

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
	)	
SUSAN HEILIGMAN,	)	
	)	
Petitioner,	)	Case No. <u>RD-05-4</u>
	)	
and	)	Decision No. <u>49</u>
	)	
HAWAII STATE TEACHERS	)	
ASSOCIATION,	)	
	)	
Exclusive Representative,	)	
	)	
and	)	
	)	
HAWAII FEDERATION OF TEACHERS,	)	
	)	
Intervenor,	)	
	)	
and	)	
	)	
BOARD OF EDUCATION,	)	
STATE OF HAWAII,	)	
	)	
Public Employer,	)	
	)	

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FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER

An objection to conduct affecting the result of the June 4 and 5, 1974, unit 5 election was brought before the Hawaii Public Employment Relations Board (hereafter Board) by Messrs. Donald F. Jensen and Jack S. Warriner (hereafter Petitioners<sup>1</sup>).

Pursuant to Chapter 89, Hawaii Revised Statutes (hereafter HRS), the Board sitting en banc held a hearing on June 21, 1974. The Hawaii State Teachers Association (hereafter

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<sup>1</sup>In Case RD-05-4 the Petitioner, as the above caption indicates, is Susan Heiligman. Messrs. Jensen and Warriner were not parties to that initial proceeding. However, for the purposes of this decision and their objection to the election conducted in Case RD-05-4, they shall be referred to herein as Petitioners.

HSTA) has filed a motion to dismiss the Petitioners' objection and a supporting memorandum. The three grounds asserted by the HSTA as warranting dismissal were: (1) that petitioners Jensen and Warriner had no standing to raise objections to the election; (2) the objections were not timely filed; (3) the objections stated no particulars and no facts upon which this Board could act. Susan Heiligman and the Board of Education have not participated in the instant proceeding. Additionally, the Hawaii Federation of Teachers (hereafter HFT), though present at the June 21, 1974, hearing, has declined further involvement.

The Board having reviewed the entire record, exhibits and memorandum submitted by the HSTA,<sup>2</sup> hereby makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

1. The Petitioners are individual public employees and members of unit 5 (teachers and other personnel of the department of education under the same salary schedule).

2. The HSTA is the employee organization certified as the exclusive bargaining representative of unit 5.

3. On June 3, 1974, Susan Heiligman filed with this Board a petition for decertification of the HSTA, Case RD-05-4.

4. On June 3, 1974, the HFT intervened in Case RD-05-4.

5. Pursuant to the proceedings in Case RD-05-4, an election was conducted to determine the exclusive bargaining representative for unit 5 on June 4 and 5, 1974.

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<sup>2</sup>The Petitioners did not file a memorandum although they had requested and were afforded an opportunity to do so.

6. The ballots cast during the election were tallied on June 6, 1974, and the results were furnished and certified by the Board the same day.

7. On June 14, 1974, the fifth working day after the results of the election were certified and furnished, Jared H. Jossem, attorney for the Petitioners, called the Board's office at 4:26 p.m. to inquire as to the office closing time. Board secretary Nancy Matsunaga informed him that the office closed at 4:30 p.m. each day. Mr. Jossem then indicated that he was planning to file something that day and requested that someone stay awhile. Mrs. Matsunaga replied that she had to catch a ride, but would keep the office open after 4:30 p.m. for a few minutes. The Board was closed for the day at 4:38 p.m.

8. Between 4:40 p.m. and 4:45 p.m., June 14, 1974, Petitioner Jensen arrived at the Board office and slipped the objection to conduct affecting the results of the election, in the form of a letter, under the door.

9. On Monday morning, June 17, 1974, Board legal stenographer Priscilla Mineshima discovered Petitioners' letter and it was subsequently file stamped June 17, 1974.

10. The text of the Petitioners' letter dated June 14, 1974, was as follows:

"On behalf of Donald Jensen and Jack Warriner, we file this objection to conduct affecting the results of the election conducted on June 4, and 5, 1974.

