

decisions denying CSEA's Motion to Dismiss the Decertification Petitions and directing the decertification elections.

Pursuant to the directed election orders, the ballots are to be received in the Los Angeles Regional Office of PERB no later than 5:00 p.m. on May 22, 1981, and to be counted at 10:00 a.m. on May 26, 1981. As the issues raised by CSEA's appeal are central to these elections, the Board grants CSEA's motion to stay the proceedings in the decertification election until such time as the Board issues a decision in the above described appeal.

ORDER

The Los Angeles Regional Director of the Public Employment Relations Board is hereby ORDERED:

1. To stay all proceedings in Case Nos. LA-R-156A, D-73 and LA-R-156B, D-74 and
2. Impound all ballots received by the Los Angeles Regional Office in the above-numbered cases.

Administrative Code, title 8, section 32370 which reads:

Request for Stay of Activity. An appeal will not automatically prevent the Board from proceeding in a case. Parties seeking a stay of any activity should file a request for a stay which shall include all pertinent facts and justification for the request to be attached to the administrative appeal. The Board may stay the matter, except as is otherwise provided in these regulations.

This order is to remain in effect until such time as the Public Employment Relations Board itself issues a decision on the administrative appeals filed by CSEA in these cases.

PER CURIAM

director's findings and conclusions and affirm her administrative determinations.

ORDER

The Board AFFIRMS the determinations of the regional director, DENIES the appeal, and VACATES PERB Order No. Ad-110.

By: John W. Jaeger, Member

Barbara D. Moore, Member

Member Tovar dissenting:

I dissent. No election in this unit should be held, or exclusive representative certified, because there is reason to believe that as many as 50 to 80 employees who would be eligible to vote have been arbitrarily and improperly excluded from the election and thus denied their statutory right to vote.

FACTS

There has been no hearing in this matter, and complete evidence is therefore not available from a formal record. However, certain basic facts can be gleaned from representation documents filed with PERB in this matter.

PERB files¹ indicate that CSEA was certified as exclusive representative in clerical/technical and operations and

¹These include the original certification of CSEA, the decertification petitions of Service Employees International Union, Local 690 (SEIU), CSEA's unit modification petition, the

support units in May 1977. The principal problem in this case involves the clerical/technical unit, which was described by listing the classifications in it. In March 1981, SEIU filed a decertification petition in this unit.² In April, after SEIU's decertification petition had been verified, the CSEA attempted to file a unit modification to create five units from the existing two. The PERB regional director rejected CSEA's unit modification petition as untimely and directed an election. In the course of pre-election procedures, it became known that there were approximately 80-85 employees in classifications which were created sometime after May 1977 and therefore are not literally within the list of classifications which described the existing unit. Approximately 50 of these employees are in the new classifications of either director's secretary or administrative secretary. There are indications that these employees may not be new but have been unit employees from the start in another secretarial classification. As indicated, there is no record which would indicate whether their duties have changed at all in their new classification, as the reclassification may merely have resulted from a desk audit.

pre-election list of employees, the unit modification petition signed by the employer.

²It also filed a decertification petition in the operations/support services unit. There appear to be two new classifications in that unit.

For unexplained reasons, the exclusive representative, CSEA, had never filed a unit modification petition to update the unit description by adding these new classifications. A unit modification petition for this purpose was filed with PERB on March 23rd as a pre-election matter. However, this petition was signed only by the employer; CSEA did not sign it, apparently preferring to pursue its unit modification request to create five units, which also called for unit placement of the new classifications. Lacking CSEA's sponsorship, this petition to update the unit was never processed, presumably because it was regarded as a circumstance requiring a petition pursuant to PERB Rule 33261(a).³ As noted, the PERB regional

³PERB Rules are codified at California Administrative Code, title 8, section 31000 et seq. PERB Rule 33261(a) provides:

(a) A recognized or certified employee organization may file with the regional office a petition for unit modification pursuant to Government Code section 3541.3(e): (Emphasis added.)

