



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

PASADENA AREA COMMUNITY COLLEGE
DISTRICT,

Employer,

and

CALIFORNIA FEDERATION OF TEACHERS,

Petitioner,

and

PASADENA CITY COLLEGE FACULTY
ASSOCIATION,

Exclusive Representative.

Case No. LA-DP-460-E

PERB Order No. Ad-500

January 11, 2023

Appearances: Rothner, Segall & Greenstone by Glenn Rothner, Attorney, for California Federation of Teachers; Law Offices of David Conway by David Conway, Attorney, for Pasadena City College Faculty Association.

Before Banks, Chair; Shiners, Krantz, and Paulson, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on an interlocutory appeal of a Board agent's administrative determination (AD) concerning a decertification petition (Petition) that California Federation of Teachers (CFT) filed under the Educational Employment Relations Act (EERA) seeking to decertify and replace Pasadena City College Faculty Association (PCCFA) as the exclusive representative of faculty members at Pasadena Area

Community College District.¹ In the AD, PERB's Office of the General Counsel (OGC) concluded that CFT filed sufficient proof of support consisting of both electronically and physically signed authorization cards. On appeal, PCCFA asserts that PERB Regulation 32700 bars use of electronic proof of support for decertification, and that CFT therefore failed to submit valid proof of support sufficient to meet the 30 percent threshold for a decertification election. We agree and dismiss the Petition.

FACTUAL AND PROCEDURAL BACKGROUND

The District is a public school employer within the meaning of EERA section 3540.1, subdivision (k), and a school district within the meaning of PERB Regulation 32001, subdivision (c). PCCFA and CFT are employee organizations within the meaning of EERA section 3540.1, subdivision (d) and PERB Regulation 32001, subdivision (a). PCCFA is the exclusive representative of a bargaining unit consisting of the District's full-time and part-time faculty.

I. CFT's Campaign to Collect Electronically Signed Authorization Forms

In the first half of 2022,² District faculty members hoping to elect CFT as their exclusive representative in lieu of PCCFA solicited their colleagues to electronically sign a web-based authorization form containing the following pertinent language:

"I want to join Pasadena City College Faculty Federation (PCCFF), California Federation of Teachers (CFT), American Federation of Teachers (AFT), AFL-CIO^[3] to have a voice for better wages, benefits and working conditions.

¹ EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code.

² All dates refer to 2022, unless otherwise specified.

³ Like the parties, we refer to the petitioning organization as CFT.

I authorize [CFT] to represent me as my exclusive representative with respect to my wages, hours and terms and conditions of employment in accordance with applicable law. I understand that this authorization card may be filed with the Public [Employment] Relations Board to support holding a recognition election.”

On July 5, CFT filed the Petition, together with electronically signed authorization forms from hundreds of District faculty members. As of that date, the District and PCCFA had no collective bargaining agreement (CBA) in effect. Their most recent CBA had expired on June 30.

II. The Board Agent’s Order to Show Cause and CFT’s Response

OGC assigned a Board agent to investigate the Petition and initial proof of support. On July 7, the Board agent issued an Order to Show Cause (OSC). The OSC notified all parties that PERB Regulation 32700, subdivision (d) does not allow electronically signed proof of support from exclusively represented employees, and afforded CFT an opportunity to show cause, by July 18, why PERB should not dismiss its Petition.

After receiving the OSC, CFT obtained authorization cards bearing original, nonelectronic signatures.⁴ Some—but not all—of the faculty providing these original signatures had previously signed proof of support using an electronic signature.

On or about July 18, CFT submitted the newly collected authorization cards to PERB. CFT also filed multiple sworn declarations describing the methods it used to

⁴ In this decision, “original signatures” refers to ink or “wet” signatures, while “proof of support” can refer to electronically signed authorization forms, paper authorization cards, or both, as context demands.

obtain the electronically signed authorization forms that it had initially submitted with the Petition. These declarations stated that after employees provided their electronic signatures, they received, via e-mail, copies of their electronically signed authorization forms. The declarations further stated that CFT did not receive any responsive e-mails from employees disputing that they had authorized CFT to represent them.

