STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD UNIFIED SCHOOL DISTRICT, Employer, and INGLEWOOD CLASSIFIED ASSOCIATION, Employee Organization, and CALIFORNIA PROFESSIONAL EDUCATION EMPLOYEES, Employee Organization, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Exclusive Representative.	Case Nos. LA-D-242 LA-D-243 (LA-R-289) Administrative Appeal PERB Order No. Ad-204 March 28, 1990

Appearances: California School Employees Association by Howard Lawrence, Organizing Director, for Inglewood Classified Association; Van Bourg, Weinberg, Roger & Rosenfeld by David A. Rosenfeld, Attorney, for California Professional Education Employees.

Before Hesse, Chairperson; Craib and Camilli, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association (CSEA) of a Board agent's administrative determination (attached hereto) denying CSEA's motion to dismiss the decertification petitions filed by the Inglewood Classified Association (ICA) and the California Professional Education Employees (CALPRO).

The Board agent denied the motion, having found that the decertification petitions were timely filed and that the proofs of support were valid. We affirm the Board agent's denial of the motion, in accordance with the discussion set forth below.

DISCUSSION

CSEA argues that the unit size used to compute the validity of the proofs of support is inaccurate because the employee list provided by the District, which was used to determine unit size, does not include substitutes, who CSEA argues ought to be included.[1] CSEA further argues that ICA's proof of support is invalid because the signatures on the authorization cards were obtained through fraud and misrepresentation.

PERB Regulation 32380[2] reads, in pertinent part, as follows:

> The following administrative decisions shall not be appealable:
>
> . . . . . .
>
> (b) Except as provided in section 32200, any of the following interlocutory rulings which may be raised when the case as a whole is appealed to the Board itself:
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> . . . . . .

[1]CSEA does not contend that all substitutes should be included, because substitutes, as a whole, are not included in the bargaining unit. Rather, it argues that significant numbers of classified positions have been filled by substitutes in violation of CSEA's collective bargaining agreement, and should, therefore, be counted as bargaining unit members.

[2]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

> (4) A determination that a petitioner's proof of support is adequate . . . .

Regulation 32380 was amended on March 25, 1989, to add, inter alia, subsection (4).[3] The reason for this new section was to avoid lengthy and unnecessary delay in the election process. It is important to note that CSEA is not foreclosed from raising the issues presented herein on appeal to the Board. The issues of unit size and fraud can be raised by objections to the election once it has taken place.[4]

Thus, under PERB Regulation 32380, the two issues discussed above are not appealable to the Board at this time. Therefore, the Board will not entertain the merits of the arguments raised by CSEA. Consequently, the Board agent's determination that the proofs of support are adequate will stand.

CSEA also argues that a contract bar was in effect at the time the decertification petitions were filed. Additionally, it contends that ICA is not a valid employee organization. The Board agent properly addressed these issues. CSEA does not raise any new arguments in its appeal. Therefore, we adopt the Board agent's findings of fact and conclusions of law on these issues.

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[3]Subsections (b)(3), (b)(4) and (c) were also added at that time.

[4]In its appeal, CSEA requested a stay of the election. The election has already taken place and the ballots have been impounded pending resolution of this case. The Board, therefore, need not address this request.

ORDER

The Board AFFIRMS the administrative determination denying the motion to dismiss and ORDERS the election shall go forward in accordance with PERB regulations.

Chairperson Hesse and Member Craib joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD UNIFIED SCHOOL DISTRICT, Employer, and INGLEWOOD CLASSIFIED ASSOCIATION, Employee Organization, and CALIFORNIA PROFESSIONAL EDUCATION EMPLOYEES, Employee Organization, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Exclusive Representative.	Case Nos. LA-D-242,-243 (LA-R-289) ADMINISTRATIVE DETERMINATION September 29, 1989

Investigation of the decertification petitions filed in the above-referenced cases has resulted in the administrative determination that an election shall be conducted to determine the organization, if any, to be certified as exclusive representative of the bargaining unit in question. The motion to dismiss filed by the current exclusive representative is denied, for reasons which follow.

