OVERRULED by *Apple Valley Unified School District*
(1990) PERB Order No. Ad-209

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT, Employer. and TEAMSTERS LOCAL NO. 165, Exclusive Representative, APPELLANT. and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Employee Organization, Petitioner.	Case No. SF-D-129 Administrative Appeal PERE Order No. Ad-158 August 6, 1986

Appearances: Beeson, Tayer & Bodine by Neil Bodine for Teamsters Local No. 165.

Before Burt, Porter and Craib, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Teamsters Local No. 165 (Teamsters) from a Board agent's administrative determination and order that found a decertification petition filed by the California School Employees Association (CSEA) to be timely and ordered an election. We reverse the Board agent's determination and find that the petition is barred by a one-month extension of the collective bargaining agreement between the Teamsters and the Alum Rock Union Elementary School District (District).

FACTS

The Teamsters and the District were parties to a collective bargaining agreement covering a unit of District maintenance, operation and service employees. The agreement was effective January 31, 1983 to December 31, 1984; thus, a 30-day statutory window period for a decertification petition was created in September 1984.[1] CSEA did not file a decertification petition during that period.

On or about December 19, 1984, the Teamsters and the District commenced negotiations for a successor contract. The parties felt they would not reach agreement by the expiration

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[1]This window period is established pursuant to section 3544.7(b)(1) of the Educational Employment Relations Act (EERA or Act). EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all references are to the Government Code.

Section 3544.7(b)(1) provides in pertinent part:

> (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; or . . . .

PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Section 33020 provides for the calculation of this window period.

date of the first contract, especially in light of the Christmas holidays. Therefore, on December 20, 1984 the parties signed an agreement extending the terms of the first contract from January 1, 1985 to January 31, 1985.

On January 2, 1985, CSEA filed its first decertification petition.

Between January 4, 1985 and January 22, 1985, the Teamsters and the District held four negotiating sessions. They arrived at a tentative agreement on January 22.

On January 30, 1985, the parties initialed the successor contract and the Teamsters ratified it on or about that date. The successor agreement was made effective from January 1, 1985 through December 31, 1986.

On February 11, 1985, CSEA filed a second decertification petition.

On February 14, 1985, the District school board ratified the successor agreement.

The Board Agent's Determination:

The Board agent found the second decertification to be barred by the successor agreement.[2] The first decertification petition, however, was found not to be barred because the December 20, 1984 contract extension was of too short a duration

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[2]As no exception to this determination has been filed, we adopt it without discussion.

to provide its own window period, did not promote stability, and, therefore, could not bar the petition.

The Teamsters' Appeal

On appeal, the Teamsters argue that the December 20 extension constitutes a valid contract bar to the decertification petition at issue, and that an election cannot be properly ordered. Based on the facts of this case, we agree.

DISCUSSION

This case presents a novel issue to the Board: whether or not the contract bar doctrine embodied in section 3544.7(b)(1) applies to a contract extension of such short duration that it creates no window period of its own.

Interpreted literally, section 3544.7(b)(1) states that a petition for election is untimely and shall be dismissed when a lawful written agreement is in effect. The provision for a window period between the last 120 days and 90 days of an agreement is couched as an exception to the general proposition that a lawful agreement acts as a bar to a decertification petition. Thus, an agreement of sufficient duration is subject to a window period during which a petition may be timely filed. In short, all lawful contracts act as a bar; some contracts are subject to a window period. Member Porter, however, reads section 3544.7(b)(1) as follows: all lawful agreements bar an election except agreements of insufficient duration to create a window period in which decertification petitions may be filed.

Therefore, all agreements must be of sufficient duration to have a window period or they are not lawful. This interpretation is creative, but neither convincing nor compelled by the statutory language. It is equally reasonable to assume that the "lawful written agreement" alluded to in the first sentence of section 3544.7(b)(1) may be construed as referring only to the original contract -- which was subject to the window period exception. Thus, the one-month extension of the agreement between the parties may be viewed as just that -- a short extension of the lawful written agreement that is not itself subject to a new window period. This view is not inconsistent with the National Labor Relation Board's (NLRB) position[3] prior to its decision in Crompton Company, Inc. (1982) 260 NLRB 419 [109 LRRM 1161], discussed infra, in footnote 6. Pacific Coast Assn. of Pulp and Paper Mfrs. (1958) 121 NLRB 134 [42 LRRM 1477].

