

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LOS GATOS JOINT UNION HIGH SCHOOL DISTRICT,)
)
Employer,)
)
and)
)
SERVICE EMPLOYEES INTERNATIONAL UNION,) Case No. SF-D-35
LOCAL 715, AFL-CIO,) (SF-R-23)
)
Employee Organization,) PERB Order No. Ad-69
APPELLANT,)
)
and) Administrative Appeal
)
MS. ELEANOR BLAKISTON,) July 6, 1979
)
Petitioner.)
)
_____)

Appearances: Alison Mackenzie, Attorney (Paterson & Taggart) for Los Gatos Joint Union High School District; Robert Bezemek, Attorney (Van Bourg, Allen, Weinberg & Roger) for Service Employees International Union, Local 715, AFL-CIO; Ms. Eleanor Blakiston in Pro Per.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on an appeal by the Service Employees International Union, Local 715, AFL-CIO (hereafter SEIU) from a decision by the San Francisco Regional Director denying SEIU's request for a "unit determination hearing" after a rival employee group filed a decertification petition in the Los Gatos Union High School District (hereafter District).

FACTS

In December 1977, SEIU was certified as the exclusive representative for classified employees in the District.

SEIU's certification applied to a unit that had been agreed to earlier in 1977 by SEIU, the California School Employees Association and the District. In March 1979, certain classified employees signed and filed a decertification petition, seeking to oust SEIU. The San Francisco Regional Director gave the petitioners an opportunity to perfect the showing of support. This was done in April. While the decertification efforts were taking place, SEIU filed an unfair practice charge against the District, claiming that unlawful supervisory and/or managerial involvement occurred in connection with gathering signatures for the decertification effort. The regional director has decided to block any election pending the outcome of this unfair practice case. A hearing on the unfair practice charge took place in May 1979, but no proposed decision has issued as yet.

On the day SEIU filed the unfair practice charge, it also requested a hearing to determine the appropriate bargaining unit in order to ascertain voter eligibility if an election is ultimately held. The regional director denied the request on the ground that the previous consent election agreement had established the unit sought in the decertification petition, and that a further hearing was not necessary.

On appeal to this Board from the regional director's denial of its request, SEIU contends that various facts brought out at the May 1979 unfair practice hearing support SEIU's request for a hearing: first, that certain persons signing the petition were not actually employed in the unit in the relevant time

period; second, that the regional director used an incorrect employee list to make his determination of sufficient showing of interest; and, third, that employer interference and petition defects rendered unlawful the decertification effort. SEIU asks that the case be sent back to the regional director for re-computation of the showing of interest, and that he defer any finding on the sufficiency of the showing until the unfair practice case is decided.

DISCUSSION

The determination of the sufficiency of a decertification petition is, in the first instance, within the province of the regional director. California Administrative Code, title 8, sections 33240 and 33250. The regional director's administrative authority also extends to the election process itself. Id., section 33460, et seq. Of course, parties to an election may challenge voters as ineligible to participate (id., section 33560) and may file objections to the conduct of the election (id., section 33580), including conduct that is tantamount to an unfair practice (id., section 33590).

Given the forthcoming unfair practice decision, the blocked election, the other avenues of potential relief for the claims presented by SEIU, and the absence of evidence showing any abdication of responsibility by the regional director or any substantial prejudice suffered by SEIU, the regional director's decision should be sustained.

ORDER

For the foregoing reasons, the Board sustains the decision of the regional director denying SEIU's request for a "unit determination hearing". SEIU's appeal is denied.

By: Harry Gluck, Chairperson

Barbara D. Moore, Member

PUBLIC EMPLOYMENT RELATIONS BOARD

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San Francisco, California 94108
(415) 557-1350



May 21, 1979

Certified Mail
Return Receipt Requested

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Ms. Eleanor Blakiston
P. O. Box 1257
Los Gatos, California 95030

Re: Los Gatos Joint Union High School District
Case No. SF-D-35 (R-23)

Dear Interested Parties:

On March 7, 1979 this office received a decertification petition for a classified unit of the Los Gatos Union High School District. The petition was dated March 6, 1979, and was filed by Eleanor Blakiston. Ms. Blakiston was contacted by this office and notified that the petition was defective because it did not include a proof of service of all the parties and because it lacked information required by §33240 of the PERB Rules and Regulations. The proper procedure for filing a decertification petition was discussed and on March 12, 1979, a second decertification petition was received in the regional office. Proof of support was included with the second decertification petition.

The showing of interest submitted in support of the March 6th and March 12th decertification petitions was in the form of two signature petitions. The first petition was dated February 28, 1979. The statement on the petition itself read as follows:

"All it takes are 30 signatures to receive a 7% raise. We can then force another election and decertify #715 as our exclusive representative and represent ourselves."

