

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DOWNEY UNIFIED SCHOOL DISTRICT,)
)
Employer,)
)
and) Case No. LA-R-346B
)
LOS ANGELES CITY AND COUNTY) PERB Order No. Ad- 97
SCHOOL EMPLOYEES UNION, LOCAL 99,)
)
Employee Organization,) ADMINISTRATIVE APPEAL
)
and)
)
) September 10, 1980
)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION AND ITS DOWNEY)
CHAPTER #248,)
)
Employee Organization.)
)

Appearances: Linda Jenson Paterson, Attorney for Downey Unified School District; Jeff Paule, Attorney (Geffner & Satzman) for Los Angeles City and County School Employees Union, Local 99; Steven Nutter, Attorney (California School Employees Association) for California School Employees Association and its Downey Chapter #248.

Before Gluck, Chairperson and Moore, Member.

DECISION AND ORDER

The Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO, (hereafter Local 99 or SEIU) has appealed the determination of the Los Angeles regional director who, following a full hearing on the matter, ruled that a decertification petition filed by the California School Employees Association (hereafter CSEA)

and its Downey Chapter #248 was timely filed and not barred pursuant to provisions of section 3544.7(b)(1) of the Educational Employment Relations Act (hereafter EERA).

In accordance with the discussion below we affirm the determination of the regional director as set forth in the attached decision.

DISCUSSION

In this appeal SEIU urges that CSEA's petition for a decertification election is barred by an alleged contract between SEIU and the Downey Unified School District (hereafter District).

Unlike the National Labor Relations Act (hereafter NLRA), EERA contains specific language defining the circumstances in which a decertification petition will be barred.

Section 3544.7 reads in relevant part:

(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; . . .

The petitioner, CSEA, argues that the cardinal requirement for a contract bar has not been met in this instance because there is no evidence of the existence of a written, signed agreement between SEIU and the District at the time CSEA filed

the decertification petition. A complete contract signed only by the District on September 17, 1979 was put into evidence at the hearing. Other testimony indicated that SEIU and the District had tentatively signed off on all of the provisions of this contract.

It is unnecessary to decide here whether the series of "signed-off" provisions constitutes a lawful written agreement within the meaning of the statute, for the question of the validity of the contract turns, in this case, on whether it was ratified. By written and signed ground rules, the parties agreed that "all agreements reached by the negotiating teams for the District and for Local 99, shall be tentative until ratified by the union and the District, respectively."¹ Thus, by the terms of the parties' own agreement, the contract could not become operative until it was ratified by both SEIU and the District.²

¹SEIU Exhibit 1.

²We note that the hearing officer's representation of the rule in Appalachian Shale Products Co. (1958) 121 NLRB 1160 [42 LRRM 1506] is incorrect. (See Hearing Officer's Proposed Decision, p. 8). The rule is ". . . only where the written contract itself makes ratification a condition precedent to contractual validity shall the contract be no bar until ratified" at p. 1162 (emphasis added). We note that our approach to this case differs from the Appalachian Shale rule. Our experience to date does not persuade us that it is necessary to adopt that rule. Where there is ample and unchallenged evidence that the parties agreed, either by written

Although SEIU and the District claim that the first ratification vote taken before CSEA filed its petition operates to bar the petition, we find to the contrary. SEIU's intention to cancel the first vote is evident from its written request that the District not sign the agreement until a second ratification vote could be taken.³ That a second vote in fact occurred also points to the nullification of the first. The evidence does not establish that the employees were informed that this second vote was for any other purpose than actual ratification or rejection.

These events, combined with the fact that SEIU failed to sign the contract on September 17 when the District signed it, provide convincing evidence that SEIU did not want the

ground rules or by a provision in the negotiated collective bargaining agreement itself, that ratification was a condition precedent to the agreement, we discern no reason to distinguish between ground rules and contract provisions. Both constitute agreements between the parties, and both should be considered when deciding whether actions by the parties constitute a bar.

