

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATE OF CALIFORNIA (DEPARTMENT)
OF PERSONNEL ADMINISTRATION,)
Employer,) Case No. S-D-120-S
and) (S-SR-18)
CALIFORNIA ASSOCIATION OF) Administrative Appeal
PSYCHIATRIC TECHNICIANS,) PERB Order No. Ad-183-S
Exclusive Representative,) May 23, 1989
and)
ACTION CWA LOCAL 9000,)
Petitioner.)

)

Appearances: Loren E. McMaster, Attorney, for California Association of Psychiatric Technicians; Greenstone, Holguin, Garfield & Knox by Wallace B. Knox, Attorney, for Action CWA Local 9000.

Before Hesse, Chairperson; Shank and Camilli, Members.

DECISION

CAMILLI, Member: The California Association of Psychiatric Technicians (CAPT) appeals the attached administrative determination of the Sacramento regional director directing a decertification election. The regional director determined that a contract between CAPT and the State of California, Department of Personnel Administration, did not bar a decertification election petition filed by Action CWA Local 9000 because that contract had been "prematurely extended." (Hayward Unified School District (1980) PERB Order No. Ad-96 [4 PERC 11140]; Deluxe Metal Furniture Company (1958) 121 NLRB 995 [42 LRRM

1470]; Butte County Superintendent of Schools (1983)

PERB Decision No. 338 [7 PERC 14246]; and, Centralia School District (1985) PERB Decision No. 519 [9 PERC 16203].)

Upon review of the entire record, the Public Employment Relations Board adopts the regional director's findings of fact and conclusions of law as the determination of the Board itself.

ORDER

The appeal by CAPT in Case No. S-D-120-S is DENIED, and the case is REMANDED to the Sacramento regional director to proceed to a decertification election.

Chairperson Hesse and Member Shank joined in this Decision.

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Investigation of the decertification petition filed in the above-referenced case has resulted in the administrative determination that the petition was timely filed with sufficient proof of support and, therefore, an election shall be conducted to determine the organization, if any, to be certified as exclusive representative of the bargaining unit in question.

PROCEDURAL HISTORY

On March 3, 1989, the instant decertification petition was filed with the Public Employment Relations Board (PERB) by Action CWA Local 9000 (CWA), which is seeking to become the exclusive representative of the established Dills Unit 18 - Psychiatric Technicians. The unit is currently represented by the California Association of Psychiatric Technicians (CAPT), which itself was certified by PERB as the exclusive representative effective December 31, 1986. On the petition, CWA indicated that the

current memorandum of understanding (MOU) covering the unit has effective dates of January 1, 1987 through June 30, 1989.

On March 3, 1989, the Department of Personnel Administration (DPA) and CAPT were afforded an opportunity to respond to the petition. DPA was also requested to file with PERB a list of the persons employed in the unit to permit a determination regarding the sufficiency of the proof of support submitted by CWA. The employee list and responses from DPA and CAPT were timely filed.

In its response (and Motion to Dismiss), CAPT contends that the petition falsely states the effective dates of the MOU covering the unit¹ and argues that the petition should be dismissed as untimely. CAPT submits that there was never an MOU with an effective date of January 1, 1987, and that the expiration date of the current MOU is June 30, 1991 (not 1989).

DPA's response also excepts to the facts stated on the petition concerning the effective dates of the MOU, but takes no position as to the timeliness of the petition. In its letter, DPA states that CAPT and DPA agreed on January 31, 1989, "to terminate the memorandum of understanding scheduled to expire June 30, 1989. On that same date, and concurrently, the parties agreed to enter into a new memorandum of understanding effective

¹CAPT also notes that the face of the petition shows a signature date of the petitioner's agent as "02/03/89" which, if read to mean the date of February 3, 1989, precedes the filing date of the petition. CAPT has not offered any theory as to why this discrepancy would matter, and PERB's official records show the only relevant date (the date the petition was filed with PERB) to be March 3, 1989.

January 31, 1989 through June 30, 1991."

CWA filed a response to CAPT's Motion to Dismiss, which concedes the facts regarding the effective dates of the MOU as submitted by CAPT and DPA, but argues that the new agreement fails to establish a contract bar to the instant petition pursuant to the doctrine of "premature extension."

