

true name of the certified entity. The request and subsequent appeal are opposed by Service Employees International Union, AFL-CIO (SEIU) on the grounds that CLOCEA is, in fact, a different entity than that certified by the Board, that the difference is of such substantial nature as to raise a real question concerning representation, and thus that the amendment of certification procedure is not appropriate.

FACTS

On September 8, 1981, following a decertification election conducted by PERB, Local 690 was certified as the exclusive representative of two units of classified employees of the Ventura Community College District (District). Shortly thereafter, on October 2, 1981, the board of directors of CLOCEA, a California corporation, voted to disaffiliate with SEIU, and ordered its staff to cease using the name "Service Employees International Union Local 690" and to conduct all business using the name CLOCEA. On December 7, 1981, CLOCEA filed a request to amend the certification to reflect the corporate name change from Local 690 to CLOCEA.

Upon learning of the purported disaffiliation by CLOCEA, SEIU instituted proceedings to impose trusteeship upon its former local, and informed entities with negotiating relationships with Local 690 that the trusteeship was being imposed and that they should continue to forward dues and insurance premiums to SEIU. In response to this action, CLOCEA

sought and obtained a preemptory writ of mandate from the Superior Court, Los Angeles County, providing, inter alia, that pending ultimate resolution of the dispute, all monies collected by the affected employers on behalf of entities known as CLOCEA, CLOCEA/SEIU Local 690, SEIU Local 690, or variations thereof should be forwarded to the Court which would then forward appropriate amounts to CLOCEA for satisfaction of dues and insurance obligations. The Superior Court further denied SEIU's motion for preliminary injunction and granted CLOCEA's motion for preliminary injunction restraining SEIU from imposing a trusteeship upon Local 690 and providing that CLOCEA and Local 690 were the same entity and that, during the pendency of the action, CLOCEA had the right to represent employees in units in which Local 690 had been certified. The Court decided the issues based upon corporations law principles after reviewing the articles of incorporation and bylaws of CLOCEA, which provide that Local 690 is merely the d/b/a of CLOCEA.

There has been no change in the officers, staff, or shop stewards of Local 690 since the certification. However, it is apparent that the disaffiliation would result in severing ties with SEIU and the AFL-CIO and loss of use of the name and whatever assistance may have been forthcoming from those entities.

The record reflects that the unit employees of the District have neither been contacted nor allowed to express their views, by secret ballot or any other method, respecting the proposed disaffiliation and name change.

A letter to PERB dated February 17, 1982 and signed by 175 unit employees (out of approximately 400 in the unit) indicated to the regional director that the employees had not been contacted. It was the understanding of at least the 175 unit employees signatory to that letter that CLOCEA had "come into existence" by virtue of a split within SEIU, and that they had voted for representation by SEIU. The District, faced with competing contentions of SEIU and CLOCEA, informed the regional director that it had a good faith doubt as to the identity of the negotiating representative of the employees. There have been no negotiations and the record reflects that the employees are currently working without a contract.

There was no mention of the name CLOCEA in any of the documents submitted to PERB pursuant to the decertification election by means of which Local 690 was certified in September 1981.

DISCUSSION

CLOCEA contends, in essence, that it was entitled by its articles of incorporation and bylaws to cease using the name Local 690 and to sever its corporate relationship with SEIU by a vote of its board of directors and that, when it did so, no

change in basic identity was wrought upon the entity which was designated by the employees. Rather, argues CLOCEA, a mere name change was accomplished, no true question concerning representation arose, and hence the amendment of certification procedure is appropriate. SEIU argues, on the other hand, that the disaffiliation herein amounts to a substantial change in identity which gives rise to a question concerning representation, and that an amendment of certification is therefore inappropriate.

The petition herein arises under PERB rules 32760 through 32763.¹

¹PERB rules are codified at California Administrative Code, title 8, section 31000 et seq. Sections 32760 through 32763 provide, in pertinent part:

32760. Policy. It is the policy of the Board that in the event of a merger, amalgamation, affiliation or transfer of jurisdiction affecting an exclusive representative recognized or certified under EERA, SEERA or HEERA, the exclusive representative shall file a request with the Board, utilizing the procedures described in this Article 3.

32761. Request.

(a) A recognized or certified employee organization shall file with the regional office a request to reflect a change in the identity of the exclusive representative in the event of a merger, amalgamation, affiliation or transfer of jurisdiction affecting said organization.

.....

These rules are the PERB equivalent of the amendment of certification provisions of the National Labor Relations Act

32762. Employer Response. The employer may file a responding statement to the request filed pursuant to Section 32761. Such statement must be filed with the regional office within 15 days following the date of service of the request. A copy of the response shall be concurrently served on the exclusive representative. Proof of service shall be filed with the regional office.

32763. Board Investigation.

(a) Upon receipt of a request filed pursuant to Section 32761, the Regional Director shall conduct such inquiries and investigations or hold such hearings as deemed necessary in order to decide the questions raised by the request.

(b) The Regional Director may dismiss the request if the requester has no standing to petition for the action requested or if the request is improperly filed. The Regional Director may deny a request based on the investigation conducted pursuant to subsection (a) above.

