STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES' ASSOCIATION, Employee Organization, and STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION), Employer.	)	Case Nos. S-D-62-S (S-SR-6) PERB Decision No. 327-S July 14, 1983

Appearances: Jeffrey Fine, Attorney for California State Employees' Association.

Before Gluck, Chairperson; Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: California State Employees' Association (CSEA) appeals the dismissal of its decertification petition by the Sacramento regional director of the Public Employment Relations Board (PERB or Board). The regional director refused to accept proof of employee support for the petition submitted by CSEA after the close of the "window period" of a memorandum of understanding in effect between the State of California (State) and the current exclusive representative which CSEA seeks to decertify.

We find that the regional director acted properly in refusing to accept CSEA's tendered proof of support. Accordingly, we deny CSEA's appeal and dismiss its petition.

FACTS

In January 1982, the California Correctional Peace Officers Association (CCPOA) was certified as the exclusive representative of a unit of Department of Corrections correctional officers and California Youth Authority group supervisors who work in prisons throughout the State (Unit 6). CCPOA and the State entered into a collective bargaining agreement effective July 1, 1982 with an expiration date of June 30, 1983.

On March 30, 1983, CSEA filed a decertification petition which indicated that the "approximate number of employees in the unit" was 6,500, and which was accompanied by approximately 2,100 cards as proof of support for the petition. Pursuant to PERB's request, the State employer subsequently filed a list of employees in Unit 6 as of the end of the last payroll period immediately preceding the filing of the petition. The list shows a total of 7,936 employees in Unit 6 as of February 28, 1983.

On April 13, 1983, CSEA filed additional proof of support. In its cover letter of the same date, CSEA contended that the additional signatures should be accepted because it had received conflicting information and had been unable to ascertain the actual number of employees in the unit prior to filing the petition.

By letter dated April 25, 1983, PERB's regional director dismissed CSEA's petition, finding that the proof of support filed with the petition on March 30 was inadequate under the 30 percent showing requirement of PERB Regulation 32770,[1] and that the additional proof of support filed on April 13, after the close of the "window period," was untimely.[2]

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[1]PERB regulations are codified at Cal. Admin. Code, title 8, section 31001, et seq. Regulation 32770 provides in pertinent part:

> (a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office utilizing forms provided by the Board.
>
> (b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:
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> (1) No longer desire to be represented by the incumbent exclusive representative; or
>
> (2) Wish to be represented by another employee organization.

[2]Regulation 32776 provides in pertinent part:

> (c) Under SEERA, the [decertification] petition shall be dismissed whenever (1) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 120 days but more than 90 days prior to the expiration date of such memorandum or the end of the

CSEA appealed, contending essentially that a period to perfect a showing of employee support for a decertification petition should be permitted generally under the State Employer-Employee Relations Act (SEERA or Act)[3] and specifically in this case because of certain alleged equitable considerations present here.

DISCUSSION

In Pittsburg Unified School District (10/20/78) PERB Order No. Ad-49, a case arising under the Educational Employment Relations Act (EERA),[4] the Board determined that no

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> third year of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; . . .
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> . . . . . .
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> (e) The "window period" in the term of an existing memorandum of understanding for filing a decertification petition is defined for SEERA in Section 40130. . . .

Regulation 40130 provides, in pertinent part:

> "Window period" means the 29-day period which is less than 120 days, but more than 90 days prior to the expiration date of a memorandum of understanding between the employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum of understanding.

[3]SEERA is codified at Government Code section 3512 et seq. All statutory references are to the Government Code unless otherwise specified.

[4]EERA is codified at Government Code section 3540 et seq.

perfection period should be allowed for a decertification petition. The Board's decision was based primarily on policy grounds, balancing "the right of employees to be represented by an organization of their choosing and the maintenance of stability in employer-employee relations."

Balancing these competing interests, the Board concluded, at pp. 5-6:

> Stable employer-employee relations are undermined if employees or competing organizations are free at any time to seek to displace an incumbent exclusive representative. This is particularly true during the last days of an old agreement and during the time when an incumbent organization is striving to negotiate a new agreement. Negotiations for a new agreement seldom, if ever, afford full satisfaction to all members of the negotiating unit.
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> Rival employee organizations must be given an opportunity to challenge an exclusive representative. If, however, the challenging organization does not have the requisite support among unit members at the time it makes the challenge, the incumbent organization should be afforded the opportunity to negotiate a new agreement free from the continuing threat, and concomitant uncertainty, of challenge by a rival organization.

