STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED PUBLIC EMPLOYEES, LOCAL 390, SEIU, AFL-CIO, Employee Organization, APPELLANT, and PUBLIC EMPLOYEES UNION, LOCAL 1, Employee Organization, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, PITTSBURG CHAPTER 44, Employee Organization, and PITTSBURG UNIFIED SCHOOL DISTRICT, Employer.	Case Nos. SF-D-18 SF-D-20 PERB Order No. Ad-49 Administrative Appeal October 20, 1978

Appearances: Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for United Public Employees, Local 390, SEIU, AFL-CIO; Henry L. Clarke, General Manager for Public Employees Union, Local 1; Sal P. Cardinale, Deputy Superintendent for Pittsburg Unified School District; and Ann Stombs, Deputy Field Director for California School Employees Association, Pittsburg Chapter 44.

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

DECISION

United Public Employees, Local 390, SEIU, AFL-CIO (hereafter SEIU) appeals the decision of the San Francisco regional director granting Public Employees Union, Local 1 (hereafter Local 1) 10 days to perfect its showing of employee support for a decertification petition filed by Local 1.

FACTS

California School Employees Association, Pittsburg Chapter 44 (hereafter CSEA), the exclusive representative of a unit of classified employees, had negotiated a contract with Pittsburg Unified School District (hereafter District) which expired on June 30, 1978. Both SEIU and Local 1 filed decertification petitions. The San Francisco regional director determined that Local 1's showing of support was deficient. He notified Local 1 of the deficiency and granted it 10 calendar days in which to perfect its showing of support. Local 1 submitted sufficient additional signatures within the allotted 10 days. The regional director scheduled a decertification election to be held on June 1, 1978.[1]

SEIU appealed, contending that the regional director had erred in granting Local 1 an extension of time within which to perfect its showing of support. CSEA also contends that Local 1's petition is invalid.

We agree that the regional director improperly granted Local 1 additional time within which to perfect its proof of support and that Local 1's petition is invalid. We further find that SEIU's petition is also invalid because the signatures submitted in support of the petition are undated. Accordingly, we dismiss both petitions.

DISCUSSION

The Board's rules and regulations[2] contain no provision affording an extension of time to one employee organization seeking to decertify another. The rules governing Educational Employment

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[1]SEIU filed an appeal requesting a stay of the decertification election until after the Board itself rules on the instant appeal regarding Local 1's right to appear on the election ballot. The Board itself ordered a stay of the election in Pittsburg Unified School District (5/26/78) PERB Order No. Ad-34.

[2]The Board's rules are codified at Cal. Admin. Code, tit. 8, sec. 31100 et seq.

Relations Act (hereafter EERA)[3] representation matters are contained in chapter 3. There are two sections in chapter 3 which provide employee organizations an opportunity to perfect a deficient showing of support. Both sections are contained in article 2 of chapter 3, entitled "Request for Recognition and Intervention."[4] Neither article 5 of chapter 3, entitled "Decertification Petition," nor article 1, entitled "General Provisions," make any reference to extensions of time for perfecting a deficient showing of support. Thus, while the Board's rules allow employee organizations initially seeking to represent employees to perfect a deficient showing of support, they do not afford a similar opportunity to an employee organization seeking to replace an incumbent. This distinction is neither inadvertant nor arbitrary.

In the first instance, no purpose would be served by denying a petitioning organization an opportunity to perfect its showing

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[3]The Educational Employment Relations Act (hereafter EERA) is codified at Government Code section 3540 et seq. All statutory references hereafter are to the Government Code unless otherwise specified.

[4]There are two sections of article 2, 33055 and 33075, which the regional director to allow an employee organization up to 10 calendar days to perfect its proof of support. The text of these two sections is identical. They state, in pertinent part,

> (a) Within 20 calendar days of the date of receipt of the request, unless otherwise directed by the Regional Director, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of employees employed in the claimed unit on the date the request for recognition was filed with the employer.
>
> (b) If, after initial determination, the showing is insufficient the Regional Director may allow up to 10 calendar days to perfect the showing of support....

of support. If the initial petition were dismissed, the organization would merely refile with an augmented showing. All that would have been accomplished is a needless exchange of paper.

The second circumstance, however, requires a balance between the right of employees to be represented by an organization of their choosing and the maintenance of stability in employer-employee relations.

The EERA itself seeks to balance these competing interests. Sections 3544.1(c)[5] and 3544.7(b)(1)[6] provide that an employee organization may not file a request for recognition during the term of an existing agreement between an employer and an exclusive representative, except during a prescribed period of time of more than

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[5] Section 3544.1(c) provides:

> The public school employer shall grant a request for recognition filed pursuant to Section 3544 unless:
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> . . . . . .
>
> (c) 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, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement....

[6] Section 3544.7(b)(1) provides:

> (b) No election shall be held and the petition shall be dismissed...(1)... unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement....

