

STATE OF CALIFORNIA  
 DECISION OF THE  
 PUBLIC EMPLOYMENT RELATIONS BOARD



TAFT UNION HIGH SCHOOL DISTRICT,	)	
	)	
Employer,	)	
	)	
and	)	
	)	Case Nos. LA-R-20
SERVICE EMPLOYEES INTERNATIONAL	)	LA-R-450
UNION, LOCAL 700,	)	LA-D-11
	)	
Employee Organization,	)	PERB Order No. Ad-50
	)	
and	)	Administrative Appeal
	)	
CALIFORNIA SCHOOL EMPLOYEES	)	December 8, 1978
ASSOCIATION, CHAPTER 55,	)	
	)	
Employee Organization,	)	
<u>APPELLANT.</u>	)	

Appearances: Frank J. Fekete, Attorney (School Legal Service of Kern County) for Taft Union High School District; Henry Rodriguez, Senior Field Representative for Service Employees International Union, Local 700; and Robert C. Harmening, Field Representative and Nanci E. Bentz, Petitioner for California School Employees Association.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members.

OPINION

California School Employees Association, Chapter 55 (hereafter CSEA) appeals the Los Angeles regional director's dismissal of a decertification petition as untimely filed. For the reasons discussed below, the Public Employment Relations Board (hereafter the Board) sustains this dismissal.

FACTS

On December 1, 1976, Taft Union High School District (hereafter District), Service Employees International Union,

Local 700 (hereafter SEIU), and CSEA stipulated to a comprehensive classified unit of 35 to 40 persons. They further agreed that SEIU would have a specified period of time to demonstrate 30 percent support in the unit. If such a showing was made, a consent election would be requested. Otherwise the parties agreed that the District would voluntarily recognize CSEA as the exclusive representative.

SEIU obtained the necessary signatures and a consent election was held on April 1, 1977. On April 13, 1977, SEIU was certified as the exclusive representative for the unit. A written agreement between SEIU and the District took effect July 19, 1977, with a termination date of June 30, 1978.

On March 10, 1978, pursuant to section 3544.5(d) of the Educational Employment Relations Act<sup>1</sup> (hereafter EERA), CSEA

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<sup>1</sup>The Educational Employment Relations Act is codified at Government Code sec. 3540 et seq. All statutory references are to the Government Code unless otherwise specified.

Sec. 3544.5 provides in pertinent part that:

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

filed a decertification petition alleging that unit members no longer wished to be represented by SEIU. Because Board rule 33250(b)<sup>2</sup> precluded consideration of decertification petitions filed within one year of a representation election, CSEA's petition was dismissed as untimely. A second CSEA decertification petition filed on April 20, 1978, was also

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in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative. Such evidence of support shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence of support.

<sup>2</sup>At the time the SEIU petition was filed, Cal. Admin. Code, tit. 8, sec. 33250(b) provided:

The [decertification] petition shall be dismissed whenever either of the conditions of section 3544.7(b) of the Act exist or if a representation election has been held within the 12 months immediately preceding the filing of the petition.

An apparent disparity between the "certification bar" erected by Board rule 33660 and the "election bar" created by Board rule 33250(b) was resolved at the Board's public meeting of October 3, 1978, when section 33250(b) was amended to read:

The petition shall be dismissed whenever either of the conditions of section 3544.7(b) of the Act exist or if a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the filing of the petition.

dismissed as untimely because of EERA section 3544.7(b)'s mandate 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;...

#### DISCUSSION

CSEA in effect argues that Board rule 33250(b)<sup>3</sup> and EERA section 3544.7(b) should not be construed to prevent District employees from decertifying an undesired incumbent exclusive representative. These provisions are the source of three "bars" that prevent an employee organization from competing for recognition in a unit that has another elected and certified or voluntarily recognized exclusive representative. One year certification and recognition bars operate to safeguard new

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<sup>3</sup>Sec. 3541.3(g) empowers the Board to adopt "rules and regulations to carry out the provisions and effectuate the purposes and policies of [EERA]." Regulations validly enacted pursuant to a legislative grant of authority have the force and effect of law. See e.g. Agricultural Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 392, 420 [128 Cal.Rptr. 183], 546 P.2d 687; Harris v. Alcoholic Bev. etc. Appeals Bd. (1964) 228 Cal.App.2d 1, 6 [39 Cal.Rptr. 192]. See also K. Davis, Administrative Law (3d ed. 1972) at 137.

