P019

10256.125

STATE OF CALIFORNIA — PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
P.O. Box 420603
San Francisco, CA 94142

November 25, 1997

Jacquelyn Johnson
2183 Amanda Way
Sacramento, CA 95822

RECEIVED
NOV 26 1997
Neyhart Anderson, Freitas, Flynn & Grosboll

William Flynn
Neyhart, Anderson, Freitas, Flynn & Grosboll
600 Harrison Street, Suite 535
San Francisco, CA 94107

E. A. Hubbert Jr.
Hubbert & Shanley
2150 River Plaza, Suite 290
Sacramento, CA 95833

Re: Sacramento Regional Transit District and Amalgamated Transit Union Local 256 - Decertification Petition

Dear Parties,

Enclosed is the Proposed Order of Hearing Officer Martin Fassler in the matter referred to above. The decision is hereby approved and adopted as the Director's decision, pursuant to the Department's regulations, 8 California Code of Regulations, sections 15825 and 15855.

The Department's regulations, 8 California Code of Regulations, section 15860, provide that any party may file a statement, setting forth exceptions or newly discovered evidence, together with two copies of a supporting brief, within 20 days from the date of service of the Decision. All other parties may file a response to the exceptions within seven days

after the mailing of the exceptions, or 20 days after the mailing of the initial decision, whichever is later.

Sincerely yours,

John Duncan
Director of Industrial Relations

cc: Pete Lujan
Vanessa Holton

Encl.

10256.125

1997

STATE OF CALIFORNIA — PETE WILSON, GOVERNOR

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR - LEGAL UNIT
45 Fremont Street, Suite 450
San Francisco, CA 94105

ADDRESS REPLY TO:
Office of the Director - Legal Unit
P.O. Box 420603
San Francisco, CA 94142
(415) 972-8900
FAX No.: (415) 972-8928

November 24, 1997

Jacquelyn Johnson
2183 Amanda Way
Sacramento, CA 95822

William Flynn
Neyhart, Anderson, Freitas, Flynn & Grosboll
600 Harrison Street, Suite 535
San Francisco, CA 94107

RECEIVED
NOV 26 1997
Neyhart, Anderson, Freitas, Flynn & Grosboll

E. A. Hubbert Jr.
Hubbert & Shanley
2150 River Plaza, Suite 290
Sacramento, CA 95833

Re: Sacramento Regional Transit District and Amalgamated Transit Union Local 256 - Decertification Petition

Dear Parties,

I have reviewed all the materials submitted by the parties since the filing of the decertification position in May 1997. It is my conclusion, for the reasons explained below, that there exist no reasonable cause to believe that there exists a question of representation in the current bargaining unit represented by the Amalgamated Transit Union Local 256. For that reason, the State Mediation and Conciliation Service will not hold a de-certification election at this time. Because the evidence presented by the parties does not present a factual dispute that would necessitate a hearing on this matter to resolve disputed factual issues, no hearing will be held.

The facts are as follows:

I. The 1997 de-certification petition

On or about May 20, 1997, a petition asking for de-certification of Local 256 as the collective bargaining agent for the clerical employees of the Sacramento Regional Transit District was submitted to the State Mediation and Conciliation Service by Dan W. Bailey, Employee Relations Manager of the Sacramento Regional Transit District. On or about July 16, 1997 Jacquelyn Johnson and Kathy Riley-Riddell, each of whom had signed the May 20 petition, submitted to the SMCS an amendment to the petition, identifying themselves as representatives of the clerical employees who had submitted the petition.

II. History of the current bargaining unit

Prior to 1975, Amalgamated Transit Union Local 256 represented bus drivers employed by Sacramento Regional Transit District (SRTD). In September 1975, the State Conciliation Service (predecessor of SMCS) held a representation election among approximately 30 clerical employees of the District. This was a consent election, in which the District and Local 256 agreed to the list of eligible voters and the extent of the unit. Local 256 was the only union on the ballot. A majority of the voters supported representation by Local 256. The State Conciliation service certified this result for this unit, designating Local 256 as the bargaining agent for the clerical employees.

We are told [by counsel for ATU Local 256] that for a brief period in 1976 there was a separate contract for the clerical unit and a separate contract for the drivers, although the clerical unit contract cannot be located. Beginning with a contract dated April 1, 1976, a new collective bargaining agreement was signed, which included the following language in the bargaining unit description:

> "Employees who perform their duties on board coaches, clerical unit as defined in Certification of California State Conciliation Service dated September 10, 1975...."

This language has been carried forward without relevant change in a series of collective bargaining agreements dated April 1, 1979, March 1982, March 1, 1984, March 1, 1987, March 1, 1990, and March 1, 1993 - Feb. 28, 1996. Beginning in 1984, the bargaining unit provision also referred to "Employees defined in the Rail Recognition Agreement dated March 6, 1984...." Later, the phrase "and Fare Inspection Officers as defined in the Decision on the Petition for Unit Clarification signed and dated June 23, 1988" was added.

Thus, in the collective bargaining agreement (Article 2, Section 3) for the period March 1, 1993 - Feb. 28, 1996, the bargaining unit was defined as follows:

> [T]he bargaining unit shall include all employees within the service of the DISTRICT in the following classifications or occupations: Employees who perform their duties on board coaches; Employees defined in the Rail Recognition Agreement dated March 16, 1984; Employees in the Clerical Unit as defined in Certification of California State Conciliation Service dated September 10, 1975 (Article 76, section 1); and Fare Inspection Officers as defined in the decision on the Petition for Unit Clarification signed and dated June 23,

> 1988, excluding supervisory personnel, maintenance personnel, ...