"The election should be set aside because HSTA unlawfully campaigned using service fee monies.

Very truly yours,

/s/ Jared H. Jossem"



## CONCLUSIONS OF LAW

### I. Do the Petitioners have standing to object to the conduct affecting the results of the election?

The HSTA contends that under the Board's Rules and Regulations the Petitioners do not have standing to raise an objection to conduct affecting the results of the election since the Petitioners were not parties to the election proceedings in Case RD-05-4. The attorney for the Petitioners has stated to the Board that he has no objection to a dismissal being entered herein on such grounds.

The Board agrees with the position of the HSTA on this issue.

HPERB Rule 2.16(e)(1) provides in relevant part:

" . . . any party may file . . . objections to . . . conduct affecting the results of the election."

The term "party" is defined in HPERB Rule 1.04(d):

"The term 'party' shall mean any public employee . . . filing a complaint, petition, request or application under the Act or the rules and any person . . . named as party in a complaint, request or petition filed under the Act or the rules."

Case RD-05-4 was filed by Susan Heiligman. The HSTA and Board of Education were the other named parties in the petition. The HFT intervened in the matter.

The Petitioners did not file the petition in RD-05-4 and were not named therein, nor did they intervene in said case. Thus, it is clear that they do not satisfy the requirements of HPERB Rule 1.04(d) and 2.16(e)(1) to be regarded as parties in the representation proceeding. It follows, that since they were not parties, they have no standing under Rule 2.16(e)(1) to object to conduct allegedly affecting the outcome of the election.

The National Labor Relations Board in interpreting a rule similar to Rule 2.16(e)(1) has held on numerous occasions that one must be a party to a representation proceeding to have standing to file objections to an election. Westinghouse Electric Corp., 78 NLRB No. 38, 22 LRRM 1198 (1948). Times Square Stores Corp., 79 NLRB No. 50, 22 LRRM 1373 (1940). Wilson and Co., Inc., 82 NLRB No. 42, (1949) and Warwick Mfg., Corp., 107 NLRB No. 13, 33 LRRM 1041 (1953). While this Board is not bound by decisions of the National Labor Relations Board, it does consider NLRB decisions on the interpretation of rules similar to ours to be hortatory.

Based upon the foregoing, this Board holds that in view of the provisions of Rule 2.16(e)(1), objections to conduct allegedly affecting the outcome of an election will not be entertained unless they are filed by parties to the representation proceedings in question.

II. Even assuming that the Petitioners have standing to object, was the objection to conduct affecting the results of the election timely filed?

The HSTA has additionally urged that the instant proceeding should be dismissed since the Petitioners' objection to conduct affecting the results of the election was not timely filed.

HPERB Rule 2.16(e)(1) requires that objections to conduct affecting the results of an election be filed within five working days after the tally of ballots.

Additionally, Rule 2.16(e)(2) provides in relevant part:

"Such objections to the conduct of election or conduct affecting the results of the election shall be timely filed. . ."



Applying this rule to the facts of this case, it is clear that the objection filed by the Petitioners was untimely. The result of the tally of votes in the election was certified and furnished by this Board on June 6, 1974. Since June 11 was an official State holiday, the Petitioners had until Friday, June 14, 1974, 4:30 p.m. to file their objections. They did not do so.

The National Labor Relations Board has a similar rule that requires that objections to an election be filed within five days after the tally of ballots. Section 102.69, NLRB Rules and Regulations, provides in relevant part:

" . . . within five days after the tally of ballots has been furnished, any party may file with the regional director an original and three copies of objections to the conduct of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely. . . "

