

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN MATEO COMMUNITY COLLEGE	)	
DISTRICT,	)	
	)	
Employer,	)	Case No. SF-D-89 (R-517)
<u>APPELLANT,</u>	)	
	)	PERB Order No. Ad-133
and	)	
	)	Administrative Appeal
SAN MATEO COMMUNITY COLLEGE	)	
FEDERATION OF TEACHERS, AFT,	)	March 3, 1983
AFL/CIO,	)	
	)	
Employee Organization.	)	
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Appearances: William E. Brown, Attorney (Brown and Conradi)  
for San Mateo Community College District.

Before Gluck, Chairperson, Jaeger and Morgenstern, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB) on appeal by the San Mateo Community College District (District) of the regional director's refusal to stay certification of a new exclusive representative prior to the expiration of a decertified representative's collective agreement.

For the reasons set forth below, we affirm the regional director's refusal to grant the District's request for a stay of the certification of the new exclusive representative.

PROCEDURAL HISTORY AND FACTS

A decertification election was held on May 17 and 18, 1982, in which the incumbent California Teachers' Association

affiliate was defeated by the San Mateo Community College Federation of Teachers (SMCCFT). Although there were no objections filed to the election, on May 27, 1982, the District wrote a letter to the San Francisco regional director requesting that the certification of the new exclusive representative be stayed until July 1, 1982, the date on which the contract with the existing representative was to expire. Its reason for requesting the stay was to avoid breaching the dues deduction provision of the agreement.

The regional director denied the District's request based on her interpretation of PERB rule 32750.<sup>1</sup> That rule provides:

The regional director shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

She went on to conclude that "[i]nterpretation of Regulation 32750 has led to a long standing PERB policy that certifications be issued on the 11th calendar day after the election where no objections/challenges affect the results." She further held that the Legislature, in providing for decertification elections, must have intended that new representatives could be certified prior to the expiration of

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<sup>1</sup>PERB rules are codified at title 8, California Administrative Code section 31001 et seq. Although PERB regulations were modified and renumbered, effective September 20, 1982, PERB rule 32750 remains substantively unchanged.

the pre-existing contract, since subsection 3544.7(b)(1) of the Educational Employment Relations Act (Act) provides that decertification petitions be filed "less than 120 days, but more than 90 days, prior to the expiration . . . of the agreement; . . ."

#### DISCUSSION

Subsection 3543.1(d) provides:

All employee organizations shall have the right to have membership dues deducted . . . until such time as an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then such deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive-representative.  
(Emphasis Added.)

According to the express provisions of subsection 3543.1(d), once an employee organization has ceased to be an exclusive representative, it is no longer entitled to have dues deducted. Thus, the District's concern that the regional director's refusal to grant a stay might subject it to potential contractual liability is without merit.

Our determination in this matter is fully in accord with applicable federal precedent.<sup>2</sup> The National Labor Relations Board and the federal courts have long held that, once a union has lost its representation status through the decertification

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<sup>2</sup>It is appropriate for the Board to take guidance from federal labor law precedent when applicable to public sector labor relations issues. Firefighters v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].

process, it has no right to enforce provisions of a collective bargaining agreement. Retail Clerks v. Montgomery Ward & Co. (7th Cir., 1963) 316 F.2d 754 [53 LRRM 2069]; Milk and Ice Cream Drivers, Local 98 v. McCulloch (D.C. Cir., 1962) 306 F.2d 763 [50 LRRM 2322]; Modine Manufacturing Co. (1954) 216 F.2d 326 [35 LRRM 2003].

Since we find no basis for staying the certification of SMCCFT as the exclusive representative of the District's certificated employees, the regional director's denial of that request is affirmed.

#### ORDER

Upon the foregoing decision and the entire record as a whole, the Public Employment Relations Board ORDERS that the San Mateo Community College District's request for a stay of the certification in Case No. SF-D-89 (R-517) is DENIED.

Chairperson Gluck and Member Morgenstern joined in this Decision.