STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TONY PETRICH, Appellant, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Employee Organization, and RIVERSIDE UNIFIED SCHOOL DISTRICT, Employer.	Case No. LA-UM-368 Request for Reconsideration PERB Order No. Ad-148 PERB Order No. Ad-148a December 23, 1985

Appearance: Tony Petrich, on his own behalf.

Before Hesse, Chairperson; Morgenstern and Burt, Members.

DECISION

BURT, Member: The Public Employment Relations Board (PERB or Board), having duly considered the request for reconsideration of PERB Order No. Ad-148 filed by Appellant Tony Petrich, hereby denies that request for the reasons set forth below.

BACKGROUND

In PERB Order No. Ad-148, the Board upheld the regional director's administrative decision dismissing a unit modification petition without leave to amend. The petition was filed by Tony Petrich, an individual employee of Riverside

Unified School District (District). It was dismissed on the ground that only recognized or certified employee organizations or employers, or both jointly, have standing to file unit modification petitions pursuant to section 32781 of the Board's Regulations.[1] In his appeal to the Board, Petrich asserted that the petition was timely filed within a window period as required by section 32781, and that the regional director improperly failed to accord him status as an employee organization. In PERB Order No. Ad-148, the Board summarily denied the appeal.

In this Request for Reconsideration, Petrich raises issues not previously presented to the Board or its agents at any stage in these proceedings. He claims, in effect, a statutory right to file a unit modification petition based on section 3543 of the Educational Employment Relations Act (EERA).[2] He further argues that the Board is obligated to consider his petition because it seeks to exclude employees on statutory grounds from the certified bargaining unit of which he is a member. In essence, he contends that PERB is statutorily compelled to consider his petition, notwithstanding the provisions of section 32781 of its Regulations.

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

[2]The EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

As an additional ground for reconsideration, Petrich attaches a copy of a letter apparently sent to him by counsel for the California School Employees Association (CSEA), the exclusive representative of his bargaining unit. Petrich contends that the letter represents retaliation against him for exercise of his alleged right to file a unit modification petition.

DISCUSSION

Section 32410(a) of PERB's Regulations provides in pertinent part that:

> Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision . . . . The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

Petrich does not contest the factual basis for the Board's Order that he is not an employee organization. Rather, he argues that the Board's Decision and the Board's Regulation 32871 are inconsistent with the EERA itself. We find no such inconsistencies and, therefore, no grounds for reconsidering Order No. Ad-148.

A. The Unit Modification Issues

The short answer to Petrich's contentions is that he does not have a statutory right as an individual to present a unit

composition question to the Board. The statutory scheme established by EERA provides for representation procedures in which the participants are employers and employee organizations.[3] EERA further establishes the rights of individual employees to form, join and participate in employee organizations,[4] and provides the unfair practice mechanism to prevent interference with the exercise of those rights by employers or employee organizations. Under the terms of the statute, individuals acting alone have standing to file unfair practice charges, but not to initiate or to participate as parties in representation proceedings.[5]

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[3]PERB's authority and duty to determine appropriate units arise initially where a question concerning representation (QCR) is raised. A QCR may be raised only by an employee organization (EERA sections 3544 and 3544.4(b)) or by employees acting collectively (EERA section 3544.3). Once the Board begins its investigation, the only parties entitled under EERA to contest the composition of a proposed bargaining unit are the employer (EERA section 3544.1(a) and 3544.5(a)) or a competing employee organization (EERA sections 3544.1(b) and 3544.5(c) and (d)).

[4]EERA section 3543 provides in pertinent part as follows:

> Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. . . .

[5]Compare EERA section 3541.5(a) which provides that "[a]ny employee, employee organization or employer shall have the right to file an unfair practice charge . . ." with EERA's sections on representation proceedings cited in footnote 3 above.

Petrich contends that he has a right under EERA section 3543 to participate in determining the scope of his bargaining unit. Section 3543 establishes Petrich's rights as an individual to form and to participate in an employee organization. The organization, and not Petrich as an individual, is then entitled to participate in representation proceedings in an appropriate bargaining unit. Therefore, we reject Petrich's claim to file a petition for unit modification under section 3543.

Petrich next contends that PERB's Order is inconsistent with EERA sections 3540.1(m), 3543.4, and 3545(b)(2),[6] in that his bargaining unit allegedly contains supervisory, managerial and confidential employees in violation of these sections. He argues that PERB has a duty to monitor the composition of bargaining units on a periodic basis. However, as already discussed, the EERA itself makes no provision for review of unit composition except when a QCR is raised and it is necessary to determine the appropriate unit in order to conduct an election.

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[6]Section 3540.1(m) defines supervisory employees. Section 3543.4 provides, among other things, that managerial and confidential employees may not be represented by an exclusive representative. Section 3545(b)(2) provides, among other things, that a negotiating unit of supervisory employees may not be represented by the same employee organization which represents the employees whom they supervise.

