

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATE EMPLOYEES TRADE COUNCIL)
LOCAL 1268, LIUNA, AFL-CIO,)
)
Employee Organization,) Case No. S-SR-12X
APPELLANT,)
)
and) PERB Order No. Ad-138-S
)
STATE OF CALIFORNIA,) Administrative Appeal
)
Employer.) May 20, 1983
)
_____)

Appearances: Thomas E. Rankin, Attorney for State Employees Trade Council, Local 1268, LIUNA, AFL-CIO.

Before Gluck, Chairperson; Tovar and Burt, Members.

DECISION

GLUCK, Chairperson: The State Employees Trade Council, Local 1268, LIUNA, AFL/CIO (SETC) appeals a regional director's denial of its petition to create a separate unit of skilled hydroelectric craft employees. The regional director based her dismissal on section 32754(b)¹ of the Public Employment Relations Board's (PERB) rules and regulations which provided that the Board shall dismiss petitions requiring a representation election where it has certified an election

¹The rules and regulations of the Public Employment Relations Board are codified at the California Administrative Code, title 8, section 31001 et seq. At the time SETC filed the petition the rules and regulations of July 1980 were in effect. The Board has subsequently amended them effective

result within the 12 months preceding the filing of the petition. The petition was filed on September 11, 1981, just two months after the California State Employees Association (CSEA) won the election to represent the craft and maintenance unit of which the hydroelectric craft employees are a part.

DISCUSSION

On appeal, SETC argues that the regional director improperly relied upon section 32754(b) contending that, at the time of the petition's filing, PERB did not have any rules covering unit modification and that under subsection 3521(b)(6)

September 20, 1982. Unless otherwise noted all references are to the July 1980 rules and regulations.

Section 32754(b) provided:

The Board shall dismiss a petition requiring a representation election if it determines that:

(b) Under the SEERA, 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 a petition requiring an election, 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; or, that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition . . .

of the State Employer-Employee Relations Act (SEERA),² skilled craft employees have the right to a separate unit for which recognition can be granted without an election.

The petition should be dismissed. Section 3512 states that an underlying purpose in SEERA's passage was:

. . . to promote the improvement of personnel management and employer-employee relations within the State of California by providing a uniform basis for recognizing the right of state employees to join organizations of their own choosing and be represented by those organizations in their employment relations with the state. . . .

To meet these objectives, the Board, in interpreting the legislative intent, has had to balance two conflicting interests: the need to preserve employees' free choice of bargaining representatives and the need to provide stability to existing bargaining relationships. See NLRB v. Frick (3rd Cir.

²SEERA is codified at Government Code section 3512 et seq. All statutory references are to the Government Code unless otherwise specified. Subsection 3521(b)(6) provides:

(b) In determining an appropriate unit, the board shall take into consideration all of the following criteria:

(6) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a separate unit of representation based upon occupation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers.

1970) 423 F.2d 1327 [73 LRRM 2889]. To that end, the Board, in administering the Educational Employment Relations Act (EERA),³ has determined that the employees' exercise of their right to freely choose a representative must be barred for a period of at least 12 months following the recognition or certification of an exclusive representative in order to afford the employee organization and the employer a reasonable period of time to establish a collective bargaining relationship and reach initial agreement. Bassett Unified School District (1/30/79) PERB Order No. Ad-57, vacated by the Board on reconsideration for other reasons.⁴ The Legislature has adopted this principle of recognition and certification bars in SEERA, stating

[R]ecognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition. (Emphasis added.)⁵

See also Brooks v. NLRB (1954) 348 U.S. 96 [35 LRRM 2158] where the Supreme Court listed, with apparent approval, some of the

³EERA is codified at Government Code section 3540 et. seq.

⁴See Bassett Unified School District (3/23/79) PERB Order No. Ad-63.

⁵Subsection 3520.5(c). We note that PERB has also adopted rules and regulations establishing 12-month certification and recognition bars, as well as contract-bar provisions, for each of the statutes under its jurisdiction.

reasons that have been offered by the National Labor Relations Board and federal courts in finding a certification bar to be necessary. Included among the proffered reasons were:

In the political and business spheres, by an election the voters are bound by their choice for a fixed time. This promotes a sense of responsibility in the electorate and needed coherence in administration. These considerations are equally relevant to healthy labor relations.

[Further, a] union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hothouse results or be turned out.

We find that the principles enunciated above are applicable to the present case. To permit the hydroelectric employees to be severed from the unit after so brief a period of certification would be disruptive and effectively destabilize employer-employee relations. Accordingly, the petition filed by SETC is denied because it was filed less than 12 months after PERB certified CSEA as the exclusive representative of the unit of which the petitioned-for employees are a part.

ORDER

The appeal by the State Employees Trade Council, Local 1268, LIUNA, AFL-CIO from an administrative determination of the regional director of the Public Employment Relations Board is hereby DISMISSED.

Members Tovar and Burt joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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September 21, 1981

Mr. Charles Reiter, General Manager
State Employees Trades Council,
Local 1268, LIUNA, AFL/CIO
926 J Street, Suite 913
Sacramento, CA 95814

Re: Unit 12 - Craft and Maintenance
S-SR-12X

Dear Mr. Reiter:

On September 14, 1981 your petition for a unit of skilled craft-hydroelectric employees was received by this office (copy attached). This petition apparently seeks to create a separate unit through the severance of the listed classifications from the established SEERA Unit #12 - Craft and Maintenance.

PERB Regulation 32754(b) provides that any petition requiring a representation election under the SEERA shall be dismissed if "... a representation election result has been certified affecting the described unit or a subdivision thereof within 12 months immediately preceding the date of filing of the petition;".

In the case of SEERA Unit #12, a PERB certification of exclusive representative resulting from the conduct of a representation election was issued on July 10, 1981. The petition for a unit of skilled craft-hydroelectric employees is thus not timely filed and is therefore dismissed. Because the petition fails due to the 12 month certification bar, no determination regarding the proof of support or the appropriateness of the unit is required.

An appeal of this decision may be made to the Board itself within 10 calendar days of service of this letter by filing a statement of the facts upon which the appeal is based with the Executive Assistant to the Board 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 of the appeal must be filed with the Executive Assistant.

Should you have any questions concerning this matter, please contact me.

Very truly yours,

Janet E. Caraway
Regional Director

JEC:nv

cc: Marty Morgenstern
William McLeod