STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

Classified Union of Supervisory Employees, Local 347, SEIU, AFL-CIO, Employee Organization, and Los Angeles Unified School District, Employer.	)	Case No. LA-R-835 PERB Order No. Ad-132 Administrative Appeal August 27, 1982
Classified Union of Supervisory Employees, Local 347, SEIU, AFL-CIO, Employee Organization, and Lynwood Unified School District, Employer.	)	Case No. LA-R-858

Appearances: Joel N. Grossman, Attorney (O'Melveny & Myers) for Los Angeles Unified School District; William E. Brown, Attorney (Brown & Conradi) for Lynwood Unified School District; Bert Glennon, Jr., Attorney (Ochoa, Barbosa & Glennon) for Classified Union of Supervisory Employees, Local 347, SEIU, AFL-CIO.

Before Jensen, Tovar and Jaeger, Members.

DECISION

These consolidated cases are before the Public Employment Relations Board (hereafter PERB or Board) on interlocutory appeal of a board agent's denial of a motion to dismiss a representation petition. That denial was jointly certified to PERB by the Los Angeles Unified School District, the Lynwood

Unified School District (hereafter referred to respectively as LAUSD and Lynwood USD and jointly as Districts), and the board agent, pursuant to PERB rule 32200.[1]

On November 11, 1978, Classified Union of Supervisory Employees, Local 347, SEIU, AFL-CIO (hereafter the Local) requested recognition as the exclusive representative of the supervisory classified employees of the LAUSD.[2] During that

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[1]PERB rules are codified at California Administrative Code, title 8, section 31000 et seq. PERB rule 32200 provides:

> A party may object to the ruling on a motion by the Board agent and request a ruling by the Board itself. The request shall be made in writing to the Board agent and a copy shall be sent to the Board itself. The Board agent may refuse the request or join in the request and thereby certify the matter to the Board itself. The Board agent may join in the request only where all of the following apply:
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> (a) The issue involved is one of law;
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> (b) The issue involved is controlling in the case; and
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> (c) An immediate appeal will materially advance the resolution of the case.

[2]The Local was known as Classified Union of Supervisory Employees, Local 699, Service Employees International Union, AFL-CIO, (hereafter Local 699) at the time of the initial request for recognition. Although, as discussed more fully infra, the Local does contend that changed circumstances have altered the relationship between it and certain of its affiliates, it does not contend at this stage of the proceedings that it became a substantially different entity pursuant to the name change.

same general period of time, it requested recognition from Lynwood USD in a similar unit. On February 14, 1979, LAUSD indicated to PERB that it doubted the appropriateness of the request on the basis that representation of supervisory employees by the Local would be prohibited under subsection 3545(b)(2) of the Educational Employment Relations Act (hereafter EERA or Act) because the Local was the same employee organization as SEIU, Local 99 (hereafter Local 99), the representative of certain units of rank and file classified employees of the Districts, and was thus seeking to represent both their supervisory and non-supervisory employees.[3] On March 6, 1979, Regional Director Frances A. Kreiling ordered that investigation and processing of the petitions in the instant cases be held in abeyance pending resolution of the identical issue in case number LA-R-809, which was resolved in Los Angeles Community College District (3/25/80) PERB Decision

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[3]EERA is codified at Government Code sections 3540 et seq. All statutory references are to the Government Code, unless otherwise specified. Subsection 3545(b)(2) states:

> (b) In all cases:
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> . . . . . .
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> (2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

No. 123 and (12/16/81) PERB Decision No. 123a (hereafter LACCD). On March 25, 1980, PERB issued its decisions in Fairfield-Suisun Unified School District (3/25/80) PERB Decision No. 121, Sacramento City Unified School District (3/25/80) PERB Decision No. 122, and LACCD, supra. In Fairfield-Suisun, PERB held that two locals of California School Employees Association (hereafter CSEA) did constitute the same employee organization within the meaning of subsection 3545(b)(2) because statewide CSEA was signatory as a party to both the recognition agreements and contract signed by the District with the non-supervisory group and the request for recognition filed by the supervisory group. Further, PERB relied upon the close relationship and many connections between the two chapters and statewide CSEA. In Sacramento City, supra, the Board articulated the rule in more detail, stating that the Board would consider labor organizations separate if they are shown factually to be autonomous entities that act independently from one another and from their common parent. Contrarily, the Board would hold them to be the same organization if either dictates the other's course of action, or if the parent with which they share a common affiliation dictates the actions of both. The lead and concurring opinions stressed that mere direct or indirect affiliation would not be sufficient to render different locals the same employee organiztion. In LACCD, supra, the Board applied this rule to the entities involved in the instant case and held them not to

