

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



ALUM ROCK UNION ELEMENTARY SCHOOL )  
DISTRICT, )  
Employer, ) Case No. SF-D-226  
and ) Administrative Appeal  
TEAMSTERS LOCAL 228, ) PERB Order No. Ad-280  
Petitioner, ) December 6, 1996  
and )  
CALIFORNIA SCHOOL EMPLOYEES )  
ASSOCIATION, )  
Exclusive Representative. )

Appearances: Beeson, Tayer & Bodine by Robert Bonsall, Attorney, for Teamsters Local 228; Maureen C. Whelan, Attorney, for California School Employees Association.

Before Caffrey, Chairman; Garcia and Dyer, Members.

DECISION

GARCIA, Member: This case comes 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. The Board agent determined that the Teamsters Local 228's (Teamsters) petition to decertify CSEA as the exclusive representative of the Paraprofessional Unit in the Alum Rock Union Elementary School District (District) was timely filed with adequate proof of support. CSEA challenges that petition on the grounds that it was untimely filed. After a review of the entire record, including the decertification petition, the administrative determination, CSEA's appeal and the

Teamsters' response thereto, the Board finds that the petition to decertify CSEA in the Paraprofessional Unit was filed outside the window period specified in the Educational Employment Relations Act (EERA) section 3544.7(b)(1) and must be dismissed.<sup>1</sup>

#### BACKGROUND

CSEA is the exclusive representative of two units of classified employees in the District: the Office, Technical, Business Services (OTBS) Unit and the Paraprofessional Unit. Both units are covered under one collective bargaining agreement (CBA), which expired on June 30, 1996. There are approximately 155 employees in the OTBS Unit and 237 employees in the Paraprofessional Unit. On March 29, 1996, during the window period, the Teamsters filed a petition to decertify CSEA, naming

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq. Decertification petitions can only be filed under certain circumstances pursuant to EERA. Section 3544.7(b)(1), provides, in part, that:

(b) No election shall be held and the petition shall be dismissed whenever either of the following exist:

(1) 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, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

The window period referred to in this section is determined by counting back 91 calendar days (more than 90 days), starting with and including the last day before the expiration date of the contract, and going back no more than 120 calendar days prior to the expiration of the window period. (See Bassett Unified School District (1979) PERB Order No. Ad-63 (Bassett USD).)

only the OTBS Unit<sup>2</sup> but indicating that there were 350 employees in the unit. On or about April 12, 1996, a District office employee informed the Board agent of the discrepancy in the number of employees indicated on the petition. The Board agent contacted the Teamsters for an explanation, and the Teamsters' representative stated that the decertification petition was intended to cover employees in another unit as well.

On April 16, 1996, after expiration of the window period, the Teamsters filed a second petition, which they offered as an amendment to the original petition. That petition sought to decertify CSEA in both the OTBS Unit and the Paraprofessional Unit.<sup>3</sup> The Teamsters stated in their cover letter to the second petition that they had intended to include all employees in both units in their earlier petition, but had erroneously identified only the OTBS unit.

On April 25, 1996, CSEA filed a motion to dismiss the second petition as untimely, since it was filed after the expiration of the window period.

#### ADMINISTRATIVE DETERMINATION

In the administrative determination, the Board agent noted that although PERB has strictly enforced the window period

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<sup>2</sup>Accordingly, PERB ordered a decertification election for that unit (OTBS Unit, PERB Case No. SF-D-225). Ballots were mailed to OTBS unit employees on May 28, 1996 and were counted on June 14, 1996. Having received more votes, CSEA was certified as the exclusive representative of that unit on June 28, 1996.

<sup>3</sup>Since it is PERB's practice to assign a separate case number to each bargaining unit covered by a petition, the second petition was assigned a separate case number (SF-D-226).

requirement,<sup>4</sup> the Board has permitted the correction of a technical error in a decertification petition when the error was immaterial and did not result in prejudice to the other parties. As an example, the Board agent cited Santa Monica-Malibu Unified School District (1987) PERB Order No. Ad-163 (Santa Monica-Malibu USD), in which the Board held that a petitioning union's failure to timely serve copies of the petition on the exclusive representative and employer was not grounds to dismiss the petition, since the other parties were not prejudiced by the late service, they had actual knowledge of the filing, and there was no evidence that the late service was wilful. Examining the facts in the instant case, the Board agent noted that the Teamsters had submitted sufficient proof of support and the error caused no prejudice to the parties. She ruled that the error was merely technical and declined to dismiss the petition. She then ordered a decertification election to determine the representative, if any, desired by the eligible employees in the

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<sup>4</sup>The Board agent cited Bassett USD (dismissal of petition filed on Monday following weekend expiration of window period); Pittsburg Unified School District (1978) PERB Order No. Ad-49 (Pittsburg USD) (no extension of time beyond window period to perfect proof of support, and proofs containing undated signatures were invalidated); Petaluma City Elementary and High School Districts (1982) PERB Order No. Ad-131 (Petaluma CE and HSD) (PERB refused to allow evidence that two signatures with stale dates were actually signed within the time period); and State of California (Department of Personnel Administration) (1983) PERB Decision No. 327-S (Personnel Administration) (Board refused to allow perfection of proof of support after window period, despite claim that petitioner had been misled about the size of the unit).

