STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MOUNT DIABLO UNIFIED SCHOOL DISTRICT, Employer, and TEAMSTERS LOCAL 856, Petitioner, and PUBLIC EMPLOYEES UNION LOCAL 1, Exclusive Representative.	Case No. SF-DP-307-E Administrative Appeal PERB Order No. Ad-405 January 14, 2014

Appearances: Beeson, Tayer & Bodine by Sarah Sanford-Smith, Attorney, for Teamsters Local 856; Leonard Carder by Margot Rosenberg, Attorney, for Public Employees Union Local 1.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by Teamsters Local 856 (Teamsters) pursuant to the Educational Employment Relations Act (EERA).[1] In an administrative determination (attached) issued on October 16, 2013, the Office of the General Counsel determined that Teamsters' decertification petition filed on September 3, 2013, was filed outside the statutory window period, was thus untimely and should be dismissed. By its decertification petition, Teamsters sought to represent employees in the Maintenance and Operations (M & O)

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

bargaining unit of the Mount Diablo Unified School District (District), which employees were represented by Public Employees Union Local 1 (Local 1).

The Board has reviewed the entire record in this matter and concludes that the Board agent's administrative determination is well-reasoned, adequately supported by the record and in accordance with applicable law. Accordingly, we adopt the administrative determination as the decision of the Board itself, subject to our discussion below of the issues raised on appeal.

BACKGROUND

Local 1 and the District were parties to a collective bargaining agreement (CBA) covering employees in the District's M & O unit, having an expiration date of June 30, 2013. In late June 2013, representatives of Local 1 and the District executed a written agreement to extend their CBA through November 1, 2013. The parties dispute the degree to which notice of the extension agreement was provided to M & O unit employees.

As a consequence of the extension agreement, a new window period for the filing of a decertification petition in the M & O unit was created, July 5, 2013 through August 2, 2013.[2]

Teamsters filed its decertification petition on September 3, 2013.

BOARD AGENT'S DETERMINATION

The Board agent investigating the petition found that: (1) Local 1 was the current representative of employees in the petitioned-for unit; (2) the unit size was 485; and (3) a memorandum of understanding/written agreement existed between Local 1 and the District, which would expire on November 1, 2013. On the basis of these findings, the Board agent concluded that the Teamsters petition, filed on September 3, 2013, was untimely, since it was filed outside the statutory window period. (Admin. Deter., at p. 1.)

[2] EERA section 3544.7(b) states that a decertification petition tendered during the term of an existing agreement must be filed during the window period which is "less than 120 days, but more than 90 days, prior to the expiration of the agreement."

The Board agent considered, and rejected, Teamsters contentions that Local 1 and the District failed to inform unit employees of the extension agreement, and did so in order to evade a timely decertification petition. (Admin. Deter., at pp. 4-5.)

CONTENTIONS ON APPEAL

On appeal, Teamsters argues, as it did below, that the Board agent conducting the investigation should have convened an evidentiary hearing to resolve disputed facts regarding Teamsters' assertion that the District intentionally kept secret, the existence of the extension agreement. To support its contention that a hearing was necessary, Teamsters points to its unfair practice charge against the District and materials proffered therewith, filed just days before issuance of the administrative determination.

Local 1 rejoins that: (1) the investigative record in this representation case supports the administrative determination that the petition was filed outside the statutory window period; (2) notice to employees is not relevant to determining whether an extension agreement bars a decertification petition, and in any event the record evidence indicates that Local 1 gave employees notice of the extension agreement; and (3) nothing in the record supports Teamsters' contention that the District and Local 1 colluded to keep secret the existence of the extension agreement in order to impede exercise by employees of their right to select a representative.

DISCUSSION

We conclude that an evidentiary hearing was not required on the issue raised by Teamsters, and accordingly that the Board agent did not err in failing to conduct an evidentiary hearing. We explain.

In reviewing whether a Board agent has conducted a proper investigation, the Board looks at whether or not the Board agent abused his or her discretion. (*Children of Promise*

Preparatory Academy (2013) PERB Order No. Ad-402, p. 13, citing *Robert L. Mueller Charter School* (2003) PERB Order No. Ad-320 (*Mueller*); *Jefferson School District* (1980) PERB Order No. Ad-82; *State of California (Department of Personnel Administration)* (1985) PERB Order No. Ad-151-S; *California State University* (1988) PERB Order No. Ad-177-H; *Pleasant Valley Elementary School District* (1984) PERB Decision No. 380.) We deem this standard applicable here.

Our procedures afford no guarantee or entitlement to an evidentiary hearing in a representation proceeding. As stated in PERB Regulation 33237(a):[3]

> Whenever a petition regarding a representation matter is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election or take such other action as deemed necessary to decide the questions raised by the petition.

