

**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**



PLANADA ELEMENTARY SCHOOL  
DISTRICT,

Employer,

and

GROUP OF EMPLOYEES,

Petitioner,

and

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES LOCAL  
2703,

Exclusive Representative.

Case No. SA-DP-268-E

Administrative Appeal

PERB Order No. Ad-450

July 20, 2017

Appearances: Margarita Sanchez, for Group of Employees; Kristy Waskiewicz, Business Agent, for American Federation of State, County & Municipal Employees Local 2703; Jose Gonzalez, Superintendent, for Planada Elementary School District.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

GREGERSEN, Chair: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by a group of classified employees (Group) from the Office of the General Counsel's dismissal of its decertification petition (petition), on the ground that it was untimely filed pursuant to Educational Employment Relations Act (EERA)<sup>1</sup> section 3544.7, subdivision (b)(1).

The Board has reviewed the entire record in this case, including but not limited to the Office of the General Counsel's administrative determination and the Group's appeal. Neither

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<sup>1</sup> EERA is codified at Government Code section 3540, et seq.

of the parties to the case, the American Federation of State, County & Municipal Employees Local 2703 (AFSCME) nor the Planada Elementary School District (District) filed a response to the appeal in this matter. Based upon this review, the Board reverses the Office of the General Counsel's administrative determination and remands the matter to the Office of the General Counsel for further processing.

### BACKGROUND

AFSCME is the current exclusive representative of the District's classified bargaining unit, which was recognized in 1992. The approximate size of the unit is 35 employees. A memorandum of understanding (MOU) existed between AFSCME and the District during the time in question. This written agreement expired on June 30, 2017.

The Group's petition was mailed to PERB on March 30, 2017. It arrived at PERB and was filed on April 3, 2017, 88 days prior to the expiration of the MOU. The Office of the General Counsel found that there was a lawful written agreement in effect between AFSCME and the District, and the petition was filed outside of the filing window period detailed in EERA section 3544.7, subdivision (b)(1). As a result, the Office of the General Counsel dismissed the Group's petition as untimely.

On appeal, the Group argues that the Office of the General Counsel erroneously found its petition to be untimely because it failed to take into account the extension of time provided for in PERB Regulation 32130, subdivision (b).<sup>2</sup>

### DISCUSSION

In determining whether or not the Association's petition was timely filed, we have to determine first what the window period was for filing a petition for decertification and also

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<sup>2</sup> PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

whether the extension of time provided for in PERB Regulation 32130, subdivision (b) applies to the petition at issue.

EERA section 3544.7, subdivision (b)(1) requires that a petition for decertification be dismissed if:

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.

PERB Regulation 33020 further defines “window period” as follows:

“Window period” means the 29-day period established pursuant to Government Code Sections 3544.1(c) and 3544.7(b)(1) which is less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and the exclusive representative. The written agreement expiration date means the last effective date of the agreement. Notwithstanding the provisions of Section 32130, the date on which the written agreement expires shall not be counted for the purpose of computing the window period.

Pursuant to PERB Regulation 33020, since the expiration date of the MOU was June 30, 2017, the window period for filing the petition was from March 3, 2017 through March 31, 2017. And, since the petition was filed with PERB on April 3, 2017, after the window period, it would appear to be untimely filed. However, PERB Regulation 33020 incorporates the “holiday rule” outlined in PERB Regulation 32130, subdivision (b)

*(Grossmont-Cuyamaca Community College District (2007) PERB Order No. Ad-365, p.6),*<sup>3</sup>

which states:

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<sup>3</sup> Prior to May 11, 2006, both PERB Regulation 32130, subdivision (b) and 33020 included specific exceptions to the “holiday rule” for filings required during a window period. On May 11, 2006, PERB amended both regulations by removing the exception for filings during a “window period.”

Whenever the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code Sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.

PERB was closed for business on Friday, March 31, 2017, in observance of Cesar Chavez Day, a state holiday under Government Code section 6700. April 1, 2017 was a Saturday and April 2, 2017 was a Sunday. In compliance with PERB Regulations 33020 and 32130, subdivision (b), the deadline to file the petition in the present matter was therefore extended to April 3, 2017. Since the petition was filed with PERB on April 3, 2017, it was timely filed. We therefore reverse the Office of the General Counsel's dismissal of the petition.

#### ORDER

The Board hereby reverses the Office of the General Counsel's administrative determination in Case No. SA-DP-268-E and REMANDS the matter to the Office of the General Counsel to further process the petition.

Members Banks and Winslow joined in this Decision.