Assuming that section 3544.7(b)(1) is susceptible to different reasonable constructions, such statutory ambiguity should be resolved so as to promote the objectives of the entire

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[3]Prior to Crompton, a line of NLRB cases held that extension agreements of indefinite duration -- for example, those containing language extending the terms of the prior contract "for 30 days or until a new contract is signed, whichever is sooner" -- were stopgap agreements that would not act as a bar to a decertification petition. See, e.g., Frye & Smith, Ltd. (1965) 151 NLRB 49 [58 LRRM 1363], Dalmo Victor Co. (1961) 132 NLRB 1095 [48 LRRM 1487]. Crompton represents a deviation from this line of cases in that it holds not only that the extension agreement at issue was of indefinite duration and therefore no bar, but also that even an extension of definite duration will not act as a bar if it is not long enough to retain a window period.

statute.[4] Smith v. California Unemployment Insurance Appeals Board (1975) 52 Cal.App.3d 440, 125 Cal.Rptr. 35. Section 3540 states that the purpose of EERA is to improve personnel management and employer-employee relations within the California school systems. To further this end, the Legislature provided for a contract bar to decertification petitions in section 3544.7(b)(1).

The policy underlying the contract bar rule is to balance two competing goals of the Act: promoting stability in collective bargaining relationships on the one hand and, on the other, protecting the right of employees to choose freely their exclusive representative. Bassett Unified School District (1979) PERB Order No. Ad-63; Deluxe Metal Furniture Co. (1958) 121 NLRB 925 [42 LRRM 1471]. Section 3544.7(b)(1) furthers both these goals. It promotes a stable bargaining relationship by the general rule that a decertification petition shall be dismissed if filed when a lawful written agreement is in effect. It protects free choice by the exception to that general rule, i.e., by providing a 29-day window period prior to

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[4]We find our dissenting colleague's reference to Cadiz v. Agricultural Labor Relations Board (1979) 92 Cal.App.3d 365 inapposite. There, the court found that the Legislature stated clearly what it intended. Thus, the court concluded that the Agricultural Labor Relations Board exceeded its authority by acting contrary to the express terms of the statute. Here, the language is not entirely clear. We do not think Member Porter's reading of the statute is correct, much less compelled. Assuming, however, that his interpretation is reasonable, the statutory language is then, at best, ambiguous.

the expiration of the contract during which a decertification petition will not be barred by the contract.

The Board has adopted a second exception to the general contract bar rule to avoid unlawful manipulation of the statutory window period--the premature extension doctrine. In essence, this doctrine provides that a contract extension which alters the window period established by the original contract is not a valid contract bar to the filing of a decertification petition. Hayward Unified School District (1980) PERB Order No. Ad-96; San Francisco Unified School District (1984) PERB Decision No. 476.

In this case, although we believe that the express language of section 3544.7(b)(1) grants contract bar status to short extensions of the original lawful agreement, we also find that the interest in protecting a stable bargaining relationship outweighs the incremental benefit to employee free choice that is gained by having an additional open period following shortly after the statutory window period. As the extension here was agreed to after the window period established by the first contract had elapsed, the premature contract extension doctrine does not apply. San Francisco Unified School District, supra. Moreover, there is no evidence that the parties agreed to the extension in bad faith or in an attempt to circumvent the decertification efforts of CSEA. On deciding they could not complete negotiations by December 31, the Teamsters and the District extended the terms of the contract for one month while

they continued to bargain. Such conduct is common and unremarkable. There were no delays in the negotiations; the parties met four times during the extension period and came to an agreement in a little over three weeks.[5] To find a contract bar when an employer and the exclusive representative conclude negotiations on a successor contract before the old agreement expires, but not when their negotiations run a few days over, would be an arbitrary and unsettling rule that would not further the purposes of the Act. Although such a rule might encourage the unions to commence bargaining on a successor contract earlier, it would also provide a clear incentive to a district to delay negotiations until after the original contract had expired if it were aware of an on-going decertification movement. This, coupled with a natural tendency of parties to refrain from hard bargaining until they feel the pressure of a deadline, would unnecessarily add a significant element of destabilization to the employment and bargaining relationship.

