

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PLRA-D-14-8-E
 : (PLRA-R-93-9-E)
 :
 KAOLIN MUSHROOM FARMS, INC. :

FINAL ORDER

A Petition for Decertification under the Pennsylvania Labor Relations Act (PLRA) was filed with the Pennsylvania Labor Relations Board (Board) on September 15, 2014, by Roberto Morales (Petitioner), alleging that thirty percent or more of the employes of Kaolin Mushroom Farms (Employer) no longer desired to be represented by the Union De Trabajadores de Kaolin (Kaolin Workers Union) (Union)¹ and requesting pursuant to Section 7(c) of the PLRA that the Board schedule a hearing and order an election. The Petition was accompanied by a showing of interest to support the Petitioner's contention that at least thirty percent of the eligible employes desired to decertify the Union as their bargaining representative.

On September 24, 2014, the Secretary of the Board dismissed the Petition for Decertification as untimely. The Secretary stated that, pursuant to Section 7(c) of the PLRA, the Petition was barred by the existing collective bargaining agreement (CBA), which, as set forth in the Petition, expires on October 2, 2016.

On October 14, 2014, the Petitioner and the Employer each filed timely exceptions with the Board challenging the Secretary's dismissal of the Petition for Decertification. The Petitioner alleged in his exceptions that the parties' CBA is effective from August 3, 2009 through October 2, 2016 and that it would be an unreasonable limit on the employes' associational rights under the PLRA to allow the parties' seven-year contract to bar the Petition for Decertification. Both the Petitioner and the Employer urged the Board to apply a three-year contract bar to the present matter and allow an election to be held.

On November 4, 2014, the Union filed a response to the exceptions alleging that the Petitioner and the Employer conceded that the Petition for Decertification is barred by the parties' CBA. The Union further asserted that the Board does not have the authority to adopt a three-year contract bar in contravention of the specific language set forth in Section 7(c) of the PLRA. On November 18, 2014, the Board remanded this matter to the Secretary with direction to order a hearing, citing the Board's previous adoption of the three-year contract bar under the PLRA and Act 111 of 1968. **See O'Hara Township**, 9 PPER ¶ 9073 (Order Fixing Time and Place of Election, 1978), 10 PPER ¶ 10313 (Final Order, 1979), **aff'd**, 14 PPER ¶ 14107 (Court of Common Pleas, 1983).

Action was deferred on the decertification petition because, on October 31, 2014, the Union filed a Charge of Unfair Labor Practices against the Employer at Case No. PLRA-C-14-9-E which, if proven, would tend to coerce the employes in the free exercise of their choice of bargaining representative. On November 24, 2014, the Secretary of the Board issued a Complaint and Notice of Hearing establishing December 23, 2014 as the date of hearing on the Union's unfair labor practice charge. The hearing was continued at the request of the parties. On January 5, 2015, the Board received a letter from the Union requesting withdrawal of the charge at Case No. PLRA-C-14-9-E.

On January 23, 2015, an Order and Notice of Hearing was issued directing that a prehearing telephone conference be held on February 11, 2015 and a hearing be held on March 10, 2015 before a Hearing Examiner of the Board. The pre-hearing conference was held as scheduled, at which time the parties agreed to consider entering into a memorandum of agreement for the conduct of an election. On March 2, 2015, memoranda of

¹ On March 22, 1996, the Board certified the Union as the exclusive bargaining representative for all full-time and regular part-time mushroom production laborers, including but not limited to pickers, casers, spawners and watermen.

agreement were filed with the Board by the Employer, Petitioner and Union stipulating to the unit composition, the site for the election, position on the ballot, the eligibility list, and other matters pertaining to the conduct of the election.

On March 6, 2015, an Order and Notice of Decertification Election was issued directing that a secret ballot election be conducted on March 19, 2015, among the employees of the Employer to ascertain whether they wished to continue to be represented by the Union for the purpose of collective bargaining or whether the employees wished no representative. The election was conducted as directed by an election officer assigned by the Board. In the election, the Union received sixty-seven (67) votes and the choice of No Representative received ninety-four (94) votes. On March 27, 2015, a Nisi Order of Decertification was issued by the Board Representative certifying the results of the election and decertifying the Union as the exclusive representative of the Employer's employees. On April 14, 2015, the Union filed timely exceptions with the Board challenging the Board's adoption of a three-year contract bar under Section 7(c) of the PLRA and its Order remanding the matter for a hearing and decertification election. On May 6, 2015, the Employer timely filed a response to the exceptions.

