STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA CLARA UNIFIED SCHOOL DISTRICT, Employer, and LOCAL 715, SERVICE EMPLOYEES INTERNATIONAL UNION, Petitioner, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SANTA CLARA CHAPTER 350, Exclusive Representative.	)	Case No. SF-OB-4 (D-196, R-22B) Administrative Appeal PERB Order No. Ad-244 April 27, 1993

Appearances: Littler, Mendelson, Fastiff & Tichy by Richard M. Noack, Attorney, for Santa Clara Unified School District; Van Bourg, Weinberg, Roger & Rosenfeld by Vincent A. Harrington, Jr., Attorney, for Local 715, Service Employees International Union; Madalyn J. Frazzini, Attorney, for California School Employees Association and its Santa Clara Chapter 350.

Before Blair, Chair; Hesse and Carlyle, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by Local 715, Service Employees International Union (SEIU) to a Board agent's administrative determination (attached hereto). The Board agent determined the election objections filed by SEIU did not warrant setting aside a decertification election.

The Board has reviewed the entire record, including the administrative determination, SEIU's appeal, California School

Employees Association and its Santa Clara Chapter 350's response and the Santa Clara Unified School District's response thereto. The Board finds the Board agent's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The Board AFFIRMS the administrative determination and ORDERS the objections to the election in Case No. SF-OB-4 are hereby DISMISSED.

Chair Blair and Member Hesse joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA CLARA UNIFIED SCHOOL DISTRICT, Employer, -and- LOCAL 715, SERVICE EMPLOYEES INTERNATIONAL UNION, Petitioner, -and- CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SANTA CLARA CHAPTER 350, Exclusive Representative.	)	Case No. SF-OB-4 (D-196, R-22B) ADMINISTRATIVE DETERMINATION July 7, 1992

This administrative determination finds that the election objections in the above-referenced case do not warrant setting aside the election.

PROCEDURAL HISTORY

On March 19, 1992,[1] the Public Employment Relations Board (PERB or Board) conducted a decertification election in the established operations unit in the Santa Clara Unified School District (District or employer).[2] Of the approximately 190 eligible voters, 109 voted for the incumbent, California School Employees Association and its Santa Clara Chapter 350 (CSEA or exclusive representative), 64 voted for the petitioner, Local

[1]All dates referenced herein are in 1992 unless specified otherwise.

[2]The decertification petition was filed with PERB by Local 715, Service Employees International Union on November 20, 1991.

715, Service Employees International Union (SEIU or petitioner), and 5 voted for "No Representation." On March 27, SEIU timely filed objections to the election with this office pursuant to PERB regulation 32738.[1] The allegations contained in the statement of objections are summarized as follows:

(1) Flyers distributed by CSEA prior to the election contained statements which promised benefits and/or threatened loss of benefits, depending on the outcome of the election. Additionally, the flyers contained misrepresentations of the law and PERB's processes.

(2) CSEA's field representative reported remarks made by a bargaining unit member and known SEIU supporter during an open debate between the two unions to that person's supervisor, causing strife between the two employees and creating a coercive and intimidating environment.

(3) By continuing to enforce the organizational security clause in its collective bargaining agreement with CSEA after the expiration of that agreement, the District provided unlawful assistance to CSEA in the pre-election period.

(4) The District engaged in unlawful surveillance of the petitioner's activities.

On April 10, an Order for Production of Documents and Legal Argument was issued requiring SEIU to file documents and declarations in support of its objections, as well as legal

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[1]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

argument in support of its assertion that the conduct complained of warrants setting aside the election.[4] The Order also provided an opportunity for responsive submissions from CSEA and the District. All parties responded in a timely manner, and the matter was taken under submission on May 19.[5]

RULE OF LAW

Under PERB regulation 32738(c), the Board will entertain objections to the conduct of an election only when: (1) the conduct complained of interfered with the employees' right to freely choose a representative; or (2) a serious irregularity occurred in the conduct of the election.[6] PERB regulation 32738(g) requires the Board agent to dismiss election objections which do not satisfy the requirements of subsections (a) through (d).[7] Even if not subject to dismissal under PERB regulation

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[4]Section 32738(f) provides, in pertinent part:

> At the direction of the Board, facts alleged as supportive of the election conduct objected to shall be supported by declarations.

