STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA, Employer, and STATE EMPLOYEES TRADES COUNCIL, LIUNA, LOCAL 1268, Appellant, and CALIFORNIA STATE EMPLOYEES ASSOCIATION, Exclusive Representative.	)	Case Nos. S-R-723-S S-SR-12 PERB Decision No. 348-S September 30, 1983

Appearances: Thomas E. Rankin, Attorney for State Employees Trades Council, LIUNA, Local 1268; Deborah Warren, Attorney for California State Employees Association; Catherine C. Harris, Attorney for State of California, Department of Personnel Administration.

Before Tovar, Jaeger and Burt, Members.

DECISION

TOVAR, Member: State Employees Trades Council, LIUNA, Local 1268 (SETC) appeals the attached dismissal of its severance petition by the Sacramento regional director of the Public Employment Relations Board (PERB or Board). The regional director determined that the petition was barred under the terms of subsection 40260(b) of PERB's rules and

regulations[1] because of the existence of a collectively negotiated contract between the state employer and the California State Employees Association (CSEA), the exclusive representative for the bargaining unit of which the petitioned-for employees are members.

We find that the regional director acted properly in dismissing the petition. Accordingly, we deny SETC's appeal.

FACTS

CSEA was certified on July 10, 1981 as the exclusive representative of the craft and maintenance employees of the

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[1]PERB's rules and regulations are codified at California Administrative Code, title 8, section 31001, et seq. Subsection 40260(b) provides in pertinent part:

> (b) A [severance] petition shall be dismissed in part or in whole whenever the Board determines that:
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> . . . . . .
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> (2) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by the severance petition, unless the petition is filed less than 120 days but more than 90 days prior to the expiration date of such memorandum or the end of the third year of such memorandum; provided that, if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; . . .

State of California. The employees who are the subject of SETC's severance petition are within this unit.

CSEA and the state employer began negotiations in December 1981. As tentative agreements were reached, they were signed by CSEA and the Governor's representative. The final negotiation session ended on June 24, 1982, and all tentative agreements were signed by both parties. These agreements were assembled as a memorandum of understanding (MOU) which was presented to the Legislature as required by Government Code section 3517.5, and was approved by that body on June 30, 1982. The Governor signed the bills the same day.

On July 12, 1982 SETC filed its severance petition with the Sacramento regional office of this agency.

After the State's approval of the MOU, a ratification vote was taken by the CSEA membership. The ballots were counted and the results released on July 20, with the majority favoring ratification. Neither the MOU nor any negotiating ground rules stated that ratification by the membership was a condition precedent to effectiveness of the MOU.

The formal signing of the MOU by the employer and CSEA took place on July 29, 1982. The MOU covers substantial terms and conditions of employment and is retroactive to July 1, 1982.

DISCUSSION

In ruling that the series of signed and adopted tentative agreements between the employees and CSEA constituted a

contract "currently in effect" under the terms of PERB rule 40260(b), the regional director relied on decisions of the National Labor Relations Board (NLRB) in which the instant issues were considered. Thus, she cited Appalachian Shale Products Co. (1958) 121 NLRB 1160 [42 LRRM 1506] in support of her conclusion that, although the contract had not been ratified by the CSEA membership at the time SETC filed its petition, that contract was nevertheless effective as a bar to the petition because there was no evidence of any written agreement between the parties making ratification a condition precedent to the effectiveness of the contract. She cited Gaylord Broadcasting Co. (1980) 250 NLRB 198 [104 LRRM 1360] and Farrel Rochester Division of USM Corp. (1981) 256 NLRB 162 [107 LRRM 1358] in support of her conclusion that a signed but informal agreement will be effective to bar a severance petition even though reorganization, assembly and formal signing occur only after the date of filing of the petition. These conclusions of law were the basis for the regional director's ruling that SETC's petition for severance should be dismissed.

