STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER 515, Petitioner, APPELLANT, and MENLO PARK CITY ELEMENTARY SCHOOL DISTRICT, Employer.	Case No. SF-D-45 (R-417) PERB Decision No. Ad-65 Administrative Appeal
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER 4, Petitioner, APPELLANT, and SAN JOSE UNIFIED SCHOOL DISTRICT, Employer.	Case No. SF-D-46 (R-68B) August 8, 1979
SELMA UNIFIED FEDERATION OF TEACHERS, AFT LOCAL 2197, AFL-CIO, Petitioner, APPELLANT, and SELMA UNIFIED SCHOOL DISTRICT, Employer.	Case No. S-D-24 (R-64)

Appearances: Ruth Rokeach, Attorney for California School Employees Association, Chapters 515 and 4; Lawrence Rosenzweig, Attorney (Levy and Goldman) for Selma Unified Federation of Teachers, AFT Local 2197; Denny Adams, President for Selma Unified Teachers Association.

Before Gluck, Chairperson; Gonzales and Moore, Members.

On May 25, 1979, the Public Employment Relations Board (hereafter PERB or Board) ordered that the regional directors'

dismissals of the decertification petitions filed by the above-captioned appellants be reversed. The Board further ordered that the regional directors process said petitions and, if appropriate, conduct an election in the units in which the petitions were filed.

Following is the decision of the Board on which the aforementioned order is based.

FACTS

Menlo Park City Elementary School District

The American Federation of State, County and Municipal Employees, Local 377 (hereafter AFSCME) was certified as the exclusive representative of all classified employees of the Menlo Park City Elementary School District (hereafter the District), excluding management, confidential, and supervisory employees, on January 25, 1977. An agreement covering employees in the recognized unit was negotiated by AFSCME and the District and was effective through June 30, 1979.

On Monday, April 2, 1979, CSEA filed a decertification petition. However, by letter dated April 5, 1979, the San Francisco Regional Director dismissed CSEA's petition as untimely. In the letter of dismissal, the regional director stated that Saturday, March 31, 1979, was the last day that a timely petition could be filed since that day was 91 days (thus "more than 90 days") prior to expiration of the existing

contract as required by Government Code section 3544.7(b)[1] and PERB's rule 33270(c).[2] The regional director further noted that, based on Steele v. Bartlett (1941) 18 C.2d 573,

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[1]The Educational Employment Relations Act (hereafter EERA or the Act) is codified at Government Code section 3540 et seq.

Government Code section 3544.7(b) provides:

> (b) No election shall be held and the petition shall 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; or
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> (2) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition.

All section references herein are to the Government Code unless otherwise noted.

[2]PERB's rule 33270(c) provides:

> (c) A petition shall be dismissed in part or in whole whenever the Board determines that:
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> (1) The Petitioner has no standing to petition for the action requested; or
> (2) Either of the conditions of section 3544.7(b) of the Act exist; or
> (3) A valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

Government Code section 6707[3] and Code of Civil Procedure section 12(a)[4] did not apply to extend the weekend filing date to the following Monday.

On April 13, 1979, CSEA filed an appeal with this Board. Appellant's contend that PERB is estopped from dismissing their decertification petition as untimely filed based on PERB's past practice of accepting Monday filings when agency deadlines fell on weekend days.[5]. In this regard, CSEA also urged the Board itself to adopt application of the Government and Civil Procedure Code sections noted above. No response to CSEA's appeal was received by the Board.

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[3]Goverment Code section 6707 provides:

> When the last day of filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

[4]Code of Civil Procedure section 12(a) provides in pertinent part:

> If the last day for the performance of any act provided or required by law to be performed within a specified period of time shall be a holiday, then such period is hereby extended to and including the next day which is not a holiday.

[5]In their appeals to this Board, both CSEA Chapter 515 and 4 additionally alleged that they filed their decertification petitions in reliance on PERB agents' representations as to the appropriate filing date. To the extent that the three administrative appeals combined herein commonly allege that their reliance on PERB's past practice was the cause for their "untimely" filings, the Board finds that it is unnecessary to reach the specific issue concerning the PERB agent's involvement and thus makes no ruling thereon.

San Jose Unified School District

In the second case, AFSCME, Local 101, was certified as the exclusive representative of an operations and support services unit of classified employees in the San Jose Unified School District (hereafter the District) excluding management, confidential and supervisory employees on March 10, 1977. The District's contract with AFSCME expired on June 30, 1979.