(c) Upon approval of a request, the Regional Director shall issue a certification reflecting the new identity of the exclusive representative. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 32754 of these regulations.

(d) Any determination made by the Regional Director pursuant to this Section may be appealed to the Board itself in accordance with the provisions of Division 1, Chapter 4, Article 2 of these regulations.

and regulations promulgated thereunder.²

We are thus guided by precedent of the National Labor Relations Board (NLRB) and federal courts regarding appropriateness of amendment of certification.³ The general rule established by cases decided in the private sector is that amendment of certification is appropriate where there is no change in the basic identity of the representative chosen by the employees but, rather, where the change is one of form and not of substance. It is reasoned that such an amendment is justified without the full range of representation procedures, including a secret ballot election conducted by the labor board, because the change involved does not alter the essential identity of the negotiating representative. The amendment of certification may be granted even during the pendency of contract or election bars to conduct of representation proceedings, because it involves a change which does not affect the continuity of the negotiating relationship. To insure that this is the case, the NLRB and courts have developed criteria for determining when no question concerning representation is raised and thus that amendment of certification is appropriate

²See Rules and Regulations and Statements of Procedure, series 8, as amended, of the National Labor Relations Board, section 101.17.

³It is appropriate for the Board to be guided by federal precedent when it is applicable to the public sector issue involved in a given case. Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].

and, conversely, when the petition raises a question concerning representation such as to render the amendment of certification inappropriate. The general goal of the inquiry is to determine whether the entity seeking an amendment of certification is merely a continuation of the certified entity under a new name or is a substantially different organization.

There are two separate but related aspects to this inquiry. First, is the substitute entity substantially the same, in the sense that it has the same structure, the same officers, and the same stewards and other representatives for dealing with the employer and employees? Second, was the substitution or change procedurally valid, in that it conformed to the organization's internal rules and involved a democratically achieved ratification of the action by unit employees? As the California Court of Appeal has held in analyzing the requirements of the NLRB and federal courts for amendment of certification,

. . . the people who conduct a substantial part of the unit dealings with management must be the same and the power of the unit's members to control those agents must be the same. It is not enough that only the contract, local officers, and employees be the same, the rights of the parties must be the same.

In sum, the Court continued,

. . . for the amendment of the certificated union to sustain this test, the following three features must converge: (1) there must be acceptance by the original certified union, (2) the bargaining unit must remain substantially the same, i.e., there is

continuity of bargaining representatives, and (3) the employees are shown to be able to fully and democratically consider and vote on affiliation, i.e., in accordance with due process.

North San Diego County Transit Development Board v. Donald Vial (1981) 117 Cal.App.3d 27, [___ Cal.Rptr. ___], at pp. 33-34.

We believe this to be an appropriate general rule for evaluation of the appropriateness of amendments of certification. Among the factors to be investigated and considered are the extent of congruity of the persons who conduct the unit business with management, whether the requirement set forth in the certificated entity's governing documents for affiliation, disaffiliation, or other modification of organizational form have been met, and whether and in what manner the employees have expressed their approval of the change in form.⁴

Applying these factors to the case at hand, it appears that there may indeed be substantial continuity of identity of those persons who deal with management on behalf of the unit,⁵ and

⁴This is not intended to be an exhaustive list, but rather a general statement of factors which should be investigated and will be considered by the Board in evaluating the propriety of an amendment of certification.

⁵There are insufficient facts to enable the Board to determine to what extent, if any, agents of SEIU and the AFL-CIO may have been available to represent unit members prior to disaffiliation. For reasons set forth, *infra*, we need not make such a determination based on the limited evidence here.

even that the certificated organization's internal rules purport to enable it to disaffiliate without consultation with the unit employees or members. However, as noted above, it is clear that the unit employees had neither notice of nor an opportunity to vote upon disaffiliation.

We cannot conclude, as the petitioner urges, that disaffiliation with a national union can be viewed as a mere name change in the circumstances here presented. We are compelled to deny the petition herein on the grounds that the employees have not been given the opportunity to democratically express their views on the reorganization and name change encompassed by the disaffiliation herein.⁶

The NLRB has long held that it will not grant amendment of certification

. . . where the possibility of a question concerning representation remains open because the change of affiliation took place under circumstances that do not indicate that the change reflected a majority view. North Electric Company (1967) 165 NLRB 942, at 942 [65 LRRM 1379].

Here, there was no election or expression of employee views of any kind prior to disaffiliation. Employees received no notice of the planned disaffiliation. Because in these circumstances

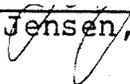
⁶Whereas the disaffiliation may well have been proper as a matter of corporate law, it did not conform to the more stringent due process requirements to which employees are entitled in the labor relations context.

we cannot conclude that the disaffiliation "reflected a majority view", it would be inappropriate for the Board to grant the amendment of certification.

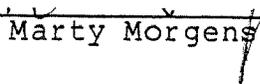
ORDER

Upon the foregoing decision and the entire record in this matter, the Public Employment Relations Board ORDERS that:

The regional director's dismissal of the proposed amendment of certification is hereby AFFIRMED, and no amendment shall issue.

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Virgil Jensen, Member



Marty Morgenstern, Member



Irene Tovar, Member