STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CAPISTRANO UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 224, Exclusive Representative, and GENERAL TRUCK DRIVERS, OFFICE, FOOD AND WAREHOUSE LOCAL 952, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO, Petitioner.	Case No. LA-D-293 Administrative Appeal PERB Order No. Ad-261 October 12, 1994

Appearances: Rutan & Tucker by L. Ski Harrison, Attorney, for Capistrano Unified School District; A. Alan Aldrich, Senior Labor Relations Representative, for California School Employees Association, Chapter 224; Wohlner, Kaplon, Phillips, Young & Barsh by John A. Siqueiros, Attorney, for General Truck Drivers, Office, Food and Warehouse Local 952, International Brotherhood of Teamsters, AFL-CIO.

Before Caffrey, Garcia and Johnson, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal filed by the California School Employees Association, Chapter 224 (CSEA) of a PERB regional director's administrative determination which concluded that a decertification petition filed by the General Truck Drivers, Office, Food and Warehouse, Local 952, International Brotherhood of Teamsters, AFL-CIO (Teamsters) was timely filed.

The Board has reviewed the entire record in this case, including the administrative determination, CSEA's appeal, the responses thereto and the statements filed with the regional director. The Board hereby reverses the decision of the regional director in accordance with the following discussion.

PROCEDURAL HISTORY

On January 7, 1994, the Teamsters filed a petition to decertify CSEA as the exclusive representative of a unit of transportation employees in the Capistrano Unified School District (District). The petition stated that there was no written agreement currently in existence between CSEA and the District covering the unit.

CSEA and the District responded to the petition claiming that the parties had an agreement which was effective from July 1, 1992 to June 30, 1995. Therefore, they asserted that the agreement constituted a bar to the decertification petition and the petition should be dismissed.

On February 8, 1994, PERB issued a determination that the proof of support submitted by the Teamsters was sufficient. In response to the contract bar dispute, the parties were asked to submit to the regional director detailed statements of fact and legal argument in support of their positions.[1]

After review of the responses filed by the parties, the regional director issued an administrative determination on

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[1]The regional director determined that a formal hearing in this case was unnecessary since there were no material facts in dispute.

March 31, 1994 in which she concluded that the unsigned agreement between CSEA and the District did not bar the decertification petition filed by the Teamsters. Accordingly, the regional director ordered that an election be scheduled.

On April 11, 1994, CSEA filed an appeal of the administrative determination and a request for stay of the representation election. The Teamsters filed a response opposing the stay and urging the Board to immediately order the conduct of the election.

On May 13, 1994, the Board denied CSEA's request for a stay of the election. The Board ordered that the election proceed but further ordered that the ballots be impounded pending the Board's decision on the merits of CSEA's appeal. (Capistrano Unified School District (1994) PERB Order No. Ad-254.)

FACTUAL SUMMARY

CSEA is the exclusive representative of two classified bargaining units in the District, a "general" unit (Unit I) and a transportation unit (Unit II). Since 1980, the practice has been for Units I and II to negotiate one collective bargaining agreement (CBA) applicable to both and to ratify the agreement as an assembled membership.

The 1991-92 contract between the District and CSEA expired on June 30, 1992. Negotiations over a successor agreement commenced on October 12, 1992. As part of the negotiations, a transportation subcommittee was formed to address issues in

Article 18 of the CBA which are specifically applicable to the Unit II transportation employees.

On May 24, 1993, the parties reached tentative agreement subject to ratification on a successor agreement for the period of July 1, 1992 through June 30, 1995. On June 1, 1993, CSEA issued a memo to all classified bargaining unit members which stated that tentative agreement had been reached by the parties on a new contract and that a ratification vote was scheduled for June 9, 1993.

The tentative agreement, a 10 page "red-lined" document entitled "Proposed Changes on CUSD/CSEA Contract Articles for 1992-1995," contained all the changes in the language of the expired contract recommended for ratification by both parties. According to the District, this document was available for review by CSEA membership prior to the ratification vote.

The articles referred to in the tentative agreement were: Article 1 - Agreement; Article 3 - Hours of Employment and Overtime; Article 4 - Grievance Procedure; Article 5 - Safety; Article 6 - Evaluation Procedure; Article 7 - Transfers and Promotions; Article 8 - Leaves; Article 9 - Vacations; Article 11 - Wages; Article 12 - Health and Welfare Benefits; Article 18 - Provision Applicable to Transportation Employees; Article 21 - Non-Discrimination; and Article 22 - Completion of Meet and Negotiate. Article 22 contains the duration dates of the agreement, July 1, 1992 through June 30, 1995.

