

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GROSSMONT-CUYAMACA COMMUNITY
COLLEGE DISTRICT,

Employer,

and

GROSSMONT-CUYAMACA COMMUNITY
COLLEGE DISTRICT FACULTY
ASSOCIATION,

Petitioner,

and

UNITED FACULTY OF GROSSMONT-
CUYAMACA COMMUNITY COLLEGE
DISTRICT,

Exclusive Representative.

Case No. LA-DP-370-E

Administrative Appeal

PERB Order No. Ad-380

June 22, 2009

Appearances: Marianne Reynolds, CCA Staff Consultant, for Grossmont-Cuyamaca Community College District Faculty Association; Law Offices of Robert J. Bezemek by David Conway, Counsel, for American Federation of Teachers Guild, Local 1931.

Before Dowdin Calvillo, Acting Chair; McKeag and Neuwald, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Grossmont-Cuyamaca Community College District Faculty Association (Association) of an administrative determination (attached) in which a Board agent dismissed a decertification petition for insufficient proof of support. The appeal alleges that the employee list provided by the Grossmont-Cuyamaca Community College District (District)

was not an accurate representation of the employees in the unit and, therefore, the Board agent erred in concluding that the Association's proof of support was insufficient.¹

We have reviewed the entire matter in this case and find the administrative determination was well-reasoned, adequately supported by the record and in accordance with applicable law. Accordingly, we hereby adopt the administrative determination as a decision of the Board itself, subject to the following brief discussion addressing the Association's allegations on appeal.

REQUEST FOR WITHDRAWAL

On June 19, 2009, the Association sent a letter by facsimile requesting the withdrawal of the instant appeal. The Board has long held that it possesses the discretion to grant or deny such requests. (*ABC Unified School District* (1991) PERB Decision No. 831b.) When an appeal involves a matter of continuing public interest, and when a precedential ruling on the matter will be instructive to all parties similarly situated, the Board has held that, when considering a request to withdraw, it should exercise discretion in the interest of justice. (*Oakland Unified School District* (1983) PERB Order No. Ad-171.) Because of the significant legal issues presented by this appeal, and because the representation rights of over 1400 employees are at issue, we find the best interests of justice are not served by the withdrawal of the instant appeal. Accordingly, we decline to grant the Association's request for withdrawal.

¹ On April 23, 2009, PERB determined that a decertification petition (Case No. LA-DP-369-E) filed by the American Federation of Teachers Guild, Local 1931 for the same bargaining unit was timely submitted and accompanied by sufficient proof of support. Consequently, an election was scheduled. In its appeal, the Association requested that this election in Case No. LA-DP-369-E be stayed, pending the Board's decision on the merits of its appeal. The Board denied the request, but ordered the ballots cast in that election to be impounded until the Board issued its decision on the merits in the instant case. (*Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-378.)

FACTS AND DISCUSSION

On April 14, 2009, the District provided PERB with a list of unit members employed as of February 28, 2009. The Board agent referred to this list as "List #1". Later, in response to a request by the Association, the District provided PERB with a second list of unit members employed in the Fall semester. This second list was consolidated with the first list to create a comprehensive list of individuals who were employed during the Fall semester and/or on February 28, 2009. The Board agent referred to this consolidated list as "List #2". The Board agent concluded that the Association failed to provide adequate proof of support in either List #1 or List #2. Consequently, the Board agent dismissed the matter for insufficient proof of support.

In its appeal, the Association argues that the Fall semester list was based, not on actual payroll records, but on the list of individuals who received hire letters for the Fall semester. According to the Association, not all individuals who receive hire letters become District employees. Therefore, if actual payroll records were used by the District, the number of individuals in the unit that worked during the Fall semester would be lower and, consequently, the Association's proof of support might be sufficient to support its participation in the decertification election. The Association also claims that List #1 is inaccurate.

To challenge the dismissal of a decertification petition for lack of support, the charging party must allege facts sufficient to demonstrate the adequacy/inadequacy of the proof of support. (*Coast Community College District (1986) PERB Decision No. Ad-159 (Coast)*.) In *Coast*, an incumbent union appealed a decertification petition filed by a rival union. According to the incumbent union, the actual unit size was much larger than the unit size considered by the Board agent and, therefore, the rival unit lacked adequate proof of support

for its petition. The Board, however, ruled that the incumbent union's bald assertion that the unit size was larger than the unit size considered by the Board agent was insufficient to sustain its appeal.

Like the incumbent union in *Coast*, the Association's appeal consists of bare assertions that the Fall semester employee list provided by the District potentially contains too many names and that List #1 is inaccurate. The appeal, however, fails to provide any specific evidence regarding employees improperly included or excluded on the list. Moreover, the appeal fails to identify how the Association would have met its proof of support burden even if the size of the unit was "appropriately" determined. Under these circumstances, the Association's grounds for appeal are, at best, speculative and insufficient to support the reversal of the administrative determination.

ORDER

The appeal of the administrative determination in Case No. LA-DP-370-E is hereby DISMISSED WITHOUT LEAVE TO AMEND. In addition, the ballot impound ordered by the Board in *Grossmont-Cuyamaca Community College District (2009) PERB Order No. Ad-378* is hereby lifted.

Acting Chair Dowdin Calvillo and Member Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2804
Fax: (818) 551-2820



April 21, 2009

Marianne Reynolds, CCA Staff Consultant
California Teachers Association
281 N. Rampart Street, Suite A
Orange, CA 92868

Michael P. Baranic, Attorney
Gatley & Baranic
2445 Fifth Avenue, Suite 350
San Diego, CA 92101-1665

Timothy K. Garfield, Attorney
Worley, Schwartz, Garfield & Prairie, LLP
401 "B" Street, Suite 2400
San Diego, CA 92101-4200

Re: Case No. LA-DP-370-E
Grossmont-Cuyamaca Community College District

Dear Interested Parties:

Review of all proof of support submitted by the petitioner with its decertification petition in the above-referenced case has resulted in the administrative determination that it is insufficient to meet the requirements of PERB Regulation 32770(b)(2).¹ The petition is therefore dismissed.

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. (Cal. Code Regs., tit. 8, sec. 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:

Public Employment Relations Board
Attention: Appeals Assistant

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95811-4124, and the text is available at www.perb.ca.gov.

1031 18th Street, Suite 200
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, sec. 32135(a) and 32130; Gov. Code sec. 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (Cal. Code Regs., tit. 8, sec. 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 justifications for the request (Cal. Code Regs., tit. 8, sec. 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 the appeal within ten (10) calendar days following the date of service of the appeal (Cal. Code Regs., tit. 8, sec. 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the [***] regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see Cal. Code Regs., tit. 8, sec. 32140 for the required contents). The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, secs. 32090 and 32135(c).)

LA-DP-370-E
April 23, 2009
Page 3

Extension of Time

A request for an extension of time in which to file an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (Cal. Code Regs., tit. 8, sec. 32132).

Sincerely,

Eric J. Cu
Regional Attorney

EC

cc: Jim Mahler