Instead, we hold that a short-term extension 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

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[5]Moreover, the successor contract agreed to was made retroactive to the expiration date of the first contract. Had the parties' motive been to delay a decertification election, it would have been more logical to make the contract effective on the signing date, thereby postponing the next window period as long as possible.

period.[6] This will guard against abuse of the contract bar by use of a series of short-term extensions to ward off a decertification petition indefinitely and, at the same time, will preserve the stability of the bargaining relationship as mandated by the Legislature.[7] This rule is consistent with our statement in San Francisco Unified School District,

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[6]In support of its position, the dissent cites Crompton Company, Inc. (1982) 260 NLRB 417 [109 LRRM 1161], in which the NLRB came to a contrary conclusion. In finding that a short contract extension did not bar a decertification petition, the NLRB held that the extension between Crompton and the Fibre Workers Association would not bar a petition because the extension was of indefinite duration and because contracts of short duration provide little in the way of industrial stability. Based on our experience in the public sector, we believe short contract extensions promote stability by allowing the parties to complete negotiations without fear of a decertification election. Unlike Crompton, the extension here is not of indefinite duration. As indicated, we find that requiring the creation of an additional open period to occur shortly after the expiration of the statutory window period adds little to employee free choice while detracting significantly from the stability of the bargaining relationship. Brevard County School Board (1984) 10 FPER 15080, the Florida case cited by the dissent as additional support, is also distinguishable from the situation we address. In Brevard, supra, the contract extension at issue occurred pursuant to a clause in the original memorandum of agreement that provided for an automatic month-to-month extension of the status quo unless terminated by the parties or superseded by a new agreement. Thus, the extension was clearly of indefinite term and, for that reason alone, would not constitute a bar to a decertification petition.

[7]Contrary to the dissent's reasoning, our interpretation of section 3544.7(b)(1) is not inconsistent with the three-year limitation on the term of collective bargaining agreements that is set forth in section 3540.1(h) and does not permit parties to avoid providing a window period for decertification petitions at least once every three years. Here, the original

supra.[8] There, after finding a four-month extension to be a valid bar to a decertification petition, we said, at p. 7:

> . . . The period following expiration of the old contract bears no resemblance to an established window period. Petitioner could not rely on being able to file their decertification petition after the contract expired. They could hope for such an opportunity, but it would occur only if no agreement was reached to bar such a filing. Unlike the window period protected by the premature extension doctrine, the Petitioner's opportunity to file its decertification petition in this case was not guaranteed by statute . . . .

For the above reasons, we reverse the board agent's determination and find that the petition at issue is barred.

ORDER

For the reasons set forth above, the Public Employment Relations Board ORDERS that the administrative determination in

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two-year contract created a window period in September 1984. The two-year successor agreement arrived at in January 1985 creates another window period in September 1986. Two window periods in under three years hardly defeats the purpose of section 3540.1(h). Although Member Porter's mechanical rule is admittedly easy to administer, this Board daily makes determinations as to whether or not parties are acting in good faith. Deciding whether a party or parties are manipulating window periods in order to defeat the statutory purposes of the Act is well within this Board's expertise.

[8]Although Member Porter believes that our decision today is inconsistent with Inglewood Unified School District (1981) PERB Decision No. 162, Inglewood is easily distinguishable. There, a petition was filed during the short interval between the expiration of one agreement and the ratification of another. Where no contract is in effect, section 3544.7(b)(1) has no application.

case No. SF-D-129 is REVERSED and that the decertification petition filed by the California School Employees Association on January 2, 1985, is hereby DISMISSED as untimely.

Member Craib joined in this Decision.

Member Porter's dissent begins on p. 12.

Porter, Member, dissenting: I would affirm the Board agent's determination that EERA section 3544.7(b) requires a lawful agreement of sufficient duration to create a window period in order for the statutory contract bar rule to apply.

The issue is whether the statutory contract bar rule embodied in section 3544.7(b)(1) applies to agreements of insufficient duration to contain a window period. The starting point for interpreting a statute is the language of the statute. Consumer Product Safety Commission v. GTE Sylvania (1980) 447 U.S. 102, 108; Leroy T. v. Workmen's Compensation Appeals Board (1974) 12 Cal.3d 434, 438. Also, the words of the statute must be construed in context, keeping in mind the nature and purpose of the law in which they appear. Stanley v. Justice Court (1976) 55 Cal.App.3d 244, 249; West Pico Furniture Co. v. Pacific Finance Loans (1970) 2 Cal.3d 594, 608. The provisions of a statute must be construed together, significance being given - if possible - to every word, phrase, sentence and part of an act in pursuance of the legislative intent and purpose. Turner v. Board of Trustees, Calexico Unified School District (1976) 16 Cal.3d 818, 826; Moyer v. Workmen's Compensation Appeals Board (1973) 10 Cal.3d 222, 230.