On appeal, SETC argues that the regional director erred in relying on decisions of the NLRB in interpreting PERB rule 40260. The NLRB's contract-bar doctrine, points out SETC, is nowhere codified in a federal statute or regulation. Rather, it is a product of the decision-making process, developed by

that agency in a series of cases. Thus, argues SETC, the NLRB has been free to develop its own principles in shaping its contract-bar doctrine; PERB, on the other hand, is bound by the specific language of rule 40260. That language flatly provides that a contract must be "in effect" before it will bar a severance petition. While CSEA's contract may have been signed, asserts SETC, it had not yet been implemented, and indeed could not be implemented until ratified, as required by CSEA bylaws. Thus, it was not "in effect."

Contrary to SETC's assertions, cases decided by the California courts have established that decisions of the NLRB may play a significant role in arriving at an interpretation of this state's labor enactments.

In Social Workers Union, Local 535 v. Alameda County Welfare Dept. (1974) 11 C.3d 382, the California Supreme Court acknowledged that because California labor relations statutes are frequently modeled upon parallel federal legislation, those federal provisions are relevant in interpreting California's labor laws:

> Federal labor relation legislation has, of course, frequently been the prototype for California labor enactments, and, accordingly, in the past we have often looked to federal law for guidance in interpreting state provisions whose language parallels that of the federal statutes. [Citations omitted.] 11 Cal.3d at 391.

In the first year of its existence, in Los Angeles Unified School District (11/24/76) EERB Decision No. 5, this Board

adopted the policy of statutory interpretation articulated by the Court in Social Workers Union, supra. We said that:

> While we are not bound by N.L.R.B. decisions, we will take cognizance of them, where appropriate. Where provisions of California and federal labor legislation are parallel, the California courts have sanctioned the use of federal statutes and decisions arising thereunder, to aid in interpreting the identical or analogous California legislation. Alameda County Assistant Public Defenders' Assn. v. County of Alameda, 33 C.A. 3d 825, 829 (1973); Fire Fighters' Union v. City of Vallejo, 12 C. 3d 608, 615-616 (1974); Social Workers Union Local 535, SEIU, AFL-CIO v. Alameda County Welfare Dept., 11 C. 3d 382, 391 (1974); American Federation of State, etc. Employees, Local 685 v. County of Los Angeles, 58 C.A. 3d 601, 605, 606 (1976). (Los Angeles USD, supra, footnote 1.)

It may be noted that both the Court in Social Workers Union Local 535, supra, and this Board in Los Angeles Unified School District, supra, expressly mention only the value of parallel federal legislation as guidance in the interpretation of this state's labor provisions. As SETC emphasizes, the contract-bar rule applied by the NLRB is not set forth in any federal statute, having come to be purely through the administrative decisional process. It may be argued, therefore, that with no statutory language to compare there is no basis for concluding that the contract-bar rule set forth in the rules and regulations accompanying the State Employer-Employee Relations Act (SEERA) should yield the same result as the federal

doctrine.[2] We find little support for such a limitation on the significance of federal decisions.

In Social Workers Union, supra, the Court noted the value of federal labor decisions as guidance in the interpretation of parallel California labor laws. The salient point of the Court's discussions is that where a federal rule has been "the prototype for California labor enactments," then review of the federal experience with that rule will be beneficial in interpreting the California provision. In this context, it would be of little significance whether the federal rule was created by legislative action or via the decision-making process, so long as it appears to have served as the model for the State's legislation.

Here, it is manifestly apparent that the contract-bar doctrine developed over many years by the NLRB served as the model for the parallel provisions in the acts administered by this Board. There is nothing expressed in our contract-bar provisions which is not a feature of the federal doctrine.

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[2]The SEERA, codified at Government Code section 3512 et seq., contains no legislatively-expressed contract-bar rule. Rather, the Legislature authorized the Board, at section 3520.5(c), to establish procedures by which employees can modify the representational authority of their exlcusive representative. However, both the Educational Employment Relations Act and the Higher Education Employer- Employee Relations Act include legislatively-expressed contract-bar provisions in connection with decertification procedures. The contract-bar provisions appearing by statute in those latter two Acts are the same in substance as that appearing at rule 40260.