(Emphasis added.) (See also *Mueller, supra,* PERB Order No. Ad-320 [under EERA, the Board agent must conduct inquiries and investigations, but has discretion as to whether or not to hold a hearing].) Although Board agents must investigate issues raised by a representation petition, that investigation may lead them to determine the existence of disputed facts, therefore, necessitating an evidentiary hearing. Or they may determine, as the Board agent did in this case, that no material issue of disputed fact exists and thus, that a hearing is unnecessary.

Here, the Board agent properly determined that the issue raised by the Teamsters, to wit, the degree of notice to unit employees of the existence of the extension agreement, was not relevant to determining whether the extension agreement was valid and barred the Teamsters' petition. (*San Francisco Unified School District* (1984) PERB Decision No. 476.)

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[3] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

We find nothing in Teamsters' submissions on appeal which convinces us otherwise. Accordingly, we affirm the administrative determination.

ORDER

The administrative determination issued by the Office of the General Counsel in Case No. SF-DP-307-E is hereby AFFIRMED.

Chair Martinez and Member Winslow joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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Re: Case No. SF-DP-307-E
Mount Diablo Unified School District

Dear Parties:

Teamsters Local Union No. 856 (Teamsters or Petitioner) filed a decertification petition (petition) in the above-referenced case on September 3, 2013. Investigation of the petition has established the following facts:

1. The current exclusive representative of the unit in question is Public Employees Union, Local 1 which was certified on March 2, 1977.

2. The approximate unit size is 485.

3. A memorandum of understanding/written agreement currently exists between the exclusive representative and the employer. This written agreement expires November 1, 2013.

The investigation has resulted in the administrative determination that the decertification petition is not timely filed.

The undersigned Board agent requested that the parties confirm or deny, inter alia, Teamsters' assertion in the petition that no memorandum of understanding (MOU) then existed between Public Employees Union, Local 1 (Local 1 or Exclusive Representative) and the Mount Diablo Unified School District (District or Employer). Local 1 filed a response on September 26, 2013 alleging that an extension to the MOU does exist, and that its expiration date is November 1, 2013. Teamsters filed a response on October 1, 2013, arguing that the contract

extension does not bar the decertification petition. Local 1 replied on October 4, 2013, and the District replied on October 8, 2013.

The Contract Extension

The MOU between the District and Local 1 has an expiration date of June 30, 2013. On June 26, 2013, the District and Local 1 entered into a written agreement that served to extend the MOU to the close of business on November 1, 2013. The extension agreement was signed by Local 1 Business Agent Karen Anthony and District Assistant Superintendent Julie Braun Martin. The basis for this determination is a copy of the extension agreement, provided to PERB on September 26, 2013 by Local 1, and declarations filed by Local 1 on October 14, 2013 which support its authenticity.[1] The extension agreement was later ratified by the District Board of Education on September 25, 2013.

Teamsters allege that "neither Local 1, nor the District, informed the membership that a contract was in place."

Discussion

PERB Regulation 32776(c)[2] provides that:

> Under EERA, the petition shall be dismissed whenever either of the conditions of Government Code section 3544.7(b)(1) or (2) exist, or a representation election result has been certified affecting the described unit or a portion thereof within the 12 months immediately preceding the date of filing of the petition.

EERA section 3544.7(b)(1) provides that a petition must be dismissed if:

> 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

[1] It is unclear whether Teamsters intend to cast doubt on the authenticity of the extension agreement provided to PERB. Teamsters state that "[t]he timing of the revelation of the contract extension is [] suspicious," however this claim appears to be related to a different argument, addressed further below. Assuming Teamsters does mean to allege that the extension agreement was entered into at a later date, then back-dated in an effort to thwart a decertification petition, no specific facts are provided that would support this allegation.

[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

> filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

In deciding contract-bar disputes, PERB has found that federal precedent under the National Labor Relations Act provides significant guidance. (*Downey Unified School District* (1980) PERB Order No. Ad-97; *State of California* (1983) PERB Decision No. 348-S.) Both the National Labor Relations Board (NLRB) and PERB have sought to establish objective criteria to determine the existence of a contract-bar in order to expedite the disposition of representation cases and to strike a balance between the dual objectives of a stable labor relations environment and freedom of choice for employees to select a new bargaining representative. (*San Juan Unified School District* (1995) PERB Decision No. 1082; *Centralia School District* (1985) PERB Decision No. 519.)

In *Appalachian Shale Products Company* (1958) 121 NLRB 1160 the NLRB found that to constitute a bar a contract must be in writing, signed by the parties, and contain "substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship . . ." The NLRB held that:

> [R]eal stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems.

