STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT, and UNITED PUBLIC EMPLOYEES, LOCAL 390, SEIU, AFL-CIO, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SAN RAMON CHAPTER NO. 65.	Case No. SF-D-33 (R-29B) PERB ORDER NO. Ad-75 ADMINISTRATIVE APPEAL October 4, 1979

Appearances: Mattie Scott, Attorney (Breon, Galgani & Godino) for San Ramon Valley Unified School District; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg & Roger) for United Public Employees, Local 390, SEIU, AFL-CIO; and Mary H. Mocine, Attorney (CSEA) for San Ramon Chapter No. 65.

The California School Employees Association and its San Ramon Chapter NO. 65 has appealed to the Public Employment Relations Board from an order of the San Francisco Regional Director blocking a decertification election in the San Ramon Unified School District.

On October 1, 1979, subsequent to filing these appeals, the United Public Employees, Local 390, SEIU, AFL-CIO, the exclusive representative of maintenance, grounds, custodial, and transportation employees in the District, and against whom the decertification petition was filed, requested PERB to proceed with the decertification election. This request was made notwithstanding the outstanding unfair practice charges it had filed and its own previous request for the Regional Director's blocking order, the

unfair charges having been the basis of the Regional Director's blocking order. In its request, Local 390 states that it understands that the PERB will not entertain objections to the decertification election based upon conduct alleged in the pending unfairs.

The Board itself consents to vacating the blocking order and therefore finds these administrative appeals to be moot. Accordingly, they are hereby dismissed.

Public Employment Relations Board
by

J. STEPHEN BARBER
Executive Assistant to the Board

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post St., 9th Floor
San Francisco, California 94108
(415) 557-1350

May 30, 1979

San Ramon Valley Unified School District
699 Old Orchard Drive
Danville, CA 94526
Attn: Ronald M. Loos, Coordinator of Personnel Services

United Public Employees, Local 390, SEIU, AFL-CIO
c/o Van Bourg, Weinberg, Allen & Roger
45 Polk Street
San Francisco, CA 94102
Attn: Robert J. Bezemek, Attorney

California School Employees Association
and its San Ramon Chapter No. 65
564 B North Civic Drive
Walnut Creek, CA 94596
Attn: Margorie Ott, Field Representative

Re: San Ramon Valley Unified School District, SF-D-33 (R-29B)

Dear Interested Parties:

On March 10, 1977, a consent election for a unit of maintenance, grounds, custodial and transportation employees in the San Ramon Valley Unified District was conducted between Public Employees Union Local 1, Service Employees International Union Local 390, Teamsters Local 853, California School Employees Association Chapter 65, and no representation. A majority of the valid ballots were cast for Service Employees International Union Local 390. On March 18, 1977, Service Employees International Union, Local 390 was certified as the exclusive representative. A written agreement covering wages, hours and other terms and conditions of employment was entered into on December 13, 1977, and thereafter ratified by the District's Board of Education and members of the Union.

Article XVII of the agreement, "Duration" states that:

> The term of this contract shall be from the date of its execution through June 30, 1979. Unless the District or Union notifies the other party in writing no later than April 1, 1979, of its desire to terminate or amend this contract, it shall continue in effect for additional one-year periods.

Additionally, Article XV "Completion of Agreement: Savings Clause," subsection "C" states that:

> Either party may notify the other in writing no later than April 1, 1978, of its intent to modify or amend only the provisions concerning salaries and benefits for 1978-1979.

Pursuant to subsection C above, the union notified the district on or about March 27, 1978, and the first meeting took place on or about June 2, 1978. On February 15, 1979, the district and the union agreed on several modifications to the '77-79 agreement, including extending the expiration date of the contract to September 30, 1979.

On March 6, 1979, California School Employees Association and its San Ramon Chapter No. 65 filed with the San Francisco Regional Office of the Public Employment Relations Board a decertification petition pursuant to Board regulation 33240 regarding the maintenance/operations unit in the District. The petition was accompanied by proof of support alleging that at least 30 percent of the employees in the established unit no longer wished to be represented by United Public Employees Local 390 and instead, designated CSEA and its San Ramon Valley Chapter No. 65 as their exclusive bargaining representative.