Consistent with this, we have several times already availed ourselves of the guidance of federal decisions on contract bar questions. See, e.g., Basset Unified School District (10/9/79) PERB Order Ad-77; Downey Unified School District (9/10/80) PERB Order No. Ad-97; Butte County Superintendent of Schools (8/22/83) PERB Decision No. 338; compare, State of California (Department of Personnel Administration) (7/14/83) PERB Decision No. 327-S.

With regard to the instant appeal, then, the NLRB's discussion and decision in Appalachian Shale, supra, is highly instructive. In that case, the NLRB made a series of revisions in its contract-bar rule based upon its extensive experience in administering the federal labor relations program and its conclusion that "every effort should be made to eliminate the litigation of factual issues such as these in representation cases. . . ."

While our experience in administering a program of labor relations has been of a limited duration in comparison with that of the NLRB, we have been similarly impressed with the value of definite, easily applied rules which reduce the need for litigation and thereby yield certain and final results. Rules which will quickly resolve representational issues and avoid lengthy litigation promote stable employer-employee relations and thereby effectuate the purpose of the Act. We have applied this principle of rule interpretation in the

past. See, e.g., Petaluma City Elementary and High School Districts (6/30/82) PERB Order No. Ad-131, in which we dismissed a decertification petition because two of the necessary one hundred and one authorization cards were dated with the previous year and thereby rendered invalid. We opted to interpret the applicable rule strictly, and on that basis denied the petitioner's request to litigate its claim that the two cards had been only inadvertently dated with the wrong year. See also State of California (Department of Personnel Administration), supra, in which we dismissed a decertification petition where the petitioner attempted to make the required showing of support by filing additional authorization cards after the close of the window period. Despite the petitioner's explanation that it was unable to determine at the critical time how many employees were in the unit, we strictly construed the decertification rules, relying in part on the guidance of NLRB decisions. We concluded that "acceptance of proof of support . . . after the close of the window period would tend to undermine stable employer-employee relations and would not effectuate the purposes of the Act." Finally, see Pittsburg Unified School District (10/20/78) PERB Order No. Ad-49, in which we discussed the destablizing effects where the status of the exclusive representative is made uncertain.

SETC contends lastly that, even if decisions of the NLRB do constitute appropriate guidance for PERB for purposes of

interpreting rule 40260, the regional director's reliance on Gaylord Broadcasting Co, supra, is misplaced. The regional director cited these cases in support of her conclusion that the subsequent reorganization and assembly of an MOU which was initially recorded in informal documents does not render the informal agreement ineffectual as a contract bar.

We are unpersuaded that the regional director erred. SETC argues that Gaylord Broadcasting can be distinguished because in that case the contract had been ratified by the union membership and implemented by the employer before the decertification petition was filed. However, our reading of the case indicates that the NLRB found the agreement to be effective as a contract bar as of the date it was initialed by the parties. This was well before the employer implemented the agreement. As to the ratification, the opinion recites in its review of the facts that the agreement was so ratified, but nowhere in the discussion is that fact identified as a relevant factor in the NLRB's decision.

Upon the foregoing discussion, we conclude that the regional director properly dismissed SETC's petition for severance. Accordingly, SETC's appeal is DENIED and its petition is DISMISSED.

It is so ORDERED.

Members Jaeger and Burt joined in this Decision.

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

State of California, Employer, and State Employees Trades Council, LIUNA, Local 1268, Severance Petitioner, and California State Employees' Association, Exclusive Representative.	)	Case Nos. S-R-723-S S-SR-12 DISMISSAL OF SEVERANCE PETITION

PROCEDURAL HISTORY

On July 12, 1982, the State Employees Trades Council LIUNA, Local 1268 (hereafter SETC) filed a severance petition. By the petition, SETC sought to become exclusive representative of a unit comprised of several classes of employees[1] who are members of a larger unit represented by the California State Employees Association (hereafter CSEA).

