

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES')
ASSOCIATION, SEIU, AFL-CIO,)
)
Employee Organization, Appellant,) Case No. S-D-70-S
)
and) PERB Decision No. 390-S
)
INTERNATIONAL UNION OF OPERATING) July 6, 1984
ENGINEERS, STATE OF CALIFORNIA)
LOCALS 3, 12, 39 and 501, AFL-CIO,)
)
Employee Organization.)

Appearances; Bernard L. Allamano, Chief Counsel for California State Employees' Association, SEIU, AFL-CIO; Walt Norris, Director, Public Employees for International Union of Operating Engineers, State of California Locals 3, 12, 39 and 501, AFL-CIO.

Before Tovar, Jaeger, Morgenstern and Burt, Members.*

DECISION

The California State Employees' Association, SEIU, AFL-CIO (CSEA) appeals an administrative determination by a regional representative of the Public Employment Relations Board (PERB or Board) denying CSEA's request to place a decertification petition in abeyance pending completion of AFL-CIO Article XX "no raiding" proceedings. After a complete review of the record and CSEA's arguments on appeal in this case, the Board

*Chairperson Hesse recused herself from participating in this case.

affirms the attached regional representative's findings of fact and conclusions of law and herein incorporates his determination.

In affirming the underlying decision, we approve the regional representative's reasoning with the following additional comments: The Board notes that the decertification petition was filed four months prior to the receipt of the request for deferral to the AFL-CIO process. As of this date, no decision has been issued by that organization, and CSEA concedes that the process may take as long as six months.

Since a petition to decertify raises a question concerning representation (QCR), it is important to resolve the matter expeditiously. The Board has no information as to what is occurring in Unit 12, but we are aware that the State is currently engaged in negotiations with CSEA regarding other units. Although we have not yet considered the rights and obligations of the employer and incumbent representatives under the State Employer-Employee Relations Act¹ (SEERA) when a QCR has been raised by the filing of a severance or decertification petition, it is not unlikely that these issues will surface should the petition here result in a change of representative. (See Pittsburg Unified School District (6/10/83) PERB Decision No. 318; but see Dresser Industries, Inc. (1982) 264 NLRB 145 [111 LRRM 1346].)

¹SEERA is codified at Government Code section 3512 et seq.

Suffice to say that this uncertainty, the time that has already passed since the petition was filed, and the prospect of a significant further delay in the ultimate resolution of the existing QCR create a dilemma for both the State and the unit employees in that they do not know where they stand or how to proceed with contract negotiations. Under these circumstances, the Board's responsibility to process the petition and proceed with the election outweighs the value of the time and expense which might result from a possible withdrawal of the petition consequent to a settlement of the dispute between petitioner and CSEA.² Moreover, while we usually prefer and encourage the private resolution of disputes, this unilateral request for Board deferral to such private resolution is opposed by the petitioner.³

The Board finds it neither necessary nor wise to establish in this case a finite policy on deferral to such external

²The Board has no assurance that the arbitrator's award in the pending Article XX proceeding will not be appealed, prolonging the delay, or that the organization that does not prevail will not continue to press for PERB resolution of the representation questions. In the latter event, we do not believe the Board can or should, in deference to an AFL-CIO internal adjudication, abdicate its statutory obligation to resolve the issues raised by the petitions.

³In contrast, the PERB representative agreed to hold in abeyance the severance petitions in related case Nos. S-R-761-S and S-R-762-S because CSEA's request was joined by petitioners, the International Brotherhood of Electrical Workers, Local 1245, AFL-CIO and the International Brotherhood of Electrical Workers, AFL-CIO.

proceedings. Considering the nature of public sector bargaining, particularly the virtually uniform practice of conducting contract negotiation sessions during the pre-budget spring months, and the pressure to reach agreement prior to budget adoption, it would be advisable to consider each such request on its merits and in light of the specific circumstances.

The director of representation should proceed as expeditiously as possible with the elections.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board hereby AFFIRMS the regional representative's denial of the California State Employees' Association's request to hold the decertification petition of the International Union of Operating Engineers, Locals 3, 12, 39, and 501, AFL-CIO in abeyance and ORDERS the regional director to proceed expeditiously with the election.

By the BOARD.