Sec. 3541.3(c) confers on the Board the power to conduct and certify the results of representation elections. Inherent in this duty is the responsibility to adopt regulations to protect negotiating relationships created through the board's election and certification procedures. Board rule 33250(b) serves this purpose.

See also 3544.7(a).

negotiating relationships.<sup>4</sup> In addition, the contract bar ensures that the exclusive representative has the latitude to develop its negotiating relationship with the employer unhampered by ongoing or new rivalries with other employee organizations.<sup>5</sup>

The practical effect of CSEA's appeal is to raise the question whether, when the certification and contract bars<sup>6</sup> operate in tandem to consume the 29-day statutory "window period" near the end of an existing contract,<sup>7</sup> one or more bar must be raised to permit a decertification petition to be filed. In addition CSEA argues that under section 3544.7(b) the contract and recognition bars

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<sup>4</sup>Cal. Admin. Code, tit. 8, secs. 33270(c)(3) and 33660 create a "certification" bar against filing for decertification for one year following Board certification of the results of an election. Sec. 3544.7(b)(2) puts a "recognition" bar against decertification petitions filed during the 12 months following an employer's lawful recognition of "an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition." Prior to its amendment on October 3, 1978, (see n. 2, supra), Board rule 33250(b) apparently created an additional "election bar."

<sup>5</sup>Sec. 3544.7(b)(1) mandates dismissal of decertification petitions filed in the face of an existing contract "unless the request for recognition [or decertification pursuant to sec. 3544.5(d)] is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement, . . ."

<sup>6</sup>Although the Los Angeles regional director dismissed CSEA's initial decertification petition on the basis of the election bar, the time period denoted in the letter of dismissal was calculated from the date SEIU was certified as the exclusive representative.

<sup>7</sup>The certification bar here prevented a decertification petition from being filed from April 13, 1977, until April 13, 1978. The contract bar curtailed decertification petition filings from July 19, 1977, through June 30, 1978,

are mutually exclusive. It supports this contention by referring to the word "or" in section 3544.7(b):

No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a lawful written agreement...;

or

(2) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner.... (Emphasis added.)<sup>8</sup>

This argument is without merit. The bars mandating dismissal of decertification petitions filed during the recognition and certification year, and during the contract period are not mutually exclusive. The bar created at the inception of negotiating relationship is not extinguished when a contract is reached. Only the passage of time removes this bar. Similarly, all that is required to create a contract bar is a lawful written agreement.<sup>9</sup> While a "window period" exists when petitions from rival employee organizations may be entertained,<sup>10</sup> the EERA does not guarantee that competing

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except during a window period extending from March 4, 1978, through April 1, 1978. The election bar period under old Board rule 33250(b) in this case would have extended from April 1, 1977, through March 31, 1978. The thirteen day discrepancy between the time periods of the election and certification bars is not important to the Board's resolution of this case, since both bars eclipse the window period of the contract year.

<sup>8</sup>Since all sec. 3544.7 references to "the petition" relate back inter alia to section 3544.5(d) decertification efforts, it cannot be argued that CSEA is exempt from the bars this section imposes.

<sup>9</sup>Sec. 3544.1(c).

<sup>10</sup>Sec. 3544.1(c). Id.

claims for representation will be considered during the fragile first stages of an employer's negotiating relationship with another exclusive representative.

The purpose of the recognition, certification and contract bars, we repeat, is to promote an environment in which a rapport between the exclusive representative and the employer can develop free from the uncertainty and disruption of rival organizational activities. Only during the first year of a new exclusive representative's tenure can these bars overlap to freeze out any attempt to oust the incumbent. But this is a crucial period in an incipient negotiating relationship, and for this reason it is doubly guarded from outside attack.

The Board rules and EERA provisions in question show that the regional director did not err in twice dismissing CSEA's decertification petition as untimely filed. Accordingly, we sustain the regional director's dismissal of CSEA's petition.

ORDER

The Public Employment Relations Board ORDERS that:

The regional director's dismissal of the decertification petitions filed by California School Employees Association, Chapter 55 is sustained.

