

Regulation 33020² and was therefore untimely. The Board agent dismissed the petition.

The Board has reviewed the entire record in this case, including the Board agent's administrative determination, the Teamster's appeal and the California School Employees Association and its Fall River Chapter #191's response thereto. The Board finds the administrative determination to be free of prejudicial error and hereby adopts it as the decision of the Board itself.

The public school employer shall grant a request for recognition filed pursuant to Section 3544 unless any of the following apply:

(c) 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, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Section 33020 states, in pertinent part:

"Window period" means the 29-day period established pursuant to Government Code Sections 3544.1(c) and 3544.7(b)(1) which is less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and the exclusive representative. The written agreement expiration date means the last effective date of the agreement.

ORDER

The appeal by General Teamsters Union Local #137 of the administrative determination in Case No. SA-SV-146 is hereby DENIED.

Members Dyer and Amador joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



July 30, 1999

Dave Hawley, Secretary-Treasurer
General Teamsters Union Local #137
3540 S. Market Street
Redding, CA 96001-3888

Vivian E. Stephens, LR Representative
California School Employees Association
8217 Auburn Boulevard
Citrus Heights, CA 95610

Earnest Graham, Superintendent
Fall River Joint Unified School District
20375 Tamarack Avenue
Burney, CA 96013

Re: SA-SV-146 (RR-392)
Fall River Joint Unified School District

Dear Interested Parties:

Final review of all proof of support submitted by the General Teamsters Union Local #137 (Teamsters or Petitioner) with its severance petition in the above-referenced case has resulted in the administrative determination that the support is sufficient to meet the requirements of PERB regulation 33050(b).

PERB must next determine if the petition was timely filed in order to proceed to the final step, does the petition seek an appropriate unit?

The severance petition in this case was originally filed with PERB on July 1, 1999. The Petitioner seeks to sever a unit of Operational Support and Instructional Assistants from the wall classified unit represented by California School Employees Association (CSEA). The petition was subsequently amended on July 6, 1999 to encompass only Operational Support employees. CSEA and the Fall River Joint Unified School District (District) were parties to a written agreement with a term of July 1, 1996 through June 30, 1999.

PERB Regulation 33020 is titled Window Period and states in relevant part:

"Window period" means the 29-day period established pursuant to Government Code Sections 3544.1(c) and 3544.7(b)(1) which is

less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and the exclusive representative. The written agreement expiration date means the last effective date of the agreement.

Government Code section 3544.1 states in relevant part:

The public school employer shall grant a request for recognition pursuant to Section 3544 unless any of the following apply:

- (c) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any of the employees included in the unit described in the request for recognition...

The District and CSEA have both provided this office with a copy of a signed written agreement that incorporates all the provisions of the 1996-1999 written agreement and extends them from July 1, 1999 through June 30, 2002. This agreement was reached on June 15, 1999 and was approved by the District's Board on June 23, 1999. There was no evidence provided that there were any ground rules in negotiations requiring unit or Board approval. The responses to the petition filed by CSEA and the District raise the issue of the petition's timeliness.

The petition was not filed during the defined window period of the parties agreement, March 3-31, 1999, therefore, in order to be timely filed, the petition must be filed when there was not a written agreement in effect between the District and CSEA.

Thus next question to be considered is whether the June 15, 1999 agreement constitutes a "written agreement?" PERB has held that an agreement must be in writing and signed, and contain substantial terms and conditions of employment in order to constitute a contract bar. State of California (Department of Personnel Administration) (1989) PERB Decision No. Ad-191-S citing Appalachian Shale Products Company (1958) 121 NLRB 1160 [42 LRRM 1506]. The June 15, 1999 agreement meets this test.

The PERB has long held that the only time certain that employees can rely on to petition to change exclusive bargaining agents is the window period prior to the expiration of an agreement. See San Francisco Unified School District (1984) PERB Decision No. 476. The Petitioner missed that opportunity in this case.

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Therefore, the petition is deemed to be untimely filed and therefore is 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. (Cal. Code Regs., tit. 8, sec. 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 18th Street, Suite 200
Sacramento, CA 95814-4174
FAX: (916) 327-7960

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 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. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 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 (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 justifications for the request (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 (regulation 32375).

Service

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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 regulation 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

Extension of Time

A request for an extension of time in which to file an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Code of Regulations, title 8, section 32132).

Les Chisholm
Regional Director

Roger Smith
Labor Relations Specialist

cc: Sharon Furlong, Senior LR Representative