DISCUSSION

PERB regulation 32120 requires the State employer to file with PERB a copy of any MOU or amendment thereto within 60 days after execution of the MOU. PERB does have on file a copy of an MOU for Unit 18 between DPA and CAPT which shows an effective date of July 1, 1987 and an expiration date of June 30, 1989. DPA has not filed with PERB a new MOU but, if the effective date of the new MOU was January 31, 1989, such filing is not yet overdue. PERB records further reflect that, in Case No. S-OS-72-S, an organizational security approval election was conducted in Unit 18 in March 1988, and the notice of election in that case referenced the organizational security provision contained within the MOU effective July 1, 1987 through June 30, 1989.

CWA does not dispute, however, that a new agreement has been entered into which establishes a later expiration date of the current MOU as June 30, 1991. CWA argues that, rather than the decertification being "prematurely filed," the new agreement constitutes a "premature extension" which does not serve as a contract bar to the instant petition.

PERB regulation 32776(c) requires, inter alia, that a

decertification petition filed under the Ralph C. Dills Act (Dills) be dismissed if there is currently in effect an MOU between the employer and the exclusive representative, "unless the petition is filed less than 120 days but more than 90 days prior to the expiration date" of the MOU.² The date the instant petition was filed falls within the "less than 120 days but more than 90 days prior to the expiration date" if. the expiration date relevant to the determination is June 30, 1989 and not June 30, 1991.

The principle or doctrine of "premature extension" was first approved by the Board in Hayward Unified School District (1980) PERB Order No. Ad-96 where, citing Deluxe Metal Furniture Company 121 NLRB 995, 42 LRRM 1470 (1958), the Board held that

if during the term of an existing contract, the parties execute a new contract which contains an expiration date later than that of the first contract, the new contract is "premature" and will not act as a bar to an election.

The purpose of such a policy is to protect petitioners from continuous contracts which would bar an election at a time the petitioners would normally have been permitted to file for an election.

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If the second contract is allowed to bar an election, it would provide a method for an exclusive representative and employer to manipulate the timing of the window period and eliminate its predictability. Employees have a fundamental right to know when they can organize to seek a change in their exclusive

²The regulation is cited herein as it read at all times applicable to these proceedings. The Board has adopted a change in this regulation, affecting when decertification petitions may be filed under Dills, which does not affect the determination in this case.

representative. If the parties to a contract could alter the window period, they could easily eliminate the preparation time necessary to mount a decertification drive. This must not be allowed to happen. (Emphasis added.)

The Board has, on more than one occasion, reaffirmed its adoption of the doctrine of premature extension. See, for example, Butte County Superintendent of Schools (1983) PERB Decision No. 338 and Centralia School District (1985) PERB Decision No. 519.

The undisputed facts of this case bring it squarely within the premature extension doctrine. An agreement was reached between the parties which created a window period not less than 120 days nor less than 90 days from June 30, 1989. Prior to the contractual window period, the parties reached agreement to terminate that agreement early and to enter into a new agreement with a later expiration date (and later window period). Such manipulation of the window period when employees in a unit may lawfully seek to change their exclusive representative is precisely the situation which the doctrine of premature extension is intended to preclude.

CONCLUSION

For the reasons discussed above, the Motion to Dismiss is denied and it is determined that the decertification petition filed in this case was timely. Further, review of the proof of support submitted by CWA with its petition has resulted in the administrative determination that it is sufficient to meet the requirements of regulation 32770(b)(2).

Accordingly, an election shall be conducted to determine the

organization, if any, to be certified as the exclusive representative of this unit. The undersigned Board agent will contact the parties shortly to discuss the mechanics of the election.

Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision (PERB regulation 32360). To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

**Members, Public Employment Relations Board
1031 Eighteenth Street, Suite 200**

Sacramento, CA 95814-4174

A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (regulation 32135.) Code of Civil Procedure section 1013 shall apply.

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (regulation 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justification for the request (regulation 32370).

If a timely appeal is filed, any other party may file with

the Board an original and five (5) copies of a response to this appeal within ten (10) calendar days following the date of service of the appeal (regulation 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Sacramento regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see regulation 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Limitation of Appeals

Pursuant to regulation 32380(b)(4), the above determination that the petitioner's proof of support is adequate is not appealable.

DATED: March 27, 1989

Les Chisholm
Regional Director