³The letter to the District reads:

Because of the recent mail ballot election, it appears as though there has been some confusion on behalf of our members on what is or is not part of the negotiated settlement. Therefore, we must take the settlement to an open meeting where all questions and concerns can be answered in a clear and concise manner and another secret ballot ratification vote taken.

agreement formalized in any manner until the second ratification. Against this written and specific evidence, Prete's testimony of his intention or understanding of the purpose of the second vote is not persuasive.

Consequently, we find that there was no agreement in effect between the parties at the time the decertification petition was filed. The decision of the regional director is hereby AFFIRMED.

PER CURIAM

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA



DOWNEY UNIFIED SCHOOL DISTRICT,)
)
Employer,) Representation
) Case No. LA-R-346B, D-48
)
and)
)
)
LOS ANGELES CITY AND COUNTY) ORDER GRANTING PETITION
SCHOOL EMPLOYEES UNION, LOCAL 99,) FOR DECERTIFICATION
) (4/14/80)
Employee Organization,)
)
and)
)
)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION AND ITS DOWNEY)
CHAPTER #248,)
)
Employee Organization.)
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_____)

Appearances: Linda Jenson Paterson, Attorney for Downey Unified School District; Jeff Paule, Attorney (Geffner & Satzman) for Los Angeles City and County School Employees Union, Local 99; and Steven Nutter, Attorney for California School Employees Association and its Downey Chapter #248.

Before: Bruce Barsook, Hearing Officer

INTRODUCTION

On October 5, 1979 the California School Employees Association and its Downey Chapter #248 (hereafter CSEA) filed a decertification petition pursuant to section 3544.5(d) of the Educational Employment Relations Act (hereafter EERA)¹ for a

¹The EERA is codified at Government Code section 3540

classified employees operations-support unit² of the Downey Unified School District (hereafter District).

et seq. All section references are to the Government Code unless otherwise indicated.

Sec. 3544.5(d) provides:

A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

(d) An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by current dues deduction authorizations or other evidence such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative.

²The unit is presently composed of the following classifications: All regular full-time and part-time classified employees serving in the following positions: Senior Lead Custodian, Lead Custodian, Utility Worker, Athletic Equipment Attendant, Custodian, Lead Groundskeeper, Maintenance Groundskeeper, Ground Equipment Operator, Groundskeeper, Lead Equipment Mechanic, Equipment Mechanic, Bus Driver/Trainer, Senior Bus Driver, Equipment Attendant, Bus Driver, Vehicle Operator, Senior Stock Clerk, Stock Clerk, Lead Maintenance Worker, Air Conditioning and Refrigeration Mechanic, Maintenance Electrician, Maintenance Electronics Technician, Maintenance Plumber, Locksmith, Maintenance Welder, Glazier, Maintenance Carpenter, Maintenance Painter, Maintenance Machinist, General Maintenance Worker, Skilled Trades Helper, Lifeguard and Pool Attendant.

CSEA alleges that a written agreement entered into between the District and the Los Angeles City & County School Employees Union, Local 99 (hereafter SEIU or Local 99) for the term March 6, 1978 to June 30, 1979, expired and that no successor agreement was reached before CSEA's decertification petition was filed.

The District and SEIU deny CSEA's allegations and assert that there is a two-year agreement ending in 1981 which bars CSEA from filing a decertification petition. As a result, the regional director has instituted a hearing to ascertain the relevant facts.

The hearing in this matter was held on January 14, 1980 and post-hearing briefs were filed by the District and CSEA on March 7, 1980.

ISSUE

1. On the date CSEA filed its decertification petition did a written agreement exist between the District and SEIU which would thereby constitute a bar to CSEA's decertification petition?

DISCUSSION

Factual Background

In April 1979 the District and SEIU began negotiations for a successor to their 1978-79 agreement. Ground rules were adopted and provided that "all agreements reached by the

negotiating teams for the District and for Local 99, shall be tentative until ratified by the Union and District, respectively."

Negotiations continued through the summer. On August 20, 1979 negotiations broke down when the District's final proposal was rejected 5-2 by SEIU's negotiating committee. Nevertheless, Pat Prete, SEIU business agent and chief negotiator for the union, tentatively agreed to the District's proposal on August 22.