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[1]The severance petition includes Program Water and Power Dispatcher, Water and Power Dispatcher, Hydro Electric Plant Electrician II, Hydro Electric Plant Mechanic II, Hydro Electric Plant Electrician I, Hydroelectric Plant Electrician, Mechanic I, Hydro Electric Plant Mechanic Apprentice, Senior Hydro Electric Plant Operator, Hydro Electric Plant Operator Assistant, Hydro Electric Plant Operator Apprentice, Control System Technician III, Control System Technician II, Electrical-Mechanic Testing Technician III, Electric-Mechanic Testing Tech II, System and Testing Technician I; it excludes all supervisory, management and confidential employees.

The Public Employment Relations Board (hereafter PERB or Board) determined SETC's proof of support adequate and initiated an investigation of the petition. CSEA opposes SETC's petition on two grounds:

(1) PERB does not have the authority to process the petition because there were no severance regulations in effect at the time the petition was filed.

(2) CSEA contends they entered into a Memorandum of Understanding (MOU) with the employer on June 23, 1982 which would be a contract to bar the petition filed on July 12, 1982.

SETC and CSEA submitted briefs on the issue of the contract bar. The employer takes no position on the contract bar issue.

FINDINGS OF FACT

CSEA was certified as the exclusive representative in Unit 12, SEERA (craft and maintenance) on July 10, 1981. The employees petitioned for by SETC are within Unit 12. CSEA and the state employer commenced negotiations in December 1981. There were no written negotiating ground rules for the negotiations sessions. As tentative agreements were reached they were signed by CSEA and the Governor's representative. The final negotiation session ended on June 24, 1982 with all of the tentative agreements signed by both parties. These tentative agreements constituted an MOU which pursuant to Government Code section 3517.5 was presented to the Legislature for approval. The MOU was approved by the Legislature pursuant

to Government Code section 3517.6 on June 30, 1982. The Governor signed the bills on June 30, 1982.

The MOU was submitted to CSEA members for a ratification vote pursuant to Division 5, CSEA policy file, ratification of MOU's. The ratification vote was conducted by secret ballot and the actual counting of all ballots took place on July 20, 1982. The majority of the members voted for ratification of the MOU. The MOU does not state that ratification of the MOU by the unit members is a condition precedent to effectiveness of the MOU.

During the month of July and through the first week in August, CSEA and the employer met to assemble and edit the MOU. The substance of the MOU was not changed during these meetings. The formal signing of the MOU by the employer and CSEA took place on July 29, 1982. The MOU covers substantial terms and conditions of employment and is retroactive to July 1, 1982.[2]

ISSUES

1. Does the PERB have the authority to process the severance petition filed by SETC?

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[2]The MOU provides for recognition, CSEA representation rights, organizational security, no strikes/no lockouts, grievance and arbitration procedure, salaries, hours of work and overtime, holidays, leaves, health and welfare, retirement, allowances and reimbursements, health and safety, career development, transfers and miscellaneous items. Duration of MOU is July 1, 1982 to June 30, 1984.

2. Does the agreement between CSEA and the employer constitute a bar to the severance petition?

DISCUSSION

In processing SETC's severance petition, PERB followed the severance petition provisions (sections 40200-40260) in Division 3 of the proposed regulations adopted by PERB in July, 1982 but not yet approved by the Office of Administrative Law. No interests of CSEA were compromised. For example, had PERB used as its guideline the then effective SEERA representation proceedings instead (July 1980 Regulations, Division 3, sections 41000-41280), petitioner SETC's proof of support requirement would have been only 30 percent. (Section 41010(b)(3)(c)). The processing of SETC's severance petition by PERB was consistent with the provisions of Government Code section 3520.5.

The MOU as a Bar to the Petition

CSEA contends that "a complete MOU was signed by the parties in the form of tentative agreements prior to the filing of the petition on July 12, 1982." SETC contends that the MOU was not officially signed by the exclusive representative and the employer until July 29, 1982. They believe that a contract bar does not exist because the MOU was not signed and ratified by the exclusive representative prior to the filing of their severance petition. The petitioner also indicates that "CSEA ratification procedures can only be interpreted to mean that

the MOU in question was not effective in the eyes of CSEA until it had been ratified by a vote of the members in Unit 12." The petitioner believes that there was an "implicit understanding" that the MOU would not become operative until it was ratified by CSEA and the employer.

