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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

_____)
In the Matter of:)
)
Vaughn L. Bennett,)
Vincent Kyle II,)
Nathan Queen and)
Robert Wright,)
)
 Petitioners,)
)
and)
)
International Association)
of Firefighters, Local 36)
)
 Respondent,)
)
and)
)
D.C. Fire and Emergency)
Services Department,)
)
 Agency.)
_____)

PERB Case No. 95-RD-01
Opinion No. 436

DECISION AND DIRECTION OF ELECTION

On March 17, 1995, Vaughn L. Bennett, Vincent Kyle II, Nathan Queen and Robert Wright (Petitioners) filed a Decertification Petition with the Public Employee Relations Board (Board), requesting decertification of the International Association of Firefighters, Local 36 (IAFF) as the exclusive bargaining representative of a unit of employees who are employed by the D.C. Fire and Emergency Department (FED) and described as follows:

Unit:

All uniformed members of the D.C. Fire Department in the ranks of Firefighter through Captain; excluding all other uniformed members of the D.C. Fire Department, confidential employees, employees engaged in personnel work in other than purely clerical capacities and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive

Decision and Direction of Election
PERB Case No. 95-RD-01
Page 2

Merit Personnel Act of 1978.^{1/}

By letter dated March 22, 1995, the Acting Executive Director of the Board, pursuant to Board Rule 505.6, solicited a response from IAFF. On March 31, 1995, the Board received a Response from IAFF to the Decertification Petition indicating its desire to continue representing employees in the unit.

On April 20, 1995, Notices concerning the Petition were sent to FED through the Office of Labor Relations and Collective Bargaining (OLRCB) for posting at employee work sites. OLRCB confirmed that the Notices had been properly posted. No objections, comments or requests to intervene were received from OLRCB, any employee, or any other labor organization.

In its Response IAFF moved that the Petition be dismissed. In accordance with Board Rule 553, the Petitioners filed a Response to IAFF's Motion to Dismiss and IAFF then filed a Reply. IAFF initially claimed that the Petition was untimely filed and is not supported by a proper showing of interest, but in its Reply, IAFF deferred to the Board's administrative determination with respect to the showing of interest. ^{2/} Board Rule 502.4 provides that

^{1/} IAFF was first recognized as the exclusive bargaining representative for a unit consisting of all "privates through captains" by the Executive Office of the Commissioner, Personnel Office on December 23, 1970, pursuant to a secret-ballot election. The Bureau of Labor Relations (the PERB's predecessor) affirmed the scope of this unit in denying a petition for unit modification on July 9, 1975. International Association of Firefighters, Local 36 and District of Columbia Fire Department, BLR Case No. 5R0015. The change from "privates" to "Firefighters" in the unit description does not reflect a change in the scope or composition of the unit but a change in the classification of this position since the unit was established in 1970.

The unit was placed in Compensation Unit 4 on February 19, 1981. AFSCME, D.C. Council 20, AFGE et al. and the Honorable Marion S. Barry, Jr. et al., 28 DCR 1762, Slip Op. No. 5, PERB Case No. 80-R-08. This unit remains the only terms-and-conditions collective bargaining unit in Compensation Unit 4.

^{2/} In its Motion, IAFF had asserted, based on conversations with local members, that many of the signatures were, among other things, undated and stale, i.e., more than a year old at the time the Petition was filed. Upon review of the showing of interest, we are satisfied that the showing meets the requirements of Board Rule
(continued...)

"[t]he adequacy of the showing of interest shall be determined administratively by the Board or its designee". Pursuant to Board Rule 502.4, we find the Petition was properly accompanied by a thirty percent (30%) showing of interest as required by D.C. Code Section 1-618.10(b)(2).^{3/}

IAFF also contends that the Petition is barred under Board Rule 505.8(c) by an effective collective bargaining agreement covering these employees that does not expire until September 30, 1995. Petitioners contend that the agreement expired on September 30, 1994, but IAFF counters that IAFF and FED extended it to September 30, 1995, in a memorandum of understanding (MOU). The MOU extending the original 1991-1994 agreement is contained in an agreement executed in August 1992, that renegotiated the compensation, benefits and leave provisions of the original agreement through September 30, 1995. (Resp. Exh. 1 at p. 7.)

Pursuant to Board Rule 505.8(c), the MOU could not effectively eliminate the open period in the original 3-year agreement, i.e.,

²(...continued)
505.3.

IAFF also claims that some employee signatures were obtained through pressure or misrepresentation. (Resp. at 4.) These claims are also based on conversations IAFF had with members of the unit. No investigation of such claims can be effective without compromising the confidentiality of employees comprising the showing of interest, as required under Board Rule 502.5. However, absent voluntary relinquishment of a union's certification pursuant to 505.6, no decertification petition is granted without providing all employees in the unit another opportunity to express their will in a secret-ballot election conducted under the auspices of the Board. Under these circumstances, we find the integrity of the process is preserved. See, e.g., Fraternal Order of Police\DOC Labor Committee and Dep't of Correction, et al., ___ DCR _____, Slip Op. No. 370 at n. 6, PERB Case No. 94-R-04.

^{3/} In response to the Board's investigation of this matter, OLRB submitted an alphabetical list of the employees in the affected unit for the pay period immediately preceding the filing of the Petition. According to that list, there are one thousand two hundred thirty-one (1,231) employees in the collective bargaining unit.

the 120th and 60th day prior to September 30, 1994.^{4/} Upon the expiration of this open period, however, the MOU's 1-year extension of the original agreement effectively established a new open period, i.e., June 2 - August 1, 1995. See, D.C. Corrections Employees Union, International Union of Police Associations, Local 1990, AFL-CIO and Dep't of Correction, et al, ___ DCR ___, Slip Op. No. 326, PERB Case No. 91-R-03 (1992). Petitioners filed their Petition after this open period, i.e., on March 17, 1995. The Petition was therefore prematurely filed under Board Rule 505.8(c). However, we will not dismiss the Petition because, with the passage of time, a new open period has now arrived.

Like the National Labor Relations Board, we hold that an election may be directed even if a petition was prematurely filed if a timely petition could be filed at the time the case is decided. See, Deluxe Metals Furniture Co., 121 NLRB No. 135 (1958). See also, Foote Memorial Hosp., 230 NLRB No. 88; Royal Crown Cola Co., 150 NLRB No. 159 (1965) and Silas Mason Co., 142 NLRB No. 83.

Upon review of the Petition, we conclude that it meets the requirements of Board Rules 505.2 and 505.3. Therefore, in view of our discussion above and pursuant to D.C. Code Section 1-618.10(b)(2) and Board Rule 505.7, we direct that an election be held to determine the will of eligible employees concerning the continuation of such representation in collective bargaining with FED.

ORDER

IT IS HEREBY ORDERED THAT:

An election is directed pursuant to D.C. Code § 1-618.10(b)(2) of the Comprehensive Merit Personnel Act to determine whether these employees wish to continue to be represented by the International Association of Firefighters, Local 36, or not, for purposes of collective bargaining over compensation and other terms and conditions of employment.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
June 16, 1995

^{4/} Board Rule 505.8(c) allows a single collective bargaining agreement covering employees in the bargaining unit to act as a bar for a maximum of 975 days. Following the 60-day open period, a contract of 3 years or more, or a contract which has been extended will bar the filing of a petition in accordance with the provisions of Board Rule 505.8(c).