

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



AMERICAN FEDERATION OF STATE COUNTY AND)
 MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL 377,)
)
 Employee Organization,)
 APPELLANT,)
)
 and)
 CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)
 Employee Organization,)
 and)
 SAN MATEO COUNTY COMMUNITY COLLEGE)
 DISTRICT,)
 Employer.)

Case No. SF-D-22
 PERB Order No. Ad-58
 Administrative Appeal
 February 14, 1979

Appearances: Michael J. Dunlap, Business Agent for American Federation of State County and Municipal Employees, AFL-CIO, Local 377; Tom Matteoli, Representative for California School Employees Association.

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

DECISION

The American Federation of State County and Municipal Employees, AFL-CIO, Local 377 (hereafter AFSCME), has appealed the decision of the San Francisco regional director to withdraw the appointment of a mediator pending completion of a decertification election. AFSCME objects that the decision was issued without proper review of the facts of the case, reversed the position of the Board that mediation was appropriate, was issued without authority as the withdrawal had not been sought by a party, and improperly negated the District's obligation to

recognize and negotiate with AFSCME during a period in which AFSCME continued to enjoy a presumption of majority support.

The Public Employment Relations Board (hereafter PERB or the Board) affirms the decision of the regional director.

FACTS

The San Mateo County Community College District (hereafter District) extended voluntary recognition to AFSCME as the exclusive representative of a blue collar unit of buildings, grounds, and food services employees on February 14, 1977. Approximately 14 months later, on April 17, 1978, the San Francisco regional director granted the joint request of the District and AFSCME to find their negotiations for an initial contract at impasse, and appointed a mediator. That same day, April 17, 1978, the California School Employees Association and its San Mateo County Community College District Chapter No. 33 (hereafter CSEA) filed a petition for decertification of AFSCME. On May 2, 1978, the San Francisco regional director determined that the petition of CSEA evidenced a sufficient showing of support and directed that a decertification election proceed. The regional director also informed the parties on May 2, 1978, that he determined that the valid decertification petition created a question concerning representation. Consequently, he was withdrawing the appointment of the mediator until resolution of the decertification proceeding.

On May 15, 1978, AFSCME appealed the decision to withdraw the mediator. AFSCME did not contest the finding of the

regional director that a question of representation had been raised. Indeed, in its appeal AFSCME specifically requested that the decertification election not be stayed pending the appeal. Nor did AFSCME request negotiations of the District in the face of the withdrawal of the mediator.

While the appeal of AFSCME was pending, the decertification election was held on June 2, 1978. AFSCME won the election; CSEA did not file objections; and AFSCME was certified as the exclusive representative on June 10, 1978.

DISCUSSION

AFSCME did not substantiate its bald allegation that the regional director failed to properly review the facts of the case. The regional director withdrew the appointment of the mediator upon finding that a question of representation had been raised. And, as appears in the following discussion, that finding was sufficient basis for the withdrawal.

Likewise, we find no merit in the contention that the regional director's determination on May 2, 1978, that mediation was no longer appropriate was incorrect simply because it reversed his earlier determination. An administrative body has the inherent power to reconsider an action taken by it unless precluded by law.¹ Moreover, circumstances had changed; the regional director had received a valid petition for a decertification election.

¹In re Fain (1976) 65 Cal.App.3d 376, 389.

The latter two objections of AFSCME, that withdrawal was improper because it was not requested by a party and because it negated the District's obligation to negotiate, are equally without merit. Apparently AFSCME has misconceived the purpose of the withdrawal. When the board withdraws the appointment of a mediator, it is regulating its own conduct, not that of the parties. The question of whether or under what circumstances parties may negotiate pending a decertification election is entirely different and concerns the Board's regulation of the conduct of the parties. We do not here address or answer that separate question.

AFSCME argues that the withdrawal of the PERB mediator had the effect of an "order to cease bargaining, by virtue of... withdrawal of the necessary vehicle (mediation) for its continuation at this stage." This argument misses the point, since it presumes that negotiations are devoid of interruptions. In fact, a brief hiatus in negotiations is commonplace.