[5]The District's response addressed only "those objections which allege that the District engaged in wrongdoing."

[6]In the instant case, only the ground set forth in subdivision one is relevant as there has been no allegation that any irregularity occurred in the conduct of the election.

[7]PERB regulation 32738 (a) through (d) provides, in pertinent part:

> (a) Within 10 days following the service of the tally of ballots, any party to the election may file with the regional office objections to the conduct of the election. . . .

32738, objections are to be dismissed if, after investigation, the objections do not warrant setting aside the election. (PERB regulation 32739(f).) Alternatively, an election may be set aside if the results of the investigation warrant such action. (PERB regulation 32739(g).)[1]

A party objecting to an election must first present a prima facie showing of objectionable conduct within the meaning of subsection (c). This includes a factual showing that employee choice was affected or that the conduct complained of had the natural or probable effect of impacting employee choice. Santa Monica Unified School District and Community College District (1978) PERB Decision No. 52; San Ramon Valley Unified School District (1979) PERB Decision No. 111; Jefferson Elementary

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(b) Service and proof of service of the objections pursuant to section 32140 are required.

(c) Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of interfered with the employees' right to freely choose a representative, or

(2) Serious irregularity in the conduct of the election.

(d) The statement of the objections must contain specific facts which, if true, would establish that the election result should be set aside, and must also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of subsection (c) above.

[1]Review of the documents submitted by the parties in this case did not reveal the existence of any substantial and/or material factual disputes. Therefore, a hearing was not required. (PERB regulation 32739(h)).

School District (1981) PERB Decision No. 164; Pasadena Unified School District (1985) PERB Decision No. 530.

After this threshold showing is met, PERB will decide whether to set aside the election depending "upon the totality of circumstances raised in each case and, when appropriate, the cumulative effect of the conduct which forms the basis for the relief requested." Clovis Unified School District (1984) PERB Decision No. 389; State of California (Department of Personnel Administration) (1986) PERB Decision No. 601-S. Thus, even when some impact on voters can be inferred, the election will not always be set aside.

It is against these standards that the petitioner's objections have been tested.

ISSUES

1. Did pre-election conduct by CSEA interfere with employees' right to freely choose a representative?

2. Did pre-election conduct by the District interfere with employees' right to freely choose a representative?

DISCUSSION

The CSEA Flyers

On or about March 16, CSEA distributed a flyer entitled "Negotiations Update", which announced certain terms of a new proposed agreement with the District reached on March 14. Among the items identified as having been achieved were binding arbitration, reclassification studies, lay-off protection, major gains on health and safety issues, three holidays for Persian

Gulf Days of Thanksgiving, a wage increase and additional release time for union activities. The flyer then stated:

> This proposed agreement is contingent upon CSEA winning the election on Thursday, March 19th. If Local 715 SEIU wins, you will not have the right to vote on this contract. SEIU will have to start from zero. Your vote for CSEA will assure your right to vote on what we think is a superior contract.

The final line urged readers to "VOTE CSEA ON MARCH 19TH".

On or about March 17, SEIU distributed a flyer in response to CSEA's flyer. It stated:

> ABOUT THE CSEA PROPOSED CONTRACT...If you like it...VOTE IT IN and it's yours to keep, despite CSEA's insistence that it is not. VOTE CSEA OUT! and we'll have the best of all possible worlds: A contract that we can live with, and most importantly a Union that will enforce it!!!

The final line urged readers to "VOTE FOR LOCAL 715 ON March 19".

A second CSEA flyer, issued on or about March 18, was entitled "IMPORTANT NOTICE," and stated:

> DON'T BE FOOLED BY SEIU LAST MINUTE TRICKS! In a desperate move, Local 715 has put out false information. They have stated that the proposed contract is yours even if you vote for Local 715, SEIU. This is absolutely untrue.
>
> CSEA's Tentative Agreement has not been ratified. The soonest you will be able to vote on the contract is March 30th. Until ratified, the contract is not guaranteed. If Local 715 SEIU is somehow elected, Local 715 must negotiate its own contract. This is the law.
>
> Also, Bear Neft is your assigned Field Representative now and after the election. Any rumors to the contrary are false.

