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	PERB Case No. 95-RD-01 Opinion No. 445
International Association of Firefighters, Local 36	Motion for Reconsideration
Respondent,	
and	
D.C. Fire and Emergency Services Department,	
Agency.	

DECISION AND ORDER

On June 16, 1995, the Board issued a Decision and Direction of Election, Slip Op. No. 436, in the above-captioned case directing an election to determine whether employees in the bargaining unit represented by the Respondent, the International Association of Firefighters, Local 36 (IAFF), wish to continue to be represented by IAFF.[1]/ On June 23, 1995, Respondent filed a Motion requesting that the Board reconsider its Decision and Direction of Election. In accordance with Board Rule 553.2, Petitioners filed a Response opposing the Motion.

We held in Opinion No. 436 that "an election may be directed even if a petition was prematurely filed if a timely petition could

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[1]/ Member Jenkins did not participate in that Decision or in the Board's decision on the Motion for Reconsideration.

be filed at the time the case is decided."[2]/ We cited certain National Labor Relations Board (NLRB) precedent as supporting this result. In the main, IAFF contends that the facts of this case do not meet all the criteria relied upon in the cited NLRB cases.

Our contract and certification bar rules were derived from the National Labor Relations Board's (NLRB) policy. We therefore thought it was noteworthy that the NLRB has directed an election pursuant to a prematurely filed petition -- meeting all other requirements-- when (1) there initially were reasonable grounds for believing that the contract was not a bar to an election for some reason other than timeliness and (2) by the time this issue is determined, after a directed hearing, the open period for the petition has arrived. We cited the following cases as examples of the NLRB's policy: Deluxe Metals Furniture Co., 121 NLRB No. 135 (1958); Silas Mason Co., 142 NLRB No. 83 (1963); Royal Crown Cola Co., 150 NLRB No. 159 (1965); and Foote Memorial Hosp., 230 NLRB No. 88 (1977). However, while the Board may often cite NLRB case law, the PERB is not bound by NLRB precedent.

IAFF points out that in this case the grounds for believing the contract was not a bar was based on timeliness, and the Board's resolution of this issue was not determined by a hearing. Although a hearing was not required, a careful review of the parties' pleadings, exhibits and briefs was necessary to render a determination on the issue presented. We do not believe the conduct of a hearing is an essential element driving this exception to the contract bar principle. And while the issue raised related only to the timeliness of the Petition, we nevertheless find the purpose of the exception served when the dismissal of the Petition would not finally resolve the representation dispute since a new petition could be timely filed as soon as our Decision in Opinion No. 436 issued. Silas Mason Co., 142 NLRB No. 83 and Weston Biscuit Company, 117 NLRB 1206.

The Board has reviewed the arguments and finds that IAFF, in its distinction of Deluxe Metals Furniture Co., has not provided any convincing reasons why we should not direct an election under the facts and circumstances of this case. We note, however, that should we ever detect that a petitioner has deliberately filed prematurely to take advantage of our holding, our decision might be

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[2]/ Our ruling creates an exception we will recognize when a petition is filed prematurely but in good faith. We believe this exception is not inconsistent with the purpose and policy of Board Rule 505.8 and 502.9 to balance the competing interests of maintaining stable labor-management relations and providing a regular and predictable opportunity for employees to vote on their exclusive representative.

otherwise. We do not find this to be the case with the instant Petition. The Motion is, therefore, denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Motion for Reconsideration of the Board's Decision and Direction of Election in Opinion No. 436 is denied.

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

July 31, 1995