In section 32781 of its Regulations, PERB has established additional procedures for review of unit composition in situations in which parties to the bargaining relationship in an established unit raise specified grounds for such review. The existence of statutorily excluded positions in the unit is one such ground under section 32781(b)(5).[7] However, section 32781(b) restricts the right to file unit modification

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[7]At the time of filing of the petition for unit modification herein, section 32781(b) read in pertinent part as follows:

> (b) <u>A recognized or certified employee organization, an employer, or both jointly</u> may file with the regional office a petition for change in unit determination:
>
> > (1) To delete classifications or positions no longer in existence or which by virtue of changes in circumstances are no longer appropriate to the established unit;
> >
> > . . . . . .
> >
> > (5) <u>To delete classification(s) or position(s) not subject to (1) above which are not appropriate to the unit because said classification(s) or position(s) are management, supervisory, confidential</u>, provided that:
> >
> > > (A) The petition is filed jointly by the employer and the recognized or certified employee organization, or
> > >
> > > (B) There is not in effect a lawful written agreement or memorandum of understanding, or
> > >
> > > (C) The petition is filed during the "window period" of a lawful written

petitions under all of its subsections to employers and to recognized or certified employee organizations. The EERA itself imposes no requirement for regular monitoring of unit composition. PERB's decision to provide for such review in its regulations only on a petition by a party to the bargaining relationship is consistent with the statutory scheme and serves the purpose of protecting the stability of bargaining relationships.

In this case, PERB is not faced with an appropriate petition under section 32781, that is, one raised by a party to the bargaining relationship. In fact, the regional director determined that CSEA does not wish to change the composition of this unit.[8] Even assuming that Petrich is correct that some

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> agreement or memorandum of understanding as defined in these regulations in section 33020 for EERA, 40130 for SEERA or 51026 for HEERA. (Emphasis added.)

Effective November 9, 1985, section 32781(b)(5) was amended to include as an additional ground the deletion of classifications or positions not covered by EERA, HEERA or SEERA.

[8]We take note of the Board's Decision in Riverside Unified School District (Petrich) (1985) PERB Decision No. 512. During his investigation of the underlying charge in that case, the regional attorney ascertained that it was CSEA's position that job classifications contended by Petrich to be supervisory pertained to lead positions and were not supervisory. He further ascertained that CSEA did not wish to change the composition of the bargaining unit.

of these employees may be in excluded categories, no apparent purpose would be served by permitting an individual to initiate a regional office unit investigation when neither party to the bargaining relationship seeks to do so. Any harm to Petrich's rights as an individual may be adequately protected through the charge procedure.[9]

B. The Retaliation Claim

Petrich's retaliation claim is not properly before the Board in a Request for Reconsideration under section 32410(a). CSEA's letter is not "newly-discovered evidence" within the meaning of section 32410(a), since it has no bearing on the issues decided in PERB Order No. Ad-148. It is therefore not

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[9]Petrich further claims that the Board's decision in Order No. Ad-148 is arbitrary in light of its earlier decision dismissing his charges based on these same facts. See PERB Decision No. 512, supra, in which PERB affirmed the regional attorney's dismissal of Petrich's charges against his employer, alleging that the presence in his bargaining unit of statutorily excluded employees constituted a violation of EERA section 3543.5(a), (b) and (d). In that case, the regional director determined that Petrich had not stated a prima facie case of a violation of EERA, but was instead attempting to use the unfair practice charge procedure to gain standing to petition to modify his unit. The regional attorney noted that the proper procedure for petitioning to modify a bargaining unit was set forth in section 32781, and concluded that Petrich could not use the charge procedures to circumvent the standing requirements in section 32781. We affirmed. PERB Decision No. 512 is thus entirely consistent with our decision in Order No. Ad-148.

properly presented in a Request for Reconsideration of that Order. Furthermore, allegations of retaliation for the exercise of protected rights are properly raised by filing an unfair practice charge in the regional office.

ORDER

The Public Employment Relations Board, having duly considered Appellant Tony Petrich's Request for Reconsideration of PERB Order No. Ad-148 and finding no grounds for reconsideration, hereby DENIES that request.

Chairperson Hesse and Member Morgenstern joined in this Decision.

PROOF OF SERVICE BY MAIL
C.C.P. 1013a

I declare that I am employed in the County of Sacramento, California.

I am over the age of 18 years and not a party to the within entitled cause; my business address is 1031 18th Street, Suite 200 Sacramento, California 95814

On December 23, 1985 (Date), I served the enclosed PERB Order No. 148a

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(Describe Document)

on the parties to this case by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail, Sacramento (City or Town), California, addressed as follows:

George Lantz, Superintendent
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on

December 23 (Date), *19* 85 *at* Sacramento (City or Town), *California.*

Noel F. Lawrence
(Type or print name)

(Signature)