The flyer concluded by urging readers to stop "this foul play by Local 715 and vote CSEA!"

SEIU alleges that the CSEA flyers constitute objectionable conduct on two grounds. First, the flyers constituted a threat of loss of benefits contingent upon the outcome of the election in that they created the impression that the employees would lose the benefits in the proposed agreement if CSEA lost the election. Conversely, they created the impression that only by CSEA winning the election could the employees obtain the benefits in the proposed agreement. The petitioner asserts that such conduct "reasonably tends to coerce and restrain employees in the exercise of their rights."

Secondly, SEIU states that the flyers contained intentional misrepresentations of the law designed to manipulate voters in the period immediately preceding the election.

CSEA responds that, by arguing that its flyers are objectionable in that they contained a threat of loss and/or a promise of benefits, SEIU imposes on CSEA the requirement of strict neutrality applicable only to employers. It claims that the "statements in CSEA's flyers were legitimate and unobjectionable pre-election campaigning protected by free speech guarantees."

CSEA responds to the second allegation by asserting that the flyers accurately state the law, and that, even if they contained misrepresentations, recent case law holds that an election will not be set aside based on misleading campaign statements.

In Pasadena Unified School District (1985) PERB Decision No. 530, the Board adopted the standard set forth in Midland National

Life Insurance Co. (1982) 263 NLRB 127, 110 LRRM 1489, in which the National Labor Relations Board (NLRB) stated it would:

> . . . no longer probe into the truth or falsity of the party's campaign statements, and that we will not set elections aside on the basis of misleading campaign statements. We will, however, intervene in cases where a party has used forged documents which render the voters unable to recognize propaganda for what it is. Thus, we will set an election aside not because of the substance of the representation, but because of the deceptive manner in which it was made, a manner which renders employees unable to evaluate the forgery for what it is. . . . [W]e will continue to protect against other campaign conduct, such as threats, promises, or the like, which interferes with employee free choice.

Similarly, misstatement of NLRB case law has been held not to be grounds for setting aside the election. Furrs, Inc. (1982) 265 NLRB 1300, 112 LRRM 1034.

In the instant case, under the Midland standard adopted by the Board, whether the statements in CSEA's flyers were true or false is immaterial. SEIU does not contend, nor has it presented any evidence to support a contention, that the flyers were forged or altered documents. It is also significant to note that SEIU responded with its own flyer disputing the statements contained in CSEA's initial flyer.[9]

Thus, it remains to be determined only whether the statements in CSEA's flyers constituted promises of benefits or,

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[9]Even under the NLRB's more stringent previous rule in Hollywood Ceramics Company, Inc. (1962) 140 NLRB 221, when one party has time to make an effective reply to campaign statements made by the other, the election will not be set aside even if the initial statements were false and misleading.

conversely, threats of loss of benefits depending on the outcome of the election.

While PERB has no case law directly on point, the NLRB has generally held that a union's promise of benefits which are not within its power to confer unilaterally do not warrant setting aside an election. Alyeska Pipeline Serv. Co. (1989) 261 NLRB 125, 110 LRRM 1011. In this case, the benefits promised by CSEA were contained in a recently negotiated tentative agreement not yet ratified by either party. Since CSEA had no control over whether the tentative agreement would be ratified by either the District or its own members, the statements contained in the flyers cannot be viewed as promises of benefits or threats of loss of benefits which warrant setting aside the election.

Thus, for the reasons stated above, the CSEA flyers are found not to constitute objectionable conduct.

Conversation Among CSEA Representative and District Employees

On March 10, CSEA and SEIU engaged in an open debate in the auditorium of a District high school. Among those involved were CSEA Field Representative Bear Neft and Blythe Hinkel, a bargaining unit member from the transportation department who was a known SEIU supporter. One of the issues raised by Hinkel during the debate was her contention that CSEA representatives improperly met with management representatives alone; she asserted that she was aware of such a meeting(s) between Neft and her supervisor, Linda Ferreira.

