

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MAGGIE L. BROWN,)
)
 Petitioner,) Case No. SF-D-114
) (R-552C)
 and)
) PERB Decision No. 476
 UNITED PUBLIC EMPLOYEES,)
 LOCAL 390/400, SERVICE EMPLOYEES) December 31, 1984
 INTERNATIONAL UNION,)
)
 Exclusive Representative,)
)
 and)
)
 SAN FRANCISCO UNIFIED SCHOOL DISTRICT,)
)
 Employer.)
)
 _____)

Appearances: Robert C. Evans, Jr., Attorney for
Maggie L. Brown; Van Bourg, Allen, Weinberg & Roger by Vincent
A. Harrington, Jr., for United Public Employees, Local 390/400,
Service Employees International Union.

Before Hesse, Chairperson; Tovar and Morgenstern, Members.

DECISION

MORGENSTERN, Member: This case is before the Public
Employment Relations Board (PERB or Board) on an appeal by
United Public Employees, Local 390/400, Service Employees
International Union (Union) of a Board agent's determination
that the decertification petition filed by Maggie L. Brown
(Petitioner) was valid.¹

¹Because it found that the issues raised in the instant
appeal would affect the validity of the ordered decertification
election, the Board ordered that that election be stayed
pending resolution of this appeal. San Francisco Unified
School District (8/16/84) PERB Order No. Ad-142.

For the reasons set forth below, we reverse the Board agent's determination and find that the petition was barred by the existence of the extended contract.

PROCEDURAL HISTORY

The San Francisco Unified School District (District) and the Union negotiated a Memorandum of Understanding (MOU) establishing the terms and conditions of employment of the blue collar and food service employees in the established unit. This MOU was effective from July 1, 1981 until June 30, 1983.

In March 1983, Petitioner filed a petition to decertify the Union as the exclusive representative. That petition was dismissed because it failed to establish the necessary showing of support as required by section 3544.5(d) of the Educational Employment Relations Act (EERA).²

²EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise indicated.

Section 3544.5(d) provides:

An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by evidence of support such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative. Such evidence of support shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to

On June 2, 1983, the District and the Union representatives agreed to extend the MOU to October 31, 1984.

On September 29, 1983, the Petitioner again submitted a decertification petition. This petition was likewise scrutinized in order to determine whether the showing of support was sufficient. The District submitted several lists of unit employees, each of which was plagued with alleged inaccuracies. Ultimately, however, after meeting with and inviting comment from the parties, the Board agent came to the conclusions that (1) temporary employees are not included in the unit and, therefore, the Petitioner's showing of support satisfies the statutory requirement, and (2) the parties' extension of the MOU from June 30, 1983 until October 31, 1983 did not constitute a contract bar to the filing of the decertification petition. Thus, in her administrative determination dated June 12, 1984, the Board agent found the petition to be timely filed and adequately supported and, accordingly, ordered that an election be held to determine which organization, if any, would serve as the exclusive representative of the unit.

DISCUSSION

Section 3544.7(b)(1) of EERA provides that a decertification petition must be dismissed where "there is currently in effect

carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence of support.

a lawful written agreement . . ." and the petition is not filed during a designated "window period."³ Thus, in this case, whether the Board was required to dismiss the Petitioners' decertification petition depends on the validity of the agreement between the Union and the District and whether that contract extension served to bar the petition. We find from the record before us that, in early June, the District and the Union did indeed agree to extend the expiration date of their prior agreement.

First, the documentary evidence of that extension, on its face, attests to the fact that the Union's representative, Steve Neuberger, discussed the contract extension with Jack Abad, chief negotiator for the District. In the letter, Neuberger specifically requests that Abad "sign off on this letter indicating your agreement with our decision . . ." to extend the terms of the agreement. In fact, the document is indeed signed by the representatives of both parties. By its terms, the parties' agreement incorporated the terms of the parties'

³Section 3544.7(b)(1) provides:

No election shall be held and the petition shall be dismissed whenever:

(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; . . .

pre-existing MOU and extended those terms and conditions of employment beyond the originally-designated termination date.

In addition, we find it persuasive that, subsequent to the first written agreement to extend the contract, the parties agreed to two additional extensions. The second extension carried over the terms of the contract until November 15, 1983. The third extended the agreement until December 1, 1983.⁴ Inasmuch as the two subsequent extensions were agreed to, it seems apparent that the parties clearly intended to extend their contract beyond its initial expiration date of June 30, 1983.

In finding the parties to have executed a valid extension to their contract, we necessarily reject the Board agent's conclusion that the agreement was not "accepted by" the District as required by EERA section 3540.1(h).⁵ First, we find no

⁴The parties reached agreement on a new contract which was ratified by the employees on November 30, 1983.

