STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA, Employee Organization, APPELLANT, and CALIFORNIA ASSOCIATION OF PSYCHIATRIC TECHNICIANS, Employee Organization, and STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION), Employer.	Case No. S-D-87-S; (S-SR-18) PERB Order No. Ad-146-S Administrative Appeal June 14, 1985

Appearances: Kanter, Williams, Merin & Dickstein by Howard L. Dickstein and Ronald Rosenberg for Communications Workers of America; Loren E. McMaster for California Association of Psychiatric Technicians.

Before Hesse, Chairperson; Jaeger, Morgenstern and Porter, Members.

DECISION

JAEGER, Member: Communications Workers of America (CWA) appeals the interlocutory order of the Sacramento regional director of the Public Employment Relations Board (PERB or Board) directing that a decertification election be held on June 17, 1985, in Unit 18 of the State service, and requests a stay of that election.

As its first ground for appeal, CWA argues that the proof of support submitted by petitioner California Association of Psychiatric Technicians (CAPT) pursuant to regulation 32770[1] is deficient. Regulation 32360 provides that an appeal of an administrative determination must be filed within 10 days of service of the letter of determination. Here, the letter setting forth PERB's determination that the proof of support was adequate was served on April 26, 1985. However, CWA's instant appeal was not filed until May 16, 1985, more than 10 days after service of the letter of determination. This ground for appeal is therefore dismissed as untimely.

CWA also objects to the regional director's decision to conduct this election by mail, rather than conducting an on-site election at each of the locations where unit members work. We find this matter to be a question of election mechanics and therefore unappealable pursuant to regulation 32380.[2]

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[1]PERB's rules and regulations are codified at California Administrative Code, title 8, section 31001 et seq.

[2]Regulation 32380 provides as follows:

> 32380. Limitation of Appeals.
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> The following administrative decisions shall not be appealable:
>
> (a) A decision by a Board agent regarding the mechanics of an election provided the decision does not affect standing of a party to appear on a ballot;

As further grounds for appeal, CWA argues: that the election order fails to state that CWA can be decertified only by a vote of a majority of all unit members, rather than by a simple majority of those who actually vote and that no runoff election will be held if no ballot entry receives a majority vote; that the election should be stayed until a pending unit modification petition has been resolved and; that the election should be stayed until contract negotiations between CWA and the employer are completed. After fully considering these claims, we find nothing which would compel us to set aside or stay the regional director's election order.

As to CWA's argument that it can be decertified only if a majority of the employees in the unit, rather than a majority of those voting, cast their ballots accordingly, we find that the matter has been raised prematurely. The question may well be obviated by the results of the election. If not, the matter may be raised by CWA after the votes have been tallied by way of an objection to the conduct of the election pursuant to regulation 32738.

CWA's argument regarding the pending unit modification petition similarly presents no need to set aside the scheduled and noticed election. Because the petition requests a reduction in the size of the unit, the only concern raised is that some individuals may vote who should not in fact be a part of the unit. Regulation 32732, which permits a party to an

election to challenge the eligibility of any person to vote in the election, adequately resolves this concern. Pursuant to that regulation, voters so challenged are permitted to cast their ballot; such ballots are then separately identified as challenged ballots so that the right of the voter to participate in the election can be resolved at a later time.

Finally, CWA urges a stay of the election based on its claim that PERB's setting of the election has deleteriously affected ongoing negotiations between it and the State employer. It claims that the employer has engaged in surface bargaining and has otherwise frustrated the bargaining process. To the extent that CWA is arguing that the employer has committed unfair practices as defined at section 3519 of the State Employer-Employee Relations Act,[3] it may rely on well-established Board policy holding that an election may be blocked where there has been a failure on the part of the employer to bargain in good faith, since that conduct by its nature undercuts support for the exclusive representative and may make a fair election impossible. Jefferson School District (1979) PERB Order No. Ad-66. However, such a "blocking charge" claim is properly initiated by filing charges with the regional office setting forth, with specificity, its allegations of unlawful employer conduct. Los Gatos Joint Union High School

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[3]The State Employer-Employee Relations Act (Act) is codified at Government Code section 3512 et seq.

District (1979) PERB Order No. Ad-69. PERB's regional director can then determine the merits of CWA's blocking claim upon investigation. We note that in a supplemental filing (see p. 6, infra) CWA indicates that since the date of the instant appeal it has in fact filed just such charges.

To the extent that CWA is arguing that the election should be stayed so that it can complete negotiations with the employer, it is simply unsupported by the Act. Section 3520.5 guarantees the right of State employees to revoke their selection of an employee organization as their exclusive representative. Further, the procedural time lines set out in regulation 32776(c) are deliberately drawn so that a decertification effort can occur where a collective bargaining agreement is about to expire. Thus, contrary to CWA's argument that ongoing negotiations mitigate in favor of a stay, we find that those events demonstrate the importance of going forward with the election. Under established PERB policy, Board approval of a decertification petition triggers a question concerning representation (QCR) period. During this period, the employer has an obligation to maintain strict neutrality in its treatment of all employee organizations which may be competing in the forthcoming election. Santa Monica Community College District (1979) PERB Decision No. 103. This duty requires the employer to refrain from any conduct which may influence, intentionally or not, the outcome of the election.

See also, Clovis Unified School District (1984) PERB Decision No. 389. Even more significantly, the Board has held that an employer has no duty to negotiate with an exclusive representative when it has a reasonable and good faith doubt as to the existence of majority employee support of that organization. Pittsburg Unified School District (1983) PERB Decision No. 318. It is clear, then, that the negotiation of a contract during the pendency of a QCR is fraught with obstacles. Thus, contrary to CWA's argument, the better procedure is to hold the election as soon as due process permits in order to keep the QCR period as short as possible and to restore a setting in which negotiations may proceed productively.

CWA has brought two other claims before this Board by way of supplementary filings to their appeal. First, CWA claims that the ordered election will be unfairly affected by unfair practices committed recently by the employer. CWA states that it has filed charges with PERB's regional office alleging these unfair practices and that, pursuant to Board policy, the election should be blocked until these charges are resolved. CWA's second claim consists of a challenge to the status of CAPT as an employee organization.

Pursuant to established Board procedure and regulation 32705(b), these two claims are properly presented to the Sacramento regional office for initial determination. We have

therefore referred these claims to that office for administrative determination as appropriate. Whether these claims warrant a stay of the election or an impounding of ballots is a matter to be considered by the regional director following her investigation.

ORDER

For the above reasons, the appeal of the proof of support determination is DISMISSED as untimely, the regional director's order directing a decertification election in Unit 18 is AFFIRMED, the appeal of the regional director's decision to conduct an election by mail is DENIED, and the request to stay the election is DENIED insofar as it relies on the foregoing. The blocking charge request and the challenge to the status of CAPT as an employee organization, and any request to stay the election arising from these two matters, are REFERRED to the regional director for initial determination.

Chairperson Hesse, Members Morgenstern and Porter joined in this Decision.