The last page of the 10 page document includes the date the agreement was reached, May 24, 1993, and two lists of typewritten names of the representatives of both parties. No space is provided for signatures on this page and no signature or initials appear anywhere on the document.

On June 8, 1993, a separate election was held for the Unit II transportation employees to vote on the proposed changes to Article 18. Article 18 applied only to the transportation employees and contained terms concerning bus driver training, hours and selection of bus routes. The transportation employees rejected the proposed changes to Article 18. CSEA indicated to its members that negotiations over the provisions of Article 18 would continue in an attempt to reach agreement. The following day the tentative agreement, absent the proposed changes to Article 18, was ratified by the membership of both bargaining units. The District board of trustees ratified the agreement on June 28, 1993.

The ratified agreement was submitted by the District to CSEA's negotiators for signature in June 1993. However, the CSEA president was unavailable for an extended period of time following ratification and eventually resigned from District employment and as CSEA president on November 12, 1993. No explanation was offered regarding the availability of other members of the negotiating team. In addition, there was a change in the CSEA staff representative assigned to the District after tentative agreement was reached in May. As a result, the

District was unable to secure signatures from CSEA until February 1994.

Subsequent to the ratification votes, five memoranda of understanding (MOU), three of which related directly to articles in the contract, were signed by the District and CSEA: (1) Article 2 - Recognition, which contained revisions to a classification plan; (2) Article 3 - Hours of Employment and Overtime, which set forth a pilot program for a "9/80" work schedule; (3) Article 13 - Association Rights, which provided released time for the CSEA president; (4) an agreement which set up a subcommittee to develop recommendations for a bilingual stipend; and (5) an agreement regarding national days of thanksgiving. All of these MOUs were signed by the District on June 30, 1993 and by the CSEA president on November 4, 1993, with the exception of the MOU regarding Article 13, which was signed by the CSEA president on November 3, 1993.

A copy of the complete 1992-95 agreement stamped "DRAFT" was submitted to the regional director by both CSEA and the District. The Associate Superintendent stated in her declaration that while the agreement was not actually signed until February 1994, the parties dated their signatures May 24, 1993, indicating that they considered the contract to be effective as of that date. The signature page of the "DRAFT" agreement differs from the last page of the 10 page "red-lined" tentative agreement in that, on the former, lines were provided for signatures above the typewritten names, and the signatures were written thereon.

REGIONAL DIRECTOR'S DETERMINATION

In considering whether the parties' unsigned written agreement constituted a bar to the decertification petition filed by the Teamsters, the regional director relied on Appalachian Shale Products Company (1958) 121 NLRB 1160 [42 LRRM 1506] (Appalachian Shale), a decision of the National Labor Relations Board (NLRB), which refined the NLRB's contract bar rules. In that case, the NLRB found that to constitute a bar, a contract must be in writing, signed by the parties, and contain "substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship . . . " In Gaylord Broadcasting Co. (1980) 250 NLRB 198 [104 LRRM 1360], the NLRB determined that initials are sufficient to fulfill the requirement that a contract be signed to act as a bar.

The regional director found that the May 24, 1993 tentative agreement between CSEA and the District was neither signed nor initialed by the parties. Further, the final agreement was not signed by the parties until February 1994, after the decertification petition was filed. Therefore, the regional director concluded that the parties' unsigned agreement did not bar the decertification petition filed by the Teamsters and the petition was timely filed. In reaching this conclusion, the regional director found it unnecessary to determine the impact of the rejection of Article 18 by the transportation employees on the status of the parties' agreement.

CSEA'S APPEAL

CSEA contends the regional director erred in relying on decisions of the NLRB. CSEA argues that the Educational Employment Relations Act (EERA)[2] does not require that a written agreement be signed to be a valid contract bar. Citing Downey Unified School District (1980) PERB Order No. Ad-97 (Downey), CSEA asserts that ratification is sufficient to establish a contract bar.

