STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, Local 614, AFL-CIO, Charging Party, v. SOLANO COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. SF-CE-475 PERB Decision No. 166 June 30, 1981

Appearances: Stewart Weinberg (Van Bourg, Allen, Weinberg & Roger), Attorney for Service Employees International Union, Local 614, AFL-CIO; and Dr. A. Curt Steffen, Professional Consulting Services for Solano Community College District.

Before Moore, Jaeger, and Tovar, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on an appeal filed by Service Employees International Union, Local 614, AFL-CIO (hereafter SEIU) of the hearing officer's dismissal of its unfair practice charge with prejudice. That Dismissal Without Leave to Amend, issued August 13, 1980, is attached hereto and incorporated by reference herein.

The Board has considered the record as a whole in light of SEIU's appeal and hereby affirms the hearing officer's findings of fact and conclusions of law.

ORDER

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

The unfair practice charge in Case No. SF-CE-475 filed by Service Employees International Union, Local 614, AFL-CIO against Solano Community College District is hereby DISMISSED with prejudice and without leave to amend.

PER CURIAM

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, Local 614, AFL-CIO, Charging Party, v. SOLANO COMMUNITY COLLEGE DISTRICT, Respondent.	UNFAIR PRACTICE CHARGE Case No. SF-CE-475 DISMISSAL WITHOUT LEAVE TO AMEND

Notice is hereby given that the above-captioned unfair practice charge is dismissed without leave to amend.

The charge alleges the employer supported CSEA and its Chapter #211 (hereafter CSEA) in favor of SEIU, Local 614, AFL-CIO (hereafter SEIU) by meeting and negotiating with CSEA in the face of a question concerning representation raised by two representation petitions filed by SEIU. Charging party further alleges it represents a majority of the employees in the bargaining unit. Charging party contends that the respondent's actions in continuing to meet and negotiate with CSEA violate section 3543.5(a), (b) and (d).

The two representation petitions in question are SF-D-66

and SF-R-394B. San Francisco regional office records reflect that SEIU's decertification petition (SF-D-66) was filed on March 24, 1980, during the 120-90 day period immediately proceeding the expiration of the existing contract between CSEA and the District. The decertification petition sought a unit of office, technical and paraprofessional employees. Since the petition sought to carve out a new unit from the then established unit of all classified employees, the Regional Director determined that the petition should have been filed as a new request for recognition pursuant to PERB Regulation 33050, and, on April 15, 1980, he dismissed the petition. That administrative determination was appealed and subsequently upheld by the Board itself in PERB Order No. AD-94, (July 11, 1980.) The decertification petition, therefore, created no question concerning representation and it was not improper for the District and CSEA to continue to meet and negotiate in the face of the decertification petition.

The second petition (SF-R-394B) was a request for recognition seeking a unit described as "all classified 'white collar' and technical and paraprofessional positions". It was essentially the same unit petitioned for by the above mentioned decertification petition (SF-D-66). San Francisco regional office records reflect that the request for recognition was mailed by SEIU on June 1, 1980 and received by PERB on June 3, 1980.

A negotiated agreement between CSEA and the District, covering the employees in the then existing CSEA wall to wall unit, was in effect from July 1, 1977 to and including June 30, 1980. This created an insulation period from April 1, 1980 through June 30, 1980, during which CSEA and the District should have been permitted to negotiate free from the threat of further decertification petitions or requests for recognition. [1]

Since the SEIU request for recognition was filed during that insulation period it would normally be untimely on its face. This case is, however, complicated by an additional factor. San Francisco regional office records reflect that on March 24, 1980 a valid and timely request for recognition was filed by the International Union of Operating Engineers, Stationary Local No. 39, AFL-CIO (hereafter Operating Engineers) seeking to carve out a unit of operations and support services employees from CSEA's existing wall to wall unit. On May 16, 1980, CSEA, the District, and Operating Engineers agreed to hold an election in the requested operations and support services unit. CSEA disclaimed any interest in representing those employees. The parties agreed

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[1] Deluxe Metal Furniture Co. (1958) 121 NLRB 995 [42 LRRM 1470]

to an election, the choices on the ballot being Operating Engineers and No Representation, to be held May 30, 1980. Operating Engineers received a majority of the valid votes counted and was certified as the exclusive representative for the Operations and Support Services Unit as of June 10, 1980.

Since the wall to wall unit covered by the then existing contract was being carved up pursuant to the Operating Engineers timely request for recognition, it could be argued that CSEA had no contract bar protection for the residual unit still covered by the existing contract. If, however, an exclusive representative was forced to expose its entire unit to challenge by otherwise untimely petitions merely by agreeing to an election in a portion of the wall to wall unit sought by a timely request for recognition, it would be discouraged from settling even valid carve out requests in order to protect the remainder of their unit. This would be contrary to the purposes of the Act. It is therefore concluded that CSEA does not lose all contract bar protection for the residual unit simply because it agreed to an election in a unit carved out by a valid request for recognition.

The SEIU request for recognition (SF-R-394B) was accordingly barred by the contract between CSEA and the District and created no question concerning representation. Under the circumstances, it was not improper for CSEA and the District to continue to meet and negotiate in the face of the untimely request for recognition filed by SEIU.

Charging party has failed to allege supportive facts tending to show prima facie violations of Sections 3543.5(a) (b) and (d). Thus, it is concluded that unfair practice charge No. SF-CE-475 is dismissed without leave to amend.

This dismissal without leave to amend is made pursuant to PERB Regulation 32630(a). The charging party may obtain review of the dismissal by filing an appeal to the Board itself within twenty (20) calendar days after service of this Notice. (PERB Regulation 32630(b).) Such appeal must be actually received by the Executive Assistant to the Board before the close of business (5:00 p.m.) on September 2, 1980 in order to be timely filed. (PERB Regulation 32135.) Such appeal must be in writing, must be signed by the charging party or its agent, and must contain the facts and arguments upon which the appeal is based. (PERB Regulation 32630(b).) The appeal must be accompanied by proof of service upon all parties. (PERB Regulations 32135, 32142, and 32630(b).)

DATED: August 13, 1980

WILLIAM P. SMITH, Chief
ADministrative Law Judge

JAMES W. TAMM
Hearing Officer