STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

APPLE VALLEY UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION CHAPTER #653, Exclusive Representative, and APPLE VALLEY CLASSIFIED EMPLOYEES ASSOCIATION, CTA/NEA, Employee Organization.	)	Case No. LA-D-245 Administrative Appeal PERB Order No. Ad-209 June 14, 1990

Appearance: California Teachers Association by Charles R. Gustafson, Attorney, for Apple Valley Classified Employees Association, CTA/NEA.

Before Craib, Shank and Cunningham, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Apple Valley Classified Employees Association, CTA/NEA (AVCEA) of a Board agent's administrative determination in which it was found that the decertification petition filed by AVCEA on July 7, 1989[1] was untimely. Specifically, it was found that the petition was barred by a 3-month contract extension entered into by the Apple Valley Unified School District (District) and the incumbent

[1]All dates refer to 1989, unless otherwise specified.

exclusive representative, the California School Employees Association Chapter #653 (CSEA).

FACTUAL SUMMARY

The District and CSEA were parties to a contract which expired on June 30.[2] Prior to the expiration of the contract, the parties engaged in reopener negotiations. Reopener proposals were sunshined in March and May, and negotiations were conducted on May 11, May 15, and June 21. By that time, the reopener negotiations had run into the period in which the parties expected to conduct negotiations for a successor agreement. On June 28, the negotiators initialled a contract extension provision, which read as follows:

> CSEA/APPLE VALLEY UNIFIED SCHOOL DISTRICT
> NEGOTIATIONS - JUNE 28, 1989
>
> Management and CSEA agree to extend the present terms of the existing contract for a period not to exceed September 28, 1989 while present negotiations are continuing for a new contract.

Negotiations continued on August 14 and 16, and, on August 18, the parties reached agreement on a successor contract. The new contract was ratified by CSEA on September 19, and approved by

[2]The contract contained an automatic renewal provision, which stated that the contract would continue in effect year to year unless one of the parties notified the other, in writing, no later than April 1 of the year the contract was to expire, of its desire to modify, amend, or terminate the agreement. While there is no indication in the record that either party provided such written notice, it is clear from the facts presented that the District and CSEA, by negotiating a successor agreement, treated the contract as if it had expired on June 30.

the District Board of Education on September 20. As noted above, AVCEA's decertification petition was filed on July 7.

THE ADMINISTRATIVE DETERMINATION

Before the Board agent, AVCEA asserted many different reasons why the contract extension should not bar its petition. First, AVCEA argued that the extension was not a bar because it was not ratified by CSEA, whose bylaws require ratification. The Board agent rejected this argument, noting the Board has held that, for the purposes of contract bar rules, ratification is necessary only if the parties agree, either in ground rules or in the agreement itself, that the agreement is not effective until ratified. (State of California (SETC) (1983) PERB Decision No. 348-S.) Here, there were no ground rules or contract provisions requiring ratification.[3]

In related arguments, AVCEA questioned the authority of the District's negotiator to enter into such a contract extension, and argued that the contract extension was just a tentative agreement because it was initialled rather than signed. The Board agent dismissed these arguments because, in his view, PERB had rejected similar arguments in San Francisco Unified School

[3]AVCEA also asserted that the expired contract required a successor agreement to be ratified. Though Article XVII of the contract sets out the term of the agreement, the signature page also has "term" language which states, in pertinent part: "This agreement shall remain in force and effect from July 1, 1988 through June 30, 1989, or ratification of the next successor contract." The Board agent concluded that, even if this language can be interpreted as requiring ratification of a successor agreement, the 3-month contract extension was not a true successor agreement.

District (1984) PERB Decision No. 476. In San Francisco, the Board found that a contract extension signed by the chief negotiators acted as a bar to a decertification petition, even though the extension had not been formally "accepted" by the district. The Board stated that good faith bargaining requires negotiators to be invested with sufficient authority to fully engage in negotiations on their principals' behalf and found no indication that the district's negotiator did not have such authority. (Id. at pp. 5-6.)

Next, AVCEA argued that CSEA and the District were not legally engaged in negotiations because, at the time of the extension, they had not yet sunshined proposals for a successor agreement. The Board agent found that it was unnecessary to determine if sunshining was required because a failure to sunshine does not render an agreement invalid. (Los Angeles CCD (Kimmett) (1981) PERB Decision No. 158.)