After the debate, a meeting of the District's Governing Board took place in the same location. Neft and Hinkel both attended the meeting; Ferreira was also in attendance, sitting in the row ahead of Neft. Some time during the meeting, Hinkel left her seat and moved to a seat next to Neft and engaged her in conversation.[16]

At some point during their discussion, Neft tapped Ferreira on the shoulder. She then reported Hinkel's statement regarding their alleged meeting(s) and asked Ferreira to confirm or deny the allegation. Ferreira denied meeting alone with Neft, and then questioned Hinkel regarding her accusation. This incident was distressing to Hinkel, who sent a letter on March 12 complaining of it, among other things, to CSEA. Hinkel also circulated the letter among District employees.

SEIU asserts that by the actions described above, CSEA fomented hostility between Hinkel and her supervisor and conveyed a message to SEIU supporters that "CSEA was acting jointly with the Employer, and the Employer with it, to retaliate against Local 715 supporters." Further, SEIU claims that "Hinkel's participation in this open debate was a protected activity, and CSEA's 'set-up' of her with her supervisor, where she had to

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[16]The description of events relating to this allegation have been gleaned from a declaration submitted by Neft and a March 12 letter to CSEA from Hinkel complaining about the events. The letter was submitted as an attachment to a declaration submitted by another transportation employee, Beatrice Lomeli, who was present at the board meeting but unable to overhear the conversation. No declaration was submitted by Hinkel.

explain or justify herself clearly created a coercive and intimidating environment."

CSEA responds by stating that Neft did not divulge any information which Hinkel could reasonably expect would be kept confidential. Additionally, CSEA points out that there is no evidence that the employer retaliated against Hinkel because of her "public statements."

The statements made by Hinkel during an open debate could not reasonably be expected to remain confidential. However, Neft's action in reporting them to Ferreira in Hinkel's presence clearly placed Hinkel in an uncomfortable position. Nonetheless, such an isolated incident, made widely known apparently only by Hinkel's distribution of her March 12 letter to CSEA complaining of the incident, does not constitute objectionable conduct. If anything, the incident as reported by Hinkel would be more likely to diminish the exclusive representative in the eyes of unit employees rather than encourage them to vote for CSEA. Furthermore, the remarks made by Ferreira on the spur of the moment hardly rise to the level of District-planned retaliation against SEIU. No evidence exists that any action was taken by the District against Hinkel or any other SEIU supporter as a result of this incident. Thus, this allegation is seen as having slight, if any, impact on voter exercise of free choice.

District Enforcement of Organizational Security Clause

In late January and early February, approximately 69 bargaining unit members submitted forms to the District

requesting that it "immediately stop deduction for dues or service fees currently being remitted to CSEA." In response, the District sent those employees a memo indicating that such deductions would cease with their February pay warrants. The memo also stated that the employees would then be

> . . . obligated to pay membership dues or service fees directly to CSEA.
>
> If the District is notified by CSEA that you have not made arrangements to pay either membership dues or service fees directly to CSEA, the District will be obligated to deduct from your paycheck the equivalent amount of the service fees according to Article V, Section (3) of the CSEA contract.[11]

Although negotiations had been taking place between CSEA and the District since June 1991, before the expiration of the contract, no new written agreement was in effect prior to the election. However, in the first or second negotiating session, the parties orally agreed to extend the contract until a new agreement was reached. This agreement was confirmed in a letter dated February 6 to CSEA Field Representative Bear Neft from Superintendent Bob Carter, Ed.D. and Associate Superintendent Nicholas R. Gervase.

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[11]Article V Section 3 of the 1988-1991 agreement provides, in pertinent part:

> Revocation - In the event that an employee revokes the dues or service fee authorization or fails to make arrangement with CSEA for the direct payment of dues or service fees, the District, upon notification from CSEA, shall deduct the equivalent amount of the services fees and forward them to CSEA.