Very little information was provided about the negotiations which led to the 1976 inclusion of the clerical employees within the larger bargaining unit. The District submitted a declaration by Mr. John Kettelson, formerly chief legal counsel of SRTD, which included the following statement:

> During the 1976 negotiations, wherein the Sacramento Regional Transit District Clerical Unit were first represented by Amalgamated Transit Union Local 256 ("ATU 256") I had an occasion to discuss the Clerical Unit with Roy Williams, the Representative of ATU 2567. During these discussions, there was no affirmative discussions of the merger of the Clerical Unit with the Drivers Unit, however, there were specific representations from Roy Williams that the two units would be negotiated at the same time for convenience purposes but that the groups would be kept separate.

However, that declaration does not state what the District's intentions were in this regard; it does not state that the District agreed to proceed along the lines assertedly suggested by Williams. Inasmuch as the statement attributed to Williams describing the union's preference is inconsistent with the explicit wording of the agreement that eventually was reached by the parties, it cannot be the basis of a finding of fact.

Several employees and former employees submitted unsworn statement or declarations regarding statements made at Local 256 membership meetings at or around the time of the 1975 negotiations or the 1976 negotiations. These, however, do not cast light on the exchange of proposals between the parties during the negotiations that led to the 1976 agreement, or the intention of the parties with respect to the combining of the bargaining units and the negotiations that led to the agreement.

Legal Analysis

Counsel for the district argues that it is the District Board has that the right to determine the appropriate unit under the Meyers-Milias-Brown Act ("MMB") (Government Code sections 3500 et. seq.) rather than the Director of Industrial Relations, who is granted authority under Public Utilities Code section 102403. This is not a correct reading of the relevant law. PUC section 102403, enacted in 1971, after MMB, provides, in relevant part:

> If there is a question whether a labor organization represents a majority of employees, or whether the proposed unit is or is not appropriate, such matters shall be submitted to the State Conciliation Service for disposition.

PUC section 102410 provides:

> In the event an exclusive collective bargaining representative is selected pursuant to section 102403, the provisions of Chapter 10 ..., of the Government Code [Meyers-Milias-Brown] are not applicable to the District.

In view of these provisions, and the usual rule of statutory construction that specific legislative provisions prevail over more general provisions (these PUC code sections apply specifically to the Sacramento District), and the fact that the PUC code sections were enacted after MMB, the logical conclusion is that the PUC code sections and not MMB apply here.

Public Utility Code section 102403 provides that "the State Conciliation Service shall be guided by relevant federal law and administrative practice, developed under the Labor-Management Relations Act, 1947, as presently amended."

In addition, section 15875.1 of the Department's regulations, 8 California Code of Regulations, section 15875.1, provides:

> In resolving questions of representation, the Director shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended.

Federal law on the merger of several bargaining units into one bargaining unit is this: once a union is certified or recognized for more than one bargaining unit of the same employer, the employer and the union may agree to merge the separate bargaining units into one. Once that is done by the employer and the union, the proper unit for a decertification petition is the entire bargaining unit, rather than any of the smaller units that existed prior to the merger. There is no requirement that the merger has to be voted on in a Board-conducted election or otherwise (e.g. in an election conducted by the union itself).

This is the law as set out in Gibbs & Cox 280 NLRB No. 110 (1986), Wisconsin Bell 282 NLRB No. 179 (1987); and Albertsons Inc. 307 NLRB No. 51 (1992). There is no court decision to the contrary cited by counsel for the District. Counsel for the District cites several earlier NLRB decisions concerning separate bargaining units for bus drivers and other bus company employees,

but none of the cases cited touch on the primary issue here, regarding merger of bargaining units after individual certifications.

The prevailing view in the NLRB decisions was explained in this way:

> [G]reater latitude should be accorded the collective rights of employees to pursue and preserve the pattern of representation of their own choosing. Thus, to characterize the unit from the vantage of any period of time but the one presently under consideration is to disturb the reasonable balance the Board seeks to achieve between the aims of assuring freedom of employees' choice and fostering established bargaining relationships.....
>
> The Board is required on an almost daily basis to render decisions subordinating to various degrees the rights of some subgroupings of employees to those of a majority. Examples in representation proceedings abound, among them the contract bar rule, the one-year certification rule, the requirement that units requested in decertification petitions be coterminus with existing certified or recognized units, and denial of separate decertification elections in most instances for professionals seeking severance from an overall mixed unit of professional and nonprofessionals.

In Albertson's Inc. the Board pointed to several factors in its decision to reject the request for a decertification election among a unit of customer service employees, which had been merged into a larger unit that included grocery, bakery, produce and general merchandise employees:

> As the current larger unit has existed longer than the smaller unit, as there is a fully-agreed-upon merger of the units, and as there is no significant history of bargaining on a narrower basis, we find that the balance here as in Wisconsin Bell must be struck in favor of the current larger unit.

The Department in this case will follow the well-established NLRB precedent. In this instance, the employer has negotiated with a merged unit of clerical employees, along with bus drivers and other employees, for 20 years. If there was a period of separate bargaining and separate contracts for the two units, it lasted for less than a year, in 1975 and 1976. The appropriate bargaining unit is the entire bargaining unit currently covered by the collective bargainning agreement between SRTD and Local 256.

Department regulation 15815 requires that for the SMCS to hold an election, petitioner must submit authorizations by employees constituting at least 30 per cent of the employees in the relevant bargaining unit. It is the Department's understanding that the signatures submitted in support of the de-certification petition do not constitute 30 per cent or more of that bargaining unit. For that reason, there is no question concerning representation and the SMCS will not direct that a de-certification election will be held.

Very truly yours,

Martin Fassler
Hearing Officer designated by Director of Industrial Relations