

Association because that contract had been "prematurely extended." See Hayward Unified School District (6/10/80) PERB Order No. Ad-96; Deluxe Metal Furniture Co. (1958) 121 NLRB 995 [42 LRRM 1470]; Hertz Corporation (1982) 265 NLRB 138 [112 LRRM 1040].

Upon review of the entire record, the Public Employment Relations Board adopts the regional director's findings of fact and conclusions of law as the determination of the Board itself.

ORDER

The appeal by Butte County Employees Association/Service Employees International Union, Local 916, AFL-CIO in Case No. S-D-59 is DENIED and the case is remanded to the Sacramento regional director to proceed to a decertification election.

Members Tovar and Morgenstern joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, California 95814
(916) 322-3198



April 29, 1983

Mr. Robert Vassar
Assistant Superintendent/Personnel
Butte County Superintendent of Schools
1859 Bird Street
Oroville, CA 95865

Mr. Neil McAfee, Field Representative
California School Employees Association
7 Caballo Way
Chico, CA 95965

Mr. Brian Schroeder, Research Analyst
Service Employees International Union
Butte County Employees Association
1220 H Street, Suite 206
Sacramento, CA 95814

Re: S-D-59
Butte COE

Dear Interested Parties:

On March 8, 1983, a decertification petition was filed by the California School Employees Association (hereafter CSEA) for the established unit of classified employees of the Butte County Superintendent of Schools (hereafter Employer). The incumbent exclusive representative of the unit is the Butte County Employees Association/Service Employees International Union, Local 916 (hereafter SEIU). The petition filed by CSEA indicated that the term of the contract between the Employer and SEIU is from July 1, 1980 to June 30, 1983. Both the Employer and SEIU responded that a contract is in place with an expiration date of June 30, 1985.

ISSUE

Does the contract currently in effect between the Employer and SEIU bar the decertification petition filed by CSEA?

BACKGROUND & ANALYSIS

SEIU was recognized as the exclusive representative of classified employees of the Employer on June 14, 1976. Subsequently, contracts

were negotiated and executed between the Employer and SEIU. The terms of these contracts were as follows:

July 1, 1977 to June 30, 1979
July 1, 1979 to June 30, 1982
July 1, 1980 to June 30, 1983
July 1, 1982 to June 30, 1985

SEIU and the Employer contend that because the current agreement does not expire until June 30, 1985, it acts as a contract bar to the filing of any decertification petition until 1985. CSEA maintains that a lawful agreement existed for 1980-83, thereby creating a window period in 1983 for the filing of the instant petition.

Government Code section 3544.7(b)(1) provides:

(b) 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; or¹

The National Labor Relations Board (hereafter NLRB) has, in its contract bar policies, sought to balance the employee's right of the opportunity to select a collective bargaining representative with the concurrent purpose of promoting stable labor relations. See Pacific Coast Association of Pulp and Paper Manufacturers (1958) 121 NLRB 990, 994 [42 LRRM 1478].

¹PERB Regulation 33020 defines the window period in part as . . . the 29-day period established pursuant to Government Code section 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.

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The NLRB has established the principle of premature extension of contracts in its case law. A premature extension occurs when, during the term of an existing contract, the parties execute a new contract with an expiration date later than that of the first contract. The prematurely extended contract will not act as a bar to an election. See Deluxe Metal Furniture Company (1958) 121 NLRB 995, [42 LRRM 1470]. See also, the Hertz Corporation, Rent-A-Car Division (1982) 265 NLRB No. 138, [112 LRRM 1040].

In Hayward Unified School District (6/10/80) PERB Order No. Ad-96 the Public Employment Relations Board (hereafter PERB or Board) adopted this NLRB approach by affirming a regional director determination which, in applying the Deluxe reasoning, held that the parties had entered into a contract which was a premature extension of a prior contract. In Hayward the Board held that such action does not act to bar the filing of a decertification petition.

In the instant case, the first contract between the Employer and SEIU expired on June 30, 1979, creating a window period in approximately March of 1979. The second contract expired on June 30, 1982. However, the parties entered into another contract with an expiration date of June 30, 1983. This action constituted a premature extension of the existing contract, and would not have barred a decertification election if a petition had been filed during approximately March of 1982. Another effect of this premature extension was to create an additional window period for March of 1983. The parties entered into another contract with a term of July 1, 1982 to June 30, 1985. This action again constituted a premature extension of a prior contract and does not bar the filing of a decertification petition in the window period during March, 1983. On March 8, 1983 CSEA filed the instant decertification petition.

Based on the above, the petition is determined to be timely filed in accordance with Regulation 33020.

Review of the proof of support submitted by the petitioner in this case has resulted in the administrative determination that it is sufficient to meet the requirements of Regulation 32770(b)(2).

An election will be conducted by our office to determine the organization, if any, to be certified as the exclusive representative of this unit. I will be contacting you shortly to discuss the actual provisions of this election. The Regional Director will then issue a Directed Election Order.

An appeal of this decision pursuant to PERB Regulations 32350 through 32380 may be made within 10 calendar days following the date of service of this decision by filing an original and 5 copies of a statement of the facts upon which the appeal is based with the Board itself at 1031 18th Street, Suite 200, Sacramento, California 95814. Copies of any appeal must be concurrently served upon all

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parties and the Sacramento Regional Office. Proof of service pursuant to Regulation 32140 is required.

Please contact me if you have any questions concerning this matter.

Very truly yours,

Janet E. Caraway
Regional Director

Terrell J. Lindsey
Public Employment Relations Representative

cc: Rod Weyland