PROCEDURAL HISTORY

On May 23, 1989, and June 1, 1989, Inglewood Classified Association/CTA/NEA (ICA) and California Professional Education Employees (CALPRO), respectively, filed decertification petitions with the Public Employment Relations Board (PERB or Board)

pursuant to PERB regulation 32770. Each is seeking to replace California School Employees Association and its Inglewood Chapter #16 (CSEA) as the exclusive representative of a unit of classified employees of the Inglewood Unified School District (District). The District and CSEA were given an opportunity to respond to the petitions; the District was asked to provide lists of employees in the bargaining unit to be used to determine the adequacy of the proof of support filed by ICA and CALPRO in support of their decertification petitions. The District filed a response and provided the lists as requested. CSEA also responded, raising issues requiring resolution before any election could be directed.

CSEA argues that the unit size is larger than stated by the petitioners and, more importantly, larger than shown by the lists of unit employees provided by the District. CSEA also asserts that both petitions are barred by a contract in effect prior to the time the petitions were filed. In addition, CSEA raises issues which concern only the petition filed by ICA: CSEA contends ICA is not an employee organization within the meaning of the Educational Employment Relations Act (EERA), that ICA may not represent employees in the proposed unit because its affiliate currently represents employees who supervise these employees, and finally, that ICA procured the proof of support submitted with its petition through misrepresentation.

ICA and CALPRO filed general denials of CSEA's allegations. Thereafter, by letter dated August 1, 1989, all parties were

given a final opportunity to submit facts supported by evidence in support of their respective positions. Following a review of the parties' factual submissions, on August 25, 1989, an order issued affording CSEA an opportunity to show cause why its motion to dismiss should not be denied and why an election should not be directed. That order to show cause is expressly incorporated within this administrative determination.

DISCUSSION

Contract Bar

Among the findings in the order to show cause was the conclusion that there was no dispute of material fact involving any of the issues raised by CSEA, however, CSEA's response to the order challenges that conclusion. CSEA argues that "[its] contention that a successor contract was finalized on May 18, 1989, is still in dispute." CSEA further states that an evidentiary hearing would provide testimony which would show that the District's negotiator had authority "to enter into a final and binding agreement with CSEA on the exact terms that were agreed to on May 18, 1989." Such facts would, indeed, be material were it not for the conclusion stated in the order to show cause, which was that ARTICLE XXIX of the contract agreed to by the District and CSEA required ratification as a condition precedent to contractual validity. Assuming the correctness of that conclusion, the only material fact became whether or not the contract had been ratified at the time the decertification petitions were filed and the proof of support perfected.

CSEA does not appear to dispute the conclusion that the current agreement required ratification by the District and CSEA. CSEA suggests, however, that the analysis which led to that conclusion erroneously ignored the language in ARTICLE XXII of both the previous and existing agreement:

> Ratification of Additions or Changes: Any additions or changes in this Agreement shall not be effective unless reduced to writing and signed by both parties.

CSEA argues that ratification, as that word is used in ARTICLE XXIX, is "defined" by the foregoing provision. This interpretation simply does not comport with the ordinary and plain meaning of the language of that provision, and must be rejected for the reasons stated in the order to show cause.

Unit Size

The order to show cause also stated that there appeared to be no basis upon which to alter the lists of unit members provided by the District for use in checking the adequacy of the proof of support. CSEA argues that its position on this issue has been misunderstood by PERB. CSEA reiterates that the District has and continues to illegally exclude employees from the bargaining unit. CSEA seeks resolution of this issue prior to an election, noting that a determination that the unit is indeed significantly larger would impact the requisite proof of support, potentially obviating the need for an election. CSEA also raises the possibility that failure to resolve the issue at this time will lead to an excessive number of challenged ballots.

The order to show cause expressed the preliminary determination that no basis appeared to exist for requiring changes to the lists provided by the District. The rationale for that determination was neither the result of a lack of understanding of CSEA's argument nor due to a failure to appreciate the need to have proper employee lists. CSEA's further argument does nothing to undermine that preliminary determination. Accordingly, the lists provided by the District will be used to determine the proof of support submitted by ICA and CALPRO.

Proof of Support

CSEA seeks invalidation of ICA's proof of support on the ground that authorization cards were procured through misrepresentation. CSEA argues that the rejection of its claim as set forth in the order to show cause is erroneous under the decision of the National Labor Relations Board (NLRB) in Bookland, Inc., 221 NLRB 35, 90 LRRM 1492 (1975). A review of Bookland reveals that, while a single card was invalidated, two others were not invalidated. The NLRB based its decision upon the totality of circumstances surrounding the card solicitation. The "totality of circumstances" surrounding the solicitation of the invalidated card included evidence not only that the solicitor made a misrepresentation in response to a direct question by the signer, but also evidence that the signer had not read the card. In the instant case, there are no allegations of facts revealing the circumstances surrounding specific card

signings, but only the bare allegation of the misrepresentation itself.[1] No circumstances similar to those in Bookland were presented here, and thus, even if Bookland were controlling, it is distinguishable and not persuasive.

