

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
HAWAII FEDERATION OF TEACHERS,)	
)	
Petitioner,)	
)	
and)	Case No. <u>RD-05-2</u>
)	
BOARD OF EDUCATION,)	Decision No. <u>12</u>
)	
Public Employer,)	
)	
and)	
)	
HAWAII STATE TEACHERS ASSOCIATION,)	
)	
Certified Exclusive)	
Bargaining Representative.)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

For Petitioner:	Victor J. Van Bourg, Attorney for Hawaii Federation of Teachers
For Employer:	Roy M. Miyamoto, Deputy Attorney General, State of Hawaii
For Certified Exclusive Bargaining Representative:	Thomas P. Gill, Attorney for Hawaii State Teachers Association

Pursuant to Chapter 89, Hawaii Revised Statutes, a hearing in the above-entitled matter was held before the Hawaii Public Employment Relations Board sitting en banc, hereinafter referred to as the Board, at Honolulu, on April 10, 1972, and the Board, having considered the evidence in the record and the arguments of the parties, hereby makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

The Hawaii Federation of Teachers hereinafter referred to as Petitioner, and the Hawaii State Teachers Association, hereinafter referred to as Exclusive Representative, are employee organizations within the meaning of Chapter 89, Hawaii Revised Statutes.

The Board of Education, hereinafter referred to as Employer, is a public employer within the meaning of Chapter 89, supra.

On April 27-30, 1971, an election was held throughout the State pursuant to Section 89-7, supra, to determine whether the Hawaii Federation of Teachers or the Hawaii State Teachers Association, or neither, would represent certain employees of the Employer for the purpose of collective bargaining. The employees eligible to vote comprised a bargaining unit of:

"All Teachers and other personnel of the Department of Education under the salary schedule pursuant to Section 297-33, Hawaii Revised Statutes, employed during the payroll period ending April 15, 1971."

On May 1, 1971, the tabulation of ballots resulted in none of the choices receiving a majority of the valid votes cast. Therefore, the Board directed a run-off election between the two choices receiving the largest number of valid votes cast, i.e., Hawaii Federation of Teachers and Hawaii State Teachers Association, pursuant to Section 89-7, supra.

On May 19, 1971, the run-off election was held to determine whether the above-described unit, hereinafter referred to as Unit 5, desired to be represented by the Hawaii Federation of Teachers or the Hawaii State Teachers Association for the purpose of collective bargaining.

The ballots for the run-off election were tallied on May 20, 1971, and showed that a majority of the valid votes had been cast for the Hawaii State Teachers Association.

On May 21, 1971, the Board issued its certification of the Hawaii State Teachers Association as the exclusive bargaining representative for all employees in Unit 5 for the purpose of collective bargaining with the above-named Employer.

On February 29, 1972, Petitioner filed to decertify the certified exclusive bargaining representative of Unit 5, approximately nine months after the Hawaii State Teachers Association was certified by the Board as Exclusive Representative of said unit.

On March 28, 1972, the Board held a pre-hearing conference in the above-entitled matter and, upon Petitioner's request for continuance of the pre-hearing conference, the parties met again on March 30, 1972.

The Board issued notice that a hearing in the above-entitled matter was to be held on April 5, 1972. Subsequently, the Board granted Petitioner's request for rescheduling of the hearing and held the hearing on April 10, 1972.

CONCLUSIONS OF LAW

The issue before us is whether the Hawaii Federation of Teachers decertification petition of February 29, 1972, is timely under Section 89-7, Hawaii Revised Statutes. At the hearing, Petitioner alleged that its petition is timely filed since Section 89-7, supra, only prohibits the holding of an election within twelve months from the date a valid election is held in any appropriate bargaining unit and there is no valid collective bargaining agreement in force and effect.

The Board will concern itself herein with Petitioner's allegation that Section 89-7, supra, does not preclude the filing of a decertification petition, but only the holding of an election, within twelve months from the date a valid election was held in the appropriate bargaining unit involved, Unit 5. Although Petitioner has also questioned the validity of the collective bargaining agreement between the Exclusive Representative and the Employer, the Board reserves the question of the validity of the contract at this time. We find no useful purpose in determining whether or not the collective bargaining agreement is valid prior to the expiration of twelve months from the date a valid election was held for Unit 5, since it will have no bearing on the timeliness of the decertification petition before us.

Section 89-7, supra, which Petitioner contends only prohibits holding an election, and not the filing of a decertification petition, within twelve months from the date a valid election was held for Unit 5, reads in part:

"No election shall be directed by the Board in any appropriate bargaining unit within which (1) a valid election has been held in the preceding twelve months;...."

We do not dispute Petitioner's contention that the specific wording of the above provision does not mention the filing of a decertification petition.

