinion and the arguments of the Guild, the question before the Board is not whether Section 7054 is reasonable, the question is whether the District's policy conforms with the language and intention of Section 7054. As discussed above, the Board concludes that it does. In interpreting the Education Code, the Board is guided by several fundamental principles. Among these principles, if the language of a statute is not ambiguous, then the plain meaning of the language shall govern its interpretation. (Barstow Unified School District (1997) PERB Decision No. 1138b (Barstow), citing Lennane v. Franchise Tax Bd. (1994) 9 Cal.4th 263 [36 Cal.Rptr.2d 563].) Also, interpretations that render a term mere surplusage should be avoided, and every word should be given significance, leaving no part

useless or devoid of meaning. (Barstow, citing City and County of San Francisco v. Farrell (1982) 32 Cal.3d 47 [184 Cal.Rptr. 713].)

The plain meaning of Education Code section 7054 clearly prohibits the use of school district or community college district funds, services, supplies, or equipment for the purpose of the urging the support or defeat of any ballot measure or candidate. Such a prohibition is not limited to the District only. Further, any interpretation of this section which limits the prohibition to a District expenditure of funds would read use of "services" and "equipment" out of the statute.

EERA section 3540 provides, in part, that nothing contained herein shall be deemed to "supersede other provisions of the Education Code." In Healdsburg Union High School District and Healdsburg Union School District (1980) PERB Decision No. 132, the Board held (at p. 19) that, where a provision of the Education Code requires a certain action, the parties are prohibited from negotiating a provision which directly conflicts with the statutory requirement. Further, the mandate of Education Code section 7054 removes the policies at issue from the scope of representation to the extent that the statutory language of Section 7054 clearly evidences an intent to set an inflexible standard or insure immutable provisions. (Tustin Unified School District (1987) PERB Decision No. 626, citing San Mateo City School Dist. v. PERB (1983) 33 Cal.3d 850.)

The Board declines to harmonize Education Code section 7054 and EERA in the way urged by the Guild. The District's prohibition on use of the inter-site mail system and photocopying services, falls squarely within, and is in fact mandated by, the plain words of Section 7054. On this basis, the charge is dismissed.

ORDER

The unfair practice charge in Case No. LA-CE-4217-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Whitehead joined in this Decision.