STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD UNIFIED SCHOOL DISTRICT, Employer, and INGLEWOOD FEDERATION OF TEACHERS, AFT LOCAL 2024 AFL-CIO, Employee Organization, (Petitioner) and INGLEWOOD TEACHERS ASSOCIATION, CTA/NEA, (Incumbent) Employer Organization.	Case Nos. LA-R-98 LA-D-70 PERB Decision No. 162 May 12, 1981

Appearances: Bernard Garen, Associate Superintendent for the Inglewood Unified School District; William L. Parker, Attorney for the Inglewood Federation of Teachers AFT Local 2024, AFL-CIO; Robert M. Dohrmann, Attorney for the Inglewood Teachers Association CTA/NEA.

Before: Gluck, Chairperson; Jaeger and Tovar, Members.

DECISION

This case is before the Public Employment Relations Board on exceptions to the attached hearing officer's proposed decision filed by the Inglewood Teachers Association and the Inglewood Unified School District. The hearing officer determined that the decertification petition filed by the Inglewood Federation of Teachers, AFT Local 2024, AFL-CIO was timely filed and that notice of the same was properly served pursuant to the EERA and applicable PERB rules.

The Board has considered the record as a whole and the proposed decision in light of the exceptions filed and hereby adopts the hearing officer's findings of fact and conclusions of law.

ORDER

The Los Angeles Regional Director is hereby ORDERED to proceed with the decertification election pursuant to PERB Rules.

PER CURIAM

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD UNIFIED SCHOOL DISTRICT, Employer, and INGLEWOOD FEDERATION OF TEACHERS AFT LOCAL 2024 AFL-CIO, Employee Organization, and INGLEWOOD TEACHERS ASSOCIATION/ CTA/NEA, Employee Organization.	Representation Case Nos. LA-R-98, LA-D-70 ORDER GRANTING PETITION FOR DECERTIFICATION (1/19/81)

Appearances: Bernard Garen, Assistant Superintendent for the Inglewood Unified School District; William L. Parker, Attorney for the Inglewood Federation of Teachers AFT Local 2024, AFL-CIO; Robert M. Dohrmann, Attorney for the Inglewood Teachers Association CTA/NEA.

Before: Dee Crippen, Hearing Officer.

INTRODUCTION

The Inglewood Unified School District (hereafter District) has a student enrollment of approximately 15,789 at 14

elementary schools, 1 junior high school and 5 high schools in the County of Los Angeles.[1]

On June 30, 1980 the Inglewood Federation of Teachers AFT Local 2024 AFL-CIO (hereafter Federation) pursuant to section 3544.5(d) of the Educational Employment Relations Act (hereafter EERA)[2] filed a decertification petition for the regular contract certificated unit[3] of the Inglewood Unified School District with the Public Employment Relations Board (hereafter PERB). It is the Federation's contention that the decertification petition is timely filed as the wording of the collective bargaining agreement entered into on September 5, 1978 between the District and the Inglewood Teachers Association/CTA/NEA (hereafter Association) Article

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[1]"California Public School Directory" (1980) State Department of Education, at pp. 199-200.

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

[3]The unit is presently composed of the following classifications:

All regular contract certificated personnel, specifically including the following designations and groupings of jobs and positions: All contract classroom teachers K through 12 (including long-term temporary employees), Children's Center Teachers, Coordinators (State and/or Federal Projects), Specialists (State and/or Federal Projects), School Nurses, Home Teachers, Elementary P.E. Teachers, Teachers (EH, LDG and EMR), Department Chairmen, Librarians, Reading Resource Teachers, Athletic Directors, Specialists (Language, Speech and Hearing), and Music Teachers.

20: Term[4] states, in part, that the Agreement "shall remain in full force and effect up to June 30, 1980"....[Emphasis added.]

The Federation alleges that a successor agreement had not been entered into by the Association and the District at the time of filing of the decertification petition and that the agreement entered into on September 5, 1978 had expired at midnight on June 29, 1980.

The Association and the District deny the allegations of the Federation and assert that the agreement ended on June 30, 1980, that the successor agreement was ratified by both parties on June 30, 1980, and that no gap existed in the two agreements, thereby creating a bar to the filing of the decertification petition by the Federation.

The Regional Director ordered that a hearing be held to obtain the relevant facts of this case.

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[4]Joint Exhibit #1- Collective Bargaining Agreement covering September 5, 1978 to June 30, 1980:
ARTICLE 20: TERM

> This agreement shall remain in full force and effect up to June 30, 1980 and thereafter shall continue in effect year-by-year unless one of the parties notifies the other in writing no later than March 15, of the applicable year of its request to modify, amend, or terminate the Agreement. For the 1979-80 school year, the

After an informal conference, at which no resolution was reached, a formal hearing was held on October 29, 1980 with simultaneous briefs due on November 30, 1980. A brief was received from the Federation on November 25, 1980. The District and the Association did not file briefs.