AFSCME also misconstrues PERB's obligation to provide a mediator. Educational Employment Relations Act² section 3548 provides that PERB is obliged to appoint and pay the full cost of a mediator at the request of either the employer or the exclusive representative. This section further establishes that the purpose of a mediator is to assist the parties "in

²The EERA is codified at Government Code sections 3540 et seq. Hereafter, all statutory references are to the Government Code unless otherwise provided.

reconciling their differences and resolving the controversy on terms which are mutually acceptable." It charges the mediator with the responsibility "to persuade the parties to resolve their differences and effect a mutually acceptable agreement."

PERB is also required to resolve questions of representation. Whereas the parties may employ a mediation procedure other than that provided by PERB,³ only PERB may resolve questions of representation.⁴

The real question raised by this appeal is the proper role of PERB in facilitating an agreement between the employer and an exclusive representative while there is a doubt as to the exclusive representative's continued right to act in that capacity raised by a rival employee organization's petition for decertification. We conclude that withdrawal of a PERB appointed mediator is proper in order to preserve a neutral election environment. If PERB were to provide continued mediation in the face of an unresolved question of representation, it might well inadvertantly influence the outcome of the election. In some circumstances continued mediation might be viewed as an implied endorsement of the

³Gov. Code sec. 3548 provides, in pertinent part:

Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, [PERB] shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter.

⁴Sections 3540, 3541.3(c), and 3544.7(a).

incumbent and in others as implicit support for the rival petitioner. Such a result may be avoided simply by suspending mediation pending resolution of the question of representation.

Once again we must caution that by this decision we express no opinion on the proper conduct of employer and exclusive representative pending a representation election. We decide only that it is improper for the Board to participate by mediation in negotiations once a rival organization has filed a valid petition for decertification.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The decision of the San Francisco regional director to withdraw the appointment of a mediator in the unresolved negotiations between the San Mateo County Community College District and the American Federation of State, County and Municipal Employees, AFL-CIO, Local 377, pending resolution of the question of representation raised by the decertification petition of the California School Employees Association is affirmed.

~~by~~ Jerilou Cossack Twohey, Member

~~Harry Gluck, Chairperson~~

~~Raymond J. Gonzales, Member~~

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
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(415) 557-1350



May 2, 1978

Mr. Tom Matteoli
California School Employees Association
and its San Mateo County Community College
District Chapter No. 33
1838 El Camino Real, Suite 201
Burlingame, California 94010

Mr. Glen P. Smith
San Mateo County Community College District
2015 Pioneer Court
San Mateo, California 94403

Mr. Michael J. Dunlap
American Federation of State, County and
Municipal Employees, Local 377
539 Middlefield Road
Redwood City, California 94063

Re: San Mateo County Community College District
SF-R-112B; SF-D-22

Dear Interested Parties:

On April 16, 1978, a timely decertification petition was filed by the California School Employees Association and its San Mateo County Community College District Chapter No. 33. After careful review of this petition, it has been determined that the showing of support submitted is sufficient. Therefore, I am directing a decertification election to proceed at this time. You will be contacted by a Board Agent in the immediate future to set up the decertification election.

I am aware that the mediation procedures of the Act have been implemented and that a mediator has been assigned to the case. In light of the above directed decertification election now pending, I am withdrawing the appointment of the mediator until after the decertification is resolved. It is my determination that the valid decertification petition filed by the California School Employees Association and its San Mateo County Community College District Chapter #33 on April 16, 1978 has created a question concerning representation in the unit, and, therefore, mediation is inappropriate at this time.

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An appeal to this decision may be made within ten calendar days of service of this action, stating the facts upon which the appeal is based and filed with the Executive Director, Mr. Charles Cole, at 923 12th Street, Suite 201, Sacramento, California 95814. Copies of any appeal must be served upon all other parties to this action with an additional copy to the San Francisco Regional Office.

Very truly yours,

James W. Tamm
Regional Director

JWT:pa

cc: Diana Fivey
State Conciliation