In accordance with an agreement with members of the SEIU negotiating committee, Prete prepared a summary of the tentative agreement. This summary, along with the mail ballot for the contract ratification election, was sent to SEIU members on August 29.

Upon receiving a copy of the August 29 letter, Frank Latino, a member of the SEIU negotiating committee, contacted Howard Friedman, secretary-treasurer of SEIU, Local 99, to voice some concerns he had with Prete's summary of the tentative agreement. It was Mr. Latino's position that Prete had failed to provide him with an advance copy of the summary as Prete had promised and that the summary itself contained a number of misrepresentations.

Mr. Friedman responded that because Prete was on vacation any solution of the problem would have to wait until after the ratification vote. If the agreement were not ratified that

would end the problem, but if it passed, Mr. Friedman indicated he would have to make a decision on what to do next.

On September 12, 1979, the ballots were counted and the vote was in favor of ratification. Prete advised the District by phone of the ratification.

The following Sunday a meeting was held with Prete, Friedman, and the entire negotiating committee. The result of the meeting was that on Monday, September 17, Mr. Friedman decided that it would be in the best interests of the union if a second ratification vote were held.

That evening the District was scheduled to ratify the agreement and both sides were expected to sign the agreement immediately thereafter. However, SEIU had determined that it would not sign the agreement until a second ratification vote was conducted and in a letter to the District SEIU requested that the District not ratify the agreement that evening. The letter reasons that:

Because of the recent mail ballot election, it appears as though there has been some confusion on behalf of our members on what is or is not part of the negotiated settlement. Therefore, we must take the settlement to an open meeting where all questions and concerns can be answered in a clear & concise manner and another secret ballot ratification vote taken.

Nevertheless, the District proceeded to ratify and sign the agreement at its September 17 board meeting. The terms of the agreement were implemented the next day, September 18.

After the District's ratification of the agreement, SEIU proceeded to conduct a second ratification election. A second ratification letter went out to members on October 1, 1979 and the ballots were to be counted on October 12, 1979. In the interim, CSEA filed its decertification petition.

On October 12, 1979 the ballots of the second ratification vote were counted and the vote was again in favor of ratification. Mr. Prete signed the agreement the same day.³

Analysis

Section 3544.7(b)(1) regulates the processing of a decertification petition filed during the term of a collective negotiating agreement. It provides that:

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.

³The face of the agreement indicates that the agreement was signed September 17, 1979. However, the parties stipulated that Mr. Prete did not actually sign the agreement until October 12, 1979, seven days after CSEA's petition for decertification was filed.

In interpreting section 3544.7(b)(1), federal precedent under the National Labor Relations Act (hereafter NLRA)⁴ offers significant guidance.

Although there is no parallel language under the NLRA establishing a "contract bar" the California Supreme Court has stated that where the NLRA does not contain specific wording comparable to the state act, if the rationale that generated the language "lies imbedded in the federal precedents under the NLRA" and "the federal decisions effectively reflect the same interests as those that prompted the inclusion of the [language in the EERA], [then] federal precedents provide reliable if analogous authority on the issue.⁵ The statutory "contract bar" language contained in section 3544.7(b)(1) is quite similar to the contract bar doctrine developed by the NLRB. In addition, the PERB recognized in its decision in Bassett Unified School District (3/23/79) PERB Order No. AD-63, that NLRB precedent "serves to illustrate the legislative intent underlying section 3544.7(b)(1)." Consequently, it is

⁴29 U.S.C. sec. 151 et seq.

⁵Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, 616, 617 [87 LRRM 2453]. See also, Faeth & McCarty v. Redlands Teachers Association (9/25/78) PERB Decision No. 72; Sweetwater Union High School District (11/23/76) EERB Decision No. 4.

appropriate to consider federal precedent in determining whether a contract bar exists.

