STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FONTANA CLASSIFIED EMPLOYEES ASSOCIATION/NEA, Employee Organization, Appellant, and UNITED STEELWORKERS OF AMERICA AFL/CIO, Certified Representative, and FONTANA UNIFIED SCHOOL DISTRICT, Employer.	Case No. LA-D-176 Administrative Appeal PERB Order No. Ad-169 June 20, 1988

Appearances; Edward B. Hogenson, Executive Director, for Fontana Classified Employees Association/NEA; Lipsky, Blickenstaff & Fenton by Henry R. Fenton for United Steelworkers of America, AFL/CIO.

Before Porter, Craib and Shank, Members.

DECISION

SHANK, Member: The Fontana Classified Employees Association/NEA (hereafter "FCEA") appeals the decision of the Los Angeles regional director dismissing its petition which sought the decertification of the United Steelworkers of America, AFL/CIO (hereafter "USWA") as the exclusive representative of all classified employees within the Fontana Unified School District (District).

PROCEDURAL HISTORY

On July 1, 1985, the FCEA filed a decertification petition with the Public Employment Relations Board's (hereafter "PERB" or "Board") Los Angeles Regional Office pursuant to PERB Regulation 32770(b)(2).[1] FCEA sought to replace USWA as the exclusive representative of all classified employees within the Fontana Unified School District. Immediately before FCEA's filing of the decertification petition, the USWA and the District reached agreement on the terms of a successor collective bargaining agreement.

The regional director of PERB's Los Angeles office dismissed FCEA's petition as barred by the July 1, 1985 agreement between the District and USWA. FCEA subsequently appealed the regional director's dismissal to the Board. PERB rejected FCEA's appeal on the procedural ground of Untimeliness. FCEA then appealed PERB's decision to the Court of Appeal and, on August 26, 1987, the Court of Appeal reversed PERB's dismissal and directed this Board to hear the case.

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[1]PERB regulations are codified at California Administrative Code, Title 8, Part III, section 31001, et. seq. PERB Regulation section 32770(b)(2) states:

> (b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:
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> . . . . . .
>
> (2) Wish to be represented by another employee organization.

On March 4, 1988, FCEA filed another decertification petition. On May 5, 1988, the parties to the instant appeal entered into a consent election agreement which called for an election on June 2, 1988.[2] This election was in fact held on its scheduled date.

DISCUSSION

This Board has long held that "where the essential nature of a complaint is lost due to the superseding conduct of the parties, it is rendered moot." Napa County Office of Education (1983) PERB Decision No. 282, citing Amador Valley Joint Union High School District (1978) PERB Decision No. 74.

The rationale supporting this Board's position is borrowed from decisions of the United States Supreme Court and California Supreme Court, as well as the California Courts of Appeal addressing this issue. As the Court of Appeal declared in Bell v. Board of Supervisors (1976) 55 Cal.App.3d 629, 636:

> It is [the Court's] function "to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or

[2]The Board takes official notice of its records which contain information pertaining to this subsequently filed petition and consent election agreement. Antelope Valley Community College District (1979) PERB Decision No. 97; Rio Hondo Community College District (1980) PERB Decision No. 128; Delano Union Elementary School District (1982) PERB Decision No. 213(a). The consent election agreement was reached by telephone on May 5 and memorialized by FCEA on May 9, and by USWA and the District on May 11, 1988.

> to declare principles or rules of law which cannot affect the matter in issue in the case before [us]. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment but will dismiss the appeal." [Citations] Consolidated etc. Corp. v. United etc. Workers (1946) 27 Cal.2d 859, 863, quoting from Mills v. Green (1895) 159 US 651, 653; Paul v. Milk Depots, Inc. (1964) 62 Cal.2d 129, 132.

Here, just as in the aforecited cases, due to events which have occurred, this Board cannot grant FCEA any effectual relief should the Board decide in its favor. Were this Board to reverse the dismissal of the decertification petition filed in 1985, the only appropriate relief would be to order a decertification election. Following its March 4, 1988 petition, FCEA has already been granted such an election (on June 2, 1988).

ORDER

For the above stated reasons, the Board ORDERS that the decertification petition in Case No. LA-D-176 is hereby DISMISSED as moot.

Members Porter and Craib joined in this Decision.