  
By: Jerilou Cossack Twohey, Member

  
Harry Gluck, Chairperson

Raymond J. Gonzales, Member, concurring:

Unlike my colleagues, I do not find that the Board's authority for establishing a certification bar lies specifically in its power to conduct and certify the results of representation elections.<sup>1</sup> Rather, I view the Board's authority to inure from its general power to promulgate regulations<sup>2</sup> to interpret and make specific Government Code sections 3544.1(d) and 3544.7, provisions which deal specifically with the subject of decertification petitions.<sup>3</sup>

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<sup>1</sup>Gov. Code sec. 3541.3(c) provides:

The board shall have all of the following powers and duties;

. . . . .  
To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and certify the results of the elections.

<sup>2</sup>Gov. Code sec. 3541.3(g).

<sup>3</sup>Gov. Code sec. 3544.1(d) reads:

The public school employer shall grant a request for recognition filed pursuant to section 3544 unless:

. . . . .  
The public school employer has, within the previous 12 months, lawfully recognized another employee organization as the exclusive representative of any employees included in the unit described in the request for recognition.

Government Code sec. 3544.7(b) reads:

No election shall be held and the petition shall be dismissed whenever:

The question in my mind, is not what rules are needed to establish where, when, and how the Board will conduct elections, which is precisely the thrust of section 3541.3(c), but what rules are necessary to determine whether an election will be conducted at all.

It is clear that a contract bar has been expressly created by section 3544.7(b)(1). Such clarity does not appear in sections 3544.1(d) or 3544.7(b)(2), although it is the majority view that the phrase "lawfully recognized," contained in these provisions merely creates a recognition bar, preferring to treat the phrase "lawfully recognized" as a term of art. I do not treat this term so narrowly but rather view it as encompassing both a situation where an employer has voluntarily recognized an employee organization's exclusive representative status, and a situation where an employer's recognition of an employee organization's exclusive representative status is required pursuant to a certification by this Board.

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(con't. fn. 3)

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another 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) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition.

If the term "lawfully recognized" is not broadly construed so as to encompass a certification bar situation, then the Board's authority to adopt a certification bar found in regulation section 33250(b) is highly questionable since the argument that arises is that the Legislature has expressly created only two types of bars (contract and recognition bars) and in so doing intended no other bar to apply. Inclusio unius est exclusio alterius.<sup>4</sup> Of course, I do not think the Legislature intended to exclude a certification bar situation, but in order to give validity to the creation of such a regulation, the Board's power and duty is to clarify those provisions specifically dealing with the issue of acceptance or rejection of decertification petitions.

~~Raymond J. Gonzales, Member~~

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<sup>4</sup>The inclusion of one is the exclusion of another.

**PUBLIC EMPLOYMENT RELATIONS BOARD**

Los Angeles Regional Office  
3550 Wilshire Blvd., Suite 1708  
Los Angeles, California 90010  
(213) 736-3127



CERTIFIED MAIL  
Return Receipt Requested

April 20, 1978

Ms. Nanci Bentz  
California School Employees  
Association Taft High Chapter #55  
404 Olive Avenue  
Taft, CA 93268

Re: LA-R-450, Taft Union High School  
LA-D-1011

Dear Ms. Bentz:

Today we received your petition to conduct a decertification election in the unit of classified employees at Taft Union High School. Previously, you had submitted such a request that I determined to be untimely filed due to the election bar (see my letter dated March 17, 1978).

The above-noted request is not timely filed due to the existence of an agreement that expires June 30, 1978. If the current exclusive representative has not been successful in negotiating a new agreement prior to July 1, 1978 you may file for a decertification election after that date. Or, if a new agreement is successfully negotiated prior to July 1, 1978 you must wait until 120-90 days before the expiration date of the new agreement to file.

Your request for a decertification election is denied.

You may request a review of this decision within ten calendar days of receipt of this letter by filing a request addressed to the PERB Executive Director in Sacramento. This request shall state fully the facts on which the appeal is based. Copies of any appeal must be served upon all other parties to the action with a copy to this office.

Very truly yours,

Frances A. Kreiling  
Regional Director

FAK:an

cc: Taft Union High School District, Mr. Donald Henshaw  
K.C.E.A., SEIU Local 700, Mr. Henry Rodriguez