

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HAYWARD UNIFIED SCHOOL DISTRICT,)
Employer,) Case No. SF-D-54 (R-111b)
and)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION and its HAYWARD) PERB Order No. Ad-96
CHAPTER #352,) ADMINISTRATIVE APPEAL
Employee Organization,)
and) June 10, 1980
UNITED PUBLIC EMPLOYEES, SEIU)
LOCAL 390, AFL-CIO,)
Employee Organization.)

Appearances: Dan Cassidy, Attorney (Paterson & Taggart) for Hayward Unified School District; Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for United Public Employees, SEIU Local 390; Steven T. Nutter, Attorney (California School Employees Association) for California School Employees Association and its Hayward Chapter #352.

Before Gluck, Chairperson; Gonzales and Moore, Members.

ORDER

The California School Employees Association and its Hayward Chapter #352 (CSEA) appeals the determination of the San Francisco regional director directing a decertification election and requests a stay of the election. The regional director determined that a contract between the CSEA and the district did not bar a decertification election petition filed by the United Public Employees, SEIU Local 390 (SEIU).

Upon review of the entire record, the Board adopts the Regional Director's findings of fact and conclusions of law as set forth in the attached letter. The Regional Director's decision to proceed with the decertification election is AFFIRMED.

PER CURIAM

PUBLIC EMPLOYMENT RELATIONS BOARD

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May 16, 1980

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Re: SF-D-54 (R-111b)

Dear Interested Parties:

On March 12, 1980 the San Francisco Regional Office received a Decertification Petition filed by the United Public Employees, SEIU Local 390, AFL-CIO (hereafter SEIU) for the Maintenance and Operations Unit of the Hayward Unified School District (hereafter District). The current exclusive representative is the California School Employees Association and its Hayward Chapter #352 (hereafter CSEA). Both the District and CSEA responded that there was a contract in place with an expiration date of June 30, 1982. CSEA argued the contract created a contract bar and that SEIU's petition should be dismissed.

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An administrative investigation was conducted by PERB agents on behalf of the Regional Director in the San Francisco Regional Office on May 7th and May 12th, 1980. The parties were given full opportunity to present any relevant evidence to the PERB agents.

ISSUE

The issue in this case is whether a contract currently in effect in the Hayward Unified School District between CSEA and the District should bar a decertification election petition filed by SEIU.

BACKGROUND AND ANALYSIS

In June, 1977, CSEA was recognized as the exclusive representative for a maintenance and operations unit for the Hayward Unified School District. A contract was subsequently negotiated and executed between the District and CSEA. The termination date of the contract was June 30, 1980.

In October, 1978, CSEA requested an early termination of the existing contract and re-negotiation of three areas: wages, fringe benefits and duration of contract. CSEA's motivation was to seek a new contract to recoup losses incurred due to the Proposition 13 wage freeze. The District did not agree to terminate the contract prior to re-negotiating a successor contract. However, on October 20, 1978 the District did agree to negotiate with CSEA. It was the District's intent to terminate the existing contract only after a new agreement was ratified by the parties.

A tentative agreement was reached in late November, 1978. The new contract was ratified by CSEA during the week of December 11, 1978 and by the District at the school board meeting on December 18, 1978. The effective date of the new contract was July 1, 1979 and the expiration date was June 30, 1982.

Upon execution of the new contract CSEA and the District agreed that the first contract would terminate one year earlier than its original termination date. The new termination date was June 30, 1979. That action, CSEA contends, changed the window period of the first contract to March 1979 instead of March 1980.

There were two meetings of unit employees called for the purpose of discussing the re-negotiation of the contract. Of the approximately 400 unit members only 15-20 attended the first meeting and 50-75 attended the second meeting. CSEA claims that at these meetings SEIU activists were notified of the changes in the window period; however, the only two individuals specifically named were

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Robert Peace and Johnny Harris.

Robert Peace was identified by CSEA as a former officer of SEIU. However, at the time of the meetings he was not an officer of SEIU nor was he even an SEIU member. Johnny Harris was also identified as a former steward for SEIU. However, when CSEA was recognized he also dropped membership in SEIU. Harris was in fact a member of the CSEA negotiating team which negotiated both contracts with the District.

A second method of notifying employees of the contract changes. was the distribution and posting of Board of Education agenda and minutes of the December 18, 1978 Board meeting. The agenda and the minutes reflect that the issue was the "extension modification of the contract between CSEA #352 (Maintenance Unit) and the Hayward Unified School District."

A third method of notifying employees was the distribution of the new contract to employees in the unit. The District sent copies of the new contract to each site and told site administrators to "make them available" to each employee. The District also sent copies to CSEA to disseminate and sent notices to each site to be posted. The notices told employees that negotiations were over and that there was a new contract. Although the notices and the new contract had the effective dates of the new contract on it, there was no specific mention of the changes in the window period and the effect that it could have on the decertification process.

CSEA argues that it had a right to terminate the contract by mutual consent, that notice of the new contract and early expiration date for the first contract was given to all employees, that SEIU was not deprived of a window period to decertify CSEA and, because SEIU had adequate opportunity to decertify CSEA at the early termination date of the first contract, the contract should act as a bar to SEIU's current decertification petition. SEIU on the other hand argues that SEIU was not given adequate notice of the changes in the window period and that the contract was extended prematurely; therefore, a decertification election should be ordered.

The facts of the employee meetings, the distribution of school board agendas and minutes and the distribution of the contract are not sufficient to support the argument that all the unit members were aware of the ramifications of the changes in the window period. Although a lack of complete notice to employees is supportive of my finding, it is not essential to it.

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Government Code Section 3544.7(b) (1)¹ provides for a contract bar. However, the well established principle of premature extension provides that if during the term of an existing contract, the parties execute a new contract which contains an expiration date later than that of the first contract, the new contract is "premature" and will not act as a bar to an election.²

The purpose of such a policy is to protect petitioners from continuous contracts which would bar an election at a time the petitioners would normally have been permitted to file for an election.

In this case, the original contract expiration date was June 30, 1980. The expiration date for the second contract was June 30, 1982. The fact that the District and CSEA formally terminated the first contract and provided for an earlier window period does not alter the fact that the second contract was a premature extension of the first contract.

If the second contract is allowed to bar an election, it would provide a method for an exclusive representative and employer to manipulate the timing of the window period and eliminate its predictability. Employees have a fundamental right to know when they can organize to seek a change in their exclusive representative. If the parties to a contract could alter the window period, they could easily eliminate the preparation time necessary to mount a decertification drive. This must not be allowed to happen.

.....
1) (b) No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement; or....

2) See Deluxe Metal Furniture Company(1958)121 NLRB 995,42 LRRM 1470.

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I therefore find that the second contract is a premature extension of the first contract and should not act as a bar to SEIU's decertification petition. The effect of the contract as a binding agreement between the parties was not in issue here and my ruling should not be construed to place that in issue.

A decertification election is hereby directed. A Regional Representative of this office will contact you to set the details of the election.

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 facts upon which the appeal is based with the Executive Assistant to the Board at 923 12th Street, Sacramento, California 95814. Copies of any appeal must be concurrently served on all parties and the San Francisco Regional Office. Proof of Service of the appeal must be filed with the Executive Assistant.

Should you have any questions concerning this matter, please contact me.

Very truly yours,

JAMES W. TAMM
Regional Director

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