VACATED By La Mesa-Spring Valley School District (1983)
PERB Decision No. 316a

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LA MESA-SPRING VALLEY SCHOOL DISTRICT, Employer, and LA MESA-SPRING VALLEY TEACHERS ASSOCIATION, CTA/NEA, Employee Organization.	Case No. LA-UM-161 LA-R-514 PERB Decision No. 316 May 31, 1983

Appearances; Larry P. Schapiro, Attorney (Littler, Mendelson, Fastiff & Tichy) for La Mesa-Spring Valley School District; Charles R. Gustafson, Attorney for La Mesa-Spring Valley Teachers Association, CTA/NEA.

Before Gluck, Chairperson; Tovar and Jaeger, Members.

DECISION

GLUCK, Chairperson: In a case notable for its procedural idiosyncrasies, the La Mesa-Spring Valley Teachers Association, CTA/NEA, (TA), the exclusive representative for a certificated employee unit in the La Mesa-Spring Valley School District (District), petitioned in November 1980 to add to the unit substitute teachers who taught 10 percent of the time during the previous and current school years. The petition was accompanied by a majority proof of support. Five months later, on March 23, 1981, TA orally sought to amend its petition to accrete all substitute teachers, irrespective of the amount of time they taught. It acknowledged that it would not provide a new proof of support.

On the same day, the District raised an objection to the use of the November proof of support. The hearing officer found the proof to be "sufficient." At the same time, he directed TA to file a written amendment of its original unit modification petition and directed the District to submit a new employee list.

A written amended petition was filed on March 24. On April 1, the regional director informed the parties in writing that the proof of support "is sufficient" and added that objection to the appropriateness of the unit modification was to be filed by April 21. On April 8, in its response to the amended petition, the District "doubted" the appropriateness of the modification and that TA had established majority support.

On April 23, by letter to the regional director, the District "moved" to dismiss the amended petition on the grounds that (1) no Board rule authorized an amendment to a unit modification petition and, alternatively, (2) the appropriate date for proof of support is the date of the amended petition. It also claimed that some of the signatures on the proof of support were more than one year old. The regional director's response dated April 27 informed the District that the motion should be made to the hearing officer.

The actual hearing began on May 11, at which time the District moved for dismissal on the same grounds cited in its

April 23 letter. The hearing officer first responded to the District's April 7 (sic) motion,[1] construing it as a request for further investigation and denying it. He then denied the District's immediate motion, adding two "comments." First, he stated he had already denied the motion as to the proof of support on March 23; second, he found the objection to an amendment untimely since the District had not raised it on that date. He then stated he would defer his ruling on the motion until the hearing was closed and he gave the TA's attorney the opportunity to argue the issue in its post-hearing brief.

A hearing officer who replaced the original board agent ultimately issued a proposed decision approving the unit modification and denying the dismissal motion because it had not been made within 10 days of the regional director's April 1 letter. The District excepts to the adverse ruling on its motion, essentially putting forth the same arguments it made to the regional director and hearing officer.

DISCUSSION

The timeliness ruling. As we sort out the facts in these unusual proceedings, we first conclude that the hearing officer's timeliness ruling was erroneous. The District's initial objection (to the proof of support) was raised on

[1]The District's motion was actually made on April 8.

March 23. That it was not finally acted upon at that time is manifest in the hearing officer's May 11 decision to defer his ruling until the record closed and his authorization to TA to argue the issue in its post-hearing brief. The District's renewed objections on April 8, April 23 and May 11 were redundancies as to this issue.

The response objecting to the March 23 amendment was first made on April 8. Public Employment Relations Board rule 33263,2 then in effect, provided a 20-day period for filing a response to a unit modification petition. In this case, the regional director gave the District until April 21 to file its response. Under either provision, the District's April 8 objection was timely. The hearing officer's unexplained reference to a 10-day response time ignored both the rule and the regional director's instructions.

The amended petition. It is not necessary to decide whether the absence of a Board rule specifically authorizing an amended unit modification petition invalidated the filing. Unlike an amended pleading which adds facts, but maintains the essential nature of the original pleading, the March filing substantially altered the nature of the proposed change in the unit composition. It would have substituted for one category of employee - the 10 percenters - a larger category: all

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2Board rules are codified at California Administrative Code, title 8, section 31001 et seq.

substitutes irrespective of time previously worked. Thus, the amendment was effectively a new petition which replaced the original. In so holding, we see in this result no prejudice to the District which had the timely opportunity to - and did - contest the various issues raised.

However, such a finding does not necessarily carry with it the conclusion that a new proof of support was required. Certainly, the proof to be valid must contain the timely signatures of a majority of those employees sought to be accreted to the unit. But nothing in our rules prohibits the use of a proof of support which is filed before the petition. Thus, if the proof relied on by TA contained signatures obtained within one calendar year prior to the filing of the new petition of a majority of employees in the all-inclusive substitute category, TA would have met the requirements of Board rules 32700 and 33261 then in effect.[3]

The usefulness of the proof of support relied upon by TA cannot be determined from the record. The hearing officer's March 23 ruling cannot be credited. He apparently based his decision on the belief that the new petition, as an "amendment" to the original, required no new supporting documents. However, if his request for an updated employee list reflects

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[3]Rule 32700 specifies that signatures acquired more than one calendar year prior to the petition filing shall be invalid. Rule 33261 requires, inter alia, that proof of support of a majority of employees sought to be accreted be filed.

another basis for his decision, he erred in finding that the proof was sufficient before receiving that list. Nor, for the same reason, does the regional director's laconic statement of April 1, illuminate our way.

Because it is not possible to determine whether the proof of support met the requirement of the rules then in effect, we cannot, at this time, approve the unit modification. It is appropriate to remand this matter to the director of representation to determine whether the proof of support was adequate in light of the new petition. Since the District has not excepted to the proposed finding that the modification would be appropriate, it shall be approved provided that the proof of support issue is resolved to so permit. Otherwise, the petition is to be dismissed.

ORDER

Based on the record and the foregoing findings of fact and conclusions of law, the Public Employment Relations Board ORDERS that the unit modification petition filed by the La Mesa-Spring Valley Teachers Association, CTA/NEA, be remanded to the director of representation for disposition in accordance with the foregoing.

Members Tovar and Jaeger joined in this Decision.