

E Center, Yuba Sutter Head Start and Service Employees International Union, AFL-CIO, CLC Local 790. Case 20-RC-17750

July 31, 2002

ORDER DENYING REVIEW

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

Pursuant to a Stipulated Election Agreement, an election by secret ballot was conducted in this matter on May 31, 2002. The tally of ballots showed approximately 104 eligible voters, and that 98 ballots were cast, of which 42 were for the Petitioner, 48 were against the Petitioner, with 8 determinative challenges. No party filed objections to the election, nor has any party otherwise claimed that the election is invalid. Thereafter, the Petitioner requested withdrawal of the petition and, by letter dated June 18, 2002, the Acting Regional Director advised the parties that the request to withdraw was approved, with prejudice. The Acting Regional Director also advised the parties that the amended report on challenged ballots and notice of hearing that issued on June 12, 2002, was withdrawn.

The Employer has requested review of the Acting Regional Director's approval of the Petitioner's request to withdraw the petition, with prejudice.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the Employer's request for review and/or motion for reconsideration and the Peti-

tioner's opposition thereto and has decided to deny the Employer's request for review and/or motion for reconsideration.

In its request for review, the Employer contends that the approval of the Petitioner's withdrawal request is inconsistent with the purpose of the Act, allows the unlawful circumvention of Section 9(c)(3) of the Act, prejudicially affects the rights of the Employer, and disregards the agreement between the parties that the Union would concede the election to the Employer. The Employer requests that its request for review and/or motion for reconsideration be granted, the approval of the Acting Regional Director be overturned, and the Regional Director be ordered to open all of the challenged ballots, resolve the challenges, or approve the existing agreement between the parties to certify the election against the Union.

The Employer's request for review and/or motion for reconsideration of the Regional Director's approval of the Petitioner's request for withdrawal of its petition, with prejudice, is denied. The Act, however, does not permit circumvention of the election bar rule contained in Section 9(c)(3). Regardless of when the Petitioner, or any other labor organization, may file a subsequent election petition, Section 9(c)(3) mandates that "no election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held."