The District joins CSEA's position, asserting that the regional director erred. The District argues that ratification of an agreement by the parties should carry more weight than signatures on a tentative agreement and, therefore, constitute a contract bar. The District contends that finding the decertification petition timely disrupts the stability of the parties' bargaining relationships long after the employees and the District have ratified the agreement.[3]

TEAMSTERS' RESPONSE

The Teamsters essentially agree with the conclusions of the regional director and her reliance on decisions of the NLRB which hold that a decertification petition may be barred only by a signed, written agreement. Assuming, arguendo, that the Board reverses the regional director, the Teamsters contend that the

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[2]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

[3]The District provided additional alternative theories which the Board finds unnecessary to address.

matter must be remanded to allow the regional director to determine whether CSEA and the District "ever agreed to a binding CBA."[4]

DISCUSSION

EERA section 3544.7(b)(1) requires that a decertification petition be dismissed whenever:

> 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 . . .

In deciding contract bar disputes, the Board has found that federal precedent under the National Labor Relations Act (NLRA) provides significant guidance. (Downey); State of California (1983) PERB Decision No. 348-S.) CSEA argues, however, that decisions of the NLRB are inapplicable to contract bar issues arising under the EERA since the federal contract bar policies are not based in statute.

The Board has previously addressed this issue in other contract bar decisions.[5] In Downey the Board stated:

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[4]The Teamsters contend that the District's brief constitutes an appeal of the administrative determination which was filed well beyond the 10 day appeal deadline, and must be rejected by the Board as an untimely filed appeal. The Board finds the District's brief does not constitute an original, independent appeal of the regional director's administrative determination. Accordingly, the District's response was timely filed pursuant to PERB Regulation 32375. (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001 et seq.)

[5]Downey; State of California (1983) PERB Decision No. 348-S; State of California (Department of Personnel Administration) (1989) PERB Order No. Ad-191-S.

> Although there is no parallel language under the NLRA establishing a "contract bar" the California Supreme Court has stated that where the NLRA does not contain specific wording comparable to the state act, if the rationale that generated the language "lies imbedded in the federal precedents under the NLRA" and "the federal decisions effectively reflect the same interests as those that prompted the inclusion of the [language in the EERA], [then] federal precedents provide reliable if analogous authority on the issue. The statutory "contract bar" language contained in section 3544.7(b)(1) is quite similar to the contract bar doctrine developed by the NLRB. . . . Consequently, it is appropriate to consider federal precedent in determining whether a contract bar exists. (Fn. omitted.)

In State of California, supra, PERB Decision No. 348-S, the Board reaffirmed this principle, stating:

> . . . 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.

Therefore, while the Board has not adopted the NLRB's contract bar rules in total,[6] the Board has determined that it is appropriate to consider federal precedent and policy in interpreting contract bar statutes and regulations under the acts administered by PERB. Accordingly, CSEA's argument that NLRB decisions are inapplicable here is rejected.

In adopting "bright line" rules, establishing objective criteria to determine the existence of a contract bar, the NLRB has sought to expedite the disposition of representation cases

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[6]See Downey, supra.

and achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." (Appalachian Shale.) The Board has also acknowledged the benefit of bright line rules in providing guidance to the parties and minimizing disputes in representation matters. (Apple Valley Unified School District (1990) PERB Order No. Ad-209 (Apple Valley); State of California, supra, PERB Decision No. 348-S.) In Apple Valley, the Board stated:

> Representation matters involving competing unions are usually hotly contested. Any ambiguity or uncertainty in the applicable rules will inevitably become the subject of dispute and, consequently, cause the delay inherent in the conduct of evidentiary hearings and subsequent appeals to the Board. Such delay can seriously interfere with the employees' fundamental statutory right to freely choose an exclusive representative and severely disrupt labor relations in general.

In light of this sound policy objective, it is incumbent upon the Board to establish clear standards to assist the parties and Board staff in resolving questions of representation involving contract bar disputes.

In Appalachian Shale, the NLRB reexamined and refined its contract bar rules, holding that an agreement must satisfy certain formal requirements in order to serve as a contract bar. The NLRB determined that to constitute a bar, a contract must be in writing, signed by the parties and contain "substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship . . ." The NLRB in Appalachian Shale

also addressed circumstances in which ratification of the agreement is a condition precedent to its validity and effectiveness, stating:

> Where ratification is a condition precedent to contractual validity by express contractual provision, the contact will be ineffectual as a bar unless it is ratified prior to the filing of a petition. . . .