CSEA has failed to provide any sufficient basis upon which to invalidate any of the cards submitted by ICA. In light of that, and because the authorization cards submitted by ICA clearly and unambiguously state that the signer authorizes the ICA to act as the signer's exclusive representative for purposes of meeting and negotiating, all cards which are properly signed and dated shall be used to determine the sufficiency of ICA's proof of support.

ICA Status

CSEA offers no additional argument in support of its assertion that ICA is not an employee organization within the meaning of EERA other than to opine that PERB's decision in Jamestown Elementary School District (1989) PERB Order No. Ad-187, will be overturned. For the reasons stated in the order to show cause, CSEA's motion to dismiss ICA's petition on the ground that it is not a valid employee organization is denied. CSEA's motion to dismiss ICA's petition on the ground that it may not

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[1]The evidence consists of two documents: a signed statement from CSEA's Chapter president which relates what she had been told concerning ICA's purpose in soliciting cards but does not relate facts concerning a solicitation of her; and a statement signed by five individuals stating they do not believe they authorized "CTA/NEA" to represent them and revoking their authorization cards on the ground that they were told by a CTA/NEA representative that the sole purpose of the card was to get information about the union.

seek to represent classified employees while its affiliate, the ITA, represents teachers, is likewise denied for the reasons stated in the order to show cause.

CONCLUSION

It is undisputed that CSEA was certified as the exclusive representative on June 6, 1987. In light of that fact, and in light of the conclusion that both petitions were filed and proof of support perfected prior to the existence of a written agreement between the CSEA and the District, these decertification petitions were timely filed pursuant to PERB regulation 32776(b). Further, the proof of support submitted by ICA and CALPRO is sufficient to meet the requirements of regulation 32770(b)(2). The criteria for a decertification petition have, therefore, been met. An election shall be conducted as soon as is practicable to determine the organization, if any, to be certified as the exclusive representative of the unit of classified employees. A PERB representative will be contacting the parties shortly to discuss the mechanics of the election.

Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision (PERB regulation 32360). To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

MEMBERS, PUBLIC EMPLOYMENT RELATIONS BOARD

1031 18th Street, Suite 200

Sacramento, CA 95814-4174

A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (regulation 32135). Code of Civil Procedure section 1013 shall apply.

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (regulation 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justifications for the request (regulation 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (regulation 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Los Angelee regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see regulation 32140 for the required contents and

a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Dated: September 24, 1979

Charles F. McClamma
Labor Relations Specialist

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD UNIFIED SCHOOL DISTRICT, Employer, and INGLEWOOD CLASSIFIED ASSOCIATION, Employee Organization, and CALIFORNIA PROFESSIONAL EDUCATION EMPLOYEES, Employee Organization, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Exclusive Representative.	Case Nos. LA-D-242,-243 (LA-R-289) ORDER TO SHOW CAUSE August 25, 1989

On May 23, 1989, and June 1, 1989, Inglewood Classified Association/CTA/NEA (ICA) and California Professional Education Employees (CALPRO), respectively, filed decertification petitions with the Public Employment Relations Board (PERB or Board) pursuant to PERB regulation 32770. Each is seeking to replace California School Employees Association and its Inglewood Chapter #16 (CSEA) as the exclusive representative of a unit of classified employees of the Inglewood Unified School District (District). At the request of PERB, the District provided lists of employees in the proposed unit for use in determining the adequacy of the proof of support filed by ICA and CALPRO in support of their petitions.

On June 21, 1989, CSEA filed a response to the petitions which raises several issues requiring resolution before an election, if any, can be ordered. CSEA argues that the unit size is larger than represented by the petitioners and the District. CSEA also asserts that the petitions are barred by a contract in effect prior to the time the petitions were filed. CSEA also raises issues which concern only the petition filed by ICA: CSEA contends ICA is not an employee organization within the meaning of the Educational Employment Relations Act (EERA), that ICA may not represent employees in the proposed unit because its affiliate currently represents employees who supervise these employees, and finally, that ICA fraudulently procured the proof of support submitted with its petition.