Lastly, the Board agent rejected AVCEA's assertion that an evidentiary hearing was necessary pursuant to the rule set out in Alum Rock Union Elementary School District (1986) PERB Order No. Ad-158 (Alum Rock), because he found that there were no material facts in dispute. In Alum Rock, the Board held that a short-term contract extension which is too short to create a window period will be a valid bar to a decertification petition, so long as the parties are actively engaged in good-faith negotiations, and absent other evidence of a bad-faith attempt to manipulate the window period.

The Board agent found that AVCEA failed to allege sufficient facts to reflect that the contract extension was entered into in bad faith, i.e., in an effort to circumvent the decertification petition that was filed shortly thereafter. The Board agent was not convinced that the bad faith exception described in Alum Rock applied here. AVCEA pointed to several factors that purportedly showed bad faith: (1) the lack of formality surrounding the extension, as evidenced by the lack of ratification and written signatures, the failure to sunshine, and the overall style and format of the extension; (2) CSEA leaders and District administrators, when talking with AVCEA members shortly after the petition was filed, spoke of going ahead with an election, and only later did they assert that there was a contract extension that barred the petition; and (3) a CSEA interoffice memorandum sent to all locals warned of possible raids by another organization and suggested that chapters with contracts about to expire enter into "Alum Rock" agreements.

In finding AVCEA's allegations of bad faith to be insufficient, the Board agent focussed on what he saw as the similarities between the present case and Alum Rock. Of primary importance was the Board agent's observation that, as in Alum Rock, the parties extended the existing contract because they felt they would not complete negotiations before it expired, and a retroactive successor agreement was reached within the period of the extension. Thus, he concluded that the extension in this case contributed to stability in labor relations, and thereby

served the interest the Board sought to protect in its Alum Rock decision. The Board agent found no indication of bad faith in CSEA's internal memorandum because, in his view, an "Alum Rock" agreement is, by definition, entered into in good faith. He also noted that the contract extension did not result in the manipulation of any existing window period.[4]

DISCUSSION

In its appeal, AVCEA insists that an evidentiary hearing is required because there are material facts in dispute concerning the existence of the contract, ratification requirements, and the bad faith of the District and CSEA.

In view of the Board's holdings in State of California (SETC), supra, PERB Decision No. 348-S and San Francisco Unified School District, supra, PERB Decision No. 476, the Board agent correctly rejected the arguments that ratification was required or that the District's negotiator lacked authority to enter into the contract extension. AVCEA has failed to allege sufficient facts to support these arguments. More interesting is AVCEA's assertion that the extension was not effective as a bar because it was initialled instead of "signed." This raises the question of what is meant by the Board's requirement that to constitute a

[4]The contract extension, in the literal sense, was of an indefinite duration because it was "for a period not to exceed September 28, 1989 . . . ." However, unlike the open-ended extensions the Board has previously found not to bar petitions, this one is indefinite only within fixed limits. (See State of California, Department of Personnel Administration (1989) PERB Order No. Ad-191-S.) Noting this distinction, the Board agent concluded that the indefinite duration rule did not apply. We need not address this issue here.

bar, a contract must be in writing, signed, and contain substantial terms and conditions of employment. (State of California, Department of Personnel Administration, supra, PERB Order No. Ad-191-S, at p. 7.)

While no Board decision has addressed this precise issue, the National Labor Relations Board (NLRB) has done so on at least one occasion. In Gaylord Broadcasting Co. (1980) 250 NLRB 198, 199 [104 LRRM 1360], the NLRB held that initials constitute a sufficient signature for contract bar purposes. The NLRB concluded that signing an agreement with initials was no less certain an event than signing with a full signature. Further, there was no indication that the contract was not intended to be final and binding, even though formal execution was scheduled for some time later. While the Board has not adopted all of the NLRB's contract bar rules, it has followed most of them. (See State of California, Department of Personnel Administration, supra, PERB Decision No. Ad-191-S, at p. 7, fn. 4.) Here, we find the NLRB's supporting rationale to be persuasive and hold that initials are sufficient to fulfill the requirement that a contract be "signed" in order to act as a bar.

As noted above, in Alum Rock, the Board held that contracts too short to create their own window periods can nonetheless bar a decertification petition, if the contract is not entered into in an effort to circumvent the petition. For the reasons that follow, we overrule Alum Rock and hold that the short-term

contract extension involved here did not act as a bar to the filing of AVCEA's decertification petition.

The Educational Employment Relations Act (EERA)[5] contains a statutory contract bar rule, at section 3544.7, subdivision (b)(1):

> (b) No election shall be held and the petition shall be dismissed whenever:
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> (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; . . . .