EERA section 3544.7(b)(1) provides, in pertinent part:

> (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; or . . . .

Subdivision (b)(1) thus prescribes that a decertification petition filed while a lawful written agreement is in effect shall be dismissed unless the petition is filed during the window period occurring between 120 and 90 days prior to the expiration date of such agreement. Pittsburg Unified School District (1978) PERB Order No. Ad-49, p. 4; Taft Union High School District (1978) PERB Order No. Ad-50, p. 5, fn. 5.

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 its preceding main clause requiring a "lawful written agreement."[1] This conclusion is mandated by applying

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[1]An examination of the language of the contract bar provision of another statute administered by this agency, the Higher Education Employer-Employee Relations Act (HEERA) further supports this interpretation. At section 3577(b)(1) the statute reads:

> (b) No election shall be held and the petition shall be dismissed whenever:
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> > (1) There is currently in effect a memorandum of understanding between the employer and . . . employee organization . . . unless the petition is filed not more than 120 days and not less than 90 days prior to

one of the simplest and most fundamental canons of statutory construction: a qualifying phrase must be applied to the antecedent word to which it relates. Addison v. Dept. 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. Fairly read, subdivision (b)(1) cannot be fragmented so as to isolate "a lawful written agreement" from its qualifying phrase, "prior to the expiration date of the agreement," as the two phrases are inextricably tied. People v. Superior Court (1969) 70 Cal.2d 123, 133. The provision may not be given an alternative interpretation, and the statute's express designation of a "window period" during the 120 days to 90 days prior to the expiration of the agreement requires the existence of an agreement of at least 120 days duration in order to constitute a "lawful written agreement" that could trigger the rule's bar effect.

The majority opinion dismisses this interpretation as "creative but neither convincing, nor compelled by the statutory language." The majority would instead interpret the

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> the expiration date of such memorandum,. . . (Emphasis added.)

For further examples of such precise parallelism in the language used by the Legislature, see also HEERA section 3574(c), and PERB Regulations 33020 (governing EERA), 51026, 51140 (governing HEERA) and 40130 and 40260 (governing the State Employer-Employee Relations Act, or SEERA). PERB Regulations are codified at California Administrative Code, title 8 section 31001 et seq.

statute to mean that "all lawful contracts act as a bar," that no window period is required when the contract is of less than 120 days duration and accordingly, that the prescribed window period is not a requirement but instead is an exception which applies only to contracts of at least 120-days duration. The majority also asserts that the statute can reasonably be construed to mean that the "lawful written agreement" referred to in the first sentence of section 3544.7(b)(1) refers "only" to the original contract. Thus, a window period is not required when the "lawful written agreement" is not an original contract. Once having assumed an "ambiguity" in the statute, the majority opinion abandons any statutory analysis and pursues instead its own policy-making rationale by a goal balancing process. It ultimately proposes the ad hoc rule that, "a short-term extension 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." (Majority Opinion, pp. 8-9).

At the outset it should be recognized that the majority opinion's approach, one of administratively legislating an ad hoc rule, is patently wrong in light of the fact that this Board has a statutory mandate to follow. This is in sharp contrast to the National Labor Relations Board (NLRB), in that the National Labor Relations Act (NLRA) does not contain an express legislative mandate or guidelines governing the

principles of contract bar. Accordingly, while the NLRB may properly develop such a rule solely as a matter of administrative discretion, this Board does not have the same latitude to formulate its own concept of a contract bar. Cadiz v. Agricultural Labor Relations Board (1979) 92 Cal.App.3d 365.[2]

The majority opinion compounds its error by "assuming" that the language and framing of EERA's statutory contract bar rule are ambiguous. While one may always find some specious ambiguity in any statute, cardinal rules of statutory construction require a statute which is plain on its face to be administered and enforced as written. EERA section 3544.7(b)(1) is not a general directory type statute enacted by the Legislature, with the details left to be supplied by this Board. We may not assume the existence of an alternative legislative intent that finds no expression in the words or framing of the statute; nor may we insert or add words to the statute to reflect an alternative legislative intent that is not expressed in the words of the statute. Service Employees

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[2]The Cadiz Court relied, in part, on this distinction in its reversal of a decision of the Agricultural Labor Relations Board within a context generally similar to that of the instant case. In recognizing that the contract bar statute under the Agricultural Labor Relations Act "on its face explicitly permits a decertification petition to be filed at any time during the term of a one-year contract," the Court concluded that "the language of the provision was too clear to permit any administrative or judicial tampering with its provisions." See Cadiz, supra, 92 Cal.App.3d at 371-372.