CSEA and its Chapter 4 filed a decertification petition on April 2, 1979. On April 5, 1979, the San Francisco Regional Director dismissed CSEA's petition as untimely. CSEA appealed this dismissal on April 13, 1979, urging the same argument outlined above. As with the appeal filed by CSEA and its Chapter 515, no response to this appeal was submitted.

Selma Unified School District

The Selma Unified Teachers Association (hereafter SUTA) was recognized as the exclusive representitve of all certificated employees in the Selma Unified School District (hereafter the District) excluding management, confidential, supervisory, and substitute employees, in October 1976. The negotiated contract between SUTA and the District was to remain in full force and effect up to and including June 30, 1979.

On April 2, 1979, Selma Unified Federation of Teachers, AFT Local 2197, AFL/CIO (hereafter SUFT) filed a petition for decertification. On April 6, 1979, this petition was dismissed as untimely by the Sacramento Regional Director. This dismissal likewise states that the appellant had improperly

relied on the Government and Civil Procedure Code sections set forth above for extending the window period.

On April 16, 1979, SUFT appealed the regional director's dismissal of their decertification petition urging that Steele v. Bartlett, supra, is inapplicable. The incumbent SUTA submitted a response to SUFT's appeal on April 30, 1979, urging only that the instant dispute be handled expeditiously by this Board.

For purposes of the instant decision, the Board has consolidated these three administrative appeals.

DISCUSSION

Section 3544.5 of the EERA authorizes the Board to consider decertification petitions under certain conditions. Where there is a contract between the public school employer and an incumbent employee organization, the decertification petition may not be entertained "unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement." (Sec. 3544.7(b)(1).) In other words, there is a 29 day period from the 119th day through the 91st day (both days inclusive) prior to the expiration of the negotiated agreement during which employees may petition to oust the incumbent employee organization. This provision of the Act codifies a "window period" parallel to that developed by case law under the National Labor Relations Act (hereafter the NLRA). (See Deluxe Metal Furniture Company (1958) 121 NLRB 995 [42 LRRM 1470]; Leonard Wholesale Meats, Inc. (1962) 136 NLRB 1000 [49 LRRM 1901].)

In applying these time periods, the National Labor Relations Board (hereafter the NLRB) has favored a policy of strict construction. (Brown Co. (KVP Division) (1969) 178 NLRB 57 [71 LRRM 1642].) In doing so, the NLRB has sought to preserve as much time as possible during the life of the contract free from the disruption caused by organizational activities thus enabling the incumbent to negotiate without threat that a rival organization will convince employees to turn elsewhere if discussions at the bargaining table are disappointing. (Deluxe Metal Furniture Company, supra.)

In Bassett Unified School District (3/23/79) PERB Order No. Ad-63, this Board indicated that it would follow NLRB precedent and would likewise strictly adhere to the time limitations prescribed by the statute.

> The window period provided by section 3544.7(b) is unequivocally defined. For the Board to extend that period by allowing the filing of decertification petitions outside its time limits would be to override explicit legislative direction and erode the right to the incumbent organization to pursue its obligations as the exclusive representative. This the Board cannot and will not do. (Bassett at p. 4.)

In each of the administrative appeals at issue, contracts between the public school employers and the incumbent labor organizations expired on June 30, 1979.[6] Appellant employee organizations filed decertification petitions with the appropriate PERB Regional Office on April 2, 1979, (less than

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[6]SUFT's assertion that July 1, 1979 is the expiration date of the contract does not alter the fact that the last day for filing the petition fell on a weekend.

90 days prior to expiration.) Appellants argue, however, that since the last day for filing their decertification petitions fell on a weekend day, PERB should adhere to Government Code section 6707 and Code of Civil Procedure section 12(a) and accept the petitions filed on Monday, April 2, as timely.

The Board finds that the regional directors correctly refused to apply the above referenced code provisions to the statutory window period set forth in the Act. Contrary to the urging of Appellants, case law interpreting and applying these code sections has refused to extend statutory time limits where specified acts must be performed "not less" or "not later" than a given number of days before a designated time. (Steele v. Bartlett, supra, at p. 574.)

The language of section 3544.7(b) of the Act expresses a similar intent. (See Bassett, supra.) For the Board to apply these code sections would, as stated in Steele, supra at p. 574, "nullify the legislative intent that the act must be performed more than a designated number of days before the event specified."

For this reason, the Board refuses to adopt appellants' argument that application of the Government and Civil Procedure Code sections cited above is appropriate under the Act.

Appellants further allege, however, that the instant decertification petitions were filed on April 2, 1979, based on the Board's past practice of applying the Government and Civil Procedure code provisions set forth above. Thus, the question is whether PERB is equitably estopped from asserting

that the decertification petitions filed by the appellants were untimely filed.