General denials to CSEA's allegations were subsequently received from ICA and CALPRO. Thereafter, by letter dated August 1, 1989, which letter is expressly incorporated within this order, all parties were given a final opportunity to submit facts supported by evidence in support of their respective positions. Upon examination of the submissions of all parties, there appears to be no dispute of material facts. The parties disagree only as to the legal effect of the facts.

CSEA argues that the unit size is larger than represented by the other parties because the District allegedly has placed substitutes into vacant positions for a period beyond that which is permitted by law. CSEA has made clear that it is not contending that the unit does or should include substitute

employees. Rather, CSEA asserts that the lists of unit employees submitted by the District should include those employees in substitute positions whom the District wrongfully denied positions in the classified service.

CSEA notes that it has been forced to approach the District's practice on a case-by-case basis, and submitted as supporting evidence a document in which the District agrees to place certain named substitute employees into classified positions. An examination of this document discloses, however, no instance in which anyone is placed in a bargaining unit position effective on or before the date the lists were prepared.[1] The fact that there may, indeed, be more persons who should have been or may be placed in the classified service is not a matter which can be addressed in this proceeding. Only if the persons were actually a part of the established unit should they actually be counted for purposes of determining the size of the unit at the time these petitions were filed. See State of California (Department of Personnel Administration) (1985) PERB Decision No. 532-S. There appears to be no basis in law or fact requiring changes to the lists of unit members provided by the District for use in checking the adequacy of the proof of support.

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[1]Further, even if all of the identified individuals had been placed on the lists of unit employees, their numbers are insufficient to adversely impact the petitioners.

CSEA's contention that these petitions are barred by the existence of a contract is based upon Government Code section 3544.7(b)[2] which states in relevant part:

> [n]o election shall be held and the petition shall be dismissed whenever:
>
> > (1) There is currently in effect a lawful written agreement negotiated between the public school employer and another employee organization . . . .

According to CSEA, an agreement was in effect on May 18, 1989, which would constitute a bar to the petitions pursuant to this provision. CSEA submitted a copy of a written agreement which was initialed on May 18, 1989. That agreement, if "in effect" on that date, would constitute a bar to the petitions, both of which were filed subsequent to May 18, 1989.

This case presents a question similar to that addressed by the Board in Downey Unified School District (1980) PERB Order No. Ad-97. In that case, the Board concluded that it was unnecessary to decide whether "signed off" provisions constituted a lawful written agreement which would bar a decertification petition, because the question of contract validity turned on whether the contract had been ratified. The parties in Downey had agreed by written ground rules to submit their agreement to ratification by both the union and the District, and the Board concluded that "by the terms of the parties' own agreement, the contract could not become operative until it was ratified by both [the exclusive representative] and the District."

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[2]This section is made applicable to decertification petitions by PERB Regulation 32776(b).

The Board's decision in Downey was actually an expansion of the rule adopted by the National Labor Relations Board in Appalachian Shale Products Co. (1958) 121 NLRB 1160 [42 LRRM 1506], which is as follows:

> Where ratification is a condition precedent to contractual validity by express contractual provision, the contract will be ineffectual as a bar unless it is ratified prior to the filing of a petition.

See San Francisco Unified School District (1984) PERB Decision No. 476. Application of this rule to the instant petitions means that if the agreement negotiated by CSEA and the District contains a provision requiring ratification, there could be no bar until ratification was accomplished.

The agreement submitted as evidence by CSEA, and which CSEA contends was in effect on May 18, 1989, contains an ARTICLE XXIX, "TERM OF AGREEMENT," which states in pertinent part:

> This Agreement shall become effective as of ratification, and shall continue in effect to and including June 30, 1992, and from year-to-year thereafter . . . .

CSEA argues that the foregoing language is not controlling, and points instead to the prior agreement, which does not require ratification. ARTICLE XXII, Section 22.1 of the prior agreement between CSEA and the District states:

> Ratification of Additions or Changes: Any additions or changes in this Agreement shall not be effective unless reduced to writing and signed by both parties.

This language indeed suggests that changes made during the life of that agreement would not have required ratification, but it does not speak to subsequent agreements. On the other hand, the plain language of ARTICLE XXIX of the current agreement made

ratification a condition precedent to the agreement becoming effective.

According to the response filed by the District, the agreement was "tabled" by the District's Board of Trustees on June 7, 1989, and was subsequently ratified on June 12, 1989. No precise information was submitted by any party concerning the date on which CSEA ratified the agreement, however, ICA does state that "[n]o final ratification . . .took place until a week after ICA filed its petition on May 23, 1989." ICA was apparently referring to CSEA ratification, and its assertion comports with allegations in an unfair practice charge[3] filed with PERB by CSEA which alleges that unit members ratified the agreement on June 1, 1989.