Internat. Union v. City of Santa Barbara (1981) 125 Cal.App.3d 459, 467; North San Diego County Transit Development Board v. Vial (1981) 117 Cal.App.3d 27, 31-32, 34; Regents of the University of California v. PERB (1985) 168 Cal.App.3d 937,941-945. Moreover, a process of weighing competing goals is not a valid substitute for our duty to comply with the language and legislative intent of the statute. An approach of circumspection is particularly warranted in dealing with a statute such as EERA's contract bar provision, which is the result of a legislative balancing of competing interests, and is the embodiment of a legislative mandate designed in part to preserve "a basic democratic right that lies at the very foundation of the law this Board administers . . . ." Petaluma City Elementary and High School Districts (1982) PERB Order No. Ad-131, dissenting opinion p. 8.[3]

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[3]The "basic democratic right" referred to in Petaluma, supra, is the employees' right of free choice in selecting or changing their exclusive representative. As the California Supreme Court has observed,

> labor law generally [is] premised on the legal fiction of sorts that the union elected by past employees is the freely chosen representative of current employees. [However], it should be remembered as the court in Gissel noted, that "[t]here is, after all, nothing permanent in a bargaining order, and if [. . .] the employees clearly desire to disavow the union, they can do so by filing a [decertification] petition." Harry Carian Sales v. Agricultural Labor

On a purely substantive level, the majority opinion's interpretation of section 3544.7(b)(1) is untenable. The majority assumes that the "lawful written agreement" designated in section 3544.7(b)(1), and which statutorily acts as the contract bar, refers only to the original agreement. Therefore, under the majority opinion's interpretation, section 3544.7(b)(1) has been effectively rewritten to be read 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 which also constitutes the original contract 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 . . .

The majority opinion errs in its approach of "assuming" such words into a statute where they do not exist. Regents of the University of California v. PERB, supra. Furthermore, even

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> Relations Board (1985) 39 Cal.3d 209, 241, citing NLRB v. Gissell Packing Co., Inc. (1969) 395 U.S. 575.

In the instant case, PERB's Director of Representation determined that the requisite 30-percent showing of support existed in the unit for purposes of qualifying the decertification petition under PERB Regulation 32770. As a consequence, much more than inchoate statutory rights are at stake in this controversy. It is of utmost importance that this Board not fall prey to the legal fiction to which the Supreme Court referred, lest employees in this bargaining unit be effectively disenfranchised.

though erroneous, the majority opinion's interpretation of section 3544.7(b)(1) nonetheless actually leads to the conclusion that EERA's contract bar rule does not permit a bar of the decertification petition in this case. That is, in carrying out the majority opinion's interpretation to its logical end, if the "lawful written agreement" is only an original agreement, then, ipso facto, a 30-day extension agreement cannot also be a "lawful written agreement" within the meaning of section 3544.7(b)(1). What agreement, then, can now bar the decertification petition? In interpreting the statute in the manner that it has, the majority opinion has irretrievably lost the statutory justification for the provision's bar effect.

There exists yet another shortcoming in the majority opinion's analysis. By adopting a result in which stability in the bargaining relationship is favored over employee free choice, the majority has interpreted EERA's contract bar rule to not require a window period as a prerequisite to the bar effect. This interpretation, however, is inconsistent with the rule ultimately proposed: if the parties are engaged in good faith negotiations, a windowless agreement will be allowed to constitute a bar; if they are not, it will not create a bar and the requirement of a window period is presumably resurrected. There is a fallacy inherent in such reasoning. By rejecting a window period as a necessary requirement for a lawful written

agreement pursuant to section 3544.7(b)(1), the very substantive foundation upon which EERA's contract bar rule is predicated is also destroyed. As a consequence, the majority opinion has thereby lost the statutory justification for reimposing the requirement of a window merely as a result of concluding that the parties failed to negotiate in good faith.