III. PCCFA's Motion to Dismiss and CFT's Response

On August 1, PCCFA moved to dismiss the Petition, asserting two primary arguments. First, PCCFA argued that CFT had no right to cure the insufficient proof of support it filed with the Petition. In making this argument, PCCFA assumed the Board agent had been correct that PERB Regulations do not allow electronically signed proof of support from exclusively represented employees. PCCFA's motion also argued that CFT "evasively hid that it sought decertification of PCCFA, and fraudulently misrepresented the requests for signed cards to be for 'reforming PCCFA' and 'affiliating with CFT.'"

On August 9, CFT opposed the dismissal motion, arguing that it had a right to cure its initial proof of support and had not engaged in misrepresentation.

IV. The Board Agent's Administrative Determination

On August 18, the Board agent issued the AD, which included five primary conclusions. First, the Board agent found that CFT had the right to augment its proof of support because there was no contract bar in effect. Second, the Board agent rejected PCCFA's misrepresentation allegations. Third, the Board agent found that the number of paper authorization cards CFT submitted, standing alone, did not satisfy the 30 percent showing of support requirement in PERB Regulation 32770,

subdivision (b). Fourth, the Board agent found that the number of electronically signed authorization forms CFT submitted, standing alone, also was less than 30 percent of the bargaining unit. Accordingly, the Board agent found that CFT could satisfy the required showing only by combining paper cards and electronic forms. Finally, the Board agent reversed the position he had articulated in the OSC—that PERB Regulations do not allow electronically signed proof of support from exclusively represented employees. In explaining his change of mind, the Board agent found that the electronically signed authorization forms satisfied the description in PERB Regulation 32700, subdivision (d)(5): “Other evidence as determined by the Board, provided that such evidence is consistent with the principles underlying this subsection (d).” The Board agent therefore found sufficient proof of support to trigger a decertification election.

V. PCCFA’s Interlocutory Appeal

On September 8, PCCFA filed a motion asking the Board agent to take two actions. First, PCCFA asked the Board agent to certify an interlocutory appeal to the Board over whether the AD erred in finding “that electronic, non-original signatures may be used for proof of support for decertification petitions under PERB Regulation 32700(d)(5).” Second, PCCFA asked the Board agent to stay the decertification election pending the Board’s determination of the interlocutory appeal. CFT opposed both requests on September 15. On September 22, the Board agent certified the interlocutory appeal for Board review but did not address PCCFA’s stay request.⁵

⁵ An appeal from an administrative determination does not automatically stay further proceedings. (PERB Reg. 32370.) Interlocutory appeals are a subset of

VI. Proceedings While This Appeal Was Pending

The Board conducted a mail ballot election. On November 15, the Board agent informed the parties that 235 employees voted in favor of PCCFA, 229 voted in favor of CFT, and 7 voted for no representation. The Board agent further informed the parties that because none of the choices achieved a majority, PERB would conduct a runoff election between CFT and PCCFA. The Board agent has not scheduled that election due to a dispute over which employees have the right to vote in a runoff.

DISCUSSION

When appealing an administrative determination, an appellant must show that the challenged decision departs from the Board's precedent or regulations. (*City and County of San Francisco* (2022) PERB Order No. Ad-497-M, p. 15.) Here, we reverse the AD because the Board agent misconstrued the applicable regulation on proof of support.

For most of PERB's history, the agency's regulations have disallowed electronically signed proof of support. (*Regents of the University of California* (2018) PERB Order No. Ad-459-H, p. 4.) As described below, this partially changed on February 15, 2021, when revisions to PERB Regulation 32700 took effect together with newly promulgated PERB Regulations 32092 and 32110.

administrative appeals involving controlling issues of law the resolution of which will materially advance case resolution. (PERB Reg. 32200.) For that reason, "in most cases it is appropriate for a Board agent certifying an interlocutory appeal to the Board itself to pause activity in the case pending the Board's resolution of the issue(s) on appeal." (*Regents of the University of California (San Francisco)* (2023) PERB Order No. Ad-499-H, p. 8.)

PERB Regulation 32092, subdivision (a) permits electronic signatures only where “expressly” authorized by PERB Regulations. PERB Regulation 32110, subdivision (c) complements Regulation 32092, stating that a party submitting proof of support “may rely on electronic signatures only to the extent permitted under section 32700.” These two new regulations provided context for the Board’s contemporaneous updates to PERB Regulation 32700, which governs proof of support in representation matters. The sole part of revised Regulation 32700 that allows electronic signatures is subdivision (d)(4), which adds an electronic signature option for “employees who are not exclusively represented by an employee organization.” The plain language of the revised regulation thus left PERB’s longstanding requirement of original signatures unchanged for exclusively represented employees who wish to change or decertify their representative or sever themselves from a represented unit. (Zerger et al., edits., California Public Sector Labor Relations (2d ed. 2022) § 4.03[2][a][ii] [revisions to PERB Reg. 32700 permit certain proof of support without original signatures, “though not for decertification and severance petitions”].)

