STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GERALD F. deBANE PICHE, Petitioner and Appellant, and MENDOCINO COLLEGE INSTRUCTORS ASSOCIATION, CTA/NEA, Employee Organization.	)	Case No. SF-D-104 PERB Decision No. 369 December 22, 1983

Appearances: Gerald F. deBane Piche, representing himself.

Before Tovar, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (Board) on an appeal filed by the petitioner, Dr. Gerald F. deBane Piche, which disputes the decision of the Board's Regional Director to dismiss the petitioner's decertification petition.

We have reviewed the attached decision of the Regional Director in light of the petitioner's appeal and the entire record in this matter. Finding it to be free from prejudicial error, we adopt it as the decision of the Board itself.

ORDER

The Board ORDERS that the petitioner's decertification petition filed on March 23, 1983 be DISMISSED.

Members Tovar and Burt joined in this Decision.

STATE OF CALIFORNIA
GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
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April 19, 1983

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Re: SF-D-104 (R-615)
Mendocino Community College District

Dear Interested Parties:

A decertification petition in the above-referenced case pursuant to PERB Regulation 32770[1] was filed with this office on March 28, 1983 by Dr. deBane Piche on behalf of a group of employees. The established unit consists of approximately thirty-eight full-time instructors of the Mendocino Community College District, currently represented by the Mendocino College Instructors Association/CTA/NEA (MCIA/CTA/NEA).[2]

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[1]PERB regulations are codified at California Administrative Code, title 8, part III, section 31001 et seq.

[2]The Mendocino College Instructors Association/CTA/NEA was granted voluntary recognition on February 21, 1979 for a unit of all full-time certificated employees excluding the Superintendent/President, all Vice-Presidents, all Deans, all Assistant Deans, all Directors, all part-time certificated employees, and all management, supervisory and confidential employees.

Section 3544.5(d) of the Educational Employment Relations Act (EERA)[3] permits employees and employee organizations to seek to expel an incumbent organization or replace an incumbent with another organization by filing a petition with the Board. The decertification petition was allegedly accompanied by proof that at least 30% of the employees in the established unit desired no representation.[4] The sole issue to be determined in this case is whether the proof of support submitted with the petition is adequate within the confines of sections 32770(b)

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[3]The EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code unless otherwise noted. Section 3544.5(d) authorizes the filing of a decertification petition, stating:

> A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:
>
> . . . . . .
>
> (d) An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by current dues deduction authorizations or other evidence such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative.

[4]See attached copy of Decertification Petition, item 9.

and 32700 of PERB's rules and regulations to sustain the decertification petition.[5]

DISCUSSION

The proof of support which accompanied the petition consisted of individually signed statements in the format described as follows. At the top of each page, the following statement appeared:

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[5]Section 32770(b) provides:

> (b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:
>
> (1) No longer desire to be represented by the incumbent exclusive representative; or
>
> (2) Wish to be represented by another employee organization.
>
> Proof of support is defined in Division 1, Section 32700 of these regulations.

Section 32700 provides in part:

> . . . . . .
>
> (b) The proof of support shall indicate each employee's printed name, signature, job title or classification and the date on which each individual's signature was obtained. A signature without evidence that it was obtained within one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this Section shall be considered valid even though the signator has executed authorizations for more than one employee organization.

PETITION TO PERB FOR A DECERTIFICATION ELECTION OF MCIA (MENDOCINO COLLEGE INSTRUCTOR ASSOCIATION)

MARCH 10, 1983

The body of each statement contained three options, one of which was to be selected by the signatory employee:

/___/ A. I wish to decertify MCIA as the exclusive representative agent under the California Teachers Association.

/___/ B. I wish to decertify MCIA as the exclusive representative agent under CTA and form a new MCIA under local control.

/___/ C. I wish to retain MCIA as the exclusive representative agent under the California Teachers' Association.

A space for the employee's printed name and signature was provided and, at the bottom of each page, the statement "Please return to my mailbox by March 18, 1983." was printed.