It is SEIU's position that the organizational security clause expired with the contract in June, 1991, and that no lawful extension was in place. SEIU asserts that the District's intent to enforce the organizational security provision, as announced by its memo, was unlawful and constituted an unfair practice in that it restrained and coerced those employees in the exercise of their rights under the Educational Employment Relations Act (EERA or Act).[12] The petitioner also claims that, by such action, the District provided unlawful assistance to CSEA during the pre-election period and clearly expressed a District preference for CSEA.[13] SEIU argues that such conduct, which affected at least 69 unit members, is objectionable in that it interfered with the employees' right to freely choose a representative.

Both the District and CSEA contend that the 1988-91 contract was lawfully extended, that the District was therefore obligated to comply with the organizational security provision in that contract, and that the issuance of the memo to the affected employees was an appropriate step in ensuring such compliance.

Government Code section 3540.1(i)(2) provides that an organizational security arrangement in a collective bargaining agreement may require an employee to pay dues or a service fee:

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[12]The EERA is codified at Government Code section 3540 et. seq.

[13]PERB records reflect that there are currently on file no unfair practice charges filed by SEIU against the District.

> for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

As noted by the Board in Los Altos School District (1981) PERB Decision No. 190, at fn. 12:

> . . . the words "three years from the effective date of the agreement" takes into account that security agreements cannot exceed the permitted term of the collective bargaining agreement. Subsection 3540.1(h) prohibits any collective bargaining agreement from exceeding three years.

It is arguable that extending a three year agreement containing agency fee beyond the third year would violate sections 3540.1(h) and (i)(2) of EERA.[14]

However, reaching an interim agreement (of less than three years) which remains in effect until negotiations are completed may not violate either section 3540.1(h) or (i)(2), even when the terms are identical to those of the expired agreement.

The agreement reached by CSEA and the District is described in the February 6th letter from the District representatives to Bear Neft, which states, in pertinent part:

> . . . the parties agreed that all provisions of the 1988-91 collective bargaining agreement would

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[14]But see McDonnell Douglas Corp. and UAW Local 1093, NLRB Gen. Counsel Advice Memo., Case Nos. 16-CA- 13095-1,-2 and 16-CB-2914-2, 126 LRRM 1374 (1987) where the NLRB found that enforcement of an organizational security agreement after the expiration of the contract is permitted when the employer and the union had orally agreed to extend that provision of the contract; and Robbins Door and Sash Co. (1982) 109 LRRM 1182. See also Los Altos, supra, where the Board held that, under EERA, "the negotiability of organizational security agreements is subject to treatment [no] different from other negotiable items such as wages, hours or appropriate terms and conditions of employment."

> remain in full force and effect until a successor agreement was reached.

It is difficult to determine whether the parties' agreement was to extend the three year contract or reach a new interim agreement that would be in effect during negotiations. In any case, it is unnecessary to resolve this issue because, even if the District's conduct were illegal, SEIU's argument that it must, therefore, be objectionable, is not persuasive. Not every instance of illegal conduct is necessarily objectionable conduct; conversely, not all objectionable conduct is necessarily illegal. Clovis Unified School District (1984) PERB Decision No. 389.

In this instance, 69 unit employees submitted to the District requests to terminate their dues or service fees deduction on forms given them by SEIU. The District complied with their requests, and also sent them a memo which informed them of their contractual obligation to pay CSEA directly. Even assuming, arguendo, that this conduct was illegal, the degree of impact on employee free choice is questionable; reasonable minds could conclude that the employer's action, if influential at all, might have influenced voters to vote for either CSEA or SEIU. In any case, SEIU has not met its burden of showing how this conduct was likely to have an effect on the election; no facts have been submitted from which impact can be inferred, merely conclusory theories of law. Moreover, in light of PERB precedent, such

conduct has far less potential for influencing free choice than SEIU argues.[15]