PUBLIC EMPLOYMENT RELATIONS BOARD

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May 23, 1984

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RE: Abeyance Requests - Case Nos. S-R-761-S; S-R-762-S; S-D-70-S

Dear Interested Parties;

This is an administrative decision issued in response to the requests of the California State Employees Association (CSEA) to place certain representation cases in abeyance.

CSEA has been the exclusive representative of the employees in State Employee-Employer Relations Act (SEERA) Unit 12 (craft • and maintenance employees) since CSEA was certified on July 10, 1981.

On March 5, 1984, the International Brotherhood of Electrical Workers, Local 1245, AFC-CIO and the International Brotherhood of Electrical Workers, AFC-CIO (IBEW) filed two severance petitions (S-R-761-S and S-R-762-S) by which IBEW seeks to replace CSEA as exclusive representative of two separate groups of employees currently within SEERA Unit 12.

On March 13, 1984, the International Union of Operating Engineers Crafts and Maintenance Division, State of California, Local 39, 501, 3 and 12 (IUOE) filed a decertification petition by which it seeks to replace CSEA as exclusive representative for all of SEERA Unit 12 (S-D-70-S).

All three petitions were timely filed with adequate proof of support.

May 23, 1984

Page 2

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) filed a request with PERB on March 12, 1984 asking PERB to place IBEW's severance petitions, S-R-761-S and S-R-762-S in abeyance. By letters of March 26 and April 25, 1984, CSEA asked that IBEW's severance petitions and IUOE's decertification petition be placed in abeyance. Abeyance was sought to allow for completion of proceedings initiated by CSEA against IBEW and IUOE under the provisions of Article XX of the AFL-CIO constitution,¹

CSEA affiliated with SEIU on February 4, 1984, thus becoming an AFL-CIO affiliate. IUOE, petitioner in Case No. S-D-70-S, and IBEW, petitioner in Case Nos. S-R-761-S and S-R-762-S, are also AFL-CIO affiliates and, as such are subject to Article XX.

Efforts to settle the raiding disputes under Article XX procedures have not been successful. Hearing before an impartial umpire is scheduled for May 31, 1984 between CSEA and IUOE concerning the unit petitioned for in S-D-70-S and for June 1, 1984 between CSEA and IBEW concerning the units petitioned for in S-R-761-S and S-R-762-S,

On April 26, 1984, all interested parties were asked to submit facts and legal argument regarding the abeyance requests. Initial submissions were received by May 7, 1984. Responses were received by May 17, 1984.

IUOE opposes CSEA's request to have PERB place their petition in abeyance until the Article XX proceedings have concluded. IBEW, on the other band, has joined in CSEA's request regarding it's petitions.

¹Article XX of the AFL-CIO constitution is a multi-step procedure for resolving representational disputes among affiliates. The steps include mediation, and if voluntary settlement is not reached within 14 days, hearing before an impartial umpire. An umpire's determination may be appealed to the President of the AFL-CIO who refers the appeal to a subcommittee of the Executive Council. The subcommittee may disallow an appeal or refer it to the Executive Committee Article XX Appeals Committee. Sanctions (including loss of Article XX protection) may be imposed against an affiliate that fails to comply with the final determination.

It has been PERB's practice in representation cases to honor a petitioner's request to hold its own filings in abeyance. Therefore, the request made by IBEW to place Case Nos. S-R-761-S and S-R-762-S in abeyance is granted until further notice.

IUOE's opposition necessitates a different analysis concerning the request to place Case No, S-D-70-S in abeyance, since IUOE is petitioner in that case.

A primary purpose of the SEERA is to allow the employees in an appropriate unit to select one employee organization as their exclusive representative in dealing with the state on employment relations matters. (Government Code section 3512)² The employees* right to select an exclusive representative is more explicitly defined in section 3515?

Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

SEERA does not contain procedures for resolving questions concerning representation. However, by section 3520.5 (b) PERB is enjoined to "establish reasonable procedures for petitions and for holding elections" This statutory mandate is reinforced in section 3541.3. See, particularly, subsections (c) (arrange for and supervise elections), (e) (decide contested decertification matters), and (n) (take other action to discharge its powers and duties).