The majority opinion's reading of section 3544.7(b)(1) would also sanction results which could not possibly have been intended by the Legislature. For example, subdivision (b)(1), when read in conjunction with EERA section 3540.1(h), which prescribes a three-year limitation on the duration of a collective bargaining agreement,[4] directs the conclusion that a window period must occur at least every three years. However, the majority opinion's reading of subdivision (b)(1) would infer a legislative intent to permit, and would in fact permit the parties to agree to an endless succession of windowless agreements or extensions of expired collective bargaining agreements which do not individually exceed 90 days,

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[4]EERA section 3540.1(h) provides, in pertinent part:

> "Meeting and negotiating" means . . . and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement . . . and the execution . . . of a written document incorporating any agreements reached . . . . The agreement may be for a period of not to exceed three years.

but collectively exceed three years. This would have the effect of defeating one of the purposes of EERA section 3540.1(h).[5]

The approach of the majority opinion also constitutes a significant departure from federal precedent. While EERA's contract bar rule is codified in the statute, as opposed to being a discretionary doctrine as is the case under the NLRA, EERA's rule nonetheless shares striking substantive similarities to the federal doctrine. As has been recognized by this Board,

> . . . it is manifestly apparent that the contract-bar doctrine developed over many years by the NLRB served as the model for the parallel provisions in the acts administered by this Board. There is nothing expressed in our contract-bar provisions which is not a feature of the federal doctrine. State of California (SETC & CSEA) (1983) PERB Decision No. 348-S, pp. 7-8.

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[5]As the majority opinion correctly notes, the parties on these facts will not have exceeded the three-year limitation on the term of the collective bargaining agreement prescribed in section 3540.1(h). Therefore, they will not have contravened one of the essential purposes of that section: to ensure that a window period will occur at least once every three years. However, the observation that the purpose of section 3540.1(h) has not been violated in this case should not obscure the fact that a disjunctive interpretation could permit such a result. Also, adopting a construction which could bring section 3544.7(b)(1) into disharmony with section 3540.1(h) violates the canon of statutory construction requiring that:

> [T]he various parts of a statute must be harmonized by considering the particular clause (under scrutiny) in the context of the statute as a whole. Moyer v. Workmen's Compensation Appeals Board (1973) 10 Cal.3d 222, 230.

In light of the profound similarities between EERA's contract bar rule and the federal doctrine it is appropriate for this Board to take cognizance of the contract bar decisions of the NLRB. State of California, supra. See also Bassett Unified School District (1979) PERB Order No. Ad-63, p. 3, fn. 6.

The NLRB has had the occasion to consider whether short-term agreements providing for less than a full window period should be capable of triggering a bar to a duly qualified election petition, and has rejected such a proposition. In reaching a result directly contrary to that reached by the majority opinion, the NLRB reasoned that a short-term agreement which is of insufficient duration to contain a window period fails to meet either of the dual objectives of the contract bar rule: stability in collective bargaining relationships or preservation of employee free choice in representational matters. Crompton Company, Inc. (1982) 260 NLRB 417 [109 LRRM 1161].

Critical to the NLRB's analysis in Crompton Company, Inc., supra, was its recognition that a provision for a window period is the result of reconciling the competing interests of employees with those of the exclusive representative. The window period accommodates the employees' interest in free choice, while the "insulated period," or the final days of the contract after the expiration of the window period, accommodates the interest of an incumbent union to be protected

from disruptive representational challenges prior to the expiration of the contract. A delicate balance is thereby struck. Crompton Company, Inc., supra, at p. 418.

The majority opinion rejects the conclusion reached in Crompton, Company, Inc., supra, by relying on a serious misapprehension of the NLRB's reasoning therein. The majority opinion states:

> In finding that a short contract extension did not bar a decertification petition the NLRB held that the extension between [the parties] did not bar a petition because the extension was of indefinite duration and because contracts of short duration provide little in the way of industrial stability.

Majority Opinion, p. 9, fn. 6 (Emphasis added).

While the NLRB in Crompton Company, Inc., supra, did in fact conclude that short term contracts "provide little in the way of industrial stability,"[6] the majority opinion errs in its conclusion that the NLRB also relied on the fact that the extension at issue was of an indefinite duration. To the contrary, the NLRB expressly disavowed any reliance on the latter point, and stated,

> [E]ven if the extension agreement were for a definite duration . . . it would still not bar the Petitioner's petition.
> . . . [A]greements of less than 90 days, even if they are for a definite period, fail to meet either objective [of the contract bar doctrine]. Because of their short duration, they provide little in the way of industrial

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[6] 260 NLRB at p. 418.