(*Ibid.*)

Contract extensions may also create a bar to a decertification petition. (*San Francisco Unified School District* (1984) PERB Decision No. 476 (*San Francisco USD*).) In order to create a bar, the extension must be signed after the close of an established window period. (*Ibid.*) The extension must be sufficiently long to create its own window period under EERA section 3544.7(b)(1)—i.e. it must be for at least 120 days. (*Apple Valley Unified School District* (1990) PERB Order No. Ad-209 (*Apple Valley USD*).) The extension must be for a fixed, rather than indefinite, duration. (*State of California, Department of Personnel Administration* (1989) PERB Order No. Ad-191-S.) Ratification is not required unless the extension agreement itself requires so. (*San Francisco USD.*) Whether a petitioner was given notice of the contract extension is not a relevant consideration. (*Ibid.*)

As noted above, the MOU between Local 1 and the District had an expiration date of June 30, 2013. The extension agreement was signed on June 26, 2013, and extended the contract until the close of business on November 1, 2013. Therefore, the extension agreement was entered-into after the close of the window period created by the MOU's original expiration date, and was more than 120 days in duration. The extension agreement therefore satisfies the requirements of *San Francisco USD*, *supra*, PERB Decision No. 476 and *Apple Valley USD*, *supra*, PERB Order No. Ad-209. The window period for filing a decertification petition

pursuant to EERA section 3544.7(b)(1) was July 5, 2013 to August 2, 2013. Teamsters' decertification petition was filed on September 3, 2013, and is therefore untimely.

Teamsters contends that the extension agreement should not create a contract-bar because "the District and Local 1 completely failed to inform the membership that they had entered into an extension agreement." Teamsters further contends that the District and Local 1 did so intentionally to evade a decertification petition. These contentions must be rejected for the reasons that follow.

As an initial matter, Petitioner fails to describe what sort of "notice" to bargaining unit members should be required. PERB has long held that 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* (1979) PERB Decision No. 111.) PERB has specifically applied this rule in the context of a decertification petition, and found that ratification of an extension agreement by either party's principals is not required unless ratification is a condition precedent to the agreement itself. (*San Francisco USD*, *supra*, PERB Decision No. 476.) The Board has further held that employees' ignorance of the existence of a contract extension or the window period it created is "of little significance." (*Ibid.*) While, EERA section 3544.7(b)(1) creates a right to file during the established window period prior to the expiration of an agreement, a petitioner cannot rely on being able to file a decertification petition afterward. (*Ibid.*) As noted above, the statutory window period for decertification petitions in the present case was July 5, 2013 to August 2, 2013. Petitioner's opportunity to file after August 2, 2013 was not guaranteed by statute. (*Ibid.*)

Petitioner cites *Tinton Falls Conva Center* (1991) 301 NLRB 937 (*Tinton Falls*) in support of its argument that employees' lack of knowledge of the extension agreement renders it invalid. In that case, the NLRB held that an employer had committed an unfair practice by unilaterally repudiating a contract with and withdrawing recognition from a union following a decertification petition by a rival union. (*Id.* at p. 940.) The NLRB referenced its earlier, unpublished, decision finding that the rival union's decertification petition was not barred by the contract between the existing union and the employer. (*Id.* at p. 938.) The terms of the contract in question were not wholly clear, because the parties had signed, on the same day, "three versions of the [] agreement, with two different sets of effective and expiration dates, as well as a yellow sheet containing six contract modifications." (*Id.* at p. 937.) The NLRB described its earlier, unpublished, decision as holding that the conflicting contracts precluded interested parties from determining the proper time for filing a petition, and so no contract-bar existed. (*Id.* at p. 938.)

The facts of the instant case are markedly different. Here, unlike in the *Tinton Falls*, *supra*, 301 NLRB 937 petition, there is no need to resort to parol evidence to determine the term of the agreement. The effective and expiration dates appear on the face of the extension agreement and are readily ascertainable. Employees are not required to "go beyond the face" of the extension agreement to determine whether it is in effect and for what period. (*Tinton Falls*, *supra*, 301 NLRB 937, 939.) Furthermore, *San Francisco USD*, *supra*, PERB Decision

No. 476, which controls in this case, specifically addressed a situation where employees were unaware of an extension agreement. As noted above, such allegations are not a basis for avoiding the contract-bar rule in EERA section 3544.7(b)(1).

Because the June 26, 2013 extension agreement between Local 1 and the District satisfies the conditions of *San Francisco USD*, *supra*, PERB Decision No. 476 and *Apple Valley USD*, *supra*, PERB Order No. Ad-209, the requirements of EERA section 3544.7(b)(1) apply. Because Teamsters' decertification petition was filed outside the statutory window period, it is hereby dismissed.

Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision (PERB Regulation 32360). To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Public Employment Relations Board
Attention: Appeals Assistant
1031 Eighteenth Street, Suite 200
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

A document is considered "filed" when actually received during a regular PERB business day. (PERB Regulations 32135(a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (PERB Regulation. 32135(b), (c) and (d); see also PERB Regulations 32090 and 32130.)

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (PERB Regulation 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justification for the request (PERB Regulation 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (PERB Regulation 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Sacramento regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see PERB Regulation 32140 for the required contents). The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (PERB Regulation 32135(c).)

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

Sincerely,

Daniel Trump
Regional Attorney

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