District Surveillance of Union Activities

SEIU alleges that the District engaged in unlawful surveillance of two meetings held by members of SEIU's Local Committee at restaurants in the period preceding the election. In support of this allegation, it submits the declaration of Beatrice Lomeli, an employee of the District and member of the Committee. Ms. Lomeli states that Robert Buchser, Valley High School Principal, was seen dining at the same restaurants on those occasions. She also states that Mr. Buchser was never close enough to hear anything said, but that "he was in a position to observe persons who were in attendance at the meeting." She asserts that his presence on the second occasion caused some night custodians at the meeting to become uncomfortable.[16]

In his declaration, Buchser states that he and his wife dine out frequently, up to six or seven nights a week. He does not dispute that he and his wife (and daughter on one of the occasions) dined in the same restaurants as the Committee members. In fact, on the first night, he approached their table and greeted them, was introduced to the SEIU organizer and told

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[15]Compare, for example, to Pleasant Valley Elementary School District (1984) PERB Decision No. 380.

[16]No declarations were submitted by the night custodians to support this assertion.

they were having an organizational meeting. He then excused himself and rejoined his family.

On the second occasion at some point during his meal, he noticed that some of the same individuals were at the restaurant in which he and his wife were dining. He did not go to their table, although he did acknowledge the presence of one or two of the employees.

Buchser, who has never participated in classified negotiations for the District, declares that he

> had no prior knowledge that the employees I saw at these restaurants would be present or that they would be having a meeting that involved union activities. I was not asked by anyone associated with the District to spy on or to report on the activities of any group of classified employees. I did not report or even mention to anyone in the District Personnel Office that I had seen a group of employees at a restaurant. While it may have occurred to me at the time that the two happenstances were a coincidence, there was nothing particularly unique about the events that caused me to remember them in detail.

SEIU asserts that the presence of Buchser at the same restaurants on the same two nights as the SEIU organizing committee was "extraordinary" and "creates the clear presumption that he was there to observe those activities." SEIU argues that such surveillance or appearance of surveillance by an employer or its agents is an unfair practice, and is objectionable pre-election conduct.

The District contends that Principal Buchser had no interest in the outcome of the election and was coincidentally present at the two restaurants. Buchser confirms this in his declaration,

and also points out that he made his presence known on both occasions. Furthermore, SEIU's declarant, Lomeli, confirmed that Buchser was not in a position to overhear the committee's conversations.

No evidence was presented that the principal's presence had any effect beyond making some committee members uncomfortable. Indeed, it appears that their discomfiture was not sufficient to cause the committee to either cease meeting or move elsewhere away from the public facility. As the District stated in its brief, if "this were surveillance, it could not have been more ineffective." Further, no showing has been made to demonstrate how the alleged surveillance might have interfered with the employees' right to freely participate in the election. The "surveillance" was witnessed only by members of SEIU's organizing committee, whose commitment to the petitioner, one would presume, could withstand such an occurrence. Therefore, this conduct is found to have had little, if any, impact on the employees' ability to freely choose an exclusive representative.

Totality of Circumstances

As indicated above in the review of each allegation of objectionable conduct, the conduct involved had far less potential, if any, for influencing employee free choice than SEIU argues. Similarly, when viewed under a totality of circumstances test, the allegations do not rise to the level of conduct so objectionable as to warrant setting aside the election.

Each of the cases in which PERB has set aside an election has involved a more telling and comprehensive course of misconduct than is present in this case. In Clovis Unified School District, supra, the employer dealt with a dominated or assisted employee organization on matters of critical importance to unit employees, extolled the virtue of the organization to unit employees and committed other acts which clearly assisted and demonstrated employer preference for that organization.[17] In Gilroy Unified School District (1992) PERB Order No. Ad-226, the incumbent exclusive representative was found to have materially breached the consent election agreement, calling into question the fairness and validity of the election.

In this case, neither the alleged misconduct by the employer nor the exclusive representative has been found to have likely interfered with the employees' opportunity to exercise their free choice in the election.

CONCLUSION AND ORDER

For the reasons stated above, the objections to the election in this case are hereby DISMISSED.

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

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[17]See also Kern County Superintendent of Schools (1985) PERB Decision No. 533.

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 San Francisco 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: July 7, 1992

Jerilyn Gelt
Labor Relations Specialist