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None of the signatures on this petition were dated.

The second signature petition was dated March 1, 1979, and read as follows:

"At least 30 percent of the employes in the established unit no longer desire to be represented by the incumbent Local #715 as their exclusive representative."

All of the signatures on the second petition were dated. All but two of the employees signing the first petition had signed the second petition.

Prior to March 30, 1979, Ms. Blakiston was contacted by this office and told that the signature petition dated February 28, 1979 could not be counted because it failed to demonstrate that the employees signing the petition either: 1) no longer desired to be represented by the incumbent exclusive representative; or 2) wished to be represented by another employee organization as required by Section 33240(c) of the Rules and Regulations. Ms. Blakiston was also notified that the signature petitions could not be counted because none of the signatures were dated.

At the same time Ms. Blakiston was notified that the language of the second signature petition dated March 1st was questionable, although no determination as to its validity had been made at that time. Ms. Blakiston was told that, if desired, there was time to perfect her showing of support by filing another petition with the required language of §33240(c) on the petition.

On April 3, 1979, the regional office received a third showing of support signature petition from Ms. Blakiston. The showing was dated March 27, 1979 and contained the following language:

"We, the undersigned, no longer desire to be represented by the incumbent SEIU Local #715 as our exclusive representative."

All of the signatures were individually dated.

Investigation of this matter has also established the following facts:

- 1) The current exclusive representative of the unit in question is Service Employees International Union, Local #715, which was certified on December 14, 1977.
- 2) No written agreement currently exists between the exclusive representative and the employer.

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The limitations expressed in §33250(b) of the PERB Rules and Regulations do not exist in this case. Therefore, the decertification petition of March 12, 1979 is timely filed.

Review of the showing of support submitted by Ms. Blakiston in support of the decertification petition has resulted in the following administrative determinations:

- 1) The language of the April 3, 1979 signature petition clearly indicates that those signing the petition no longer desired to be represented by the incumbent exclusive representative. Review of the support also indicates that at least 30% of the employees in the unit signed the petition. The April 3, 1979 showing of support is therefore sufficient to meet the requirements of §33240(c) of the PERB Rules and Regulations.
- 2) It is unnecessary to rule upon the sufficiency of the March 1st showing of support petition in light of the sufficiency of the April 3rd petition.
- 3) The showing of support petition dated February 28th is inadequate because it did not indicate that the employees either no longer desire to be represented by the incumbent exclusive representative or wish to be represented by another employee organization. The showing is also inadequate because the individual signatures were not dated.

On March 12, 1979, by way of a letter from Robert Bezemek, SEIU, Local 715 requested a hearing to determine the appropriate bargaining unit so that they might ascertain who is eligible to vote if an election is ultimately held. A review of the file shows that the current unit was established on March 1, 1977, when SEIU, Local #715, the employer, and the California School Employees Association entered into a consent election agreement. In light of the fact that the decertification petition is seeking to decertify that same unit I find that a unit determination hearing is not appropriate and therefore deny the request.

By way of the same March 12, 1979 letter mentioned above and by an unfair practice charge filed by SEIU, Local #715 on March 13, 1979 (SF-CE-348) the exclusive representative has raised a question of supervisory and/or managerial involvement or inducement in the circulation of the decertification petition. In that a formal hearing has been scheduled for the unfair practice charge for May 23, 1979, I will defer ruling on that issue to the hearing officer. The unfair practice charge will block any decertification election from being held until it is resolved or waived by the charging party. I will issue a directed election order if it is found to be appropriate at that time.

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CONCLUSIONS

- 1) The decertification petition dated March 7, 1979 is dismissed for failure to serve all the parties pursuant to §33240(d) of the PERB Rules and Regulations.
- 2) The decertification petition dated March 12, 1979 is valid and is timely filed.
- 3) The showing of support petition dated February 28, 1979 is dismissed.
- 4) The showing of support petition dated April 3, 1979 is sufficient to meet the requirements of §33240(c) of the PERB Rules and Regulations.
- 5) SEIU Local 715's request for a unit determination hearing is denied.
- 6) The question of supervisory and/or managerial involvement or inducement in the circulation of the decertification petition is deferred to the hearing officer in the unfair practice case No. SF-CE-348.

An appeal of this decision may be made to the Board itself within 10 calendar days of service of this letter by filing a statement of the facts upon which the appeal is based with the Executive Assistant to the Board at 923 12th Street, Suite 201, Sacramento, California 95814. Copies of any appeal must be concurrently served upon all parties and the San Francisco Office. Proof of service of the appeal must be filed

Very
James
Regi
JWT

PS Form 3800, Apr. 1976

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