ISSUES

1) Does the collective negotiating agreement between the District and Service Employees International Union Local 390 bar CSEA's decertification petition?

2) Has CSEA and its San Ramon Chapter No. 65 demonstrated a sufficient showing of support?

DISCUSSION

Contract Bar Issue

The statutory "contract bar" language contained in Government Code Section 3544.7(b)(1) is quite similar to the contract bar doctrine developed by the National Labor Relations Board (hereafter NLRB). Although there is no statutory provision included in the Labor Management Relations Act as amended (hereafter LMRA),[1] the NLRB holds generally that a valid collective bargaining agreement will act as a bar to a representation election.[2] The rule is self-imposed and discretionary.[3]

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[1]29 U.S.C. 15 1 et.seq.

[2]Initially, the bar was for a "reasonable period" and there was no specific period in which to file a petition. In 1939, the National Sugar Refining Co., (1936) 10 NLRB 1410, [3 LRRM 544], a one year contract was held to bar "an investigation of representation until such time as the contract is about to expire and a question exists as to the proper representative."

In 1958, in Pacific Coast Association (1958) 121 NLRB 990, [42 LRRM 1477]. the contract bar was extended to two years. Also at this time, the NLRB created an "open period" in which a

While this Board is not bound by NLRB decisions, cognizance is taken of case law developed under the LMRA. Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [87 LRRM 2453]; Sweetwater Union High School District (11/23/76) EERB Decision No. 4.

Section 3544.7(b)(1) provides for the dismissal of a decertification petition and bars an election during the term of a collective negotiating agreement. Section 3544.7(b)(1) 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.

When the parties execute a collective negotiations agreement, section 3544.7(b)(1) generally bars external organizations from filing decertification petitions except

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Footnotes continued from previous page.

petition could be filed. Originally, the "open period" extended from 150 days to 90 days prior to the expiration date of the contract. Deluxe Metal Furniture Co. (1958) 121 NLRB 995, [42 LRRM 1420]. In 1962 the "open period" was changed to extend from 90 to 60 days prior to the expiration date of the contract. In General Cabel Corp., (1962) 139 NLRB 1123, [51 LRRM 1444], the contract bar was extended to three years.

[3]Local 1545, United Brotherhood of Carpenters (2nd Cir., 1960) 286 f2d, [47 LRRM 2304].

during the period running less than 120 but not more than 90 days prior to the expiration of the agreement. Therefore, during the life of the agreement the parties are enabled to achieve stability in their labor relations.

The NLRB has developed a "premature extension" doctrine which essentially dictates that when an amendment or a new contract containing a latter termination date is executed during the term of an existing contract, the former will act as a bar to an election only for the remainder of the period when the prior contract would have been such a bar. See The Lord Baltimore Press, Inc., 144 NLRB 1376; New England Telephone & Telegraph Company, 179 NLRB 531. Therefore, when a "premature extension" is executed, the appropriate time for the filing of a rival petition is during the window or open period prior to the expiration date of the original contract. The statutory window period provided by Government Code section 3544.7(b)(1) is less than 120 days but more than 90 days prior to the expiration of the contract.

In H. L. Klion Inc. (1964) 148 NLRB 656 [57 LRRM 1073] the NLRB reasoned that:

> The primary purpose of the premature-extention rule is to protect petitioners from being faced with prematurely executed contracts at a time when the petitioner would normally be permitted to file a petition.