The purpose of the contract bar doctrine is eloquently stated in the NLRB's An Outline of Law and Procedure in Representation Cases:

The major objective of the Board's contract-bar doctrine is to achieve a reasonable balance between the frequently conflicting aims of industrial stability and freedom of employees' choice. This doctrine is intended to afford the contracting parties and the employees a reasonable period of stability in their relationship without interruption and at the same time to afford the employees the opportunity, at reasonable times, to change or eliminate their bargaining representative, if they wish to do so.⁶

In order to bar a decertification petition, an agreement must be written, signed by authorized representatives of both parties, have a definite duration, contain substantial terms and conditions of employment and cover all employees in the appropriate unit. Appalachian Shale Products Co. (1958) 121 NLRB 1160 [42 LRRM 1506].

In addition, where, as here, "ratification is made a condition precedent to contract validity, failure to achieve

⁶An Outline of Law and Procedure in Representation Cases, Office of the General Counsel, National Labor Relations Board (1974) p. 74; See also, Union Fish Co. (1965) 156 NLRB 187, 191 [61 LRRM 1012]; Bassett Unified School District (10/9/79) PERB Decision No. AD-77.

timely ratification of the contract, i.e., before the filing of a petition, will remove it as a bar." Appalachian Shale Products Co., supra, 121 NLRB at 1162.

The evidence in this case indicates that although the District ratified, signed, and implemented the agreement before CSEA's decertification petition was filed, SEIU had not yet ratified the agreement. Even though SEIU had informed the District that it had ratified the agreement on September 12, 1979, its decision to hold a second ratification vote coupled with its request in writing to the District prior to the District's September 17, 1979 board meeting that the District delay ratification of the agreement pending the outcome of a second ratification vote leads one to conclude that SEIU had not yet ratified the agreement.⁷ Consequently, because the

⁷In his testimony, Pat Prete claimed that the first ratification vote was never nullified and that the second vote was for clarification purposes only. This claim was disputed by Frank Latino who testified that Howard Friedman called him by phone and told him that the first ratification vote had been declared "null and void."

Mr. Prete's claim is undermined by his own admission that SEIU would not sign the agreement until after the second ratification vote and by SEIU's attempt to convince the District to delay its ratification of the agreement until after the second ratification vote. If SEIU believed the first ratification vote to be valid what would be the purpose of holding a second but meaningless (ratification) vote, or refusing to sign the agreement or requesting that the District

agreement had not yet been ratified by both sides, there was no agreement in existence and therefore no contract bar exists. Because the agreement was not ratified in a timely fashion, it need not be determined whether the parties had signed the agreement in a timely fashion.⁸ Consequently, the District's innovative argument that signed tentative agreements coupled with ratification by the parties constitutes a contract bar under the Appalachian Shale standard⁹ need not be addressed.

PROPOSED ORDER

It is hereby ordered that the decertification petition filed by the California School Employees Association and its

not ratify the agreement pending the outcome of the second ratification vote.

For the above reasons, it is found that Mr. Latino's explanation is the more credible one.

⁸See Appalachian Shale Products Co., supra, 121 NLRB at 1162, which provides that:

[A] contract to constitute a bar must be signed by all the parties before a petition is filed and that unless a contract signed by all parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions.

⁹Thus, "In order to constitute a bar a contract need not be encompassed within a single formal document but may consist of an exchange of a written proposal and a written acceptance." Valley Doctor's Hospital, Inc., d/b/a Riverside Hospital (1976) 222 NLRB 907 [91 LRRM 1334].

Downey Chapter #248 was timely filed and not barred pursuant to provisions of section 3544.7(b)(1).

This Administrative Order shall become final on April 24, 1980 unless a party files a timely statement of exceptions and supporting brief within ten (10) calendar days following the date of service of this Administrative Order. Any statement of exceptions and supporting brief must be actually received by the executive assistant to the Board at the headquarters office in Sacramento on April 24, 1980 in order to be timely filed. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself.

Dated: April 14, 1980

Frances A. Kreiling
Regional Director

By _____

Bruce Barsook
Hearing Officer

PROOF OF SERVICE BY MAIL - C.C.P. 1013a

I declare that I am employed in the county of Sacramento, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 923 - 12th Street, Suite 300, Sacramento, California 95814.

On April 14, 1980, I served the attached ORDER GRANTING PETITION FOR DECERTIFICATION on the below listed parties by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 14, 1980, at Sacramento, California.

Marie S. Macaulay

(Type or print name)

(Signature)

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