90 but less than 120 days prior to the expiration date of the agreement. Section 3544.5(d)[7] permits employees and employee organizations to seek to expel an incumbent organization or replace an incumbent with another organization. Both a request for recognition and a decertification petition raise a question of representation. Section 3544.7(a)[8] grants the Board broad authority to resolve questions of representation. Inherent in this broad authority is the necessity of establishing when and how a question of representation may be raised.

Stable employer-employee relations are undermined if employees or competing organizations are free at any time to seek to displace

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[7] Section 3544.5(d) authorizes the filing of a decertification petition, stating:

> A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:
>
> . . . . . .
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> (d) An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by current dues deduction authorizations or other evidence such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative.

[8] Section 3544.7(a) provides, in pertinent part:

> (a) Upon receipt of a petition filed pursuant to Section 3544.3 or 3544.5, the board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the petition....

an incumbent exclusive representative. This is particularly true during the last days of an old agreement and during the time when an incumbent organization is striving to negotiate a new agreement. Negotiations for a new agreement seldom, if ever, afford full satisfaction to all members of the negotiating unit.

Rival employee organizations must be given an opportunity to challenge an exclusive representative. If, however, the challenging organization does not have the requisite support among unit members at the time it makes the challenge, the incumbent organization should be afforded the opportunity to negotiate a new agreement free from the continuing threat, and concomitant uncertainty, of challenge by a rival organization. Since Local 1's petition was not accompanied by a sufficient showing of support at the time it was filed, it is dismissed.

SEIU's petition is also deficient and must be dismissed. As set forth above, the Board's rules governing EERA representation matters are set forth in chapter 3. Article 1 of that chapter is entitled "General Provisions." The rules contained in article 1 are applicable to all subsequent rules in the chapter. Section 33030 of article 1, entitled "Proof of Majority Support or at Least 30 Percent Support," states, in pertinent part,

> (c) Each form of proof, excluding a notarized membership list, shall indicate the date on which each signature was obtained. A signature which is undated...shall be invalid for the purpose of calculating proof of support.... (Emphasis added.)

None of the signatures submitted by SEIU in support of its petition is dated. It is impossible to ascertain from the proof of support itself when any of the signatory employees signed the declarations in support of SEIU. The purpose of requiring dated designations is basically to make certain that the signatory employees currently wish to be represented by the organization designated and to preclude stale claims of representation.

No party to the instant case questioned SEIU's showing of support. However, verification of the sufficiency of an employee organization's showing of support is solely within the Board's jurisdiction. Section 3544.5(d) of the EERA, as amended, requires that the showing of support shall be submitted to the Board, and that the Board shall not disclose it to anyone else. Thus, only the Board and its agents are able to determine the validity of an employee organization's showing of support. Accordingly, we dismiss SEIU's petition.[9]

ORDER

The Public Employment Relations Board ORDERS that:

The decertification petition filed by Public Employees Union, Local 1, is dismissed.

The decertification petition filed by United Public Employees, Local 390, SEIU, AFL-CIO, is dismissed.

By Jerilou Cossack Twohey, Member Harry Gluck, Chairperson

Raymond J. Gonzales, Member, dissenting:

The majority finds that because the signatures on the petitions

[9]Our dissenting colleague argues that because the regional director notified SEIU, and all other parties, that SEIU had a sufficient showing of support for its petition, the Board is estopped from finding the petition invalid. Our colleague has misconstrued the doctrine of estoppel. Equitable estoppel requires the presence of all the following elements: (1) a representation or concealment of material facts, (2) made with knowledge of the fact, (3) to a party ignorant of the truth, (4) with the actual or virtual intention that the ignorant party rely thereon, (5) and inducement of the ignorant party to act on the represented facts. City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 488-89 [91 Cal.Rptr. 23, 476 P.2d 423]; Domarad v. Fisher & Burke, Inc. (1969) 270 Cal.App.2d 543, 555 [76 Cal.Rptr. 529]; California Milling Corp. v. White (1964) 229 Cal.App.2d 469, 479 [40 Cal.Rptr. 301]. See also Cal. Evid. Code section 623. The regional director in the instant case did not have access to facts unknown to SEIU. Both knew, or should have known, that the signatures submitted were undated. Both were, or should have been, aware that Board rule 33030(c) requires signatures to be dated. The regional director's mistake in accepting undated signatures could not rectify SEIU's mistake in submitting them in the first place. Moreover, the dissent ignores the Board's responsibility to correct the error of its agents and to protect the right of the incumbent employee organization to be free from improper decertification petitions.

submitted by SEIU in support of its decertification petition are undated, SEIU's decertification petition is invalid. I disagree.

Section 33030(c) of the Board's rules, quoted in part by the majority, provides:

> (c) Each form of proof, excluding a notarized membership list, shall indicate the date on which each signature was obtained. A signature which is undated or which indicates that it was obtained earlier than one calendar year prior to the filing of the request or intervention with the employer shall be invalid for the purpose of calculating proof of support. In the case of a notarized membership list, the list shall be dated not earlier than one calendar year prior to the date of filing and shall [be] certified as accurate. (Emphasis added).