A motion to dismiss had been filed by the Association prior to the hearing on the grounds that the petition was not timely filed and that the Association and the District were not properly served with a copy of the petition. At the hearing, the Association further alleged a motion to dismiss on the basis that the petition had been filed for an "inappropriate unit". The hearing officer ruled to take all motions to dismiss under submission for the purpose of ruling on these motions in this proposed decision.

ISSUES

1. Was the unit filed for in the decertification petition an "inappropriate unit"?

2. Did the Federation properly serve the decertification petition on the District and the Association pursuant to PERB rule 33240(c)?

District and Association agree to renegotiate two Articles in the Agreement selected by the Association, and two Articles selected by the District. Such negotiations shall not commence before April 1st of the preceding school year.

3. On the date the Federation filed its decertification petition did a written agreement exist between the District and the Association which would thereby constitute a bar pursuant to section 3544.7(b)(1)?

FINDINGS OF FACT

On June 4, 1976 voluntary recognition was granted to the Association for a unit of all regular contract certificated employees by the Inglewood Unified School District. Subsequent to recognition, the parties had negotiated a one-year agreement covering the 1976-77 school year, a one-year agreement covering the 1977-78 school year and a two-year agreement commencing on September 5, 1978 to June 30, 1980.

The District and the Association had been meeting on a successor agreement since approximately August 9, 1979. On October 1, 1979 the Association sent a letter to the PERB pursuant to section 3548 stating that an impasse existed and requesting that a mediator be appointed. The District concurred with this request and on October 2, 1979 the PERB determined that impasse existed and appointed a mediator to assist in the resolution of the dispute.

On November 23, 1979 the mediator sent a letter to the PERB which stated that the position of the parties lends itself to section 3548.1 of the EERA and invoked the factfinding process. Both parties concurred in this request for

factfinding in a letter received by the PERB on December 14, 1980.

A factfinder was selected by the parties and appointed on January 17, 1980 by the PERB. The factfinding report was issued to the parties on May 6, 1980. The parties continued to meet and reached agreement on a successor agreement in early June that was to be ratified on the evening of June 30, 1980 by the Association and the District.

Prior to the ratification of the successor agreement by both parties a decertification petition was filed with the PERB by the Federation. The petition was received by the PERB on June 30, 1980 at 3:16 p.m. and stated that the current agreement became effective on September 5, 1978 and would expire on June 30, 1980. The petition was accompanied by showing of support of at least 30 percent of the employees in the established unit and a proof of service, pursuant to PERB rule 32140[5], that it was served on the Association as the exclusive representative and the District.

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[5]PERB rules are codified at California Administrative Code, title 8, section 31000. Section 32140 provides as follows:

> (a) All documents referred to in these regulations requiring "service" or required to be accompanied by "proof of service," except subpoenas, shall be considered "served" by the Board or a party when personally delivered or deposited in the first-class mail properly addressed. All

On July 1, 1980 a letter acknowledging receipt by the PERB of the decertification petition filed by the Federation was sent to the Association and the District. Both parties were requested to confirm or refute facts contained in the petition, including the term of the agreement, within five (5) days in a written statement to all parties with a proof of service to the PERB. The employer was further advised to post the petition and submit a list of names of the employees in the established

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documents required to be served shall include a "proof of service" affidavit or declaration signed under penalty of perjury which meets the requirements of section 1013(a) of the Code of Civil Procedure or which contains the following information:

> I declare that I am employed in the county of _____, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is _____.
> On_____I (personally) served the _____on the (by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail at_____addressed) as follows:
> Names of parties served)
>
> I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on_____ at _____,California.
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> _____ _____
> (Type or print name) (Signature)

(b) That portion of section 1013 of the Code of Civil Procedure relating to extending time after mailing shall not apply.

(c) Whenever "service" is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question.

unit to the PERB so that the adequacy of the showing of support submitted by the Federation could be checked.

A Motion to Dismiss filed by the Association was received by the PERB on July 7, 1980. The grounds stated for dismissal alleged that the petition was not timely filed. On July 17, 1980 the Association submitted an Amendment to Motion to Dismiss, advancing the additional point that the Association and the District were not properly served a copy of the decertification petition filed by the Federation.

The District submitted a letter to the PERB on July 8, 1980 refuting all facts and stating that concurrent service of the Federation's petition had not occurred.

Response to the Motion to Dismiss was received from the Federation on July 11, 1980 by the PERB. The Federation urged the PERB to reject the motion based on the interpretation of Article 20 of the negotiated agreement, stating that the agreement expired prior to June 30, 1980.