Pursuant to its rulemaking authority PERB has adopted regulations concerning the filing and processing of a decertification petition. Cal. Admin. Code, title 8, section 32770-32776. The regulations provide that "upon receipt of a petition for decertification, the Board shall investigate and, where appropriate, conduct a hearing and/or an election or take such other action as necessary." (Calif., Admin. Code, title 8, sec. 32776 (a).) They make no mention of Article XX proceedings or no-raiding procedures generally.

²All references are to the Government Code unless otherwise indicated.

In contrast, the National Labor Relations Board promulgated rules in March 1980 which direct NLRB regional offices to notify the president of the AFL-CIO whenever a representation case is filed which includes at least two affiliates of the AFL-CIO among the parties if one of them has been recognized as an exclusive representative by the employer for at least 1 year or has been certified. (National Labor Relations Board Casehandling Manual (Part Two) Representation Proceedings (October 1975) section 11052.1.)

Under the NLRB rules, "in all cases in which the petitioner is an affiliate of the AFL-CIO," formal action on the petition is delayed for 30 days, "if necessary, from the date of notification to the AFL-CIO president (and others) to permit use of the settlement provisions of the agreement (Article XX)". If Article XX has been invoked but the procedure is not completed within the 30 day period, the Regional office is to consult the Executive Secretary of the Board before taking further action on the case, (ibid., section 11052.1 (c).) The NLRB rationale for adopting the procedure is that it "avoids unnecessary case-processing effort by allowing time for operation of the no-raid machinery which may result in withdrawal of the petition." (ibid., section 11052, 1(e).)

Before adoption of the above described rules, the NLRB's policy had been to not consider Article XX determinations as dispositive of questions concerning representation. Nor, at least under certain circumstances, would the NLRB allow a decertification petitioner to withdraw a petition because of an adverse Article XX determination. Cadmium and Nickel Plating, Division of Great Lakes Industries, Inc. and Metal Polishers an Buffers, Platers and Helpers International Union, AFL-CIO 124 NLRB 50, 44 LRRM 1387 (1959), upheld on appeal, International Union of Doll and Toy Workers v. Metal Polishers Union, 180 F.Supp.280, 45 LRRM 2567 (S.D. Cal.1960) Anheuser-Busch, Inc. (1979) 246.NLRB No. 3, 102 LRRM 1422.

As expressed in Great Lakes Industries, the NLRB was concerned that reliance on Article XX determinations by the NLRB "would be to permit a private resolution of the questions concerning representation in a manner contrary to the policies of the Act and would impinge upon the Board's exclusive jurisdiction and authority to resolve such questions of representation." (Great Lakes Industries 44 LRRM 1387.) The same important employee rights and Board jurisdiction factors must be considered in evaluating CSEA's request in this case.

None of the cases cited in the submissions of the parties are PERB cases, nor do any of them address directly the issue of whether the Board may, in its discretion, delay processing a decertification (or severance) petition pending the outcome of an Article XX proceeding. In Local 1547, IBEW v. Local 959, Teamsters (9th Circuit, 1974) 507 F.2d 872, 87 LRRM 3060, 3063 the court deferred to the NLRB's determination to proceed on the petition of a raiding AFL-CIO affiliate but expressly left open the question of whether it would have been proper for the Board to have deferred to the Article XX proceeding.

However, it is unnecessary to determine the exact limits of PERB's statutory authority in this regard to respond to CSEA's request. Had the Board wished to grant such a request over the opposition of a petitioner, presumably, the Board would have promulgated rules similar to those of the NLRB,

In the absence of a PERB case decision or rules stating that the employee's statutory right to select an exclusive representative and the Board's jurisdiction over representation matters should be side tracked even temporarily to await the outcome of an Article XX proceeding, processing of the petition must not be delayed for that purpose. Accordingly, CSEA's request to place Case No. S-D-70-S is denied and processing of the petition will proceed.

Pursuant to Cal. Admin. Code, title 8, sec. 32360, this decision may be appealed to the Board itself by filing an original and five copies in the headquarters office, Public Employment Relations Board, 1031 18th Street, #200, Sacramento, CA 95814, within 10 days following the date of service of this decision.

The appeal must state in writing the specific issues of procedure, fact, law or rationale that is appealed and the grounds for the appeal. Service and proof of service of the appeal pursuant to Cal. Admin. Code, title 8, sec. 32140 are required.

Very truly yours,

JANET CARAWAY
Chief, Division of Representation

Joseph C. Basso
Regional Representative

JCB:mlb