

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

In the Matter of the Administrative Appeal)

LOS ANGELES UNIFIED SCHOOL DISTRICT,)
Employer,)

and)

PROFESSIONAL EDUCATORS OF LOS ANGELES,)
Employee Organization, APPELLANT,)

and)

UNITED TEACHERS-LOS ANGELES,)
Employee Organization.)

Case Nos. LA-R-687
LA-CO-7
LA-CO-8

EERB Decision No. HO-U-9
HO-R-20
EERB #5

EERB Order No. Ad-14

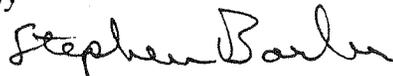
ORDER

The decision of the Executive Assistant to the Board, in the above-cited case, denying an extension of time requested by appellant to file exceptions to the hearing officer's proposed decision is sustained by the Board itself.

The Board finds that the Executive Assistant correctly applied the Board's rules and regulations in this matter.

Educational Employment Relations Board

by



STEPHEN BARBER
Executive Assistant to the Board

9/29/77

Jerilou H. Cossack, Member, concurring:

Pursuant to a decision and order of the Educational Employment Relations Board (EERB), an election was held on January 12, 13, and 14, 1977 in Los Angeles

Unified School District (District) in the negotiating unit found appropriate.¹ According to the tally of ballots issued on January 29, 1977, United Teachers-Los Angeles (UTLA) was selected as the exclusive representative.²

Professional Educators of Los Angeles (PELA) filed objections to the conduct of the election on February 7, 1977. PELA had previously filed two unfair practice charges against UTLA, which were consolidated for hearing with the objections to the conduct of the election. A hearing was held by a hearing officer of EERB. The hearing officer issued a proposed decision on July 25, 1977, recommending that the unfair practice charges and the objections to the conduct of the election be dismissed and that UTLA be certified as the exclusive representative of the negotiating unit.

¹The negotiating unit found appropriate in Los Angeles Unified School District, EERB Decision No. 5, November 24, 1976 was as follows:

Included: All certificated employees including secondary school counselors.

Excluded: All other employees, including medical examiners, psychiatrists, school dentists, school physicians, chest specialists, managerial employees, supervisory employees and confidential employees.

²The talley of ballots states:

Approximate number of eligible voters	31,517
Void ballots	59
Votes cast for United Teachers-Los Angeles	12,882
Votes cast for Professional Educators of Los Angeles	3,755
Votes cast for no representation	3,165
Valid votes counted	19,802
Challenged ballots	1,154
Valid votes counted plus challenged ballots	20,956

Pursuant to EERB Regulation 33380,³ and as set forth in the proposed decision, the parties had until August 9, 1977 in which to file exceptions to the proposed decision.

A request for an extension of time pursuant to EERB Regulation 33410⁴ was received by the EERB on August 1, 1977. PELA requested an extension of 30 days in which to file its exceptions, relying on the length of the decision, the extensive research necessary to prepare a supporting brief, and the length of the case and number of issues involved. Both the District and UTLA objected to granting an extension of time.

³Cal. Admin. Code, Title 8, Sec. 33380 states:

33380. Exceptions to Hearing Officer Decision.

- (a) A party may file with the Board an original and four copies of a statement of exceptions to the proposed decision, and supporting brief, within seven calendar days after receipt of the proposed decision. The statement of exceptions shall:
 - (1) State the specific issues of procedure, fact, law or policy to which each exception is taken;
 - (2) Identify the part of the recommended decision to which each exception is taken;
 - (3) Designate by page citation the portions of the record relied upon for each exception;
 - (4) State the grounds for each exception.
- (b) No reference shall be made in the statement of exceptions to any matter not contained in the record of the case.
- (c) An exception not specifically urged shall be waived.
- (d) The party shall serve a copy of the statement and supporting brief upon each party to the proceeding. A statement of service shall be filed with the Board.
- (e) The filing of the statement of exceptions submits the case to the Board itself.

⁴Cal. Admin. Code, Title 8, Sec. 33410 states:

Extension of Time. A request for an extension of time within which to file a statement of exceptions or response to the statement of exceptions and briefs shall be in writing and shall be filed with the Board at the headquarters office at

PELA filed no exceptions; neither did the District nor UTLA.

On August 9, 1977 the Executive Assistant to the Board issued an order in Case Nos. LA-CO-7 and LA-CO-8 which stated:

Pursuant to California Administrative Code Sections 35029 and 35030, no exceptions having been filed in the above-captioned matter, the recommended decision of the hearing officer is hereby declared the final decision, to wit:

The unfair practice charges filed by the Professional Educators of Los Angeles are dismissed.

On the same date the Executive Assistant to the Board also issued an order in EERB Decision No. 5 (Case No. LA-R-687) stating:

Pursuant to California Administrative Code Sections 33380, 33390, and 33640, no exceptions having been timely filed in the above-captioned matter, the proposed decision of the hearing officer is hereby declared the final decision, to wit:

1. The objections to the conduct of the election are dismissed.
2. The Regional Director shall certify the United Teachers-Los Angeles as the exclusive representative of the certificated negotiating unit described in the directed election order.⁵

On August 9, 1977 PELA requested review by the Board itself of the denial of the extension of time, contending that it had not had sufficient time to file exceptions. PELA claimed to have been unaware of any objections to the request for extension of time until after the deadline to file the appeal had run, acknowledging that it was aware that an extension of time would be granted only if no objections were made. PELA further requested the Board to stay the certification of UTLA as the exclusive representative pending review of its request.

(cont.)

least three calendar days before the expiration of the time required for filing. Copies of such request shall be concurrently served upon each party. Extensions of time shall be granted only under extraordinary circumstances.

⁵On August 10, 1977 the Regional Director issued a certification of UTLA as the exclusive representative in the negotiating unit found appropriate by the Board.

On August 15, 1977 UTLA objected to PELA's request that the Board itself review the decision of the Executive Assistant in refusing to grant PELA's request for an extension of time and objected to PELA's request that the Board stay the certification of UTLA as the exclusive representative.⁶

EERB Regulation 33410 clearly states that extensions of time within which exceptions may be filed shall be granted only in extraordinary circumstances. There is nothing extraordinary about the circumstances in this case. "Extraordinary" is a word commonly understood to mean something which is out-of-the-ordinary, not normal or which with reasonable prudence, might not have been foreseen. PELA, which filed the objections and charges, thus framed the issues in the instant case. PELA also argued the issues at the hearing and subsequently in a brief to the hearing officer. PELA cannot now claim that either the number or complexity of the issues is a matter of surprise for which it was ill-prepared. Accordingly, I concur that this case does not warrant the special consideration PELA seeks and that PELA's request for an extension of time and revocation of the certification of UTLA as the exclusive representative should be denied.



Jerilou H. Cossack, Member

⁶In fact, since the certification had already issued, granting PELA's request would require revocation of the certification.