

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

|                              |   |                  |
|------------------------------|---|------------------|
| In the Matter of             | ) | CASE NO. RM-01   |
|                              | ) |                  |
| UNITED PUBLIC WORKERS, LOCAL | ) | DECISION NO. 171 |
| 646, AFSCME, AFL-CIO,        | ) |                  |
|                              | ) |                  |
| Petitioner.                  | ) |                  |
| _____                        | ) |                  |

DECISION

On February 3, 1983, the UNITED PUBLIC WORKERS, LOCAL 646, AFSCME, AFL-CIO [hereinafter referred to as Petitioner or UPW], filed with this Board a Petition for Adoption, Amendment or Repeal of Rules pursuant to Chapter 89 and §91-6, Hawaii Revised Statutes [hereinafter referred to as HRS], and Administrative Rules §12-42-10. Petitioner, an employee organization, seeks to amend Administrative Rules §12-42-23, Evidence of showing of interest, to read as follows [new matter is underlined; bracketed matter is to be deleted]:

§12-42-23. [Evidence] Written proof of [showing of interest.] representation.

(a) In determining whether the [evidence] written proof submitted to establish a showing of [interest] representation is sufficient, the board shall accept as evidence of written proof, dues check-offs which have not been revoked, employee organization membership cards, authorization cards, or petitions which were signed within [six months] 60 days of the filing of the petition with the board, or a combination of these.

[(b) The determination of the sufficiency of showing of interest is a ministerial act and shall not be reviewed by the board.]

[(c) The evidence of showing of interest shall not be furnished to any of the parties.]

(b) The written proof of representation submitted to the board shall in each case be verified by the board as to name, signature and date of signature of the employee concerned and in the event of any discrepancy between the proof submitted and the verification thereof, the name of the employee shall not be counted in determining the per cent representation required. The Board shall report the results of said verification to the employer and employee organization concerned.

Petitioner cites three reasons in support of the proposed rule change. First, Petitioner alleges that the rule is not properly titled since §89-7, HRS, refers to "written proof of at least thirty per cent representation of the public employees in an appropriate bargaining unit" rather than an anomalous "showing of interest" which is not required to be in writing. Secondly, Petitioner asserts that the present six-month effective period of the proof of representation should be reduced to 60 days since the former is far too long a period. Third, the proposed rule would have the Board independently verify the written proof of representation as to the employee's name, signature and date of signature. In the case of a discrepancy under the proposed rule, the employee's name would not be counted and the Board would report the results of the verification to the employer and employee organizations involved. Petitioner asserts that this procedure would eliminate any chance of error, misrepresentation or fraud and would clarify the matter.

After consideration of the proposed rule and the supporting arguments presented by the UPW in its petition, the Board hereby denies the subject petition to amend Administrative Rules §12-42-23.

While Petitioner correctly notes that §89-7, HRS, refers to "written proof of at least thirty per cent representation" rather than a "showing of interest," we believe that the phrases are synonymous. Generally, rules or statutes governing representation elections provide that petitions for representation elections are to be supported by a thirty per cent "showing of interest" of bargaining unit members. Moreover, merely because the Legislature called it by one name and we recognize it by another does not detract from the Board's practice to require the showing of interest to be submitted in written form in compliance with §89-7, HRS.

The present rule provides that the evidence of unrevoked dues check-offs, membership cards, authorization cards or signed petitions shall be accepted by the Board in computing the employees' interest. We note that the Petitioner does not seek to significantly alter these forms of evidence. Hence, while Petitioner's proposed amendment of the rule's title may be technically more accurate, we feel that this amendment by itself is nonsubstantive and is not sufficient to warrant rulemaking at this time.

Petitioner proposes decreasing the six-month effective period for the signing of cards and petitions to 60 days because the former period is too long. Our review of the procedures in other jurisdictions indicates that the present six-month period is in consonance with established time periods elsewhere. We are unable to find any procedure with an effective time period for signatures as short as 60



days.<sup>1</sup> Hence, contrary to Petitioner's assertions, we believe that the present six-month time period is appropriate while the imposition of a 60-day period would be unreasonably short and restrictive.

Petitioner also proposes to require independent investigation and verification of each name, as well as each signature and the date of signature contained in the proof of representation by the Board. Any discrepancy would result in the disqualification of the employee and any results of the verification would be reported to the employers and the employee organizations. Simultaneously, Petitioner seeks the repeal of existing provisions which preserve the confidentiality of the showing of interest and indicate that the determination of the sufficiency of the showing of interest is ministerial and not reviewable. Petitioner maintains that these amendments eliminate any chances of deception or error with respect to the eligibility of employee organizations to be placed on the ballot.

While the Board's agent by practice verifies the eligibility of petition signatories and signatures, there appears to be no practicable way to verify the date of the employee's signature absent individual inquiries. The complexities presented by the independent investigations would thus unduly prolong the verification process. In addition, we believe that the report of verification results to the

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<sup>1</sup>Our review of jurisdictions which have a public sector collective bargaining law and rules which establish an effective period for the validity of the showing of interest indicates that none provide for a period of less than 90 days. Three jurisdictions provide for a period of 90 days, one provides for period of 120 days, six jurisdictions, including Hawaii, provide for a six-month period and five for a one year period.

employer, who is neutral in the representation process and the employee organizations, who are not otherwise entitled to disclosure, may destroy the confidentiality of the identities of employees seeking a change in representation.

The present rule is based upon the National Labor Relations Board elections procedures. We continue to believe that the determination of the sufficiency of the showing of interest is ministerial and not reviewable and no evidence should be furnished to any parties to protect the confidentiality of the affected employees. Hence, we maintain our present rule is appropriate and reflects the current practice of the National Labor Relations Board.

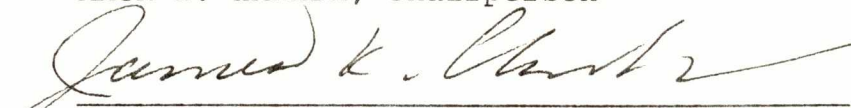
ORDER

For the foregoing reasons, we deny the subject petition.

DATED: Honolulu, Hawaii, March 4, 1983.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES K. CLARK, Board Member

  
JAMES R. CARRAS, Board Member

cc: James A. King Esq.  
Joyce Najita, IRC  
Robert Hasegawa, CLEAR  
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