We note that such one-year election bar contained in our statutes is patterned after Section 9(c)(3) of the National Labor Relations Act, which, in part, is as follows:

"No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period a valid election shall have been held."

Relevant sections of both statutes are similarly silent with respect to the filing of decertification petitions.

However, under its authority, the National Labor Relations Board has interpreted congressional intent with respect to the one-year election bar, since 1952 in various cases before it, as also precluding the filing of representation petitions, including decertification petitions, before one year has elapsed since a valid election was held in any bargaining unit. The National Labor Relations Board's rationale for its administrative rule on the filing of decertification petitions is explicitly stated in Centr-O-Cast & Engineering Co., 100 NLRB 52, 30 LRRM 1478 (1952), as follows:

"It is a basic principle in Board law, as stated by the Supreme Court, '* * * a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed. [Frank Bros. Co. v. NLRB, 321 U.S. 702, 705, 14 LRRM 591].' A Board certification has thus been held to identify the statutory bargaining agent with certainty and finality, free from challenge as to its majority status, for a period of one year, absent unusual circumstances. This minimum period during which the employer, upon proper request, is obligated under the Act to bargain in good faith with the certified union is, we reaffirm, fair and reasonable. By thus substantially foreclosing any question of representation and clearly defining the duty of the employer during the one-year certification period, the Board has achieved the dual purpose of encouraging the execution of a collective bargaining contract and enhancing the stability of industrial relations. No contract was in this case."

Prior to the Centr-O-Cast & Engineering Co. case, the National Labor Relations Board had entertained petitions filed prior to the end of the certification year. However, in Centr-O-Cast it stated:

"Aside from this, we have reconsidered the Board administrative rule of holding in inactive status, petitions filed in the twelfth month of a certification year. Henceforth, we shall dispense with this rule and dismiss all three types of petitions when filed at such time. For we believe that the mere retention on file of such petitions, although unprocessed, cannot but detract from the full import of a Board certification, which should be permitted to run its complete one-year course before any question of the representative status of the certified union is given formal cognizance by the Board."

Although the National Labor Relations Board adopted its policy on decertification petitions through case rulings, this Board was mandated to comply with the following directive in Section 89-7, Hawaii Revised Statutes:

"The board shall adopt rules and regulations governing the conduct of elections to determine representation, including the time, place, manner of notification, and reporting the results of elections, and the manner for filing any petition for an election or any petition concerning the results of an election."

Thus, under the authority vested in it, the Board included the following Rules with respect to the filing of decertification petitions in its Rules and Regulations promulgated in accordance with the Administrative Procedures Act, Chapter 91, supra.

Rule 2.06 (a) (1)

"FILING OF PETITION. A petition for determination of an optional appropriate bargaining unit, or petition for election of an exclusive bargaining representative in an appropriate bargaining or optional appropriate bargaining unit or petition for decertification may be filed at any time, provided there has been no valid determination or election within the preceding twelve months and further, provided, there is no collective bargaining agreement."

Rule 2.06 (b) (1)

VALID DETERMINATION; VALID ELECTION. Where there has been a valid determination of an optional appropriate bargaining unit or election to determine the exclusive bargaining representative in an appropriate bargaining or optional appropriate bargaining unit, the Board shall not entertain a petition for determination, election or decertification until the expiration of twelve months of such determination or election."

In formulating our Rules on decertification petitions, we looked at the Centr-O-Cast decision and decisions of other states, such as, Michigan's In the Matter of City of Bay City and the American Federation of State, County and Municipal Employees, AFL-CIO, and City Employees Association,

Case No. R67 B-36 (April 18, 1967), which we found is similar to Centro-Cast. The Board concurred that it should adopt the rationale of Centro-Cast and formulated its Rules accordingly.

Petitioner argues that the above Rules on decertification petitions is contrary to the law, Section 89-7, Hawaii Revised Statutes. Petitioner further argues that the Legislature would have stated that decertification petitions could not be filed prior to twelve months from the date an election was held, if such was its intent, since the Legislature must have been apprised of the National Labor Relations Board rule while enacting the collective bargaining law.

We find no merit in Petitioner's argument that it is contrary to Section 89-7, supra. It was previously mentioned that of Section 9(c) (3) the National Labor Relations Act is similar to Section 89-7, supra. We also find that the comparable provision in the Michigan statute is similarly worded. Yet, the practice initiated by the National Labor Relations Board, which has been upheld by the courts, and that followed by the Michigan Labor Mediation Board is what we have adopted in our Rules, i.e., that decertification petitions filed prior to the expiration of twelve months from the date a valid election is held are untimely.