In 1964, an NLRB regional director ruled in a case with facts nearly identical to those in the case at hand, that a petition filed 15 minutes after the official closing time of the agency's office was not timely filed. The regional director dismissed the petition. Wilson-Jacobi, Inc., 1964 CCH NLRB 12,957, 55 LRRM 1342 (1964). In Wilson-Jacobi, a representation election was conducted on January 16, 1964, and the results thereof were provided that same day. The last day upon which objections could be filed was January 23, 1964, five working days after the release of the election results. At 3:00 or 3:30 p.m. on January 23, an NLRB employee received a telephone inquiry as to the closing time of the office. The caller indicated that he wished to file objections to an election. The employee advised the caller that 5:30 p.m. was the closing hour and anything received after that time would be credited to the

next day. The caller delivered and filed the objections to the election at 5:45 p.m. The regional director rejected the objection since it was received after business hours on the last day to file objections, and was therefore untimely and not filed in accordance with the pertinent NLRB Rules and Regulations. See also Sigwold Storage and Transfer, 20 NLRB No. 70, 84 LRRM 1228 (1973), Hughes Tool Co., 197 NLRB No. 17, 80 LRRM 1479 (1972), Election Corp. v. NLRB, 449 F.2d 774, 78 LRRM 2575 (7th Cir. 1971); Wilson-Sinclair Co., 191 NLRB No. 62, 77 LRRM 1438 (1971), and NLRB v. Reliance Steel Products Co., 322 F.2d 49, 53 LRRM 2961 (5th Cir. 1963). In all of these cases, objections to elections were uniformly dismissed because they had not been filed within five days after an election.

This Board holds that under its rules, in order for the Petitioners' objection to an election to be entertained, it must be properly and timely filed. Filing an objection after the close of this Board's office on the fifth working day after the tally of the ballots does not satisfy this requirement. Thus, the failure of the Petitioners to comply with the timeliness requirement, without good cause, warrants a dismissal of their objection. The rules which require the filing of objections to an election within five days after the election are designed to insure the expeditious processing of the matters before the Board. Dismissals or other sanctions are clearly necessary to promote, preserve and enforce the Board's function.



III. Does the Petitioners' letter of June 14, 1974, constitute a valid objection to the election?

The HSTA has urged that the Petitioners' letter dated June 14, 1974, does not satisfy the requirements of HPERB Rule 2.16(e)(3) in that it does not contain supportive particulars. This Board finds no merit to the contention of the HSTA.

The HSTA has cited, to support its contention, one NLRB case, a section of the NLRB Rules and Regulations, and HPERB Rule 2.16.

NLRB Rule 102.69, quoted above, requires that objections to the election contain a short statement of the reasons therefore. That section further requires that "the party filing objections shall, upon request, promptly furnish to the regional director the evidence available to it to support the objections."

The NLRB case relied upon by the HSTA is not applicable because in that case the objection was dismissed for failure to comply with the second part of Rule 102.69(a), viz, a regional director had directed the petitioner to submit promptly written prima facie evidence in support of the petitioner's objections. The petitioner failed to do so and, on this ground, his objections were dismissed.

Lindsley Industries, 199 NLRB No. 83, 81 LRRM 1275 (1972).

The applicable HPERB Rule 2.16(e)(3) states the following:

"Such objection shall contain a brief statement of the reasons therefor."

The Petitioners' letter dated June 14, 1974, did state a reason for their objection to the conduct allegedly affecting the outcome of the election sufficient to put all




interested parties on notice as to the reason for the objections. For purposes of filing an objection, it is enough under our rule that reasons be given; it is not necessary, at the point in time when objections are filed, that said objections be supported in such initial pleading by evidence of a prima facie case or extensive particularization. For this reason, the Board holds that the Petitioners' letter of June 14, 1974, satisfied the requirement of Rule 2.16(e)(3) and does not afford a ground for dismissal of the objections filed.


ORDER

Because Petitioners lacked standing to file their objection and because said objection was not timely filed, the HSTA's motion is granted and the Petitioners' objection to conduct affecting the results of the election is hereby dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
John E. Milligan, Board Member

  
James K. Clark, Board Member

DATED: August 1, 1974

Honolulu, Hawaii