⁵Section 3540.1(h) provides:

"Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

basis to conclude that the acceptance mandated by EERA must be nothing short of formal adoption by the District board of education. Secondly, good faith bargaining requires that designated negotiators be invested with sufficient authority to fully engage in negotiations on their principals' behalf. San Ramon Valley Unified School District (11/20/79) PERB Decision No. 111; Oakland Unified School District (7/11/83) PERB Decision No. 326. Here, the District's signator to the extension agreement held himself out to be the District's legitimate spokesperson and, except for the Petitioner's assertion, there is nothing to indicate he was not.⁶

Invoking the premature extension doctrine, the Petitioner also contends that the contract does not bar the filing of its decertification petition. We find to the contrary. The premature extension doctrine renders an agreement to extend a contract invalid as a contract bar in those instances where the extension eliminates an established window period during which employees could count on a time-certain opportunity to exercise a basic but limited right. See Deluxe Metal Furniture Company

⁶Petitioner also argues the invalidity of the contract because employees were not given an opportunity to ratify the agreement. However, relevant federal precedent finds ratification by union membership is not a necessity for upholding a contract as a bar unless the contract itself requires ratification. Appalachian Shale Products Co. (1958) 121 NLRB 1160 [42 LRRM 1506]. While this Board has found that ratification may also be required where the parties' written ground rules make ratification a condition precedent to agreement (Downey Unified School District (9/10/80) PERB Order No. Ad-97), we find no basis in the instant case to require ratification of the agreement to extend the existing contract.

employees could count on a time-certain opportunity to exercise a basic but limited right. See Deluxe Metal Furniture Company (1950) 121 NLRB 995 [42 LRRM 1470]; Hayward Unified School District (6/10/80) PERB Order No. Ad-96.

In the instant case, the agreement to extend the contract did not deprive the Petitioner of an established window period in which to exercise their rights because the agreement was only extended after the contractual window period and the opportunity for decertification had passed. The period following expiration of the old contract bears no resemblance to an established window period. Petitioner could not rely on being able to file their decertification petition after the contract expired. They could hope for such an opportunity, but it would occur only if no agreement was reached to bar such a filing. Unlike the window period protected by the premature extension doctrine, the Petitioner's opportunity to file its decertification petition in this case was not guaranteed by statute.

Finally, contrary to our dissenting colleague's view, we find it to be of little significance that the Petitioner may have lacked knowledge of the contract extension or the July window period it created. Ignorance of those facts would merely have left intact the Petitioner's belief that a timely petition could have been filed after expiration of the original agreement in July. Thus, in either situation, the Petitioner could have filed a timely decertification petition during the

month of July. As the petition before us was filed in September, it is not cured by any lack of knowledge the Petitioner may have had.⁷

ORDER

Based on the foregoing, we reverse the administrative determination of the Board agent and DISMISS the decertification petition.

Member Tovar joined in this Decision. Chairperson Hesse's dissent begins on page 9.

⁷Having concluded that extension of the MOU served as a contract bar to the decertification petition, we do not resolve the factual dispute concerning the unit placement of the temporary employees.

Hesse, Chairperson, dissenting: I concur with the majority that this case is not one where the doctrine of premature extension applies. I am disturbed, however, that the majority is willing to decide this case on less than a full record.

When the petitioner filed on September 29, 1983, she was under the impression that there was no contract in force to bar the petition. Whether this impression was reasonable or not depends on a number of factors not known to us. For example, if the petitioner was misled into believing there was no contract or if, due to the failure to ratify the agreement by the membership at large, there was no possible way petitioner could have known about the contract, then her mistaken belief is a factor that I believe this Board should consider in ruling whether there was a contract bar.

The notion of a window period is to guarantee a known, specific number of days at a specific time in the contract term during which the bargaining unit members have a statutory right to challenge the incumbent exclusive representative. Here, the extension was akin to a new contract of four months duration, with a statutory window period that ran from July 1-31. When a group of employees is deprived of that period as happened here, this agency must investigate whether that deprivation is the result of petitioner's own inaction, ignorance, or other factors within petitioner's control or whether the petitioner was effectively deprived of that window period for reasons that

are beyond her control, e.g., fraud or collusion between the exclusive representative and the employer to keep secret the contract term so that dissident employees would never know when the window period fell.

In this case, petitioner argues that she was not aware of any contract for the period July 1-October 31, 1983, because the union failed to ratify the contract in the normal manner. Whether this is true needs some type of formal investigation. Further, the union and the employer should be free to show that the petitioner had actual or implied notice of the July 1-October 31 contract. I am not willing to speculate on what such a hearing may show. Rather than merely strip the petitioner of a statutory right, I would remand this to the regional director with instructions to take testimony on this matter before we rule on whether this contract acted as a bar to the petition.

Although the majority believes that knowledge of the new contract (or extension) is irrelevant to the issue of the establishment of the window period, I find no case law to support this. The statutory guarantee of a window period presumes knowledge of the term of the contract, otherwise the statute is useless. (See, e.g., Bob's Big Boy Family Restaurants (1978) 235 NLRB 1227, [98 LRRM 114]; Delto Company Ltd. (1973) 202 NLRB 921. See generally, 1 Morris, The Developing Labor Law, 2d Ed., 363-64 (1983).) As the NLRB

notes, a contract cannot act as a bar to a petition when a situation is created whereby a potential petitioner cannot make a clear determination of the proper time for filing. (Delto Company Ltd., supra, at p. 923.)¹

In other words, having statutorily guaranteed all employees the right to challenge an incumbent exclusive representative, we must also guarantee that such a right does not become gutted by clever maneuvers on the part of those who oppose petitioners. Whether that is the case here can only be determined by a full hearing with all parties represented. Thus, I would remand for further investigation.

¹Indeed, in the only situations where PERB has addressed the issue of notice, i.e., cases where a contract has been prematurely extended, notice would appear to be a critical factor in permitting the "old" window period to have vitality even when the contract has a new termination date.