

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CABRILLO COMMUNITY COLLEGE DISTRICT,)
Employer,) Case No. SF-R-614
and) PERB Order No. Ad- 90
CABRILLO COLLEGE FACULTY)
ASSOCIATION,) ADMINISTRATIVE APPEAL
Employee Organization.) May 19, 1980

Appearances: John L. Bukey, Attorney (Biddle, Walters & Bukey) for Cabrillo Community College District; Kirsten L. Zerger, Attorney for Cabrillo College Faculty Association, CTA/NEA.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION AND ORDER

The Cabrillo College Faculty Association, CTA/NEA (hereafter Association) appeals from the San Francisco Regional Director's granting of a motion to dismiss a request for recognition filed by the Association.

It is evident from the facts presented on the record in this case that the motion to dismiss was made by the District during the course of the representation hearing. The merits of this motion do not concern us here as the issue in this case is procedural and not substantive in nature.

Section 32350 of the California Administrative Code sets forth criteria which distinguish administrative appeals from other appealable decisions made by PERB staff¹. Normally, a motion to dismiss a request for recognition would not be appealable through the administrative appeal process. Here, however, the hearing officer did not rule on the motion but instead referred the motion to the regional director who thereupon rendered the determination. It is this determination which is objected to by the Association.

It is the opinion of the Board itself that the proper procedure for ruling on such a motion was not followed here. A motion to dismiss is to be ruled on by the hearing officer. Accordingly, we remand this case to the hearing officer with instructions to rule

¹Section 32350(a) states:

Definition of Administrative Decision.

(a) An administrative decision is any determination made by the Executive Director, a Regional Director, the General Counsel, the Chief Administrative Law Judge, or the Executive Assistant to the Board other than a refusal to issue a complaint in an unfair practice case pursuant to Section 32630, or a decision issued pursuant to Section 32654(e) ((one)) or a decision which results from the conduct of a formal hearing. Any administrative decision issued by an agent of the above listed staff officers shall be considered as issued by the Executive Director, Regional Director, General Counsel, Chief Administrative Law Judge, or Executive Assistant to the Board. ((and if appealable, shall be appealed directly to the Board itself.))

on the motion to dismiss and to prepare a proposed decision as required by Section 32215² of the California Administrative Code.

ORDER

This case is remanded to the hearing officer. The hearing officer is instructed to rule on the motion to dismiss and proceed thereafter in accordance with Section 32165 et seq. of the California Administrative Code.

PER CURIAM

²Section 32215 states:

Proposed Decision. At the close of the formal hearing the case shall be submitted to the Board agent conducting the hearing or another Board agent assigned by the Chief Administrative Law Judge who shall issue a proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself. The proposed decision shall be in writing and contain a statement of the case, findings of fact, conclusions of law and the order. The Board shall serve the proposed decision on each party.

STATE OF CALIFORNIA
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CABRILLO COMMUNITY COLLEGE DISTRICT,)	
Employer,)	ADMINISTRATIVE
and)	DETERMINATION
CABRILLO COLLEGE FACULTY ASSOCIATION,)	Case No. SF-R-614
Employee Organization)	(11/20/79)

PROCEDURAL HISTORY

On September 27, 1978, the Cabrillo College Faculty Association, CTA/NEA (hereafter Association) filed a request for recognition for a unit of all full-time (60 percent or more of a regular teaching assignment) contract certificated faculty in the Cabrillo Community College District (hereafter District) excluding the following: district superintendent and college president, assistant superintendent-instruction, assistant superintendent-business services, dean of instructional services, administrative dean of student services, dean of placement-financial aids, administrative dean of community services, dean of occupational and construction education, dean of special services, and dean of student affairs.

A letter informing both parties of the sufficiency of support was sent by this office on October 30, 1978 and on November 9, 1978, the employer filed its response denying recognition and requesting a representation hearing.

Specifically, the employer doubted the appropriateness of the Association's proposed unit since it included division

chairpersons.

An informal conference was held on January 29, 1979. At the informal, the PERS agent informed the parties that if the issue of inclusion or exclusion of division chairpersons went to hearing, the hearing officer would, pursuant to established Board precedent regarding community college certificated units, raise the issue of the appropriateness of a full-time unit. Since no agreement was reached, a representation hearing was scheduled for March 19, 1979. The employer requested and was granted a continuance, so the hearing commenced on April 3 and was concluded on April 26, 1979.

At the hearing, the employer made a motion to dismiss subsequent to the Association's presentation regarding the unit issue. The hearing officer accepted the motion under advisement and deferred to this administrative determination.

ISSUES

1. Should the request for recognition filed by the Association for a full-time certificated unit be dismissed for petitioner's failure to establish why it is an appropriate unit?
2. If the petition is not dismissed, what is the appropriate certificated unit in the Cabrillo Community College District?
3. Are division chairpersons supervisory employees within the meaning of section 3540.1(m) of the Educational Employment Relations Act (hereafter EERA)?

DISCUSSION

The District contends that the request for recognition filed by the Association should be dismissed because:

1. the petition does not reflect the largest group of teaching employees,

and/or

2. the Association did not defend any exclusions by providing a preponderance of the evidence thereto.

For the reasons set out below, the employer's motion for dismissal is hereby granted.

The Public Employment Relations Board (hereafter PERB) has many decisions which have defined appropriate certificated units in community colleges. The first of these cases was Los Rios Community College District (6/9/77) EERB Decision No. 18 which defined the appropriate unit as

. . . All certificated employees, including full-time instructors, part-time instructors who have taught at least the equivalent of three semesters of the last six semesters inclusive. . .