In the past, courts have been hesitant to accept and apply the principle of equitable estoppel when asserted against a governmental agency. (See generally Davis, Administrative Law, section 17.01, et seq., p. 343.) The clear trend, however, is to reject this rigid rule. Recent decisions reveal a willingness to rely on this doctrine "when the accommodation of the needs of justice to the needs of effective government so requires." (Davis, supra, at p. 357.) In California, it is well established that a equitable estoppel defense against a governmental agency is accepted where the impact of the doctrine does not nullify a strong public policy. (Strong v. County of Santa Cruz (1975) 15 C.3d 720 [125 Cal.Rptr. 896, 543 P.2d 264]; Baillargeon v. Department of Water & Power (1977) 69 C.A.3d 670; 138 Cal.Rptr. 338; Longshore v. County of Ventura (1979) 88 C.A.3d 126;____ Cal.Rptr.____.)

In City of Long Beach v. Mansell (1970) 3 C.3d 462 [91 Cal.Rptr. 23, 476 P.2d 423] the Court instructed:

> The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel. (p. 496-7).

Satisfaction of the requisite elements of the doctrine of equitable estoppel involves a showing that the party to be

estopped was apprised of the facts and intended that its conduct be acted upon (or that the party asseting the doctrine could reasonably infer that the conduct was so intended). The party asserting estoppel must support a showing that it was ignorant of the true facts and relied upon the conduct which resulted in injury. (Driscoll v. City of Los Angeles (1967) 67 C.2d 297 [61 Cal.Rptr. 661, 431 P.2d 245].)

In the instant cases, the Board finds that each element of the equitable estoppel doctrine is satisfied by the facts presented. PERB was aware of situations where decertificatin filing periods or other time limitation deadlines fell on weekend days. In responding to these situations, the Board takes official notice of PERB's past practice of applying the Government and Civil Procedure Code provisions and accepting Monday filings of petitions otherwise due on weekend days.[7] Having provided no actual notice to the parties practicing before this Board that a change in policy had been adopted, the Board finds that in each administrative appeal at issue herein, the appellant's reliance was reasonable and, absent application of the doctrine of estoppel, substantial injury would result. The Board therefore concludes that the elements of estoppel have, as a matter of fact, been satisfied. (Driscoll, supra.)

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[7]In Bassett, supra, issued prior to the filings at issue herein, the Board first found that decertification time limits would be strictly applied and not be extended. However, to the extent that the Board found that the properly calculated final filing date fell on a Friday, rather than on a weekend, it was unnecessary for the Board to specifically reach the issue concerning application of the Government and Civil Procedure Code sections and thus did not specifically disrupt the parties' justifiable reliance on past practice.

In responding to appellants' request that the doctrine of equitable estoppel be accepted and applied to the instant cases, the Board has reviewed NLRB precedent where, based on a party's good faith reliance on a board agent's representation, the NLRB accepted the doctrine of equitable estoppel and granted the relief requested by employers and employee organizations alike. (Smeco Industries, Inc. (1965) 151 NLRB 1240 [58 LRRM 1592]; NLRB v. I. Posner (2nd Cir, 1962) 304 F.2d 773 [50 LRRM 2680]; Carolina Power & Light Company (1958) 119 NLRB 1422 [41 LRRM 1317]; original decision reported at 119 NLRB 742 [41 LRRM 1190]; Natvar Corp. (1954) 109 NLRB 1278 [34 LLRM 1539]; Armour Fertilizer Works, Inc. (1943) 46 NLRB 629 [11 LRRM 237].)

In reaching its decision herein, the Board acknowledges that precedent under the NLRA involves time limits promulgated in NLRB regulations. Thus, notwithstanding the satisfaction of the elements of estoppel in this case, the Board must consider the nature of the decertification provision and, noting the statutory nature of the time limitation under EERA, must consider whether the Board "lacks the power to effect that which an estoppel against it would accomplish." (Crumpler v. Board of Administration (1973) 32 C.A.3d 567; 108 Cal.Rptr. 293.)

After careful consideration, the Board must reject the argument that statutory time limits are per se jurisdictional and thus preclude reliance on equitable principles to deviate from those time limits. The Board is satisfied that the

courts' prior adherence to a distinction between procedural limits, to which equitable estoppel could be applied, and jurisdictional prerequisites, to which equitable estoppel was said to be beyond the power of an agency, is no longer a tenable position. (City of Long Beach v. Mansell, supra.) In this regard, the Board finds support in the recent decision of the third circuit in Hart v. J.T. Baker Chemical Company (Opinion filed May 14, 1979) _____ F.2d _____, which considered statutorily imposed time limits for filing discrimination charges under Title VII of the Civil Rights Act of 1964.[8] The court held that "the time limitations should not be treated as inflexible jurisdictional prerequisites, but should be subject to equitable modifications."

