



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES UNIFIED SCHOOL DISTRICT,)
)
Employer,)
)
and) Case No. LA-S-115
)
) Administrative Appeal
SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL #99,) PERB Order No. Ad-232
)
Exclusive Representative,) May 5, 1992
)
and)
)
MEMBERS FOR UNION DEMOCRACY,)
)
Petitioner.)
)
_____)

Appearances: Victor Wightman, on behalf of Members for Union Democracy; O'Melveny and Myers by Pamela D. Samuels, Attorney, for Los Angeles Unified School District.

Before Hesse, Chairperson, Camilli and Carlyle, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Victor Wightman on behalf of the Members for Union Democracy (Petitioner or Members) from a Board agent's administrative determination that both the Los Angeles Unified School District (District) and the Service Employees International Union, Local #99 (SEIU), be allowed to participate in this matter.

Procedural Background

On September 9, 1991, the Members filed a severance petition with the Board, seeking to sever a unit of bus drivers from a unit for which SEIU is the current exclusive representative in

the District. On September 19, 1991, the Regional Director for the Los Angeles Regional Office of PERB sent a letter to both the District and SEIU requesting each to confirm or refute information contained in the severance petition by written statement within 20 days of service of the letter. The letter goes on to state that each may file a response under PERB Regulation section 33710¹ within 20 days of service of the request. The letter further adds that if no opposing statement is filed by SEIU, it will have waived its right to oppose the request and the other parties may proceed with the unit determination process.

The responses filed by both the District and SEIU objecting to the petition were filed within 20 days from the date of service of the September 19, 1991, letter. On November 14, 1991,

¹PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 33710 states, in pertinent part:

(a) The employer and the exclusive representative of the established unit may file a responding statement supporting or opposing the severance request. Such response shall be filed with the regional office within 20 days following the date of service of the severance request. Service and proof of service of the response pursuant to section 32140 are required.

(c) If no timely opposing statement is filed by the exclusive representative pursuant to this section, the other parties to the severance request may proceed with the unit determination process, including recognition or certification of a severance petitioner. (Emphasis added.)

PERB issued an administrative determination that proofs of support were sufficient and requested the District file a decision concerning the severance request. On December 3, 1991, the District denied recognition of Petitioner. An informal settlement conference was set.

At the settlement conference, Petitioner contended that SEIU had waived its right to participate in the proceeding because its response had neither been timely filed nor properly served. The conference was continued so that an investigation could be performed. On February 3, 1992, Petitioner filed a letter with PERB contending (1) SEIU had no right to participate because its response was neither timely filed nor properly served; (2) the District has no independent right to object to the petition; and (3) PERB should enjoin SEIU and the District from negotiating with one another.

Administrative Determination

The administrative determination found that the September 19, 1991, letter incorrectly required the responses be filed within 20 days of the date of service of the letter. In the same paragraph of the letter, parties are correctly told to file a response within 20 days from the date of service of the request. See PERB Regulation 33710, footnote 1, supra. Both parties timely filed under the incorrect time limit stated in the letter, but did not timely file under PERB Regulation. The Board agent found that the Board has held it is responsible for correcting the errors of its agents, and that principles of

equity and fairness should not be subordinated to rigid procedural requirements. (Pittsburgh Unified School District (1978) PERB Order No. Ad-49; Menlo Park City Elementary School District, et al. (1979) PERB Decision No. Ad-65.)

The Board agent held that because the District and SEIU relied on the incorrect and confusing time limits stated in PERB's letter, and in good faith filed their responses in accord therewith, causing no prejudice to the Petitioner, they should not be penalized.

The Board agent found that PERB Regulation 33710 does not expressly state that the exclusive representative will waive its right to oppose the petition if it fails to file an opposing statement. The Board agent states that the purpose of the language is to "ensure compliance with the Board's policy of resolving all representation matters as expeditiously as possible." It is further stated that "[i]t is also the Board's policy to ensure that any decision reached regarding unit appropriateness be a fully informed one." It is found that SEIU can provide critical information in this case, and to disallow it from doing so would be inconsistent with the factfinding goals of the investigation. The good faith filing is therefore accepted, and it is found that SEIU has not waived its right to participate in the matter.

The Board agent excuses SEIU's failure to provide a proof of service, finding that the letter indicates copies had been sent to the parties, and that a sworn declaration of the secretary who

effected service had been filed with PERB, stating that all parties were served on October 9, 1991. It was further noted that Petitioner had not alleged that it was not served with SEIU's response, nor had Petitioner made any showing of prejudice resulting from the absence of a formal proof of service.

The Board agent summarily dismissed Petitioner's request for an injunction barring SEIU and the District from negotiating, on the ground that the request was not properly made. In response to Petitioner's request that hearing dates be scheduled only on bus drivers' "non-working days," the Board agent states that PERB will follow its normal practice when scheduling any proceedings, i.e., during PERB work days and hours.

DISCUSSION

PERB Regulation 32360 states, in pertinent part:

(a) An appeal may be filed with the Board itself from any administrative decision, except as noted in section 32380.

(c) The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal.

The appeal filed by Victor Wightman on behalf of Petitioner fails to adequately state the issues being appealed or the grounds for the appeal. The portions of the appeal which best state the issues on appeal are as follows:

For one quarter of a year then, petitioners were thereby foreclosed from addressing their concerns to PERB (i.e. required to complete a "window period"). All this in the holy name of "procedure".

Now, nearly a year later, (with still no PERB hearing scheduled for petitioning schoolbus drivers), PERB agent Anita Martinez states that 'to stand on technicalities would not be equitable'! . . . Adding a 'time-out' upon a 'delay', then, Ms. Martinez has chosen to continue placing petitioners severance hearings on hold...

. . . Martinez adds 'petitioners have not been prejudiced' by respondents' activities.

As the appeal does not state the issues on appeal or the grounds for the appeal, the appeal itself is defective under PERB Regulation section 32360.

ORDER

The appeal of the administrative determination in Case No. LA-S-115 is hereby DENIED, and the matter is remanded to the Los Angeles Regional Director to be processed in accordance with PERB Regulations.

Chairperson Hesse and Member Carlyle joined in this Decision.