In Shasta-Tehama-Trinity Joint Community College District (9/22/77) EERB Decision No. 31, the Board affirmed the hearing officer's decision since it was substantially in accord with Board precedent established in Los Rios; also, hearing officer decisions in San Joaquin Delta Community College District (5/12/77) EERB Decision No. HO-R-5 and Riverside Community College District (5/9/78) PERB Decision No. HO-R-66 have adhered to this policy.

Subsequently, in Hartnell Community College District (1/2/79) PERB Decision No. 81, the Board abolished the formula for inclusion in the unit and the voter eligibility requirement

for part-time faculty (their having taught three or more of the last six semesters) by stating

Thus, the community of interest with full-time faculty of part-time faculty who teach less than three of the last six semesters and those who teach three or more of the last six semesters is identical. Accordingly, there is no basis for excluding part-time faculty who teach less than three of the last six semesters from the negotiating unit. In fact, upon reflection such a distinction is potentially disruptive to the very stability and harmony in employer-employee relations which the EERA seeks to promote through the collective negotiations process. We therefore conclude that the unit appropriate for negotiations includes all full- and part-time faculty. To the extent that Los Rios and its progeny are inconsistent with this decision, they are expressly overruled...

Finally, in Rio Hondo Community College District (1/25/79) PERB Decision No. 87, the unit found to be appropriate consisted of

all certificated employees of the District who are regular full-time teachers, including those who also teach summer school, and all teachers who teach summer school only; except management, supervisory and confidential employees shall not be included in the unit.

Based on all of the above, it is obvious that in community colleges the Board has found a unit composed of both full-time and part-time faculty, regardless of length of service, to be a presumptively appropriate unit.

This does not mean that any unit which differs from a presumptively appropriate unit is inappropriate, since the presumption is rebuttable. See for example Foothill-DeAnza Community College District (3/1/77) EERA Decision No. 10 and Fallbrook Union High School District (12/4/78) PERB Decision No. 78. However, it is essential that when a requested unit does not conform to established Board policy, the petitioner

must produce facts on the record which would enable the hearing officer to find such a unit appropriate. Consequently, the Association would appear to have the burden of showing with sufficient evidence why a unit consisting solely of full-time employees is appropriate in order to overcome the Board's established presumption.

The only evidence elicited by the Association consisted of the following:

- 1) There are approximately 170 part-time faculty;
- 2) Part-time faculty are paid by the unit ("...a teaching unit being defined as one hour of lecture per week or three hours of laboratory for two teaching units; also, they are paid by the course description that appears in the college catalog determining the number of teaching units that are involved.") See transcript at p. 275, lines 4-8.
- 3) Part-time faculty receive pro rata health and welfare benefits when employed for more than 7 1/2 units over a prescribed period of time. See transcript at page 275, lines 10-12.
- 4) Part-time faculty do not vote for the selection of faculty senators; and,
- 5) Part-time faculty do not accumulate sick leave and other leaves.

While these facts are important, they offer no comparison

to full-time employees and/or how they differ. There was no evidence presented by the Association regarding the community of interest of a full-time unit and how it might differ from that of part-time faculty, i.e., qualifications, job duties and responsibilities, hiring and evaluation procedures, benefits and privileges, participation on college committees, working conditions, etc.

Instead, the Association's position was that the PERB hearing officer should show why a full-time unit was not appropriate or, gather whatever evidence the PERB agent thought might be appropriate. This position, however, is misplaced. The Board has stated that the "...burden of proving the inappropriateness of a comprehensive teachers' unit..." is on those that oppose it; and, that it "...would be obligated to combine different groups of instructional personnel absent a finding that such community of interest does not exist." Peralta Community College District (11/17/78) PERB Decision No. 77.

The Board has found appropriate units which differ from those it has stated to be presumptively appropriate,¹ but this case is distinguished because the Association did not make a record upon which the hearing office could rely to make a

¹ See for example, Foothill-DeAnza Community College District (3/1/77) EERB Decision No. 10; Sacramento City Unified School District (9/20/77) EERB Decision No. 30; Shasta Union High School District (10/25/77) EERB Decision No. 34; Greenfield Union School District (10/25/77) EERB Decision No. 35; and Fallbrook Union High School District (12/4/78) PERB Decision No. 78.

unit determination. While the hearing officer did gather some evidence regarding part-time faculty contrary to the wishes of the District, the entire representation hearing process is thwarted if PERB agents must construct and present a party's case.

Based on all of the above, the employer's motion for dismissal is hereby granted and the Association's request for recognition is dismissed. However, this dismissal would be with leave to the Association and the District to come to an agreement upon a certificated unit and simultaneously file a petition for unit modification pursuant to PERB Regulation 33261(a)(2) to decide the issue of division chairpersons.

Another option would be for the Association to file a new request for recognition for all full-time and part-time instructors. Additionally, the record that was made regarding division chairpersons at the hearing may be utilized by a hearing officer to decide their status in order to avoid another hearing if either option is selected by the parties.

CONCLUSION

A determination having been made that the employer's motion for dismissal has been granted and therefore the request for recognition filed by the Association has been dismissed, the issue regarding the status of division chairpersons is not decided nor addressed as part of this decision. A decision regarding their status notwithstanding the granting of the motion and dismissal of the request for recognition would be solely an advisory opinion. The Board has consistently

determined that the agency will not issue advisory decisions on matters not properly in dispute before it.

An appeal to this administrative decision may be made to the PERB itself within 10 calendar days of service by filing a statement of the facts upon which the appeal is based with the Executive Assistant to the Board at 923 12th Street, Suite 201, Sacramento, CA 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.

November 20, 1979

James W. Tamm
Regional Director

JWT:ed