With respect to Petitioner's other argument, we believe, on the contrary, that the Legislature would have been prompted to specify a novel procedure for the filing of decertification petitions rather than remain silent, if such was its intent. Throughout the collective bargaining law, where the Legislature intended less than conventional labor relations practices, it has set forth such novel provisions in the statute. Inasmuch as the statute is silent on the matter of decertification petitions and the Board was directed to adopt Rules and Regulations governing this matter, we believe that the Legislature intended that we conform to the prevailing practice for the filing of representation petitions, including decertification petitions. We, therefore, reject

the basis for Petitioner's contention that our Rules governing the filing of decertification petitions is contrary to legislative intent.

As this is the Board's initial decertification case, to which reference may be made in subsequent decertification cases, the Board feels that it would be apropos to clarify herein that the computation of time contained in Rules 2.06(a)(1) and 2.06(b)(1) is to be computed from the date of certification of the exclusive bargaining representative, or in the event that none is chosen, from the date of certification of the results of the election. We follow the National Labor Relations Board in its computation of time, which commences from the date of certification.

In Brooks v. NLRB, 348 U.S. 96, 25 IRPM 2158 (1954), the court upheld the National Labor Relations Board decision that it would use the date of certification in its computation of time governing the filing of petitions for election.

"But the Board's view that the year period should run from the date of certification rather than the date of election seems within the allowable area of the Board's discretion in carrying out congressional policy. See Phelps Dodge Corp. v. Labor Board, 313 U.S. 177, 192-197, 8 LRPM 439; Labor Board v. Seven-Up Bottling Co., 344 U.S. 344, 31 LRPM 2337. Otherwise, encouragement would be given to management or a rival union to delay certification by spurious objections to the conduct of an election and thereby diminish the duration of the duty to bargain. Furthermore, the Board has ruled that one year after certification the employer can ask for an election or, if he has fair doubts about the union's continuing majority, he may refuse to bargain further with it. This, too, is a matter appropriately determined by the Board's administrative authority."

Michigan also uses the certification date in its computation of time for the filing of decertification petitions. Its reason set forth in In the Matter of City of Bay City and the American Federation of State, County and Municipal Employees, AFL-CIO, and City Employees Association, supra, is as follows:

"The election process includes notices of election, eligible voters, polling places, observers, casting of ballots, counting ballots, challenges, objections, hearings on objections and challenges, determinations of eligibility and conduct of election, retabulation, and finally declaration of election results."

"It is the holding the Mediation Board that a valid election has been held, within the meaning of Section 14 of the PERA when the Board's 'Certification of Representation' is issued."

The Board similarly holds for essentially the same reasons as specified in the above decisions that the one year period, barring the filing of decertification petitions, shall run from the date of certification. If we held otherwise and computed time from the date of the casting of ballots, the exclusive bargaining representative would not be afforded the opportunity of a full year of time in which to execute a collective bargaining agreement in all instances. In the event of challenges or objections to the conduct of the election or conduct affecting the results of an election, the one year period set aside to promote the execution of a collective bargaining agreement would be shortened by the length of time necessary to resolve such objections or challenges.

Thus, in the instant case, it is the holding of this Board that a valid election has been held within the meaning of Chapter 89, Hawaii Revised Statutes, as of the effective date of the Board's certification of the Hawaii State Teachers Association as the Exclusive Representative of Unit 5, May 27, 1971. (Note: Although the Board's certification was dated May 21, 1971, the effective date of certification commences five working days after the official tally of ballots, so as to allow time for the filing of any challenges or objections to the conduct of the election or conduct affecting the results of the election.)

Pursuant to Rules 2.06(a)(1) and 2.06(b)(1), the Board reiterates its policy that it will not entertain petitions for elections, certification or decertification, until the year's certification issued by this Board has elapsed. We are of the opinion that this is in accord with the intent of the Legislature to promote the execution of a collective bargaining agreement and to enhance the stability of public employee relations.

As the Exclusive Representative of Unit 5, the Hawaii State Teachers Association is protected from any interference in its bargaining relationship with the Employer for a period of one year from the effective date of its certification of May 27, 1971.

The Hawaii Federation of Teachers decertification petition of February 29, 1972, is untimely filed under Section 89-7, Hawaii Revised Statutes, and the Board's Rules 2.06(a)(1) and 2.06(b)(1) and, therefore, shall be dismissed.

ORDER

The Board hereby grants the Exclusive Representative's motion and orders that the decertification petition filed by Petitioner be, and hereby is, dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

By Mack H. Hamada
Mack H. Hamada, Chairman

Carl J. Guntert
Carl J. Guntert, Board Member

John E. Milligan
John E. Milligan, Board Member

Dated: April 28, 1972

Honolulu, Hawaii