

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BASSETT UNIFIED SCHOOL DISTRICT,)
)
Employer,)
)
and)
)
BASSETT EDUCATORS ASSOCIATION,) Case No. LA-R-587
CTA/NEA,)
) PERB Order No. Ad-63
Employee Organization,)
) Administrative Appeal
and)
) March 23, 1979
BASSETT FEDERATION OF TEACHERS,)
AFT LOCAL 727, AFL-CIO,)
)
Employee Organization.)
)
)
)

Appearances: Richard N. Fisher, Attorney (O'Melveny & Myers) for Bassett Unified School District; Charles R. Gustafson, Attorney for Bassett Educators Association, CTA/NEA; Lawrence Rosenzweig, Attorney (Levy, Koszdin, Goldschmid & Sroloff) for Bassett Federation of Teachers, AFT Local 727, AFL-CIO.

Before: Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

The question before the Public Employment Relations Board (hereafter PERB or Board) on reconsideration of its decision in Bassett Unified School District (1/30/79) PERB Order No. Ad-57 is whether a decertification petition filed by the Bassett Federation of Teachers, AFT Local 727, AFL-CIO (hereafter AFT) was properly dismissed by the Public Employment Relations Board

regional director.¹ Section 3544.7(b)(1) of the Educational Employment Relations Act² (hereafter EERA) reads in pertinent part:

(b) No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a lawful agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for reconsideration, 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; . . . [Emphasis added.]³

Assuming for the purpose of this reconsideration, but not deciding, that the negotiated agreement in question expired on June 30, 1978, the proper calculation of "more than 90 days, prior to" that date establishes Friday, March 31, 1978, as the

¹The facts involved here are discussed in the accompanying order granting reconsideration, Bassett Unified School District (3/23/79) PERB Order No. Ad-62.

²The Educational Employment Relations Act is codified at Government Code section 3540 et seq. Hereafter, all references are to the Government Code unless otherwise indicated.

³California Administrative Code, title 8, section 33250(b) provides in pertinent part:

The [decertification] petition shall be dismissed whenever either of the conditions of section 3544.7(b) of the act exists.

final date for the filing of the decertification petition.⁴

The original decision issued by the Board erroneously indicated that the filing deadline occurred on a weekend and that receipt of the decertification petition by the Board on Monday, April 3, 1978, was acceptable.⁵

In providing a period of time for filing decertification petitions during the life of an existing agreement, the Legislature balanced the interests of employees who might be reconsidering their choice of exclusive representative with the need for stability in employer-employee relations.⁶ That "window period," prior to the expiration of the contract, provides the employees with the opportunity to exercise that choice but still allows an incumbent organization which retains its certification to proceed with negotiating a successor agreement insulated from the continued incursions of a

⁴This is determined by counting back 91 days (more than 90 days) starting with and including June 29, 1978 (prior to June 30), the hypothetical expiration date.

⁵See Code of Civil Procedure section 12(a) and Government Code section 6707, which include Saturdays as holidays for filing purposes and extend the time to file to the following Monday.

⁶See Deluxe Metal Furniture Co. (1958) 121 NLRB 925 [42 LRRM 1471] which fully explicates the reasons for the creation of a "window period." While the private sector rule is a creation of NLRB policy rather than statute, it serves to illustrate the legislative intent underlying section 3544.7(b) which is virtually identical.

competing organization.⁷ 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 of the incumbent organization to pursue its obligations as the exclusive representative. This the Board cannot and will not do.⁸ For this reason it is unnecessary in this reconsideration to review the underlying question of the actual duration of the negotiated agreement in question.

On March 20, 1979, the Board rejected a request filed by the District and CTA to stay a decertification election scheduled for April 3, 1979, pending its decision on the request for reconsideration. That order is necessarily vacated herewith.

⁷Ante, fn. 6.

⁸The NLRB's strict application of its time requirements is illustrated in Hemisphere Steel Products, Inc. (1961) 131 NLRB 56 [47 LRRM 1595] and Brown Co. (1969) 178 NLRB 57 [71 LRRM 1643].

ORDER

Based on the foregoing facts and conclusions of law, the decision of the Board itself in Bassett Unified School District (1/30/79) PERB Order No. Ad-57 is hereby vacated and the order of the regional director dismissing the decertification petition filed by the Bassett Federation of Teachers, AFT Local 727, AFL-CIO is affirmed, though for the reasons stated herein.

It is further ordered that the Board's order of March 20, 1979, denying a request to stay the pending decertification election for April 3, 1979, is hereby vacated and the regional director shall vacate her order to conduct a decertification election in the District.

Public Employment Relations Board

Per Curiam