CONCLUSIONS OF LAW

Issue No. 1

Was the unit filed for in the decertification petition an "inappropriate unit"?[6]

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[6]The unit petitioned for by the Federation reads as follows:
Contract teachers K through 12, including temporary employees, children center teachers, coordinators, (State

In the course of the hearing the Association asked that the decertification petition be dismissed on the basis that the unit filed for by the Federation contained "temporary employees" who are not a part of the existing unit. Review of the Recognition agreement granting voluntary recognition submitted to the PERB by the Association and the District, dated June 4, 1976 and signed by both parties, shows that the unit encompasses "all regular contract certificated personnel (including long-term temporary employees)".

Review of the Recognition clause of the agreement, Article 1, does not delineate the unit, but directs the reader back to the Recognition agreement dated June 4, 1976.[7]

The Association's argument that the decertification petition was filed for an inappropriate unit is without merit. The unit description agreed to at the time of recognition shows

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and/or Federal Projects,) Specialist (State and/or Federal Projects), school nurses, home teachers, elementary P.E. teachers, teachers, (EH, LDG, and EMR), department chairmen, librarians, reading resource teachers, athletic directors, specialists (language, speech and hearing) and music teachers for the purpose of meeting and negotiating as defined in the California Government Code.

[7]Joint Exhibit #1 ARTICLE 1: RECOGNITION

> 1.0 The District recognizes the Association for the duration of this Agreement as the exclusive representative for that unit of employees recognized by the District per the Recognition Agreement dated June 4, 1976, and ratified by the Board of Education on June 14, 1976.

"long-term temporary employees," and no change has been noted in the agreement submitted.

No further definition is given throughout the negotiated agreements defining a "long-term temporary employee". The Association erred in its argument that temporary employees were not included in the existing recognized unit description. It is determined that the omission of the words "long-term" from an otherwise accurate unit description was due to inadvertence on the part of the Federation, and is not a sufficient basis to dismiss the petition. The motion to dismiss the petition on the basis of filing for "inappropriate unit" is denied.

Issue No. 2

Did the Federation properly serve the decertification petition on the District and the Association?

The decertification petition filed with the PERB by the Federation on June 30, 1980 at 3:16 p.m. was accompanied by a proof of service pursuant to PERB rule 32140.

Despite the Federation's compliance with PERB rule 32140, the Association and the District argue that the decertification petition should be dismissed by reliance on the NLRB's precedent in handling representation cases where a contract will bar an election if it is effective immediately or retroactively and the employer has not been informed at the

time of execution that a petition has been filed.[8] The rules promulgated by the PERB to govern the case handling of representation petitions places responsibility for service on the petitioner, not on an agent of the Board. The Federation has complied with the PERB rule on service. Thus, the motion to dismiss based on an alleged failure to serve the District and the Association is denied.

Issue No. 3

At the time the Federation filed its decertification petition did a written agreement exist between the District and the Association which would thereby constitute a bar pursuant to section 3544.7(b)(1)?

Government Code section 3544.7(b)(1) defines the bar to the processing of a decertification petition filed during the term of a collective bargaining agreement as follows:

> (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, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement...[Emphasis added].

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[8] Deluxe Metal Furniture Co. (1958) 121 NLRB 995 [42 LRRM 1470].

The PERB has previously interpreted the legislative intent of "contract bar" language of section 3544.7(b)(1) by looking to the National Labor Relations Act (hereafter NLRA) precedent for guidance.[9]

The PERB has determined that section 3544.7(b)(1) balances the interests of employees who might be reconsidering their choice of exclusive representative with the need for stability in employer-employee relations.[10]

In this decision, analogous authority of cases decided by the NLRB will be considered in determining if a contract bar does exist which would bar the processing of the decertification petition filed by the Federation.

In Appalachian Shale Products Co. (1958) 121 NLRB 1160 [42 LRRM 1506], the NLRB defined what a collective bargaining agreement must contain in order to bar a decertification

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[9]The PERB in Los Angeles Unified School District (11/24/76) EERB Decision No. 5 stated:

> While we are not bound by NLRB decisions, we will take cognizance of them, where appropriate. Where provisions of California and federal labor legislation are parallel, the California courts have sanctioned the use of federal statutes and decisions arising thereunder, to aid in interpreting the identical or analogous California legislation. See also Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, pp. 615-616.

[10]Bassett Unified School District (3/23/79) PERB Order No. AD-63

petition. The agreement must be written, signed by the authorized representatives of both parties, have a definite duration, contain substantial terms and conditions of employment and cover all employees in the appropriate unit.

All aspects of the negotiated agreement submitted meet the requirements set forth in Appalachian Shale.

Four agreements were entered into evidence at the hearing. The District and the Association had negotiated agreements covering the school years 1976-77, a one-year agreement, 1977-78, also a one-year agreement, 1978-1980, a two-year agreement and had completed negotiations for a new agreement covering the period of July 1, 1980 through June 30, 1983.