(1) To add to the unit unrepresented classifications or positions which existed prior to the recognition or certification of the current exclusive representative of the unit, provided such petition is filed at least 12 months after the date of said recognition or certification, except as provided in subsection (2) below;

(2) To add to the unit unrepresented classifications or positions which were included in an original request for recognition or intervention, but disputed as

director also rejected CSEA's own unit modification petition. Instead, the regional director directed the decertification election to proceed, excluding all employees in the new classifications who had been omitted from the unit through the above-described failure to update the unit description. No effort apparently was made to determine whether the employees in the new classifications were new employees or, if not, whether they performed different duties when their classification was changed.⁴

to management, supervisory or confidential status, provided a written agreement of all parties to submit the disputed classifications or positions pursuant to this Section 33261(a) (2) was filed with the regional office prior to recognition or certification of an exclusive representative in the unit in question;

(3) To add to the unit new unrepresented classifications or positions created since recognition or certification of the current exclusive representative;

(4) To divide an existing unit into two or more appropriate units;

(5) To consolidate two or more established units into one appropriate unit, provided neither of the conditions of Government Code section 3544.7(b) exist in any of the units to be consolidated. The "window period" provided for in Government Code section 3544.7(b) (1) is defined in Section 33020 of these regulations.

⁴Employees in some new classifications were apparently permitted to vote. These classifications were types of instructional aides; e.g. Instructional Aide II: Agricultural

DISCUSSION

The PERB has been charged by the Legislature with the responsibility and trust of carrying out the provisions of the Educational Employment Relations Act (hereafter EERA). The ability of all employees to participate in the selection of an exclusive representative to represent them in their employment relations with their employer is fundamental to this statutory scheme.⁵ Indeed, the Legislature endowed PERB with ample powers over representation matters, in order to rule on the appropriateness of negotiating units and, in conducting representation elections, to carry out this mission.⁶

Mechanic; Instructional Aide II: Data Processing, etc. Apparently the regional director decided that these were not new classifications because other classifications of Instructional Aides II were in the original unit description.

⁵Government Code section 3540 et seq. EERA section 3540, stating the purpose of the statute, provides, in pertinent part:

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. . . .

⁶Several sections are indicative of the powers granted to

In this case, information has come to the attention of the PERB in the normal course of processing a representation petition which indicates that there may be a substantial number of employees who have been in the unit, and who still should be

PERB to be exercised in carrying out its mission. For example: Section 3541.3 empowers PERB:

.....

(e) To establish by regulation appropriate procedures for review of proposals to change unit determination.

.....

(l) To decide contested matters involving recognition, certification, or decertification of employee organizations.

.....

(n) To take such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

Section 3544.5 calls for PERB to investigate and decide, upon presentation of a petition, questions of representation and to determine appropriate units.

Section 3544.5(d) directs PERB, upon presentation of a decertification petition in an appropriate unit, to obtain information from the employer necessary to carry out its responsibilities in representation matters.

Section 3544.7 directs the PERB, upon receipt of a decertification petition, to conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the representation petition.

in the unit, but who are being arbitrarily disenfranchised.⁷ While PERB need not initiate a thorough search or investigation for unrepresented employees whenever it receives a petition, it should not close its eyes to evidence of the presence of employees who should be voting in the unit when confronted with it, as it has been in this case. On the contrary, PERB's duty is to investigate or conduct a hearing. If there is arbitrary disenfranchisement, PERB should exercise its powers and refuse to conduct an election, and refuse to certify an exclusive representative in a unit which is patently inappropriate.

In this case, both the unit modification petition signed by the employer and CSEA's unit modification petition, although rejected for other reasons, state facts indicating the existence of employees who will be denied the right to vote. The role of a labor board in this type of situation was well described by the U.S. Circuit Court of Appeals as follows:

The interest of a rank-and-file worker in selecting an economic representative having the power to fix wages and working conditions is no less important than a citizen's interest in selecting a political representative. The National Labor Relations Act vests the Board with discretionary authority to conduct a fair election--fair for individual employees, as well as for the Company or for the Union.

⁷It is quite possible that these employees could affect the results of the election, since these 50-80 employees comprise a substantial proportion of the approximately 186 employees who were considered eligible.

The Board abuses its discretion when it knowingly allows eligible employees to be disfranchised or when it fails to investigate the eligibility of disfranchised employees whose votes would change the results of an election to decide upon a bargaining agent. (Emphasis added.) Shoreline Enterprises v. NLRB (5th Cir. 1959) [43 LRRM 2407].

Under the circumstances of this case, the regional director should have investigated to determine whether the unit proposed by the decertification petition is inappropriate because it fails to include eligible employees.

Irene Toyar, Member