In its exceptions, the Union reiterates its arguments as previously set forth in its November 4, 2014 response to exceptions. Section 7(c) of the PLRA provides, in relevant part, that "[a]ny certification of representatives by the board shall be binding for a period of one year, or for a longer period if the contract so provides, even though the unit may have changed its labor organization membership." 43 P.S. § 211.7(c). Unlike the three-year contract bar provision in the Public Employee Relations Act (PERA)², Section 7(c) of the PLRA does not set forth a maximum limit on the number of years that a contract may bar a representation petition. However, in **O'Hara Township, supra**, which involved police officers covered under Act 111, the Board adopted a three-year contract bar for representation petitions filed under the PLRA.³ In **O'Hara Township**, the Board stated as follows:

This Board has on many occasions recognized the existence of a contract bar rule in petitions brought under the PLRA. *Shafer's Petition*, 347 Pa. 130, 31 A.2d 537 (1943), *Pennsylvania Labor Relations Board v. Loose*, 402 Pa. 620, 168 A.2d 323 (1961). We have been instructed by the Supreme Court in *Philadelphia Fire Officers Association, supra* to "construe the two acts together as a single statute." While Section 11 of Act 111 repeals all parts of acts inconsistent with that Act, there is no such inconsistency as Act 111 has no provision for contract bar. Because the PLRA does contain a contract bar provision and because that Act is read in pari materia with Act 111 we must therefore apply a contract bar to petitions brought under Act 111.

In reading Act 111 in pari materia with the PLRA, it is clear that while a contract bar is to apply, it remains for the Board to establish a framework for its application...

In the federal sphere, the contract bar rule was created by the National Labor Relations Board for the purpose of creating stability in industrial relations. The Board balanced the interest of employe[s'] freedom to choose their own representatives with the interest in stability of industrial relations and fashioned a rule whereby no redetermination of

² Section 605(7) (i) of PERA provides that "[n]o election shall be conducted... during the term of any lawful collective bargaining agreement... This restriction shall not apply to that period of time covered by any collective bargaining agreement which exceeds three years..." 43 P.S. § 1101.605(7) (i).

³ Because Act 111 does not contain provisions addressing selection of employe bargaining representatives, the Pennsylvania Supreme Court has directed that Act 111 must be read **in pari materia** with the PLRA, which does contain such provisions. **Philadelphia Fire Officers Association v. Pennsylvania Labor Relations Board**, 470 Pa. 550, 369 A.2d 259 (1977).

bargaining representatives could be made until the approaching expiration of a collective bargaining agreement. *Superior Electric Products*, 6 NLRB 19, 2 LRRM 105 (1938), *Container Corporation*, 61 NLRB 823, 16 LRRM 112 (1945).

...

[W]e must determine how long a contract may serve to bar an election. The National Board in *General Cable Corporation*, 41 LRRM 1444 (1962) established a three year contract bar whereby contracts of definite duration for terms up to three years will bar an election for that entire period and contracts having longer fixed terms would be treated for bar purposes as three year agreements and will preclude an election for only the initial three years. This is also the practice adopted by the General Assembly for petitions brought under Act 195 (see 43 P.S. § 1101.101 et seq.). We also think that three years is appropriate as the maximum length of time a contract may serve as a bar for resolution of police/fire questions of representation. While adopting this three year maximum, we are mindful of a growing trend toward multi-year contracts between public employers and their employees generally and police/fire employees in particular.

9 PPER at 142.

The Board is charged with the responsibility of implementing the public policy behind enactment of the PLRA, which is "to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing..." 43 P.S. § 211.2(c). In **O'Hara Township**, the Board determined that adopting a three-year contract bar to representation petitions filed under the PLRA would further this public policy. To hold otherwise, as argued by the Union, would allow employers and employe organizations to enter into contracts spanning limitless years, hindering the rights of employees to freely choose their representatives. Further, the Board's adoption of a three-year contract bar for representation petitions filed under the PLRA was consistent with the Board's election procedures under PERA and the procedures followed by the National Labor Relations Board in the private sector. Therefore, the Petition for Decertification in this case is not barred by the parties' seven-year agreement because the Petition was filed past the initial three years of the contract.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Union's exceptions and make the Nisi Order of Decertification final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Union De Trabajadores de Kaolin (Kaolin Workers Union) are hereby dismissed and the Nisi Order of Decertification be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this twenty-first day of July, 2015. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.