In order to determine if a contract bar existed to the filing of the decertification petition by the Federation, the termination clauses of the agreement must be examined.

The Federation argues that by express language, the agreement for the term September 5, 1978 to June 30, 1980 terminated on June 29, 1980 at midnight. The expiration date shows that the agreement goes to June 30, 1980 and, therefore, its decertification petition must be considered timely filed.

The negotiated agreements covering school years 1976-77, 1977-78 and 1978-1980 all contain identical termination clauses, except for a reopener provision provided for in the multi-year contract covering 1978-1980.

In the agreement covering the period beginning July 1, 1980, Article XXIV Term, reads as follows:

> The agreement shall become effective July 1, 1980 and remain in full force and effect, unless modified in accordance with other provisions contained herein through June 30, 1983. [Emphasis Added.]

It is significant to note the change in language of the termination clause from the three prior contracts. All prior contracts used the word "to" a specific date.

The NLRB has held that in the absence of specific expression to the contrary, a contract in effect until a day certain is to be construed as not including the date named after the word "until". Hemisphere Steel Products, Inc. (1961) 131 NLRB 56 [47 LRRM 1595]. Further, it has been held that the contract's effective date does not include the date named after the word "to", which the NLRB regards as synonymous with the word "until".[11]

The Association argued that in order to resolve the ambiguity of the use of the word "to" in the termination clause of the negotiated agreement, reference must be made to other parts of the agreement, by reference to prior agreements and by

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[11]See Williams Laundry Co. (1952) 97 NLRB No. 144 [29 LRRM 1207]; Bouvier's Law Dictionary (3rd ed.) p. 3377; Brown Co. (1969) 178 NLRB 57 [71 LRRM 1643].

reference to specific parts of prior agreements dealing with the term of an obligation imposed by the agreements.[12]

Specific reference was made to the health and welfare contributions made by the District. The District contends that contributions are made by the District on the basis of the school year and that employees are covered for benefits throughout the summer when they have been working on the last day of school and have a reasonable expectation of continued employment in September. Contributions are also continued for the Child Development Teachers who are the only employees on the job on June 30, and who are covered by the negotiated agreement. It is the District's and the Association's contention that no gap was intended in the agreements and that all benefits accrued through June 30.

After careful review of the negotiated agreement covering the period of September 5, 1978 to June 30, 1980 and the two prior agreements covering the 1976-1977 and 1977-78 school years, it is concluded that no specific expression to the contrary can be found to show that the District and the Association intended the agreement to expire other than June 29, 1980 at midnight.

The Association further alleged that the Federation could have filed their decertification petition during the "window

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[12]Cooper Tire and Rubber Co. (1970) 181 NLRB 509 [73 LRRM 1402].

period" provided pursuant to section 3544.7(b)(1), but chose not to do so, thereby disrupting the stability of their labor relations by waiting to file on June 30.

That the Federation chose to file its decertification petition on June 30, 1980 at 3:16 p.m., instead of the "window period" provided for in section 3544.7(b)(1) does not have bearing on this decision. Their contention is that the negotiated agreement ended on June 29, 1980 at midnight, not on June 30, thereby creating a one-day gap in the agreements and providing for the opportunity to file their petition.

The agreement presented to both parties for ratification on the evening of June 30, 1980 covering the period of July 1, 1980 through June 30, 1983 would not be binding upon both parties unless ratification and acceptance had taken place prior to the filing of the decertification petition pursuant to section 3540.1(h).[13]

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[13]Section 3540.1(h) defines "meeting and negotiating" as follows:

> "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

Although the filing by the Federation took place on June 30, 1980, which was also the date of the ratification by both parties of the successor agreement, the NLRB has held a contract will bar an election if it is effective immediately or retroactively and the employer has not been informed at the time of execution that a petition has been filed. Deluxe Metal Furniture Co.[14] In this instance, the contract would have taken effect on July 1, 1980, subsequent to the filing of the petition.

Therefore, there was no written agreement existing between the District and the Association which would thereby constitute a bar.

PROPOSED ORDER

It is hereby ordered that the decertification petition filed by Inglewood Federation of Teachers AFT Local 2024 AFL-CIO was timely filed and not barred pursuant to provisions of section 3544.7(b)(1). Therefore, an election will be conducted.

Pursuant to California Administrative Code, title 8, part III, section 32305, This administrative Order shall become final on February 9, 1981, unless a party files a timely

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2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years. [Emphasis added.]

[14]Deluxe Metal Furniture Co., supra, 121 NLRB at 999.

statement of exceptions and supporting brief within ten (10) calendar days following the date of service of this Administrative Order. Any statement of exceptions and supporting brief must be actually received by the executive assistant to the Board at the headquarters office in Sacramento on February 9, 1981 in order to be timely filed. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself.

Dated: January 19, 1981

/By Dee Crippen
Hearing Officer