In agreement with the Hart decision, this Board is unwilling to view its power as so circumscribed that it is unable to effectively respond to principles of equity, fairness and justice as urged herein by appellants.

In the cases at issue, the Board is mindful of those ends served by definite time limitations for submission of decertification petitions as expressed supra in Deluxe Metal Furniture and adopted by this Board in Bassett. However, the Board believes that its broad grant of power to effectively administer the EERA is furthered when all employees are provided an opportunity to voice their dissatisfaction with an incumbent employee organization. Effective and meaningful labor relations are fostered when the majority of employees in

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[8] 42 U.S.C. Section 2000c-5(e).

the bargaining unit have vocalized their support for their organizational spokesperson. Any mechanism, such as the decertification election procedure, which insures this result should be provided for whenever possible.

The public purpose of insuring harmonious labor relations is likewise fostered by the Board's acceptance of the appellants' equitable plea. In the instant cases, the Board will not allow principles of equity and fairness to be subordinated to rigid procedural requirements. Absent any substantial injustice occasioned on the public and in order to further the goals of the EERA, petitioners who were misled by the Board's past practice should not be forced to suffer the penalty which would result from dismissal of their decertification petitions.

By: Barbara D. Moore, Member

Harry Gluck, Chairperson

Raymond J. Gonzales, Member, concurring:

On May 25, 1979, I joined with the other Board Members in reversing the regional directors and directing them to accept the decertification petitions filed in these three cases. PERB Decision No. Ad-65 (5/15/79). I did so principally on the basis that Government Code 6707 and Code of Civil Procedure (CCP) 12(a) apply to the filing of decertification petitions filed pursuant to EERA Section 3544.7(b)(1) and PERB regulation 33270(c). I

believe these statutes operated to extend the filing deadlines to Monday, April 2, and the petitions should therefore be considered as timely filed.

I do not believe that the California Supreme Court's holding in Steele v. Bartlett (1941) 18 C.2d 57, controls in this case. First, that case concerned the California election laws which serve a different purpose than the emphasis on harmonious labor relations and stability which informed labor relations statutes such as the EERA. Moreover, the language of the statute interpreted by the Court in Steele v. Bartlett was significantly different from the EERA language in issue. That statute utilized negative language ("not later than 12 o'clock noon on the 31st day before the election," Election Code Section 9760), which emphasized the rigid nature of the filing deadline. By contrast, the EERA language in question -- "but more than 90 days" -- does not contain negative language suggesting the time period may not be extended. I believe that in enacting the EERA, the Legislature would have phrased EERA Section 3544.7(b)(1) in negative terms -- or otherwise indicated CCP 12(a) and Government Code 6707 did not apply -- had they intended to distinguish the fixed nature of the decertification filing period from other filing periods provided for in the EERA.

I believe this is especially true insofar as the Legislature had enacted Government Code 6707 (in 1957, 16 years after the Steele v. Bartlett decision) to apply specifically to filings with state agencies, of which PERB is one.

I share with my colleagues the opinion that because PERB has had a practice of accepting petitions filed on a Monday which would otherwise have been due on a weekend, it must continue to accept petitions so filed unless and until it notifies parties that there is a new filing policy.

Raymond J. Gonzales, Member

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CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, AND ITS CHAPTER 4, Petitioner, APPELLANT, and SAN JOSE UNIFIED SCHOOL DISTRICT, Employer.	Case No. SF-D-46 (R-68B) Administrative Appeal May 25, 1979
SELMA UNIFIED FEDERATION OF TEACHERS, AFT LOCAL 2197, AFL-CIO, Petitioner, APPELLANT, and SELMA UNIFIED SCHOOL DISTRICT, Employer.	Case No. S-D-24 (R-64)

ORDER

The Public Employment Relations Board ORDERS that:

(1) The regional directors' dismissals of the decertification

petitions filed by the California School Employees Association, and its Chapter 515 and Chapter 4, and by Selma Unified Federation of Teachers, AFT Local 2197, AFL-CIO in the above-captioned cases are reversed.

(2) The regional director shall process the decertification petitions and, if appropriate, conduct an election in the units in which petitions were filed as soon as possible.

The parties herein are advised that an opinion of the Board consistent with this Order will follow.

Public Employment Relations Board
Stephen Barber, Executive Assistant