They further reasoned in New England Telephone & Telegraph Co. (1969) 179 NLRB 531 [72 LRRM 1389] that:

> In determining when a petition has been timely filed, the Board has consistently sought to provide guidance as to the appropriate time to organize for and seek a change of representatives, and to secure to employees the right to change representatives at reasonable intervals. The Board is of the view that stability in labor relations is facilitated by using reasonable guides as to timeliness of petitions. To this end, we have long held that a new contract for a longer period signed during the term of a previously executed agreement, at a time when that prior agreement would bar a petition, can itself prevent the processing of a rival petition only for the remainder of the period when the prior contract would have been such a bar. It has been held that, where such a premature extension occurs, the proper time for the filing of a rival petition in order to promote such stability and employee protection is the 30-day period between the 90th day and the 60th day prior to the expiration date of te original contract of 3 years or less duration. However, the Board's rule is not an absolute ban on premature extensions, but only subjects such extensions to the condition that if a petition is filed during the open period calculated from the expiration date of the old contract, the premature extension will not be a bar.

The NLRB has held that a contract is not prematurely extended when executed "1) during the 60-day insulated period preceding the terminal date of the old contract; 2) after the terminal date of the old contract if notice by one of the parties forstalled its automatic renewal or it contained no renewal provision; or 3) at a time when the existing contract

would not have barred an election because of other contract bar rules."[4]

In the instant case, the parties had negotiated an agreement with an expiration date of June 30, 1979. During meetings held on or about June 2, 1978, through February 15, 1979, regarding salaries and benefits for 1978-79, they also agreed to extend the expiration date of the contract until September 30, 1979.

The decertification petition was filed by CSEA and its San Ramon Chapter No. 65 on March 6, 1979, during the window period of the prior agreement. It is hereby determined that the extention of the prior contract is premature and does not constitute a contract bar. Therefore, the decertification petition submitted by CSEA is timely filed.

2. Showing of Support

Review of the showing submitted by CSEA and its San Ramon Chapter No. 65 in support of their petition has resulted in the administrative determination that it is sufficient to meet the requirement of section 33030(b) and 33240(c) of PERB's Rules and Regulations.

At the present time, however, United Public Employees, Local 390 has filed an unfair practice charge against the district, SF-CE-350, which will block an election until it isresolved, or waived by the charging party. An informal

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[4] Deluxe Metal Furniture Co. (1958) 121 NLRB 995 [42 LRRM 1420].

conference was held on May 7, 1979, and a formal hearing is set for June 11, 1979, at the District office. At the time the charge is either wavied or resolved, an election will be directed if appropriate.

Conclusions and Order

1. The contract between the San Ramon Valley Unified School District and United Public Employees Local 390 does not serve as a bar to the decertification petition filed by California School Employees Association and its San Ramon Chapter No. 65.
2. California School Employees Association and its San Ramon Chapter No. 65 has demonstrated a sufficient showing of support pursuant to section 33030(b) and 33240(c) of PERB's Rules and Regulations.
3. An election will be directed, if appropriate, to determine which organization, if any, will be certified as the exclusive representative of the maintenance, grounds, custodial, and transportation unit when the unfair practice charge is either waived or resolved.

An appeal of this decision may be made within 10 calendar days of service of this decision by filing a statement of the facts upon which the appeal is based with the PERB Executive Assistant to the Board, Mr. Stephen Barber, at 923 12th Street, Suite 201, Sacramento, CA 95814. Copies of any appeal must be served on 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:AIM:rcd

PROOF OF SERVICE BY MAIL - C.C.P. 1013a

I declare that I am employed in the county of SAN FRANCISCO. I am over the age of eighteen years, and not a party to the within entitled cause; my business address is 177 POST STREET, 9th FLOOR, SAN FRANCISCO, CALIFORNIA 94109.

On May 30, 1979, I served the attached Administrative Decision on the Parties listed below by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail, at San Francisco addressed as follows:

Ronald M. Loos
Coordinator of Personnel Services
San Ramon Unified School District
699 Orchard Drive
Danville, CA 94526

Robert J. Bezemek
Van Bourg, Weinberg, Allen & Roger
45 Polk Street
San Francisco, CA 94102

Marjorie Ott, Field Representative
California School Employees Association
and its San Ramon Chapter No. 65
564 E North Civic Drive
Walnut Creek, CA 94596

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 30, 1979, at SAN FRANCISCO, California.

Richard C. Dearing
(Type or print name)

(Signature)