Neither the number of option A signed statements nor the number of option B signed statements submitted with the petition demonstrates at least 30 percent proof of support as required by section 32770(b) supra.[6] In addition, a number of employees selected option C.[7]

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[6]Using the approximate figure of thirty-eight employees in the unit as stated on the petition, 30 percent proof of support would require at least twelve valid authorizations for either option A or B.

[7]This option is irrelevant to the instant proceeding since it seeks to retain the incumbent and nullifies the intent of decertification petitions which is either to oust the incumbent or oust and replace it with another employee organization.

When I informed Dr. deBane Piche of the deficiency of the proof of support on April 4, 1983,[8] he asked that I combine the totals submitted for both options and render the support sufficient to meet PERB regulation requirements since both at least sought to decertify MCIA/CTA/NEA. As I explained to Dr. deBane Piche, I must adhere to a requirement of strict compliance with PERB regulations. Proof of support in decertification cases must clearly and unequivocably state that either the employees no longer desire the incumbent (32770(b)(1)) or wish to be represented by another employee organization (32770(b)(2)). The PERB has stated that ". . . it is the responsibility of the petitioner to present to PERB evidence showing the necessary proof of support" and that ". . . the burden placed on petitioners to assure the accuracy of their supporting materials is not an unreasonable one." Petaluma City Elementary and High School Districts (6/30/82) PERB Order No. Ad-131, at p. 5.

The intent of those individuals executing option B is clearly different from the intent of those employees that selected option A. Option A merely seeks decertification of the incumbent exclusive representative and, assuming timely filing and adequate proof of support, would result in a decertification election ballot which offered a selection between MCIA/CTA/NEA and No Representation. Option B, on the other hand, seeks to replace the exclusive representative with the formation of ". . . a new MCIA under local control." When read together with option A, the intent of the employees expressing a desire for option B is especially clear since, if they simply desired to expel the incumbent, they would have chosen option A. Their selection of option B must therefore be interpreted as a desire that another organization replace

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[8]In accordance with PERB policy to review decertification petitions immediately upon receipt, I attempted to contact Dr. deBane Piche on March 28, 1983 to inform him of the apparent shortcomings of the petition. I was told that he was out of town and unreachable until Sunday, April 3, 1983. I insisted that a message for him to call me be left at his home. The receptionist, Debbie Rosen, returned my call and confirmed that my message had been forwarded. I did not hear from Dr. deBane Piche prior to the close of the window period.

MCIA/CTA/NEA and appear as a third ballot choice along with the incumbent and No Representation in any election held as a result of the petition. Consequently, it cannot be inferred that employees who selected option B would necessarily prefer option A to option C, the status quo. Since options A and B would each result in a different set of ballot choices, it would be a violation of the express provisions of PERB regulation 32770(b) to combine the option A and B proof of support as suggested by Dr. DeBane Piche.

The proof of support submitted with the decertification petition must be rejected for other reasons as well. PERB Regulation 32700(b) specifically requires that each signatory employee's job title or classification be indicated, and that "the date on which each individual's signature was obtained" also be included.[9] Each signature submitted with the petition was undated and did not include a job title.[10]

As stated above, no waiver of proof of support requirements contained in PERB regulations can be made. Because the proof of support submitted in this case is defective in several respects as discussed above, it is determined that the proof submitted is insufficient to support the decertification petition. For this reason, the petition is hereby dismissed.

Because the petition has failed due to insufficient proof of support, no determination regarding the timeliness of the petition is required.

An appeal of this decision pursuant to PERB Regulations 32350 through 32380 may be made within 10 calendar days following the date of service of this decision by filing an original and 5 copies of a statement of the facts upon which the appeal is based with the Board itself at 1031 18th Street, Suite 200, Sacramento, California 95814. Copies of any appeal must be

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[9]See Petaluma City Elementary and High School Districts supra and A. Werman and Sons, Inc. (1955), 114 NLRB 629 [37 LRRM 1021].

[10]The petition forms utilized had dates printed on them prior to circulation. This practice does not meet the requirement that each signature be dated.

concurrently served upon all parties and the San Francisco Regional Office. Proof of service pursuant to Regulation 32140 is required.

Please contact me should you have any questions concerning this matter.

Very truly yours,

Anita I. Martinez
Regional Director

AIM:ir

Attachment