Although the evidence points to ratification of the agreement by both parties as of June 12, 1989, CSEA has argued in unfair practice charge LA-CE-2867 that the District's failure to ratify the agreement on June 7, 1989, improperly aided CALPRO's decertification effort. Fixing the precise date of ratification is actually unnecessary for purposes of this proceeding. What <u>is</u> required is to determine whether these petitions were timely filed and also, whether the proof of support was perfected in a timely manner.[4] The petitions filed by ICA and CALPRO were filed

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[3]That charge has been docketed as case number LA-CE-2867 and is presently under investigation by the General Counsel.

[4]Although a party filing a petition for decertification may not be granted "additional time" to perfect proof of support, a party may augment such support until the last day the petition may be filed. Any support filed thereafter is invalid and may

on May 23 and June 1, 1989, respectively. Further, both of those parties had perfected their proof of support by June 6, 1989, one day prior to the date when CSEA contends the District should have ratified the agreement, and more than one week prior to the date the District actually ratified the agreement. It seems logical to conclude, therefore, that these decertification petitions are not contract barred, and were, in fact, timely filed.

CSEA has challenged the status of the ICA as an employee organization within the meaning of EERA on the ground that ICA is affiliated with the Inglewood Teachers Association (ITA) and the California Teachers Association (CTA), both of which, according to CSEA, deny membership to non-certificated employees. The gravamen of this assertion appears to be the absence of independence inherent in such a relationship, which, according to CSEA, results in domination and control of the ICA by the ITA and CTA.

CSEA has offered no evidence supporting its assertion that ITA and CTA will dominate ICA, but seems to rely solely on the alleged restriction on membership rights within the affiliated organizations. I cannot conclude based upon that fact alone that ICA is under the contol of, or dominated by, those affiliates. Further, ICA's response notes that classified employees will have full membership rights in ICA, thus casting serious doubt upon

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not be counted towards the necessary 30% needed for a valid petition. State of California (1983) PERB Decision No. 327-S; Petaluma City School District (1982) PERB Order No. Ad-131; Pittsburg Unified School District (1978) PERB Order No. Ad-49.

CSEA's contention that the organization will be controlled by the organizations with which it has affiliated. There is even less evidence of domination and control here than in the case of Jamestown Elementary School District (1989) PERB Order No. Ad-187, in which the Board rejected a similar argument concerning the status of a petitioning organization. The ICA, having filed a decertification petition along with proof of support, has demonstrated a purpose to represent employees on employment related matters. It thus meets the test for an employee organization stated by the Board in State of California (Department of Developmental Services) (1982) PERB Decision No. 228-S.

CSEA also contends ICA may not seek to represent the classified employees because of its affiliation with ITA, which represents teachers. Government code section 3545(b)(2) prohibits an organization from representing both supervisors and the employees whom they supervise. CSEA argues that teachers effectively recommend hiring and firing of certain certificated employees, however the employees are not identified. The argument is unsupported by any evidence, although CSEA does contend there is evidence which would distinguish this case from Redlands Unified School District (1982) PERB Decision No. 235a. Redlands stands for the proposition that, while teachers may perform supervisory duties as envisioned by section 3540.1(m), the authority is not exercised in the interest of the employer, but is part and parcel of a teacher's professional duties.

Because teachers, as a matter of law, are not supervisors, the possibility of a violation of section 3545(b)(2) does not exist, and cannot serve as the basis for dismissal of ICA's petition. Further, ICA is not the same organization as either the ITA or the CTA, but is simply affiliated with them. See California Teachers Association (Link) (1981) PERB Order No. Ad-123 (law which requires a certified or recognized employee organization to file financial statement does not extend to organizations with which it is affiliated).

CSEA contends ICA induced employees to sign cards supporting ICA by falsely informing employees that the purpose of the cards was to obtain information about ICA. CSEA submitted an affidavit of its Chapter president in support of its contention. When the language on the face of the proof of support card is unambiguous, as it is in the case of the cards submitted by ICA, the support will not be invalidated based upon contentions that the employees did not know what they were signing or believed they were signing for another purpose. The best evidence of the signer's intent is the card itself, and extrinsic evidence, including, for example, a subsequent revocation or the signing of support for a rival organization[5] does not require invalidation.