There are several reasons supporting PERB’s decision to accept electronic proof of support only for petitions to represent unrepresented employees. First, while a petitioner seeking to represent unrepresented employees is always an employee organization, a decertification petitioner can be either an employee organization, a group of employees, or an individual. Required electronic signature procedures, including record-keeping necessary to prevent fraud and create an adequate audit trail, constitute critical precautions that an employee organization will likely be more able to follow, as compared to an individual employee or group of individuals. Electronic proof

of support thus makes more sense in cases where it is certain that the petitioner will be an employee organization.

Second, EERA delegates to PERB the delicate task of balancing employee free choice with preserving stable employer-employee relations. (*Regents of the University of California v. Public Employment Relations Bd.* (2020) 51 Cal.App.5th 159, 192; *State of California (Department of Personnel Administration)* (1983) PERB Decision No. 327-S, p. 5; *Pittsburg Unified School District* (1978) PERB Order No. Ad-49 (*Pittsburg*), pp. 4-6.) In exercising this discretion, PERB recognizes that decertification petitions destabilize employer-employee relations as well as employer efficiency.⁶ In part for these reasons, PERB Regulations limit decertification petitions more than petitions to represent unrepresented employees, provided that represented employees retain a reasonable opportunity to change their representative or become unrepresented. (*Pittsburg, supra*, PERB Order No. Ad-49, pp. 4-6; see also *Service Employees Intern. Union, AFL-CIO v. Superior Court* (2001) 89 Cal.App.4th 1390, 1396 [promoting stable labor relations is a valid rationale for timing and proof of support rules that disfavor decertification compared to initial certification, but it is

⁶ We know this to be true from multiple past examples. (See, e.g., *City of Fremont* (2013) PERB Order No. IR-57-M, p. 25 [employer stated that it would not bargain with incumbent union pending outcome of decertification petition, preventing union from performing its duties as exclusive representative and undermining labor law's dual purposes of improving employer-employee relations and increasing communication with employees].)

overly restrictive to allow a decertification petitioner only 30 days to collect proof of support from half the unit].)⁷

While the February 2021 regulatory changes allowed electronic signatures for unrepresented employees, the changes did not impose any new limit on represented employees' ability to decertify or change representatives. Rather, represented employees retain the same rights to do so that they have had since EERA's enactment. By allowing electronic signatures only in the limited instance of petitions to represent unrepresented employees, PERB declined to liberalize decertification processes, thereby rejecting a potentially destabilizing change. Taking administrative notice of EERA petitions filed before and after the regulatory change, statistics reveal no impact on the rate of decertification activity.⁸ In fact, these statistics also show no impact on the rate of petitions to represent unrepresented employees, despite the potential liberalizing effect of accepting electronic signatures from unrepresented employees.⁹ Thus, historical rates of both types of petitions, and by extension the ratio between them, remain unchanged. However, the Board may take future action if evidence arises that decertification petitions have become overly difficult.

⁷ PERB Regulation 32700, subdivision (b) gives parties a full year to collect proof of support, a standard that is substantially more liberal than the standard at issue in *Service Employees Intern. Union, AFL-CIO v. Superior Court*, *supra*, 89 Cal.App.4th 1390.

⁸ PERB received an annual average of 8 decertification petitions in the decade prior to 2021 and 17 such petitions in the 23 months since the regulatory change.

⁹ PERB received an annual average of 17 petitions to represent unrepresented employees in the decade prior to 2021 and 33 such petitions in the 23 months since the regulatory change.

CFT concedes that PERB Regulation 32700, subdivision (d)(4) applies only to proof of support from unrepresented employees. Nevertheless, CFT argues that the Board agent correctly accepted the electronic signatures under subdivision (d)(5), which allows “[o]ther evidence as determined by the Board, provided that such evidence is consistent with the principles underlying this subsection (d).” CFT submitted evidence that it met subdivision (d)(4)’s procedural requirements that apply to electronic signatures by unrepresented employees, and on that basis, argued that its approach was “consistent with the principles” underlying subdivision (d).