Contrary to CSEA's contentions, the policy expressed in Pittsburg favoring the stability of employer-employee relations applies with equal force to SEERA.[5] The fact that in SEERA,

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[5]See State of California (SETC) (5/20/83) PERB Order No. Ad-138-S articulating a similar policy of repose under SEERA in a case concerning a petition for unit modification filed less than 12 months after certification of an election.

the Legislature did not spell out in detail the procedures to be followed in matters of representation, but rather authorized the Board to establish such procedures by regulation, does not argue for a different rule.[6] Rather, the Legislature's deferral to PERB's rule-making authority, after the Board had already promulgated regulations governing representation matters under EERA, which the Legislature is presumed to have known, must be construed as legislative approval of those regulations. Further, the regulations established under SEERA follow EERA's statutory language.[7] Neither Act nor the regulations governing procedure pursuant to them provide a period for perfection of the showing of interest in support of a decertification petition. (See Regulation 32774.)

Therefore, we find that under SEERA, as under EERA, the acceptance of proof of support for a decertification petition after the close of the window period would tend to undermine

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[6]Compare EERA Article 5, consisting of five sections detailing procedures for representation, recognition, certification and decertification, with SEERA subsection 3520.5(c) which provides:

> (c) The board shall also establish procedures whereby recognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

[7]Compare EERA subsection 3544.7(b)(1) and Regulation 32776(c), supra, fn. 2.

stable employer-employee relations and would not effectuate the purposes of the Act.

Further, we find, on the facts presented here, no compelling reason to grant an exception to that rule. Citing figures which it obtained from the State Controller, CSEA points to changes in the size of the bargaining unit during the twenty months preceding the filing of its petition.[8] CSEA urges that we follow the "principle" articulated by the National Labor Relations Board in General Extrusion Co., Inc. (1958) 121 NLRB 1165 [42 LRRM 1508] that a contract does not bar an election if executed "prior to a substantial increase in personnel."

However, CSEA admits that the change in personnel here fails to satisfy the definition of a "substantial increase" stated in General Extrusion, supra.[9] In fact, CSEA does not

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[8]CSEA provides the following figures:

No. Employees - Unit 6

June 1981	6,622
December 1981	6,996
December 1982	5,740
January 1983	7,745
February 28, 1983	7,936

[9]In General Extrusion, supra, at 1167, the NLRB stated:

> When the question of a substantial increase in personnel is in issue, a contract will bar an election only if at least 30 percent of the complement employed at the time of the hearing had been employed at the time the contract was executed, and 50 percent of

indicate the number of employees in the unit on the date of execution of the contract, which is, according to General Extrusion, the relevant date for determining whether a substantial increase has occurred. Moreover, in urging us to follow the principle but not the standard stated in General Extrusion, CSEA would have us disregard a substantial body of case law strictly applying that standard.[10] We decline to do so.

We, therefore, find that the change in the size of Unit 6 was not so substantial as to remove the contract bar.

CSEA next urges us to adopt a rule requiring employers to inform the union of the size of the unit:

> [w]here the employer is statewide, where there is restricted access to employees, where many employees due to security concerns do not disclose their home addresses, and where there is a large increase in the numbers of the unit.

However, as discussed above, CSEA admits that the State Controller did, in fact, inform CSEA of the size of the unit on several dates. In these circumstances, we fail to see the need to consider the rule CSEA proposes.[11]

> the job classifications in existence at the time of the hearing were in existence at the time the contract was executed.

[10]See, e.g., American Beef Packers, Inc. (1970) 180 NLRB 634, 639-641; United Service Co. (1977) 227 NLRB 1469.

[11]See Marin County Office of Education (7/10/80) PERB Order No. Ad-95 holding that, under EERA, an employer has no

Finally, CSEA contends that various actions of the State employer and CCPOA interfered with its efforts to obtain a sufficient showing of interest. It provides declarations and unsworn statements which allege that the State failed to timely deliver CSEA mail to employees, removed material from a locked CSEA bulletin board, and prevented CSEA members from distributing literature, and that CCPOA officers threatened to fine CCPOA members $500 if they participated in the decertification campaign, verbally harassed employees signing the petition and otherwise attempted to prevent the gathering of signatures.

While this alleged conduct might arguably constitute unlawful interference, such charges are properly raised and remedied in an unfair practice proceeding.[12] For purposes of this appeal, CSEA's bare allegations, without benefit of investigation or hearing, are insufficient to warrant acceptance of proof of support after the window period.

Having rejected each of CSEA's proffered exceptions, we find that the regional director properly refused to accept proof of support after the close of the window period.

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obligation to provide information about the unit size referenced by a decertification petition.

[12]We take judicial notice of the fact that on June 27, 1983 CSEA filed charges against CCPOA and the State regarding this alleged conduct.

Accordingly, CSEA's appeal is DENIED and its petition is DISMISSED.

It is so ORDERED.

