



STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION,)	
LOCAL 22, AFL-CIO,)	
)	
Employee Organization, <u>APPELLANT</u> ,)	Case No. S-R-313
)	
and)	PERB Order No. Ad-45
)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)	Administrative Appeal
AMERICAN RIVER CHAPTER #538,)	
)	September 6, 1978
Employee Organization,)	
)	
and)	
)	
FOLSOM-CORDOVA UNIFIED SCHOOL DISTRICT,)	
)	
Employer.)	

Appearances: Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg and Roger) for Service Employees International Union, Local 22, AFL-CIO; California School Employees Association, American River Chapter #538 and Folsom-Cordova Unified School District made no appearance.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

DECISION

Service Employees International Union, Local 22, AFL-CIO (hereafter SEIU) appeals the Sacramento regional director's direction of a decertification election in the transportation unit in the Folsom Cordova Unified School District (hereafter District).

FACTS

On February 14, 1977, SEIU was certified by the Public Employment Relations Board (hereafter PERB or Board) as the exclusive representative of a unit of transportation employees. SEIU and the District executed a collective negotiations agreement which expired on June 30, 1978. On March 23, 1978, the California School Employees Association, American River Chapter #538 (hereafter CSEA) filed a decertification petition pursuant to section 3544.7(b) of the Educational Employment Relations Act (hereafter EERA).¹ On March 30, 1978, PERB's regional director determined that the petition was timely filed and directed that a decertification election be held. On April 4, 1978, the regional director ordered a correction of the pertinent ballot and mailed a notice to SEIU providing ten days to appeal his order directing the election.

On April 14, 1978, SEIU filed an unfair practice charge alleging, inter alia, management support of CSEA. On April 20,

¹The EERA is codified at Gov. Code sec. 3540 et seq. Gov. Code sec. 3544.7(b) provides:

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....

1978, SEIU filed an administrative appeal of the regional director's order directing the decertification election. The appeal stated:

...The grounds for the appeal and exceptions include but are not limited to the following:

1. Pending unfair labor practice charges, filed April 14, 1978, against the District;
2. A request to have a hearing on the matter;
3. The decertification petition is tainted because of employer support;
4. The petition is barred under the Board Rules;
5. The employer has refused to bargain in good faith with Local 22;
6. The employer has interfered, restrained, and coerced employees in the exercise of their rights under the Rodda Act;
7. The employer, by the above actions, has interfered with Local 22 in the exercise of their rights under the Rodda Act;...

Following an investigation of the unfair practice charge, the regional director determined that the employees would be able to exercise their free choice in a decertification election and ordered that election to be held on May 4, 1978.² The election was so held, CSEA receiving a majority

²Board Resolution #14 provides in pertinent part:

- 1) It shall be the policy of regional staff to evaluate each representation case and decertification case where pending unfair practice charges have been filed with

of the votes cast.³ On May 9, 1978, SEIU filed objections to the conduct of the election. These objections included the grounds relied on in appealing the election order.

DISCUSSION

The regional director's notice of April 4 was intended to provide 10 calendar days from date of service to file an appeal from the order to conduct the election. SEIU interpreted that notice as providing it with 10 working days from its receipt. In Vista Unified School District,⁴ decided July 19, 1978, PERB held that a similar notice was ambiguous and inadequate to bar acceptance of an administrative appeal which would have otherwise been untimely. Operating under his understanding at the time, however, the regional director proceeded to conduct the election when SEIU's time to appeal had apparently expired. It is, therefore, impossible to defer the election as SEIU requests through this appeal. However, since the

respect to the negotiating unit in question. In each case where there is a pending unfair practice charge, a determination shall be made on whether or not to conduct the election, stay the election or impound the ballots.

³Gov. Code sec. 3544.7(a) provides that upon receipt of a decertification petition, the Board:

...shall order that an election shall be conducted by secret ballot and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast....

⁴PERB Order No. Ad-43.

objections to the election filed by SEIU will effectively dispose of the same issues, and others, the appeal is therefore dismissed.

ORDER

The Public Employment Relations Board ORDERS that:

The appeal by Service Employees International Union, Local 22, AFL-CIO of the order by the Sacramento regional director to conduct a decertification election in the Folsom-Cordova Unified School District is dismissed.

By: Harry Gluck, Chairperson / Jerilou Cossack Twohey, Member

Raymond J. Gonzales, concurring:

I agree with the majority that this appeal should be dismissed and that the objections to the election filed by SEIU will effectively dispose of the issues raised by the appeal. However, I reason as follows.

As this case illustrates, the regional director's administrative decision could be challenged either by means of an administrative appeal or objections to the conduct of the election. Accepting this administrative appeal as timely filed pursuant to Vista Unified School District,¹ I find that the

¹(8/19/78) PERB Order No. Ad-43.

more appropriate of the two methods of challenge is the objections to the conduct of the election, and on this basis dismiss the administrative appeal.

I trust the regional directors to use their discretion in deciding whether or not to conduct an election. They are experts in the area of labor relations and have full knowledge of the situation in a district in which they order an election. Since they are knowledgeable experts, with the supposed ability to make correct judgments in critical situations, I do not think it is necessary to allow an administrative appeal from each and every one of their decisions. Specifically, I do not think it is necessary to allow an administrative appeal from a regional director's decision to conduct an election.

I would expect to uphold the regional director's decision in the great majority of such cases. Further, another avenue of appeal is available. If a party objects to the conduct of an election, the issue can be determined by means of objections to the conduct of the election filed after the election is held. Not only does this course take advantage of the expertise and field knowledge of the regional directors, but it saves the time and expense of processing appeals which the election may render moot or which present issues which will only be relitigated in a hearing on objections to the conduct of the election.

In the present case, it is probable that SEIU would have withdrawn this appeal if it had won the election. Similarly it

would not have filed objections to the conduct of the election. Thus, the issues involved in this appeal would not be before the Board at all, saving time and expense for both the Board and all parties.

Although SEIU did not win the election, the dismissal of this appeal and consideration of the issues raised therein by means of the objections to the conduct of the election save time and expense. The matters raised in the appeal involve complex facts which will be presented and considered at the hearing on the objections to the conduct of the election. No purpose would be served by investigating the identical facts in resolving this administrative appeal.

Thus, since I believe that the regional directors should be trusted to direct elections only when appropriate, and that such decisions should be reviewed only through objections to the conduct of the election, I would dismiss this appeal.

~~Raymond J. Gonzales, Member~~

PUBLIC EMPLOYMENT RELATIONS BOARD

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March 30, 1978

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Dear Interested Parties:

Please be advised that pursuant to Rule 33240, Public Employment Relations Board, the Regional Director has made an administrative determination on a petition for decertification of the exclusive representative for Classified Employees in the Transportation Unit in the Folsom Cordova Unified School District.

The decertification petition filed is timely and is supported by at least thirty percent (30%) of the employees in the established unit. The Regional Director finds that a question of representation exists and directs that an election be held.

The ballot choices for the upcoming election will be between the California School Employees Association and No Representation. Further election details will be forthcoming from the Sacramento Regional Office, PERB.

If you have any questions regarding this matter, please call Carmen Ochoa at (916) 322-3198.

Notice is also given that any party may obtain a review of this action by filing an appeal with the Executive Director within ten (10) calendar days. The appeal should contain a complete statement setting forth the facts and reasoning upon which the appeal is based. Copies of any appeal must be served upon all other parties to this action with an additional copy to the Sacramento Regional Office.

Sincerely,

William E. Brown *WES*
Regional Director

By _____

Carmen Ochoa
Regional Representative

WEB/CO/jd