

meet the requirements of PERB Regulation 32770(b)(2).¹ CTA appeals the regional director's determination regarding the adequacy of the proof of support. It claims that the size of the certificated bargaining unit in which the decertification election is sought is not as is asserted by AFT.

FACTUAL AND PROCEDURAL SUMMARY

On May 30, 1986, AFT filed a decertification petition with the Board. That petition represents that CTA is the exclusive representative, that the collective bargaining agreement has an expiration date of September 1, 1986, and that there are approximately 1,326 employees in the certificated bargaining unit. Proof of service attached to the petition affirms that the petition was mailed to Lee Anderson, CTA president.

On May 30, 1986, the regional director advised both CTA and the Coast Community College District (District) of AFT's petition. That letter sets forth certain facts as attested to by AFT, the petitioner. Those facts include the date CTA was certified as the exclusive representative and the expiration

¹PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. In pertinent part, Regulation 32770(b)(2) provides:

(b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit . . . :

.

(2) Wish to be represented by another employee organization.

date of the written agreement that currently exists between CTA and the District.² The regional director requested each party

to confirm or refute the above information provided by the petitioner by filing a written statement with this office within 15 calendar days of service of this letter. (Emphasis supplied.)

The regional director's letter further advised the District of its obligations pursuant to PERB regulations to post notices of the decertification election and to provide the Board with a list of names of all persons employed in the unit as of the last date of the payroll period preceding the filing.³ The letter concludes:

This office will use the list of employees provided by the employer to check the sufficiency o [sic] the proof of support submitted by the petitioner. All parties will be advised in writing as soon as a proof of support determination has been made.

On June 13, 1986, the District communicated by letter to a Board agent confirming certain information set forth in the Board agent's letter to the District and confirming the expiration date of the parties' contract. The District also advised the Board agent that notice of the election had been posted and would remain posted until June 30, 1986. The District also supplied

²The regional director's letter erroneously states that AFT claims September 11, 1986 as the expiration date of the parties' contract. The petition sets forth September 1, 1986 as the expiration date, and the District's letter of June 13, 1986, discussed infra, confirms September 1, 1986 as the correct date.

³See PERB Regulations 32772 and 32774.

the Board agent with a list of names of employees in the unit as of the last date of the payroll period immediately preceding May 30, 1986.

On June 19, 1986, the regional director advised the parties that an election would be conducted to determine which organization, if any, would serve as the employees' exclusive representative. His letter concluded, inter alia, that review of the proof of support submitted by AFT resulted in the administrative determination that the support is sufficient to meet the requirements of PERB Regulation 32770(b)(2), supra.

On June 27, 1986, CTA submitted the instant appeal of the Board agent's determination to proceed with the decertification election. The appeal states in full as follows:

In accordance with PERB Administrative Regulation 32350, Sub-section (a), Coast CTA/NEA, current exclusive representative for the unit in question, appeals the Regional Director's determination that proof of support submitted by the petitioner in this case is sufficient to meet the requirements of PERB Regulation 32770 (b).

This appeal is based on the fact that the approximate number of employees in the unit reported on the Decertification Petition, and upon which the percentage of employees submitted as proof of support depends, differs substantially from the number Coast CTA/NEA currently represents.

On July 2, 1986, AFT submitted its response to CTA's appeal. First, AFT asserts that the underlying decision of the Board agent concerns the mechanics of an election and is not appealable under PERB Regulation 32380. In pertinent part, that regulation

precludes review by the Board of the following administrative decisions:

(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; . . .

AFT also argues that the mere assertion that the unit size claimed in the petition "differs substantially" from the number CTA currently represents fails to comply with the requirements of PERB Regulation 32360(c)⁴ and provides no basis for overturning the regional director's decision. AFT's response states:

Without supplying numbers indicating that the unit is much larger than the Region believes, the appeal of the CTA is simply frivolous.

DISCUSSION

PERB precedent clearly establishes that it will entertain an appeal of a dismissal of a decertification petition based on a determination that the showing of support is inadequate. Marin County Office of Education (1980) PERB Order No. Ad-95; State of California (Department of Personnel Administration) (1983) PERB Decision No. 327-S; Mendocino Community College District (1983) PERB Decision No. 369; State of California (Department of Personnel Administration) (1985) PERB Order No. Ad-146-S. The

⁴PERB Regulation 32360(c) provides:

The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal.

Board's authority to conduct such a review rests on the conclusion that the regional director's assessment of the adequacy of support is not a decision regarding the "mechanics of an election." In line with that precedent, the Board rejects AFT's contention that the assessment of support in the instant case is beyond the Board's purview.

While the Board has jurisdiction to review the administrative decision made below, the appeal submitted by CTA affords no basis upon which the Board can evaluate the conclusion reached by its regional director. The record before the Board is devoid of any information gathered during the regional director's investigation regarding the unit size dispute.

While PERB regulations contemplate that the Board's regional directors review the proof of support submitted with petitions, nothing in the regulations puts the incumbent union on notice of the time period for review of the proof of support issue. In the instant case, CTA was mailed a copy of AFT's petition dated May 30, 1986 indicating a unit size of 1,326 employees. Thereafter, CTA was also mailed a copy of the District's letter to the regional director dated June 13, 1986 indicating that it was supplying the Board with the list of employees as had been requested. The regional director's final determination of the adequacy of AFT's proof of support followed six days later, on June 19.

In the record before us, we find no indication that the regional director discussed the unit size issue with the parties.

In his letter to CTA and the District on May 30, 1986, the invitation to respond within the 15-day period specified in the letter referred to the date CTA was certified as the exclusive representative and the expiration date of the agreement between CTA and the District. The letter does not invite CTA to respond within the 15-day period regarding the size of the unit.

Reference to the number of employees in the unit appears on page two of the letter where the District is requested to submit the list of names as they appear on the payroll. In contrast to the factual points raised on page one, the regional director's letter states that PERB will use the District-provided list to check the sufficiency of support and that the parties will be advised "as soon as a proof of support determination has been made." Given the specific 15-day response period regarding the two other issues, it is not unreasonable to interpret the language referencing unit size as an instruction that CTA await the regional director's determination.

In sum, neither PERB regulations nor the regional director's letter unambiguously advised CTA of specific time limits during which the unit size issue could be raised. As a result, the factual circumstances relevant to the unit size dispute have not been adequately explored, and we find that determining the adequacy of support is an assessment best rendered initially by the regional staff.

ORDER

The Board REMANDS this case to the regional director so that the parties' assertions regarding unit size can be fully considered.

Chairperson Hesse and Member Craib joined in this Decision.