> stability . . . Therefore, such agreements will not bar a petition filed during the term of the agreement. This rule applies even if the agreement is for a fixed duration of less than 90 days and without regard to whether the agreement is an extension of an existing contract or a new contract.
> Crompton, supra, p. 418. (Emphasis added)

Nor does the NLRB's decision in Crompton Company, Inc., present a departure from its previous precedent.[7] The NLRB had traditionally found that contracts of indefinite duration are incapable of barring a duly filed petition for decertification. Furthermore, the NLRB has held for a long period that a contractual extension which is intended to be superseded by a permanent agreement[8] will not constitute a

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[7]The majority opinion states that prior to Crompton Company, Inc., NLRB precedent established that extension agreements of indefinite duration were stop-gap agreements that would not act as a bar to a decertification petition. The majority then cites to Frye & Smith, Ltd. (1965) 151 NLRB 49; [58 LRRM 1363] Dalmo Victor Co. (1961) 132 NLRB 1095 [48 LRRM 1487]. (Majority opinion p. 5 fn. 3) While the contract extensions at issue in Frye & Smith and Dalmo Victor, supra, were of an indefinite duration, the definitive factor relied upon by the NLRB was the fact the extensions were of a temporary or provisional nature. Moreover, the majority opinion cites to no authority for the proposition that under the NLRB, stop-gap agreements of definite duration were traditionally deemed capable of barring a duly filed decertification petition. Furthermore, with respect to Pacific Coast Association of Pulp and Paper Manufacturers, (1958) 121 NLRB 990 [42 LRRM 1477], this decision merely held that a decertification petition filed during a 60-day insulation period was barred.

[8]These agreements are also identified interchangeably as stop-gap, temporary, provisional or interim agreements.

bar. Interborough News Company (1948) 79 NLRB 1528 [23 LRRM 1016]; The Alliance Manufacturing Company (1952) 101 NLRB 112, [31 LRRM 1028]; John Liber & Company (1959) 123 NLRB 1174; [44 LRRM 1083]. Dalmo Victor Company (1961) 132 NLRB 1095 [48 LRRM 1487]; Frye & Smith, LTD (1965) 151 NLRB 49 [58 LRRM 1363]. In rejecting these provisional agreements as being capable of acting as a bar, the NLRB has not found as constituting a determinative factor whether or not the agreement is of definite duration. Instead, the NLRB has relied on whether the agreement is of a temporary or provisional nature pending the parties' future negotiations. Therefore, rather than constituting a "deviation" from the NLRB's previous precedent, Crompton Company, Inc. merely represents the NLRB's unequivocal statement that henceforth it would not even consider the contract's indefinite duration as a relevant factor in analyzing whether or not it is capable of acting as bar. Thus, Crompton Company, Inc. is the consummation of the NLRB's evolving doctrine in which a provisional agreement pending the parties' negotiations is rejected as acting as a bar to a duly filed decertification petition.[9]

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[9]The majority opinion also rejects the result reached in Crompton Company, Inc., supra, on the ground that the NLRB's conclusion is inconsistent with the Board's "experience in the public sector." (p. 9, fn. 6) It should be noted that Florida, the only sister state found to have considered the issue before the Board in the instant case, decided in accord with Crompton. The Florida Public Employment Relations

Consistent with federal precedent, this Board has heretofore recognized that EERA's contract bar rule embodies a delicate balance between the rights of the employees and those of the incumbent union. In the interest of not upsetting this balance, the window period is to be "unequivocally defined." Bassett Unified School District, supra, p. 4. In Bassett, the Board reasoned that extending the window period:

> . . . by allowing the filing of decertification petitions outside its time limits would be to override explicit legislative direction and erode the right of the incumbent organization to pursue its obligations as the exclusive representative.

The presence of an "insulation period" between the window period and the expiration date of the agreement has likewise

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Commission held that in order for a contractual extension to bar a decertification petition under Florida's contract bar statute, the extension must provide a full window period. Brevard County School Board (1984) 10 FPER para. 15080. Also, as was noted by the majority opinion, while the extension at issue in Brevard County, supra, was techically of indefinite duration, the Florida Public Employment Relations Commission, in citing Hillsborough County Emergency Medical Services (1981) 7 FPER para. 12124, rejected the contract's indefinite duration as a relevant factor in analyzing whether or not the agreement could act as a bar. Instead, the focus of inquiry was whether or not the agreement was of a temporary, provisional nature. The Florida decisions of Brevard County and Hillsborough County, supra, therefore are in precise alignment with applicable precedent of the NLRB.