Paraprofessional Unit for purposes of meeting and negotiating with the District.

#### CSEA'S APPEAL

CSEA appealed the administrative determination,<sup>5</sup> arguing that EERA section 3544.7(b)(1) should be strictly enforced, and that, because the "amended" petition was filed after the expiration of the window period, the entire petition must be dismissed. CSEA also argues that it would be prejudiced if the Teamsters' error were excused, because it would have to spend its limited resources running an election campaign involving a unit that was not identified in the original petition.

#### TEAMSTERS' RESPONSE TO APPEAL

The Teamsters respond that, although PERB strictly enforces the rules regarding proof of support in decertification petitions, the Board does allow correction of minor, non-material technical errors that do not result in prejudice (Santa Monica-Malibu USD). The Teamsters assert that they provided adequate proof of support, and that there was no prejudice to CSEA.

The Teamsters also argue that PERB Regulations 32770 et seq.<sup>6</sup> contain no particular requirements for describing a bargaining unit, nor do the regulations require the Board to

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<sup>5</sup>In addition to appealing the administrative determination, CSEA also sought a stay of the election in the Paraprofessional Unit. In Alum Rock Union Elementary School District (1996) PERB Order No. Ad-279, the Board granted the stay pending resolution of this appeal.

<sup>6</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

dismiss a petition merely because it describes the unit in question inaccurately.

#### DISCUSSION

The Board is protective of employees' freedom to express their desires on union representation. However, this policy is restricted by the need for stability in employer-employee relations. (See Bassett USD, pp. 3-4.) In EERA section 3544.7(b)(1), the Legislature balanced these competing interests by identifying a very specific period of time during which a decertification petition may be filed if there is a CBA in effect.

Accordingly, when PERB considers a decertification petition, it strictly enforces the window period. If the petitioning organization fails to file a decertification petition within the window period, including adequate proof of support, the petition will be denied. (See, e.g., Personnel Administration; Petaluma CE and HSD; Bassett USD; and Pittsburg USD.) The reason is that the window period provided by EERA section 3544.7(b) is "unequivocally defined," and excusing a late petition would override explicit legislative direction by extending the window period. (Bassett USD, p. 4.)

In this case, the window period ran from March 3 to March 31, 1996, since the parties' contract was due to expire on June 30, 1996. Since March 31, 1996 fell on a Sunday, however,

the last day to timely file the decertification petition during the window period was Friday, March 29, 1996.<sup>7</sup>

The Teamsters filed the petition in question on April 16, 1996. They characterize that petition as a modest technical amendment to their original (March 29) petition. Citing Santa Monica-Malibu USD, Teamsters argue that their addition of a second unit in the second petition is merely a correction of a non-material technical error in the first petition. We disagree.

Santa Monica-Malibu USD concerned the late service of a properly filed petition. Here, by contrast, Teamsters attempt to expand a decertification petition to include a second bargaining unit. Instead of correcting a technical, non-material detail, as in Santa Monica-Malibu USD, Teamsters seek to alter perhaps the most fundamental piece of information contained in a decertification petition, the identity of the unit seeking the election. Therefore, Santa Monica-Malibu USD does not apply to the facts of this case.

In view of the unequivocal language in the statute, we are not authorized to extend the window period to accept the petition

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<sup>7</sup>PERB Regulation 33020 states, in part:

Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, . . . any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.

filed by the Teamsters on April 16, 1996.<sup>8</sup> (See Bassett USD.)

As a result, we hold that since the Teamsters' petition to decertify CSEA in the Paraprofessional Unit was filed outside the window period, it must be dismissed.

ORDER

The Board hereby reverses the Board agent's administrative determination in Case No. SF-D-226 and DISMISSES the Teamsters' April 16, 1996 decertification petition.

Chairman Caffrey and Member Dyer joined in this Decision.

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<sup>8</sup>Since this case hinges on strict application of a clearly worded statute, we also note that prejudice to another party, or lack thereof, is not a factor in this context.