In Alum Rock, the majority held that the above provision does not mandate that to bar a petition, a contract must be of sufficient length to create a window period. The Board instead held that the provision could be read in the disjunctive sense, so only contracts of 120 days or more are subject to the provision of a window period. The Board went on to adopt the ad hoc rule noted earlier, that contracts of less than 120 days can bar a petition if the parties are actively engaged in good-faith negotiations, and absent evidence of a bad-faith attempt to manipulate the window period. (Alum Rock Union Elementary School District, supra, PERB Order No. Ad-158, at p. 8.) This approach differs from that adopted by the NLRB, whose rule has no statutory

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[5]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

underpinning. (See Crompton Company, Inc. (1982) 260 NLRB 417 [109 LRRM 1161].) The Board declined to follow the NLRB rule, asserting that its experience in the public sector led it to believe short contract extensions add significantly to labor relations stability, while detracting little from employee free choice.[6] (Alum Rock Union Elementary School District, supra, PERB Order No. Ad-158, at p. 9, fn. 6.)

The National Labor Relations Act contains no express legislative prescriptions concerning contract bar rules. Therefore, the NLRB may properly develop contract bar rules as a matter of administrative discretion. In contrast, EERA section 3544.7, subdivision (b)(1) contains an express contract bar rule. Therefore, this Board does not have the same discretion afforded the NLRB, but instead must follow the prescription of section 3544.7. After carefully examining the language of section 3544.7, we conclude it requires that, in order to act as a bar to representation petition, a contract must be of sufficient duration to create a window period.

The phrase "of the agreement," appearing in the provision's dependent clause, "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," is an explicit reference to

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[6]Given our construction of section 3544.7 (see discussion infra), it is unnecessary to attempt, as the Board did in Alum Rock, to balance the competing interests of labor relations stability and employee free choice. We find that the Legislature, by enacting the language of section 3544.7, has already struck that balance.

the "agreement" in the preceding main clause.[7] Thus, the qualifying phrase, when properly read as a limitation upon the main clause, assumes the contract that acts as a bar is of at least 120-days duration.

As we find no ambiguity that would allow a different interpretation of section 3544.7, we conclude that the Legislature has provided that a contract must be long enough to create a window period if it is to act as a bar. It is, of course, not within the Board's authority to adopt contract bar rules which are inconsistent with the express language of the statute. (Cadiz v. Agricultural Labor Relations Board (1979) 92 Cal.App.3d 365, 371-372; Service Employees International Union v. City of Santa Barbara (1981) 125 Cal.App.3d 459, 467-468.)

The "bright line" rule, which we have found to be mandated by the statute, not only embodies the Legislature's balancing of the competing interests of labor relations stability and employee free choice in the selection of an exclusive representative, but also has important practical benefits. In contrast to the ad hoc rule adopted in Alum Rock, which requires an examination of the subjective intent of the employer and the incumbent exclusive representative, a clear and simple rule that a contract extension must be of at least 120 days in length in order to act as a bar will minimize the potential for disputes.

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[7]It is a well-established rule of statutory construction that qualifying phrases must be applied to the words immediately preceding them. (Addison v. Department of Motor Vehicles (1977) 69 Cal.App.3d 486, 496; Olivia v. Swoap (1976) 59 Cal.App.3d 130, 138; People v. Baker (1968) 69 Cal.2d 44, 46.)

While "bright line" rules are always helpful in providing guidance to the parties and minimizing disputes, they are particularly useful in representation matters. Representation matters involving competing unions are usually hotly contested. Any ambiguity or uncertainty in the applicable rules will inevitably become the subject of dispute and, consequently, cause the delay inherent in the conduct of evidentiary hearings and subsequent appeals to the Board. Such delay can seriously interfere with employees' fundamental statutory right to freely choose an exclusive representative and severely disrupt labor relations in general.

CONCLUSION

Having found that contracts of a duration of less than 120 days do not act as a bar to representation petitions, the contract extension at issue herein, which, by its terms, was effective from June 28 to no later than September 28, did not bar AVCEA's decertification petition filed on July 7. Consequently, the petition was timely filed.

ORDER

The decertification petition filed on July 7, 1989 by AVCEA was timely filed. Case No. LA-D-245 is hereby REMANDED to the Los Angeles Regional Director for further proceedings consistent with this decision.

Members Shank and Cunningham joined in this Decision.