It is also interesting to note that our California Legislature, in a number of statutes, has specifically provided for the mandatory application of federal law and federal administrative practice in the resolution of election and contract bar issues in public sector labor relations. See, e.g., Public Utilities Code section 125521 and Regulations of Director of Industrial Relations, 8 Cal. Admin. Code sections 15.800 et seq., and North San Diego County Transit Development Board v. Vial (1981) 117 Cal.App.3d 27. See also Public Utilities Code, sections 40122, 70122, 90300(b) and 100301.

been acknowledged by this Board as an integral component of the contract bar equation. Bassett Unified School District, supra, p. 3; Solano Community College District (1981) PERB Decision No. 166. Yet, despite this Board's holding in Bassett the majority opinion artificially extends the insulation period and, in the process, disturbs the delicate balance struck between employee rights and those of the exclusive representative. See also, Hillsborough County, supra.

In justifying its result that a windowless agreement will invoke, pursuant to section 3544.7(b)(1), a bar to an election, the majority opinion finds that "the interest of protecting a stable bargaining relationship outweighs the incremental benefit to employee free choice that is gained by having an additional open period following shortly after the statutory closed period." (Majority Opinion p. 7). This ad hoc approach of weighing interests, however, is inconsistent with previous board precedent. In Inglewood Unified School District (1981) PERB Decision No. 162, the Board adopted the ALJ's finding that an interval of a mere few hours existing between the expiration of one agreement and the ratification of the successor contract had the effect of negating an application of the contract bar rule. The ALJ reasoned that at the time of the filing of the decertification petition, due to a gap of a few hours during which the successor contract had yet to be ratified, a written agreement within the requirements of EERA's contract bar rule did not exist which would constitute a bar. This conclusion

was affirmed by the Board despite the fact that the parties' negotiations on the successor agreement were complete, and it was presumably only by their oversight that a gap existed between the two contracts. Still, even where there was arguably a much more compelling interest in "protecting a stable bargaining relationship" than the facts of the instant case, the Board in Inglewood adhered to the statutory prescriptions of EERA's contract bar rule.

Nor is the majority opinion correct in its conclusion that the result it reaches today "is consistent with [the Board's] statement in San Francisco Unified School District."[10] That decision merely addressed the issue of whether the premature extension doctrine applies to contract extensions to which the parties agreed after the lapse of the window period; the present issue simply was not implicated. Also, while this Board in San Francisco Unified School District found that the statutory contract bar rule was applicable, the conclusion that it reached was consistent with the language of EERA's contract bar rule in that the contract extension at issue had a duration of nearly five months and was, therefore, clearly of sufficient duration to contain a window period. No such duration is present in the instant case.

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[10]San Francisco Unified School District (1984) PERB Decision No. 476.

A decision finding that a windowless agreement will not bar an election is commanded by the language of EERA section 3544.7(b), and is consistent with precedent of this Board, the NLRB, as well as that of the only sister state to have considered the issue. Furthermore, it is also administratively feasible. A significant problem associated with the ad hoc approach taken by the majority opinion is its difficulty of administration. The majority opinion fails to articulate standards to be used by the Board agent for the purpose of ascertaining whether one or both of the parties engaged in a "bad faith attempt to manipulate the window period," a decision our Board agents will have to make without the benefit of an evidentiary hearing. A decision rejecting the contract bar rule's application to a windowless agreement on the other hand, offers the advantages of clarity and predictability, both to the parties, as well as to the Board agent. In recognition of these advantages, this Board has emphasized in the past the value of:

> definite, easily applied rules which reduce the need for litigation and thereby yield certain and final results. Rules which will quickly resolve representational issues and avoid lengthy litigation [and] promote stable employer-employee relations . . . . State of California (Unit 12), supra, p. 8.

Finally, section 3544.7(b)(1) requires a lawful written agreement to create a contract bar. I would find a windowless agreement not to be a "lawful written agreement" within the meaning of section 3544.7(b)(1) and, therefore, would not go

beyond that point in finding that the agreement did not act as a bar within the present factual context. The majority opinion, however, has found the extension to constitute a contract bar. This result was reached without further inquiry into whether all requirements of a "lawful written agreement" had actually been met. Specifically, I question, without having to decide the issue herein, whether this extension complied with section 35163 of the Education Code.[11]

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[11]Section 35163 of the Education Code provides that every official action taken by the governing board of every school district shall be affirmed by a formal vote of the members of the board. Furthermore, while the board may delegate its vested power to enter into contracts to the District's superintendent, the mere delegation does not enable the superintendent or his delegatee to enter into an enforceable contract until such time that the agreement is ratified by the board. Education Code section 39656.