In light of the above and pursunt to the letter of August 1, 1989, CSEA is afforded the opportunity to SHOW CAUSE why its motion to dismiss should not be denied, and why an election

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[5]PERB regulation 32700(b) expressly authorizes the acceptance from one employee of support for more than one organization.

should not be ordered to allow employees to determine what employee organization, if any, should be certified as exclusive representative of the classified employees of the District. CSEA's argument must be filed no later than September 6, 1989, with PERB's Los Angeles Regional Office. Service and proof of service are required.

Dated: August 25, 1989

Charles F. McClamma
Labor Relations Specialist

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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Re: LA-D-242,-243 (R-289)
Inglewood Unified School District

Dear Interested Parties:

By my letter dated June 28, 1989, the parties were offered the opportunity to address arguments to the response filed by California School Employees Association (CSEA) to the above-referenced decertification petitions. Responses from both Inglewood Classified Association (ICA) and California Professional Education Employees (CALPRO) were filed. The issues under consideration in my investigation involve both questions of law and fact. My analysis of these issues leads me to conclude that additional facts, supported by evidence, are required on several issues.

The first issue concerns the size of the bargaining unit. CSEA has argued that the unit is significantly larger than stated by either petitioner because the District has improperly placed substitutes in vacant positions rather than employing these persons in the classified service. Whether the District has acted improperly does not alter the fact that unless substitute employees are actually part of the established bargaining unit for whom the parties have negotiated contract terms, they may not be counted for purposes of determining the size of the unit. See State of California (Department of Personnel Administration)

(1985) PERB Decision No. 532-S. PERB records indicate that substitute employees were expressly excluded from the unit recognized by the District in 1977, and there is no evidence demonstrating substitute employees were included among the eligible voters in the decertification election conducted in 1987. Finally, there is no record of a unit modification by PERB which includes substitutes in the unit. In order to sustain its argument, CSEA must present evidence that through an agreement of CSEA and the District, substitutes have been included as part of the established unit.

The next issue concerns CSEA's allegation that these decertification petitions are barred by a contract. Both ICA and CALPRO argue that there was no contract until ratification by one and possibly both parties to the agreement. PERB decisions which address the question of whether an agreement may act as a bar to a decertification petition indicate that ratification is required only if the District and CSEA agreed, either by written ground rules or by a provision in the negotiated agreement itself, that ratification was a condition precedent to the agreement. See San Francisco Unified School District (1984) PERB Decision No. 476; State of California (SETC) (1983) PERB Decision No. 348-S; Downey Unified School District (1980) PERB Order No. Ad-97. Evidence of such ground rules or contract provision should be provided by ICA or CALPRO in support of their argument.

CSEA stated in its responses to the petitions that

> [o]n May 18, 1989 CSEA and the District reached a full and complete agreement on all outstanding issues. At its board of education meeting on May 22, 1989, the superintendent announced to the audience that an "agreement was reached with the [CSEA]." On May 26, 1989 the parties initialed the changes.

PERB precedent, which has followed closely the decisions of the National Labor Relations Board in this area, indicates that for an agreement to bar a decertification petition it must be signed by the parties prior to the filing of the petition and "it must contain substantial terms and conditions of employment sufficient to stabilize the parties bargaining relationship." State of California (SETC), supra. Initialed informal documents have been found to constitute an agreement which may act as a bar. Gaylord Broadcasting Co. (1980) 250 NLRB 198 [104 LRRM 1360]. Accordingly, the parties should present evidence of such an agreement which can be used to establish the date of a contract bar, if indeed one exists.

CSEA also raised the issue of fraudulent procurement of proof of support by ICA. CSEA must provide adequate proof of its

contention before any investigation of this matter will be undertaken. Factual assertions must be supported by declarations under penalty of perjury, by witnesses with personal knowledge, and should indicate that the witness, if called, could competently testify about the writing. If the facts asserted are reliant on a writing, the writing must be attached to the declaration and authenticated therein.

The parties are hereby notified that they will be granted only this one opportunity to submit facts and supporting evidence identified by this letter or any other facts necessary to resolve the issues. Submissions should be filed with PERB's Los Angeles Regional Office no later than August 15, 1989. Further submissions or formal hearing will be required only to resolve disputed issues of fact, if any. All parties will be afforded the opportunity to submit argument prior to the issuance of a determination.

Yours truly,

Carol Karjala
Regional Director

Charles F. McClamma
Labor Relations Specialist

cc: **Ward Allen**
Tom Battoe
Laura Terman