In Downey, the Board applied this federal precedent and focused on the requirement contained in the parties' bargaining ground rules that the agreement be ratified before it would become operative.[7] In Downey, the employees' ratification of the agreement was rescinded by the association. Before a second ratification vote could be completed, a decertification petition was filed. In finding the petition timely filed, the Board concluded that the association did not intend that the first ratification be effective. Consequently, the Board determined that the failure to ratify the agreement prior to the filing of the decertification petition, where ratification was required, established that there was no agreement in effect between the parties at the time the petition was filed. Therefore, the Board concluded that the agreement did not bar the filing of the decertification petition. Furthermore, in Downey, the Board concluded that the validity of the contract turned on whether it had been ratified, and specifically found it unnecessary to

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[7]The Board expressly declined to adopt the NLRB's rule which provides that the requirement for ratification must be contained only within the negotiated contract. (Appalachian Shale.) In Downey, the Board determined that such a requirement may also be included in the parties' written ground rules.

decide whether a series of contract provisions which had been "signed-off" by the parties constituted a lawful written agreement.

The instant case presents the issue of whether a contract constitutes a bar if it is written, contains provisions covering substantial terms and conditions of employment, and is ratified by the parties in accordance with an express provision of the contract making ratification a condition precedent to contractual validity, even if the parties failed to "sign-off" on the agreement. The Board finds that such a contract, ratified under these circumstances, constitutes a bar in accordance with EERA section 3544.7(b).

In developing its contract bar rules, the Board, like the NLRB, seeks a balance between the goal of fostering labor relations stability and the right of employees to freely choose their representative. By ratifying a CBA, the parties are choosing to stabilize their labor relationship by binding themselves to the terms of a contract which they have negotiated. Contract ratification represents a noticeable, objective milestone at which point the parties have clearly indicated their decision to give effectiveness and validity to the contract's provisions. This is particularly true when a specific provision of the contract addresses the requirement of ratification in order to effectuate the provisions of the agreement. Accordingly, where the parties have made ratification a condition precedent to the effectiveness of the contract and ratification

occurs, that ratification activates a contract bar to the filing of a decertification petition, regardless of whether the agreement had been signed by the parties prior to ratification.[8]

In the present case, it is undisputed that tentative agreement on a new contract between CSEA and the District was reached on May 24, 1993. Included in the tentative agreement was a provision which expressly required ratification before the contract could become effective. Section 1.3 stated:

> Except as noted in Section 1.4 all articles shall remain in full force and effect from the date of ratification of this contract until June 30, 1995, when it shall terminate.[9]

CSEA ratified the tentative agreement on June 9, 1993. The District board of trustees ratified the agreement on June 28, 1993, and by its express terms it was "in full force and effect from the date of ratification."

Not only must an agreement be ratified, where required by express contractual provision, to serve as a contract bar, but a contract must also contain "substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; it will not constitute a bar if it is limited to wages only, or to one or several provisions not deemed substantial." (Appalachian Shale; See also Downey; State of

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[8]By this rule, the Board does not alter its prior adoption of the signature requirement in cases where ratification is not a condition precedent to the effectiveness of a contract by express contractual provision.

[9]Section 1.4 provides for limited reopeners for the term of the current agreement.

California (Department of Personnel Administration) (1989) PERB Order No. Ad-191-S.) In evaluating whether a contract contains substantial terms, the NLRB has held:

> . . . real stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems. (Appalachian Shale.)

Finding that no contract bar existed, the regional director determined that it was unnecessary to consider whether the agreement ratified by the parties, which did not include the proposed changes to Article 18, nevertheless contained substantial terms and conditions of employment for the members of the transportation unit, Unit II. The Teamsters argue that the case should be remanded to the regional director under these circumstances to resolve the "substantial factual issues" surrounding the issue of whether CSEA and the District ever entered into a binding agreement covering Unit II employees.

The Board disagrees and finds that there is sufficient evidence in the record to resolve this question.

In a special vote held on June 8, 1993, the members of Unit II voted to reject the proposed changes to Article 18. The following day, the tentative agreement, absent the proposed changes to Article 18, was ratified by the combined membership of Units I and II. The working conditions set out in Article 18 apply only to the Unit II employees and concern the assignment and training of transportation personnel. Pending the completion

of negotiations on the terms of Article 18, the parties were subject to the provisions contained in Article 18 from the expired CBA.

The agreement ratified by the members of Units I and II contained all the essential terms and conditions necessary to guide the parties in administering their working relationship. Among other things, the agreement addressed employee wages and benefits, grievance handling, safety issues, and established an evaluation procedure. Further, the issues affecting the transportation employees were covered by the terms of the previous agreement, pending any negotiated changes. Therefore, the Board finds that the ratified agreement contained terms sufficient to stabilize the bargaining relationship and constitute a contract bar.