Chairperson Gluck and Member Burt joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD
Sacramento Regional Office
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(916) 322-3198

April 25, 1983

Mr. Michael Frost, Director
Dept. of Personnel Administration
1115 - 11th Street
Sacramento, CA 95814

Mr. Jeff Thompson, Executive Director
California Correctional Peace Officers Assn.
510 Bercut Drive, Suite U
Sacramento, CA 95814

Mrs. Sherry L. Hunt, Field Services Administrator
California State Employees Assn.
1108 "O" Street
Sacramento, CA 95814

Re: S-SR-6; S-D-62-S
State of California, DPA

Dear Interested Parties:

PROCEDURAL HISTORY

A decertification petition in the above-referenced case pursuant to PERB Regulation 32770[1] was filed with this office on March 30, 1983 by the

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[1]PERB regulations are codified at California Administrative Code, title 8, part III, section 31001 et seq. Section 32770 provides:

> (a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office utilizing forms provided by the Board.
>
> (b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:

California State Employees Association (CSEA).[2] The state employer was requested to file with PERB a list of employees in Unit 6 as of the end of the last payroll period immediately preceding the filing of the petition. The list provided by the employer shows there were 7936 employees in Unit 6 as of February 28, 1983.[3]

PERB Regulation 32770(b)(2) requires that an employee organization decertification petition be accompanied by proof that at least 30 percent of the empoyees in the established unit wish to be represented by the organization filing the petition. The petition in the instant case was not accompanied by adequate proof of support.

CSEA filed additional proof of support on April 13, 1983. CSEA contends that because it received conflicting figures from various sources as to the unit size, CSEA's ability to file an appropriate number of signatures with their initial petition was prejudiced. Therefore, CSEA asks that its filing of additional proof of support on April 13, 1983 be allowed by PERB.

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(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.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

[2]The established unit covered by the decertification petition is entitled Unit #6 - Corrections, and consists of corrections employees of the State of California. The California Correctional Peace Officers Association (CCPOA) was certified as the exclusive representative of the employees in Unit 6 on January 27, 1982. The employees in Unit 6 are covered by a memorandum of understanding negotiated between the state employer and CCPOA which expires on June 30, 1983.

[3]No allegation has been made by CSEA that either the list provided by the employer or the total number of names on the list is inaccurate.

DISCUSSION

PERB's decertification regulations[4] permit employees and employee organizations to seek to expel an incumbent organization or replace an incumbent with another employee organization by filing a petition with PERB during the "window period" of a memorandum of understanding defined in section 40130.5

In Pittsburg Unified School District (10/20/78) PERB Order No. Ad-49, the Board concluded that while the Board's rules allow employee organizations initially seeking to represent employees to perfect a deficient showing of support, they do not afford a similar opportunity to an employee organization seeking to replace an incumbent. The Board also concluded that if an organization does not have the necessary support among unit members when it challenges the incumbent, the incumbent exclusive representative should have the opportunity to negotiate a new contract without a continuing threat, and accompanying uncertainty, of a challenge by another organization.

In Marin County Office of Education (7/10/80) PERB Order No. Ad-95, the Board found that the employer has no obligation under statute or PERB

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[4]Sections 32770 through 32776.

[5]Section 40130 provides:

> "Window period" means the 29-day period which is less than 120 days, but more than 90 days prior to the expiration date of a memorandum of understanding between the employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum of understanding. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. Whenever the last day of the window period falls on a Saturday, Sunday, or holiday as defined in Government Code section 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.

regulations to provide information about the unit size referenced by a decertification petition. The Board also noted in this decision that there was no evidence of "intentional misconduct, such as providing deliberately misleading information" to the petitioning organization as to the unit size.

The window period for filing a decertification petition in the instant case was March 3, 1983 through March 31, 1983. Therefore, CSEA's filing of additional support on April 13, 1983 occurred well after the close of the window period. Both Board regulations and precedent are very clear and unequivocal in this area. PERB decertification regulations purposefully do not provide for an extension of time to file additional proof of support (Pittsburg, supra; Petaluma City Elementary and High School Districts (6/30/82) PERB Order No. Ad-131).

CSEA's only argument that its late-filed support be declared valid relates to receipt of conflicting unit size information. Board precedent on this point is also clear. No allegation nor evidence is offered by CSEA that the employer in this case deliberately misled CSEA as to the size of Unit 6. Further, there is no requirement in the State Employer Employee Relations Act (SEERA)[6] or in applicable PERB regulations that the employer provide information as to the size of the unit to the decertifying petitioner (Marin, supra).

CONCLUSION

CSEA's decertification petition, while timely filed within the window period, was not accompanied by at least 30 percent proof of support of the employees in Unit 6. For the reasons stated above, proof of support filed after the close of the window period cannot be accepted. The petition is therefore dismissed.

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

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[6]SEERA is codified at Government Code section 3512 et. seq.

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

Very truly yours,

Janet E. Caraway
Regional Director

Joseph C. Basso
Public Employment Relations Representative III

cc: Gerrit Jan Buddingh', CCPOA
Robert Bark, DPA