PERB may be guided by NLRB precedent when interpreting similar SEERA provisions. See, e.g., San Diego Teachers Assn. v. Superior Court (1979) 24 Cal.3d 1, 12-13; Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.

The seminal NLRB case on the subject is Appalachian Shale Products Co. (1958) 121 NLRB 1160 [42 LRRM 1506]. In Appalachian Shale the NLRB stated that in order for an agreement to serve as a bar to an election, the contract bar rules require that such agreement satisfy certain formal and substantive requirements. The agreement must be signed by the parties prior to the filing of the petition that it would bar and it must contain substantial terms and conditions of employment sufficient to stabilize the parties bargaining relationship.

In Appalachian Shale the NLRB restated the rule for prior ratification as follows:

> Where ratification is a condition precedent to contractual validity by express contractual provision, the contract will be ineffectual as a bar unless it is ratified prior to the filing of a petition, but if the contract itself contains no express provision for prior ratification, prior

> ratification will not be required as a condition precedent for the contract to constitute a bar.

In Downey Unified School District PERB Order No. Ad-97, September 10, 1980, the PERB expanded the Appalachian Shale rule by stating:

> where there is ample and unchallenged evidence that the parties agreed, either by written 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 provision.

In Downey the parties had written and signed ground rules that all agreements reached by the representatives of the parties would be tentative until ratified by the exclusive representative and the employer, respectively. The agreement in Downey could therefore not become operative until it was ratified by both parties and thus did not block the filing of the decertification petition.

The NLRB has ruled that reorganization and assembly of an informal agreement after the contract or informal agreement documents have been signed by the parties does not render the informal agreement ineffectual as a contract bar. In Gaylord Broadcasting Co. d/b/a Television Station WVTV, 250 NLRB 198, [104 LRRM 1360] (1980) the employer and the union met to reorganize and assemble the provisions making up their informal, signed agreement. Thereafter the parties scheduled a session for signing a formal agreement. Before the formal

agreement was signed a decertification petition was filed. The NLRB held that the informal agreement was sufficient to operate as a bar to the petition. The NLRB affirmed Gaylord in Farrel Rochester Division of USM Corp., Rochester, 256 NLRB [107 LRRM 1361] (1981), noting "that it was a signed agreement - albeit by initialing - covering substantial terms and conditions of employment and was intended to be a final and binding agreement." The NLRB further referenced Gaylord Broadcasting in Farrel Rochester by observing:

> . . . that the negotiations which took place after [the informal agreement was signed] and the minor amendments made to the agreement after that date, did "not indicate that the agreement lacked finality or that its terms were insufficient to govern the parties relationship."

In the instant case the employer and exclusive representative signed all the tentative agreements of the MOU by June 24, 1982. The MOU covers substantial terms and conditions of employment and was intended to be a final and binding agreement. (See footnote No. 2.)

The further meetings which took place in July and August of 1982 to assemble and edit the MOU do not detract from the fact that the parties had already reached final agreement on all matters subject to the MOU and had signed tentative agreements covering all of them. Hence, consistent with the NLRB's decision in Gaylord, those assembling and editing activities do not undercut applicability of the contract bar rule in this case.

Nor, under Appalachian Shale and Downey, does the fact that employee ratification which occurred after the severance petition was filed indicate that the MOU should not bar processing of the petition. There were no written ground rules and the MOU itself did not specify that employee ratification was a condition precedent to final agreement.

CONCLUSION

Therefore, for the reasons stated above, the MOU between CSEA and the State of California bars the severance petition filed by SETC. The severance petition filed by SETC is hereby DISMISSED.

An appeal of this decision pursuant to PERB Regulations 32350 through 32380 may be made within 10 calendar days following the date of service of this decision by filing an original and 5 copies of a statement of the facts upon which the appeal is based with the Board itself at 1031 18th Street, Suite 200, Sacramento, California 95814. Copies of any appeal must be concurrently served upon all parties and the Sacramento Regional Office. Proof of service pursuant to Regulation 32140 is required.

DATED: December 9, 1982 For the Regional Director

By:
Joseph C. Basso
Public Employment Relations
Representative III