



STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD

STATIONARY ENGINEERS, LOCAL 39,)	
Employee Organization, APPELLANT,)	Case No. SF-D-24
)	
and)	PERB Order No. Ad-40
)	
HARTNELL COMMUNITY COLLEGE)	Administrative Appeal
DISTRICT,)	
)	June 27, 1978
Employer)	

Appearances: Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg and Roger) for Stationary Engineers, Local 39; Dr. Gibb R. Madsen, Superintendent/President for Hartnell Community College District.

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

OPINION

This is an appeal of the San Francisco regional director's dismissal of a decertification petition filed by Stationary Engineers, Local 39 (hereafter Local 39).

FACTS

On May 24, 1977, Hartnell Community College District (hereafter District) voluntarily recognized California State Employees Association and its Hartnell Chapter 470 (hereafter CSEA) as the exclusive representative of a wall-to-wall negotiating unit of classified employees. On June 1 and 2, 1977, Local 39 filed unfair practice charges¹ against the

¹The charges were designated SF-CE-98 and SF-CO-21, respectively.

District and CSEA challenging such recognition as illegal. Local 39 alleged in those charges, inter alia, that the District and CSEA committed unfair practices in that the District extended recognition to CSEA, and that CSEA accepted such recognition, in order to preclude Local 39 from intervening in a formal Public Employment Relations Board (hereafter PERB) unit determination hearing pursuant to the one-card rule² for the purpose of arguing that an operations unit was appropriate and should be carved out from the wall-to-wall unit requested by CSEA. These charges later were dismissed by the general counsel, and thereafter were appealed by Local 39 to the Board itself.

On May 22, 1978, almost one year later, Local 39 filed a petition for decertification election pursuant to

²Board rule 33340, codified at Cal. Admin. Code, tit. 8, section 33340, which provides:

The Board may allow an employee organization which did not file a timely request for recognition or intervention to join the hearing as a party provided:

(a) The employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the unit described in the request for recognition or an intervention; and

(b) The application is accompanied by proof of the support of at least one employee in the unit described by the request or intervention; and

(c) The Board determines that the employee organization has a substantial interest in the case and will not unduly impede the proceeding.

section 3544.5(d) of the Educational Employment Relations Act (hereafter EERA).³ The decertification petition stated that CSEA was recognized on May 24, 1977, and that there was no contract then in effect between CSEA and the District covering the negotiating unit in which the District had recognized CSEA. The petition further alleged that the employees in the unit no longer desired to be represented by CSEA, and that they wished to be represented by Local 39.

On May 22, 1978, the San Francisco regional director dismissed Local 39's decertification petition. The regional director notified the parties in writing of his decision, stating:

[I]nvestigation of this matter established the following facts:

³The Educational Employment Relations Act is codified at Gov. Code sections 3540 et seq. Section 3544.5(d) states:

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 in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative.

1. The current exclusive representative of the established unit is the California School Employees Association and its Hartnell Chapter No. 470, which was recognized on May 24, 1977.

2. No written agreement currently exists between the exclusive representative and the employer.

This investigation has resulted in the administrative determination that the conditions pursuant to section 33250(b) [4] of the PERB rules and regulations have not been met. The petition is therefore not timely filed since it was filed less than 12 months after recognition. (Emphasis added.)

In a letter received May 25, 1978, the District notified PERB that on May 23, 1978, the District and CSEA had entered into a three-year contract.

On May 30, 1978, Local 39 appealed to the Board itself the regional director's dismissal of its decertification petition. Local 39's appeal alleges the following:

1. The petition was timely filed under the EERA, PERB rules and appropriate NLRA precedent;
2. The petition was supported by an adequate showing of interest, but the regional office failed to check the showing of interest;
3. The regional office denied the petitioner due process of law;

⁴Cal. Admin. Code, tit. 8, sec. 33250(b) states:

(b) The 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.

4. Since the incumbent union was not certified by the PERB after an election, the incumbent was not entitled to a presumption of continued majority status.

During the time period in which the above events occurred, this Board was in the process of deliberating Local 39's appeal of the general counsel's dismissal of the unfair practice charges filed June 1 and June 2, 1977. On June 5, 1978, two weeks after the regional director's dismissal of Local 39's decertification petition, we issued our decision in Hartnell Community College District.⁵ That decision reversed the general counsel's dismissal of the charges and remanded them to the general counsel for hearing on the lawfulness of the recognition agreement entered into between CSEA and the District.

DISCUSSION

The regional director, pursuant to his interpretation of Board rules, dismissed Local 39's decertification petition on the ground that it was not timely filed. That action was taken before the Board itself issued the order of remand in the unfair practice case then pending before it.⁶ Section 3544.7(b)(2) of the EERA states that a petition for decertification election shall be dismissed where a public school employer has recognized an employee organization

⁵(6/5/78) PERB Decision No 54.

⁶We note that the regional director had no knowledge of our pending remand order at the time that he dismissed Local 39's decertification petition.

lawfully within the previous 12-month period.⁷ The lawfulness of the District's recognition of CSEA is the point in question in the remanded case. Thus the outcome of the remand may determine the disposition of the decertification petition. The regional director's dismissal of Local 39's petition therefore is rescinded. Further proceedings in the decertification matter are stayed until the unfair practice case has been resolved.

⁷Gov. Code sec. 3544.7(b) states:


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; 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.

ORDER

The regional director's dismissal of the decertification petition filed by Stationary Engineers, Local 39 in the Hartnell Community College District is hereby rescinded by the Board itself. The Board itself stays further action on such decertification petition pending the disposition of unfair practice case numbers SF-CE-98 and SF-CO-21.


By: Harry Gluck, Chairperson


Raymond J. Gonzales, Member


Jerilou Cossack Twohey, Member