

¹Regulations of the PERB are codified at California

The parties are in agreement on the facts as found by the acting regional director. APT filed its petition for decertification of the existing exclusive representative on March 29, 1982. Accompanying the petition were 111 authorization cards signed by employee members of the unit, as proof that at least 101 (30 percent) of the 336 unit members

Administrative Code, title 8, section 31000 et seq. Section 33240 provides in pertinent part:

.....

(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.

supported decertification. Ten of these cards failed to indicate in what year they were signed. Two other cards showed signature dates which indicated that the signatures had been obtained early in 1981, more than one year prior to the filing of the petition. The other 99 cards were validly dated.

The time period for filing APT's decertification petition closed on April 3, 1982. On April 5, APT was notified by a PERB agent that only 99 cards were validly dated and that this was two short of the required showing. In response APT offered to submit declarations of the employees whose signatures appeared on the 12 invalidly dated cards which would assert that the cards were in fact signed within one year of the filing of the petition. However, a PERB agent notified APT that such declarations would not be accepted, and on April 8, 1982 the acting regional director dismissed the petition on the grounds that the petition lacked the required 30-percent proof of support.

APT's appeal of the dismissal is made on the ground that the PERB agent's refusal to accept and review the offered declarations described above constitutes a failure to adequately investigate the petition as required by Government Code section 3544.7 and an abuse of the agency's discretion. We find, however, that the PERB agent's investigation was neither inadequate nor did it evidence an abuse of discretion.

Pursuant to section 32700 of PERB Regulations, cards purporting to demonstrate the 30-percent proof of support required by section 33240, supra, must be signed and dated, and "[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." Twelve of the cards submitted by APT in support of its petition were without evidence that they were obtained within one year of the filing of the petition. The valid cards remaining did not show the support of 30 percent of the unit members.

Section 33250(b)² of PERB Regulations makes clear that petitions must be received by PERB prior to the close of the window period, which in this instance occurred on April 3, 1982. Since "evidence that [cards were] obtained within one year prior to the filing of the petition . . ." is a required part of the petition (section 32700, supra), APT's

²Section 33250(b) provides:

The petition shall be dismissed whenever either of the conditions of Government Code section 3544.7(b) exist. A petition filed less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and another employee organization must be actually received in the manner set out in Section 32135 during the "window period" as defined by Section 33020.

offer to submit such evidence after April 3, 1982 constitutes an attempt to submit essential petition material after the close of the filing period. Thus, we find that the acting regional director acted properly in refusing to accept such evidence in this case.

We note that the policy of the National Labor Relations Board appears to be the same. Thus, in A. Werman & Sons, Inc. (1955), 114 NLRB 629 [37 LRRM 1021], that board denied an election petition where the proof-of-support cards failed to meet the requirements of the board's rule that such cards must be dated (to establish current support). The board noted that a petitioner's showing of interest is an administrative matter not litigable by the parties, and that evidence of support which fails to meet the requirements of the board is insufficient.

Regulations of the PERB provide that it is the responsibility of the petitioner to present to PERB evidence showing the necessary proof of support. We find that the burden placed on petitioners to assure the accuracy of their supporting materials is not an unreasonable one. Especially where, as here, the underlying matter is a nonlitigable administrative determination, a requirement of strict compliance with procedural rules is appropriate. In this

instance we are administratively satisfied that the showing of support submitted by APT is insufficient.

Appeal DENIED.

Irene Tover, Member

John Jaeger, Member

The dissent of Marty Morgenstern, member, begins on page 7.

Marty Morgenstern, Member, dissenting:

The draft decision rests on a questionable syllogism that goes as follows:

PERB rules require all petitions be filed only during the window period.

All such petitions must be properly dated to indicate timeliness.

Therefore, an apparent technical error in the dating of a petition cannot be investigated after the window closes.

The fact that proof of support cannot be submitted after the window period is not an issue in this case. Likewise, the rule that petitions must be signed within 12 months of filing is not questioned, nor is the Board's requirement that petitioners bear the burden of responsibility for the accuracy of their materials. No extension of time to gather support or submit petitions is being sought. No waiver of the requirements that the employee's name, signature, title, class and date he or she signed the petition is being sought.

Twelve cards are admittedly flawed. Ten lack any indication of the year signed, two others appear to be too old. The petitioner argues that the ten inadvertently omitted the year and in the case of the two stale cards, because it was early in the year, the signers accidentally wrote "81" instead of "82".

The Board's rules do not specifically preclude an investigation of these matters, nor would an investigation undermine the rule burdening a petitioner with the

responsibility to furnish accurate supporting documents. An inquiry here would not lift or significantly lighten the load; it would merely indicate that the Board will not be unreasonable or inflexible in determining if the burden was met. Indeed, the fact that this is an administrative and thus unappealable decision argues more for such an approach than it does for the very strict application the majority favors.

If this is indeed a matter of simple human error, inadvertent, inconsequential and easily determined, then it should not be allowed to deprive the employees of a basic democratic right, a right that lies at the very foundation of the law this Board administers and the society that caused the law to be.

The regional director should be ordered to investigate or hold hearings on whether an appropriate number of cards were timely signed and are otherwise in order and to make a decision on the petitioned election on the basis of the findings.
