

PERB Upholds Union's Disciplinary Action Against Member Who Advocated Decertification

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A recent decision by the Public Employment Relations Board (PERB) upheld disciplinary procedures used by the California Association of Professional Scientists to remove a member alleged to have advocated for the union's decertification. The PERB decision overturned an earlier ruling by an administrative law judge who found in the member's favor.

The union, known as CAPS, is a California state bargaining unit governed by the Dills Act. Like the Meyers-Milias-Brown Act that governs our local public employee associations, the Dills Act gives employee organizations the right to "make reasonable provisions for the dismissal of individuals from membership." PERB has given itself jurisdiction over claims that a union's discipline procedures are "unreasonable".

Under the CAPS bylaws, the association board was authorized to terminate the membership of any member who advocated or otherwise supported the decertification of CAPS. The bylaws afforded the member the opportunity to see the written charges and all supporting material, to respond to the charges, and to receive a timely response from the Board of Directors. The bylaws also established a procedure by which the union's "member discipline review committee" was to be selected and by which the appointment of a member to the committee could be challenged for cause by the charged party.

Charles Rachlis was charged by another CAPS member with advocating the union's decertification. Rachlis challenged the composition of the discipline review committee on the basis its members who were union officers had never been properly elected to the CAPS Board of Directors. He also alleged several of the members were biased against him due to his past battles with the union leadership.

In what can only be described as a sloppy decision, the administrative law judge ruled the union had not followed its own procedures in rejecting Rachlis's challenge for cause and claims of bias. Rather than rely on evidence presented to the CAPS board when it made its decision to reject Rachlis's challenge and dismiss him from the union, the judge apparently credited new claims made by Rachlis in his post-hearing brief. The union had had no opportunity to address those claims when deciding to expel Rachlis or at the PERB hearing.

PERB issued a new decision rejecting the opinion of the administrative law judge and dismissing Rachlis's charge. While this case arose under the Dills Act governing California state employees, its principles apply equally to the expulsion procedures used by local probation associations. Those procedures must comply with principles of due process that are "reasonable" and "fair" to survive potential scrutiny by PERB.

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