The majority argues that because section 33030 falls under the heading of "General Provisions" it is applicable to all situations wherein proof of support is required. General provisions are applicable only insofar as the language contained within such provisions permit them to be. The majority conveniently ignores the plain language of subdivision (c) which refers specifically and solely to requests for recognition and intervention petitions. That subdivision does not consider decertification petitions. Thus, while the Board may have intended the dating requirement to also apply to decertification petitions, it would be unfair to suddenly impose that requirement on SEIU given the clear language of rule 33030(c) and the absence of any comparable section in the Board's rules regarding decertification petitions. Such a requirement should only be imposed by an unambiguous rule with prospective application. To do otherwise, I believe, denies SEIU a fundamental element of due process, that of notice.

Alternatively, assuming for the sake of argument a reading of rule 33030(c) could be interpreted to apply to decertification petitions as well (and this would be a strained reading of that provision in view of the above), I would argue that the Board is estopped from finding the SEIU petition invalid. In a letter dated May 5, 1978, an agent of the Board notified SEIU that its

decertification petition was acceptable.[1] In making this representation, the Board's agent was fully apprised of the facts surrounding the case. She was aware that the employee organization had submitted the decertification petition to her for approval; that she was required to notify the union of the acceptability or unacceptability of the petition; and that SEIU would rely upon her representation as to the petition's validity.

It has been well over four months since this case came to the attention of the Board. I have no doubt that SEIU, relying on the Board agent's representation that its petition for decertification was adequate, can demonstrate an expenditure of time, money, and energy in anticipation of its participation in a decertification election. Nor do I doubt that such reliance is justified.[2] As noted above, neither section 33030(c) nor any other provision of the rules specifically requires dated signatures on decertification petitions. In view of this ambiguity, it would be ludicrous to assert that SEIU knew or should have known that its petition required dated signatures.

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[1]In the letter, addressed to all the parties in this case, the Board agent stated:

> Review of the showing submitted by both the United Public Employees, Local 390, SEIU, AFL-CIO and by the Public Employee Union, Local No. 1 in support of those petitions has resulted in the administrative determination that they are sufficient to meet the requirements of section 33030(b) of the PERB rules and regulations.

[2]Although a similar representation of adequacy was made to Local No. 1 in the Board agent's letter dated May 5, 1978, I would find its reliance to be unjustified. As the majority opinion points out, the Board's rules and regulations are devoid of any provision affording an extension of time to one employee organization seeking to decertify another. Further, on the very same day Local No. 1's showing of support was determined to be adequate, SEIU's appeal was filed placing the validity of Local No. 1's petition in issue. Thus it would have been imprudent for Local No. 1 to rely solely on the Board agent's representation as to the validity of its petition.

The "doctrine of equitable estoppel may be applied against the government where justice and right require it."[3] Numerous cases have applied it under circumstances similar to those here where an agent of the public entity has made representations to an individual causing him to act or not act to his detriment.[4] Basic notions of justice and fair play require that we not allow SEIU to suffer for its relying on a representation made to it by one of this Board's agents.

Lastly, I believe the Board could have protected its processes short of declaring SEIU's petition invalid as it does today. It could have ascertained whether or not the signatures submitted by SEIU were current. The Board could have required SEIU to either submit a declaration to the effect that the signatures on its showing of support were current or to submit affidavits of the signatories themselves to the effect that they had signed SEIU's petition within the current year.

On the basis of the foregoing, I cannot find SEIU's petition to be invalid. Rather, the majority has erred in denying SEIU its fundamental right of due process.

Raymond J. Gonzales, Member

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[3]City of Long Beach v. Mansell (1973) 3 Cal.3d 462, 493.

[4]See Rand v. Andreatta (1964) 60 Cal.2d 846, where the Court held that estoppel may be used in a proper case to excuse the late filing of the claims against public entities or the filing of such claims in a defective form. (Emphasis added). See also Farrell v. County of Placer (1944) 23 Cal.2d 624, and Cruise v. City and County of San Francisco (1951) 101 Cal.App.2d 558.

STATE OF CALIFORNIA EDMUND G. BROWN JR., Govern

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post St., 9th Floor
San Francisco, California 94108
(415) 557-1350

April 25, 1978

Mr. David V. Platt
Public Employees Union, Local 1
P.O. Box 222
Martinez, California 94533

RE: SF-D-20

Dear Mr. Platt:

The decertification petition filed by Local 1 for a unit of classified employees (Unit A) was received by the Pittsburg Unified School District on or about March 28, 1978.

Review of the showing submitted in support of your request for recognition has resulted in the following initial determination:

1.	Unit size per employer as of March 28, 1978	= 184
2.	Support required to qualify	= 55
3.	Valid support submitted	= 52
4.	Valid support still required	= 3

You are hereby granted 10 calendar days in which to perfect your showing of support. Please note that any such augmentation must be received by this office within 10 calendar days of receipt of this letter.

Should you have any questions concerning this matter, please contact Jerilyn Gelt.

Sincerely,

James W. Tamm
Regional Director

Jerilyn Gelt
Regional Representative

JG:JT:pa