be the same employee organization. The District in that case requested judicial review. On June 16, 1981, the Court of Appeal, Second District, Division 2, issued its opinion in Los Angeles Community College District v. PERB (1981) __ Cal.App. __ (no official cite) [175 Cal.Rptr. 223] (hereafter LACCD v. PERB) finding that because the Local and Local 99 were affiliates of Service Employees International Union (the International), they were the same organization for purposes of subsection 3545(b)(2) and thus were precluded from representing supervisory and non-supervisory employees. The Court relied upon its construction of the subsection, to wit, that the Legislature intended to prevent representation of supervisory employees by an employee organization which was affiliated directly or indirectly with an employee organization that represents non-supervisory employees. The Court further noted, in dicta, that PERB's decision was not fairly supported by the evidence, and that there was substantial identity of interest and function between the locals and substantial control of them by the International, but that it did not rely on that factual determination for its result. PERB requested a hearing on that decision from the Supreme Court, which denied hearing on September 20, 1981, but ordered that the Court of Appeals decision be unpublished.

On October 8, 1981, the Local requested PERB to resume processing the instant petition, and on October 30, 1981 filed

a brief in support of that request. On November 12, 1981, LAUSD responded, urging PERB not to proceed. Pursuant to the Court of Appeals remand, PERB issued LACCD, Decision No. 123a, on December 16, 1981. That decision provided that, on the facts of that case, and as of the date of the original decision (3/25/80), the Local and Local 99 were the same employee organization.

On March 17, 1982, LAUSD filed a Motion to Dismiss the representation petition filed by the Local, arguing that under the doctrines of res judicata and collateral estoppel the LACCD v. PERB decision was conclusive as to the "sameness" of the Local and Local 99. The Local subsequently filed a responsive brief, followed by the District's response and the Local's further response. On April 22, 1982, Regional Representative Robert Bergeson issued his ruling denying the District's motion, and ordering that the hearing proceed. The Districts appealed, and the regional representative certified their appeal of his ruling to the Board on April 29, 1982. On May 13, 1982, the Local filed a response to the Districts' appeal. The Districts place reliance upon their earlier pleadings.

DISCUSSION

The issue in this case is whether the decision of the Court of Appeals in LACCD v. PERB should be given collateral estoppel effect and thus bar relitigation of the issue as to whether the

Local (formerly Local 699) is the same employee organization as Local 99. The threshold requirements for collateral estoppel are present. Thus, the party against whom collateral estoppel is asserted as a bar is the same (Local 347).[4] The issue (whether, for purposes of subsection 3545(b)(2) of EERA, the Local and Local 99 are the same employee organization) was presented, litigated and decided in the LACCD v. PERB case. Tadhunter v. Smith (1934) 219 Cal. 690, at 695.

The Districts argue that because the elements for application of collateral estoppel are present, the doctrine should apply here.[5]

The Local argues that collateral estoppel should not apply for several reasons, discussed infra, and thus that it should

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[4]It is not necessary for the party asserting collateral estoppel to have been a party to the prior case, so long as the entity against whom the doctrine is asserted was a party. Bernhard v. Bank of America (1942) 19 Cal.2d 807.

[5]The strongest effect the Court of Appeals decision could be given is that of res judicata/collateral estoppel. This is because the Supreme Court, while denying PERB's request for a hearing, ordered that the decision be relegated to unpublished status. California Rules of Court, Rule 977 provides:

> An opinion of a Court of Appeal or of an appellate department of a superior court that is not published in the Official Reports shall not be cited by a court or by a party in any other action or proceeding except when the opinion is relevant under the doctrines of the law of the case, res judicata or collateral estoppel . . . .

be allowed to relitigate the "same organization" issue before PERB based upon the current state of facts.

A former judgment on an identical issue is not res judicata if the factual relationship of the parties changes in a relevant way between the date of the first judgment and the relevant period of the second action. As the California Supreme Court noted in Hurd v. Albert (1931) 214 Cal. 15,

> The doctrine of res judicata was never intended to operate so as to prevent a re-examination of the same question between the parties where, in the interval between the first and second actions, the facts have materially changed or new facts have occurred which may have altered the legal rights or relations of the litigants.

In accord is California Employment Stabilization Commission v. Matcovich (1946) 74 Cal.App.2d 398.