In summary, the Board finds that the agreement contained substantial terms and conditions of employment, and was ratified by the parties in accordance with an express provision of the agreement prior to the filing of the decertification petition. Under these circumstances, the Board finds that the ratified agreement between CSEA and the District was effective to serve as a contract bar to the representation petition. Accordingly, the decertification petition must be dismissed.

ORDER

The decertification petition in Case No. LA-D-293 is hereby DISMISSED. The Board further orders that the ballots from the representation election be destroyed.

Member Johnson joined in this Decision.

Member Garcia's concurrence begins on page 18.

GARCIA, Member, concurring: I concur in the Public Employment Relations Board (PERB or Board) majority's conclusion that the ratified agreement between the California School Employees Association, Chapter 224 (CSEA) and the Capistrano Unified School District (District) was effective and served as a contract bar to the decertification petition filed by the General Truck Drivers, Office, Food and Warehouse Local 952, International Brotherhood of Teamsters, AFL-CIO (Teamsters). However, I disagree with the following portions of the majority opinion.

Effect of Signature on Validity of Contracts

At footnote 8, the majority expressly clarifies that its ruling in this opinion:

> . . . does not alter [the Board's] prior adoption of the signature requirement in cases where ratification is not a condition precedent to the effectiveness of a contract by express contractual provision.

Besides being unnecessary to the holding in this case, the majority misstates California law on the necessity of a signature. As I wrote in my dissent in Capistrano Unified School District (1994) PERB Order No. Ad-254, the contract bar statute that PERB operates under requires only that there be a "lawful written agreement" currently in effect between the public school employer and another employee organization. (Educational Employment Relations Act (EERA) section 3544.7(b).)[1] As the

[1]Note that although the National Labor Relations Board signature requirement discussed by the majority opinion has been modifed and diluted since 1958, the California Legislature chose

majority now recognizes in this case, CSEA and the District entered into a lawful agreement that became effective, under its terms, when it was ratified by the parties. To imply in footnote 8 that signatures are necessary for a contract to become effective is contrary to law. It is a well-established principle of contract law that a contract goes into effect when the parties intend it to and signatures are just one form of evidence of the intent of the parties.[2] PERB does not have the authority to restrict or condition the clear intent of the statute.[3]

District's "Response to Appeal" Should Not Have Been Considered

Additionally, I disagree with the majority's treatment of the document filed by the District on April 21, 1994. In footnote 4, the majority finds that the District's "brief" is a timely-filed response to CSEA's appeal, rather than an untimely-filed appeal of the regional director's administrative

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not to impose a signature requirement when it enacted this statute in 1975.

[2]See, e.g., Angell v. Rowlands (1978) 85 Cal.App.3d 536 [149 Cal.Rptr. 574] (contract is invalid if not signed by all parties only when it is shown that the contract was not intended to be complete until all parties signed) and Domarad v. Fisher & Burke, Inc. (1969) 270 Cal.App.2d 543 [76 Cal.Rptr. 529] (an agreement is not invalid simply because it is couched in an unsigned writing).

[3]As the Board recognized in North Orange County Regional Occupational Program (1990) PERB Decision No. 857, PERB has only such jurisdiction and powers as have been conferred on it by statute; furthermore, an administrative agency is prohibited from interpreting a statute so as to alter, amend or enlarge the agency's statutory authority.

determination.[4] We should avoid creating PERB precedent that allows the label a party gives a document to control over its substance (i.e., an appeal or a response to an appeal). The PERB regulation that governs responses to appeals of administrative decisions does not define "response"; however, Black's Law Dictionary (4th ed. 1951) p. 1475 defines the verb "to respond" as "To make or file an answer to . . . [an] appeal, in the character of a respondent." Black's further defines a respondent in appellate practice as "[a] party who contends against an appeal." (Id., p. 1476.)

Thus, since the District's April 21 document takes the same position stated by CSEA in its appeal, that document is not a response; it is a late appeal, and it should not have been considered. Merely labeling a document a "response" when its substance is indistinguishable from an appeal does not ensure fairness since it will reward parties who maneuver to avoid deadlines or gain advantage. The timelines for a response must be applied evenhandedly to all parties, otherwise PERB encourages the parties to employ tactics to the detriment of a fair process.

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[4]In substance, the District's document is that of an appeal. It references the exact grounds on which it challenges the regional director's administrative decision, and requests that the election be stayed pending the appeal, just as CSEA does in its appeal. Furthermore, the District makes no mention of the arguments raised by CSEA in its appeal, which one would typically expect in a document labeled a "response" to an earlier document.