

County of Alameda and Professional Association of County Employees (PACE)/Local 21, International Federation of Professional and Technical Engineers, AFL-CIO, the Union-Petitioner. Case 32-WH-4

November 29, 1996

CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

BY MEMBERS BROWNING, FOX, AND HIGGINS

On July 27, 1995, the Professional Association of County Employees (PACE)/Local 21, International Federation of Professional and Technical Engineers, AFL-CIO (the Petitioner) filed with the Regional Director for Region 32 of the National Labor Relations Board a request for certification of representative as bona fide under Section 7(b) of the Fair Labor Standards Act of 1938, 29 U.S.C. § 207(b).

On July 31, 1995, the Regional Director issued and served on the parties a Notice to Show Cause why the Board should not grant the request. Several responses were thereafter filed by the Association of County Employees (the Intervenor). The Intervenor objected to issuance of such a certification because there is an ongoing dispute between the Intervenor and the Employer over whether the Intervenor has the right under state law to represent the unit employees as individuals with respect to their terms and conditions of employment notwithstanding that the Petitioner is the recognized collective-bargaining representative of the unit, and because the Employer is a State "political subdivision" exempt from Board jurisdiction. The Intervenor requested that no certification issue unless: (1) the parties are given the opportunity to "demonstrate that it represents those employees affected, under the customary procedures for obtaining NLRB certification"; and (2) the question of overall NLRB jurisdiction over a political subdivision has been settled.¹

Having duly considered the matter,² we find it appropriate to issue the requested certification. In support of its petition, the Petitioner submitted to the Regional Director a copy of an ordinance adopted by the Alameda County Board of Supervisors on August 15, 1995, approving a memorandum of understanding be-

tween the Employer and the Petitioner governing the unit employees' wages, hours, and other terms and conditions of employment from February 12, 1995, through February 7, 1998. Such evidence has historically been considered by the Board to be sufficient to establish that the petitioner is a bona fide representative for purposes of the FLSA.

Further, although there appears to be a dispute between the Intervenor and the Employer regarding the Intervenor's right under state law to represent the unit employees as individuals with respect to their employment terms, the instant certification procedure is not determinative of that issue. Unlike a certification of representative under the National Labor Relations Act, a certification of representative as bona fide under Section 7(b) of the FLSA does not certify a labor organization as the exclusive bargaining representative of the unit employees. Rather, it merely permits an employer and labor organization to negotiate terms and conditions of employment which vary from the overtime provisions of the FLSA. See NLRB Casehandling Manual (Part 2), Representation, section 11540. Thus, as it is clear that the latter is in fact the only type of certification being sought by the Petitioner in this case,³ there is no need for the Board to resolve the dispute between the Intervenor and the Employer prior to issuing the requested FLSA certification.

Finally, the fact that the Employer may be an exempt "political subdivision" under Section 2(2) of the NLRA also does not preclude the Board from issuing the instant certification. The Board's authority to issue the instant certification is derived from Section 7(b) of the FLSA rather than the NLRA, and thus Section 2(2) of the NLRA is inapplicable. See *id.*⁴

Accordingly, no person having shown good cause why the requested certification should not issue, in accordance with the Regional Director's recommendation, the National Labor Relations Board certifies that the Professional Association of County Employees (PACE)/Local 21, International Federation of Professional and Technical Engineers, AFL-CIO is a bona fide representative for purposes of Section 7(b) of the

¹In response to the Notice to Show Cause, on August 10 and 11, 1995, the Intervenor also filed both a representation petition seeking an election in the unit at issue (Case 32-RC-4069), and an unfair labor practice charge alleging that the Employer had unlawfully failed to bargain with the Intervenor (Case 32-CA-14905). Both the representation petition and the unfair labor practice charge were dismissed by the Regional Director on the ground that Alameda County is a political subdivision of the State of California and is excluded from the Board's jurisdiction. The Intervenor subsequently appealed both dismissals, and the appeals were denied as untimely.

²The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

³The Petitioner's petition specifically requests a "Certification as Representative Under FLSA," cites the relevant sec. (11-500) of the NLRB Outline of Law and Procedure in Representation Cases (Sept. 1995) regarding such certifications, and states that the certification is needed "in order that the terms of [the] agreement governing flex-time workweeks will be in compliance with section 7(b) of the FLSA."

⁴There is no conflict, therefore, between the Regional Director's determination in Cases 32-RC-4069 and 32-CA-14905 that the Board lacks jurisdiction over the Employer under the NLRA, and the Board's determination here to issue a certification of representative as bona fide to the recognized bargaining representative of the Employer's unit employees under the FLSA.

Fair Labor Standards Act of 1938 of the following employees of the County of Alameda:⁵

⁵ As indicated above, a certificate of bona fide for purposes of the FLSA does not necessarily establish the right of the organization so certified to be recognized as the exclusive bargaining representative of employees within a particular bargaining unit under the provisions of the NLRA.

All full-time, permanent and probationary employees in supervisory Representation Unit S-06 employed in the classifications of Items 6738PA, Appeals Officer; 6774M, Assistant Welfare Investigator; 1498SM, Patient Services Supervisor I; 1499SM, Patient Services Supervisor II; 1473SM, Supervisory Eligibility Technician; and 6776M, Welfare Investigator; employed by the Employer in Alameda County.