

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. DC-44-04

(DECERTIFICATION)

DONITTA K. BOOTH AND EMPLOYEES )  
OF MID-COLUMBIA COUNCIL )  
OF GOVERNMENTS, )

Petitioner, )

v. )

SERVICE EMPLOYEES INTERNATIONAL )  
UNION LOCAL 503, )  
OREGON PUBLIC EMPLOYEES UNION, )

Respondent. )

DISMISSAL ORDER

This matter is before this Board on Respondent's motion to dismiss, following a hearing before Administrative Law Judge (ALJ) B. Carlton Grew on November 23, 2004, in The Dalles, Oregon.

Bruce Bischof, Attorney at Law, 747 S.W. Mill View Way, Bend, Oregon 97702, represented Petitioner.

Joel L. Rosenblit, Attorney at Law, SEIU Local 503, OPEU, 1730 Commercial Street S.E., P.O. Box 12159, Salem, Oregon 97309-0159, represented Respondent.

On May 28, 2004, Petitioner Booth filed a petition to decertify the Service Employees International Union Local 503, Oregon Public Employees Union (SEIU) as the exclusive representative of a bargaining unit of employees of the Mid-Columbia Council of Governments (Council). Pursuant to a consent election agreement signed by

the parties' on June 24, 2004, an election was held on July 22, 2004. Four ballots were challenged by Petitioner, and the Oregon Employment Relations Board (ERB) Elections Coordinator determined that the challenged ballots could determine the outcome of the election. Accordingly, a hearing on the challenges was held on November 23, 2004. After the hearing, but prior to the issuance of the recommended order, the Council and SEIU reached a settlement of their disputes in a related unfair labor practice proceeding, UP-34-04.

As part of the settlement, SEIU and the Council stipulated to the following facts, of which we take notice :

1. On April 28, 2004, the Council and SEIU reached tentative agreement on their first collective bargaining agreement.
2. The tentative agreement did not require that it be otherwise signed or ratified by the parties in order to take effect. Nevertheless, the Council ratified the agreement on April 29, and SEIU ratified the agreement on May 6.
3. The new collective bargaining agreement was effective April 28, 2004.

In addition, we take notice that the records of ERB show that SEIU was certified as the exclusive representative of a bargaining unit of Council employees on May 27, 2003, following an election on May 13, 2003. *Service Employees International Union Local 503, Oregon Public Employees Union v. Mid-Columbia Council of Governments*, Case No. RC-8-03. This petition for decertification was filed on May 28, 2004.

Based upon these facts and applicable ERB precedent, Respondent SEIU moved to dismiss this decertification petition as untimely under this Board's contract bar doctrine. We grant Respondent's motion for reasons set forth below.

## DISCUSSION

OAR 115-25-000(1) deals with decertification petitions, and provides, in part:

"A petition for decertification may be filed by a public employee or group of public employees alleging that 30 percent of the employees in a bargaining unit assert that

the designated exclusive representative is no longer the representative of the majority of the employees in the unit;”

This Board’s contract bar doctrine is derived from ORS 243.692, which provides, in part:

“\* \* \* (1) No election shall be conducted under ORS 243.682(3) in any appropriate bargaining unit \* \* \* during the term of any lawful collective bargaining agreement between a public employer and an employee representative.  
\* \* \*

“\* \* \* \* \*

“(3) A petition for an election where a contract exists must be filed not more than 90 calendar days and not less than 60 calendar days before the end of the contract period.  
\* \* \* ”

Under the contract bar doctrine, if a contract between the Council and SEIU was in existence when this decertification petition was filed, the petition is untimely and will be dismissed.

On April 28, 2004, the Council and SEIU reached tentative agreement on their first collective bargaining agreement. The tentative agreement did not require that it be otherwise signed or ratified by the parties in order to take effect. Nevertheless, the Council ratified the agreement on April 29 and SEIU ratified the agreement on May 6, 2004. The new contract was effective on April 28, 2004. This decertification petition was filed on May 28, 2004. The parties had not signed a contract when the petition was filed. The issue is whether the parties’ actions were sufficient to constitute a contract prior to May 28.

This Board has previously held that a ratified, but not signed, agreement constitutes a contract sufficient to bar an election. *Douglas County Law Enforcement Association v. Douglas County*, Case No. UC-19-00, 18 PECBR 704 (2000), and cases cited therein.

In this case, employees subject to this decertification petition were covered by a collective bargaining agreement at the time the petition was filed. At the latest, the labor contract became effective on May 6, 2004, when both parties had ratified the agreement. The petition was not filed until May 28, 2004, and hence was untimely

our contract bar rule. Because no objections were raised by any party, and a consent election agreement was signed, an election was held. We grant SEIU's motion to dismiss, because under these circumstances, no election should have been held.

ORDER

The petition is dismissed.

DATED this 20 day of December 2004



Paul B. Gamson, Chair



James W. Kasameyer, Board Member

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Rita E. Thomas, Board Member

This Order may be appealed pursuant to ORS 183.482.

\*Board Member Thomas absent on date of signing.