The Districts concede that a change in essential facts which alters the legal rights and relations of the parties would render collateral estoppel inapplicable in a subsequent action raising the same issues. However, they contend that the only essential factual determination here, in light of the Court of Appeals decision, is whether the Local is still indirectly affiliated with Local 99. The Districts note that there has been no change in affiliation. They do not contend that no other facts bearing on the relationship between the Local and Local 699 have changed; rather, they argue that any other changes are irrelevant because the Court of Appeals held

as a matter of law that direct or indirect affiliation rendered the Local and Local 99 the same organization. They point out that the rest of the Court's decision, regarding identity of interest and function between the locals, and control by the International, was gratuitous dicta, and that the only fact of any consequence to the Court of Appeals was the fact of affiliation.

The Districts' argument can succeed only if collateral estoppel effect is given to the rule of law set forth by the Court of Appeals to the effect that affiliation is all that is necessary to render organizations the same within the meaning of subsection 3545(b)(2). The Court of Appeals wrote its decision in such a manner as to render its factual findings regarding interrelationship between the Locals (other than affiliation) entirely unnecessary to its judgment, and it is well established that "if a finding or determination of an issue in the first action was entirely unnecessary to the judgment, it will not have the effect of a collateral estoppel." 4 Witkin, California Procedure, Section 210 at pp. 3348-9, and cases cited therein.

The Local does not argue that it is no longer affiliated with the International and thus indirectly affiliated with Local 99. It does, however, argue that collateral estoppel effect cannot be given to the rule of law established by the Court of Appeal in these circumstances. We agree. In Louis

Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal.2d 749, at 757 [22 Cal. Rptr. 14], the California Supreme Court expressed this limitation on the operation of the doctrine of collateral estoppel in the following manner:

> An important qualification of the doctrine of collateral estoppel is set forth in Section 70 of the Restatement of Judgments, which reads as follows:
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> > Where a question of law essential to the judgment is actually ligitated and determined by a valid and final personal judgment, the Determination is not conclusive between the parties in a subsequent action on a different cause of action except where both causes of action arose out of the same subject matter or transaction; and in any event it is not conclusive if injustice would result. [Emphasis added by the Court.]
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> Comment f to this section explains:
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> > The determination of a question of law by a judgment in an action is not conclusive between the parties in a subsequent action on a different cause of action, even though both causes of action arose out of the same subject matter or transaction, if it would be unjust to one of the parties or to third persons to apply one rule of law in subsequent actions between the same parties and to apply a different rule of law between other persons. (Emphasis added by the Court.) The conclusion and reasoning of the Restatement find support in United States v. Stone & Downer Co., 274 U.S. 225, 235-237 [47 S.Ct. 616, 71 L.Ed. 1013].

This exception to the application of collateral estoppel is routinely applied in California cases, as noted at 4 Witkins, California Procedure, Section 216, at pp. 3352-3353, and the 1981 Supplement, Section 216, pp. 264-269, and cases cited therein.

In accord is Pacific Maritime Association v. California Unemployment Insurance Appeals Board (1965) 236 Cal.App.2d 325 [45 Cal.Rptr. 892]. The principle has been further explained in Chern v. Bank of America (1976) 15 Cal.3d 866 [127 Cal.Rptr. 110]. The Court stated, at 872, "In general it may be said that rulings of law, divorced from the specific facts to which they are applied, are not binding under principles of res judicata [citations]." The Court continued, "We acknowledge, further, a sound judicial policy against applying collateral estoppel in cases which concern matters of important public interest." The Court reaffirmed this notion recently in Consumers Lobby Against Monopolies v. Public Utilities Commission (1979) 25 Cal.3d 891, stating, at 902, "[But] when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed."

We find that the determination of whether employee organizations are the "same" within the meaning of subsection 3545(b)(2) presents a question of law, the resolution of which

is a matter of public interest. Further, we find that injustice would result should the Local be barred from litigating the question on the basis of the current state of facts. Should the Local be so barred by the LACCD decision, it would be subject to a different rule of law than other employee orgnizations throughout the state which seek to represent supervisory employees pursuant to EERA. The Board's current position, as expressed in Sacramento City USD, supra, is that indirect or direct affiliation does not, of itself, render entities so affiliated the "same organization" under subsection 3545(b)(2). Under that holding, other entities seeking to organize supervisors would not be prevented from doing so by virtue of their indirect affiliation with the exclusive representative of the rank and file employees, whereas the Local herein would be. This is precisely the sort of "competitive disadvantage" and "injustice" which the Supreme Court has condemned. We decline to mandate such an anomolous and unjust result.

ORDER

Upon the foregoing decision and the record as a whole, the Public Employment Relations Board ORDERS that the board agent's dismissal of the Districts' Motion to Dismiss is SUSTAINED. The regional director is hereby ORDERED to take appropriate

action consistent with this Decision, and thus to resume the processing of the Local's petitions in these cases with all due dispatch.

By: Virgil W. Jensen, Member

John Jaeger, Member

Irene Tovar, Member