CFT’s reading of PERB Regulation 32700 violates fundamental interpretive principles. A cardinal rule of statutory construction is that we must give “meaning to every word of the statute, if possible, [to] avoid a construction that makes any word surplusage.”¹⁰ (*Santa Clara Valley Water District* (2013) PERB Decision No. 2349-M, p. 16.) By allowing electronic proof of support for decertification under subdivision (d)(5), CFT’s interpretation renders ineffective subdivision (d)(4)’s limitation of electronic signatures to “employees who are not exclusively represented by an employee organization.”

We also must read our regulations as a whole so that every part is harmonized. (*County of Santa Clara* (2015) PERB Decision No. 2431-M, p. 16.) PERB Regulation 32092, subdivision (a) permits electronic signatures only where “expressly” authorized. PERB Regulation 32110, subdivision (c) states that a party submitting proof of support “may rely on electronic signatures only to the extent permitted under section 32700.”

¹⁰ The same interpretive principles apply to statutes and regulations. (*Grossmont Union High School District* (2018) PERB Order No. Ad-466, p. 3.)

CFT's interpretation ignores the clear import of these provisions by allowing electronic signatures in support of a decertification petition even though such proof of support is not "expressly" authorized by PERB Regulation 32700.

Finally, we cannot interpret a regulation in a manner that defeats its apparent purpose. In *Region 2 Court Interpreter Employment Relations Committee & California Superior Courts Region 2* (2020) PERB Decision No. 2701-I, we declined to interpret a statute so as to create a "loophole foreclosing [the union's] ability to negotiate wage increases to offset increased pension contributions" because such an interpretation "is incongruous with the Legislature's purpose in enacting a statutory scheme granting court interpreters the right to engage in collective bargaining over 'wages, hours, and other terms and conditions of employment.'" (*Id.* at p. 36.) Similarly here, CFT asks us to create a loophole allowing electronic proof of support for a decertification petition despite PERB's express intent to limit electronic proof of support to "employees who are not exclusively represented by an employee organization." This would defeat the purpose of the regulatory changes that became effective in February 2021.

The Board agent was therefore correct in his initial interpretation that PERB Regulations disallow electronically signed proof of support from exclusively represented employees. The Board agent was incorrect when he later reversed this interpretation and accepted CFT's electronic proof of support.¹¹ Without the

¹¹ Regulation 32700 governs proof of support for all petitions filed with PERB, but it does not govern petitions filed with an employer under the Meyers-Milias-Brown Act, section 3500 et. seq. (MMBA), or other acts permitting an employer to establish local rules regarding representation. The MMBA grants employers certain discretion in establishing rules that balance employee rights and stable labor relations. (*City of*

electronically signed authorization forms, CFT's proof of support did not reach the 30 percent threshold necessary for an election. The Petition accordingly must be dismissed.

We clarify, however, that so long as there is no contract bar in effect, EERA allows a decertification petitioner the right to: (a) augment the proof of support it filed in conjunction with a pending petition; or (b) file a new petition if its initial petition was withdrawn or dismissed for insufficient proof of support. (*American Indian Model Schools* (2018) PERB Order No. Ad-468, pp. 1-2 [where petitioner claimed PERB denied it the opportunity to cure its proof of support, issue was moot because petitioner simply filed a new petition to the same effect].) Indeed, in *Pittsburg, supra*, PERB Order No. Ad-49, we explained the governing principles. First, we noted that PERB Regulations are silent on curing proof of support for decertification petitions, because that opportunity ceases whenever a new contract bar takes effect, meaning PERB cannot issue a regulation guaranteeing a set period to cure in all cases. (*Id.* at p. 3.) In contrast, when there is no contract bar in effect (including for all petitions to represent unrepresented employees and for decertification and severance petitions when the contract bar has lapsed), then the opportunity to cure exists at the very least because the petitioner can file a new petition. (*Id.* at p. 4.) Accordingly, so long as there is no contract bar in effect, CFT has the right to file a decertification petition supported by proof of support bearing original signatures to meet the required 30 percent threshold for a decertification election.

Long Beach (2021) PERB Decision No. 2771-M, p. 13.) We express no opinion as to what rules on electronic proof of support such an employer may reasonably adopt.

ORDER

The Decertification Petition filed by California Federation of Teachers on July 5, 2022, is DISMISSED for insufficient proof of support.

Chair Banks and Members Shiners and Paulson joined in this Decision.