

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANTIOCH UNIFIED SCHOOL DISTRICT,)	
)	
Employer,)	
<u>APPELLANT,</u>)	Case No. SF-UM-243
)	
and)	PERB Order No. Ad-135
)	
CALIFORNIA SCHOOL EMPLOYEES)	Administrative Appeal
ASSOCIATION AND ITS ANTIOCH)	
CHAPTER #85,)	March 30, 1983
)	
Employee Organization.)	
_____)	

Appearances: Michael Aidan for California School Employees Association and its Antioch Chapter #85; Paul M. Loya, Attorney (Atkinson, Andelson, Loya, Ruud & Romo) for Antioch Unified School District.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (PERB or Board) pursuant to PERB regulation 32360,¹ as an administrative appeal of the regional representative's April 12, 1982 dismissal of a unit modification petition filed March 19, 1982 by the Antioch Unified School District (District).

The petition filed pursuant to PERB regulation section 33261(b)(1)² sought to delete one position as confidential

¹PERB regulations are codified at California Administrative Code, title 8, part III, section 31001 et seq.

²PERB regulation 33261(b)(1) provided:

from the classified unit (Unit B) represented by California School Employees Association and its Antioch Chapter #85. The regional representative dismissed the unit modification petition without prejudice based upon the fact that the District did not allege any changes in circumstances regarding the positions in dispute.

We find that the unit modification petition was properly dismissed in accordance with the requirements set forth in PERB regulation 33261(b)(1). Pursuant to that provision, which was applicable at the time the District filed the instant petition, deletions of classifications through unit modification requests were permitted where the classifications were no longer in existence or, by virtue of changes in circumstances, were no longer appropriate to the established unit. The District's failure to satisfy the requirement of that regulation mandated that the petition be dismissed.

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- (b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for change in unit determination pursuant to Government Code section 3541.3(e):
 - (1) To delete classifications no longer in existence or which by virtue of changes in circumstances are no longer appropriate to the established unit; (Emphasis added.)

.

We note, however, that that provision has since been replaced by rule 32781(b)(5).³ Effective February 14, 1983, unit modification petitions which seek classification deletions will be entertained if no lawful written agreement or memorandum of understanding is in effect or if the petition is filed during the "window period" as defined by our regulations.

³Section 32781(b)(5) provides:

- (b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for change in unit determination:
 - (5) 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 or confidential, 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) That the petition is filed during the "window period" of a lawful written agreement or memorandum of understanding as defined in these regulations in Section 33020 for EERA, 40130 for SEERA or 51026 for HEERA.

ORDER

After a review of the entire record in this case, the Public Employment Relations Board ORDERS that the unit modification petition in Case No. SF-UM-243 is hereby DISMISSED.

Members Jaeger and Morgenstern joined in this decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
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(415) 557-1350



April 12, 1982

Mr. Paul Loya, Attorney
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Mr. Michael Aidan, Field Representative
California School Employees Association
and its Antioch Chapter #85
P. O. Box 2542
Martinez, California 94553

Re: SF-UM-243 (R-146A)
Antioch Unified School District

Dear Interested Parties:

On March 19, 1982 the Antioch Unified School District filed a unit modification petition pursuant to PERB Regulation 33261(b) (1) to delete one position as confidential from the classified unit (Unit B) represented by California School Employees Association and its Antioch Chapter #85.

PERB Regulation 33261(b) (1) states:

(b) A recognized or certified organization, an employer, or both jointly may file with the regional office a petition for change in unit determination pursuant to Government Code section 3541.3(e):

(1) To delete classifications no longer in existence or which by virtue of changes in circumstances are no longer appropriate to the established unit; (Emphasis added)

Based upon information in the unit modification petition itself and discussions held at a meeting on April 6, 1982 with both parties, it is apparent that the District is not alleging any changes in circumstances regarding the position in dispute. Therefore, since it does not conform to the requirements of PERB Regulation 33261(b) (1), the unit modification petition is hereby dismissed.

April 12, 1982

Mr. Paul Loya, Attorney

Mr. Michael Aidan, Field Representative

This dismissal does not preclude either party from filing a unit modification petition at any time when the criteria of PERB Regulation 33261(b)(1) have been met.

An appeal of this decision may be made to the Board itself within 10 calendar days of service of this letter by filing a statement of the facts upon which the appeal is based with the Executive Assistant to the Board at 1031 - 18th Street, Sacramento, California 95814. Copies of any appeal must be concurrently served upon all parties and the San Francisco Regional Office. Proof of service of the appeal must be filed with the Executive Assistant.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

Jerilyn Gelt
Senior Representative

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