STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNION OF AMERICAN PHYSICIANS & DENTISTS, Charging Party, v. COUNTY OF SAN JOAQUIN (HEALTH CARE SERVICES), Respondent.	Case No. SA-CE-6-M PERB Order No. IR-55-M September 5, 2001

Appearances: Davis, Cowell & Bowe by Barry S. Jellison, Attorney, for Union of American Physicians & Dentists; Michael McGrew, Assistant County Counsel and Robyn Truitt Drivon, Chief Deputy County Counsel, for County of San Joaquin (Health Care Services).

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for injunctive relief filed by the Union of American Physicians and Dentists (UAPD). On July 27, 2001,[1] the UAPD filed an unfair practice charge and request for injunctive relief against the County of San Joaquin (Health Care Services) (County). The charge alleges that the County placed Dr. David Gran (Gran) on administrative leave to interfere with the UAPD's organizing campaign. Based on the facts and relevant legal authority, the Board grants the request for injunctive relief.

[1] All dates occurred in 2001 unless specifically noted otherwise.

FACTS

Gran has worked as a physician for the County for seven years. He first met with representatives of the UAPD on April 20, 2001 regarding possible unionization of the doctors at the hospital. On May 23, he called a meeting of doctors at the hospital to speak with Service Employees International Union, Local 790 (SEIU). On May 30, he called a meeting of doctors at the hospital to listen to a presentation by UAPD. This meeting was attended by Dr. Lee Adams, the director of anesthesiology and a member of management of the hospital. He was requested to leave the meeting by Gary Robinson, executive director of UAPD, but refused to do so.

In early June, Gran informed Roger Speed (Speed), interim director of health care services, that the union was coming in because the hospital administration would not listen to the doctors. During June, Gran spoke with several doctors and staff of the hospital about unionization and personally collected signatures from 16 doctors on authorization cards for UAPD. In addition, Gran along with other doctors, signed a two-page letter to the doctors at the hospital urging them to support UAPD in the election. On June 19, UAPD filed a petition with the County for an election among the 49 doctors at the hospital.

The State Mediation and Conciliation Service scheduled an election by mail ballot. The ballots were mailed to the 49 doctors in the bargaining unit on July 23 and were scheduled to be opened and counted by the Mediation Service in Stockton on August 10. The County provided mailing labels for the Mediation Service to use in mailing the ballots. Approximately one-third of these labels listed a local credit union address for the employees. These ballots were returned and were re-mailed by the Mediation Service to the employees' correct addresses on or about July 30. The Mediation Service had received 18 ballots from voters as of August 1.

On July 24, Gran received a memorandum from Speed which placed Gran on administrative leave until further notice. In addition, Gran was instructed "not to talk to hospital staff or come to the workplace." Speed's directive was explained in the memorandum, as follows:

> In the past weeks, you have been involved in a number of incidents that caused me to question your willingness or ability to continue as a productive member of the Hospital Medical Staff. The Medical Services Departments must function well in order to cover the 24/7 responsibilities of the hospital as well as daily outpatient clinics. Team work, dedication and effective communication are primary attributes required to function as a member of any medical department. Your behavior has called into serious question your willingness to respond and effectively interact with your Ob/Gyn colleagues.
>
> You have created an atmosphere in the Ob/Gyn Department in which the members are feeling intimidated and fearful for their jobs. Those issues I have been made aware of are:
>
> - Calling members of the hospital staff and telling them a "war" is about to begin and to stay out of it.
> - Telling members of the medical staff they were about to be terminated when there was no basis for those statements.
> - Lying about whether you or Administration chose the date of the balloting for the Medical Staff President election.
> - Against the expressed wishes of the Medical Executive Committee, attempting to initiate a second election process for Medical Staff President.
> - Producing a letter with attachments of confidential internal hospital documents protected by Evidence Code 1157 and sending it to the Board of Supervisors on June 29, 2001.
> - You have cancelled patient clinic appointments to attend meetings to advocate for physician unionization.
>
> You have been a vocal critic of Administration since I have taken the Interim Director's position. Your feelings concerning the previous Director were very negative as you have told me. Even though I have had discussions with you about giving me a chance to make some positive changes, your attitude remains openly negative. Your behavior and attitude is disruptive to the Ob/Gyn Medical Service.

POSITIONS OF THE PARTIES

UAPD's Position

UAPD argues that Gran's notice of administrative leave interferes with Gran's rights which are set forth in section 3502 of the Meyers-Milias-Brown Act (MMBA),[2] PERB Regulation 32603(a)[3] and Section 13 1A(1) and (2) of the San Joaquin County Employer-Employee Relations Policy.[4] Injunctive relief is proper in this case because the Board's normal

---

[2] The MMBA is codified at Government Code section 3500, et seq. Section 3502 provides, in relevant part:

> Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

[3] PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. Regulation 32603 reads, in pertinent part:

> It shall be an unfair practice for a public agency to do any of the following:
>
> (a) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule.

[4] Section 13 provides, in pertinent part:

> 1. UNFAIR EMPLOYER-EMPLOYEE RELATIONS PRACTICES: In their dealings with each other, management and employee organizations shall be prohibited from the following practices:
>
> A. Management:
>
> (1) Interfering with, restraining, coercing, disciplining or otherwise discriminating against any employee in the exercise of the rights, including but not limited to the filing of grievances, complaints, giving of testimony or responding to investigations, assured by statute, law, ordinance, rule or regulation, agreement or this Policy.

process would be unable to act quickly enough to return Gran to the workplace during the election period.

County's Position

The County's response is based solely on disputing the facts raised by UAPD. They see the facts as follows. Gran is a contract physician placed on administrative leave because of his inability to get along with medical staff and clinical issues pertaining to patient care. The contract allows for a 90-day termination by either side. Although there is an ongoing unionization effort, Gran's administrative leave is unrelated to it.

Gran violated County policies regarding appropriate union activity. His professional medical conduct is currently under investigation and review; he has cancelled patient clinic appointments for non-medical related activities and other clinical issues have been raised by supervisors and peers.

Gran has been afforded greater due process than required by his contract to allow for a timely review. Injunctive relief will force the County to "address the more important question, i.e., does his presence at San Joaquin Hospital adversly affect patient care." Returning him to work is not in the best interests of those served by the hospital.

DISCUSSION

MMBA section 3509(b) provides that:

> A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to

---

> (2) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, promotions or other conditions of employment.

> Section 3507 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

The Legislature has expressly provided PERB with exclusive initial jurisdiction over unfair practice charges alleging a violation of MMBA or any rules and regulations adopted by a public agency pursuant to Section 3507. If PERB finds an unfair practice, PERB has the power to determine what, if any, remedy is appropriate to effectuate the purposes of the MMBA.

MMBA section 3509(a) provides that the Board's powers and duties described in section 3541.3 of the Employer-Employee Relations Act (EERA)[5] shall also apply to the Board, as appropriate, under the MMBA. Section 3541.3(j) describes one such power as follows:

> To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings, or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

The Board is not aware of anything in the legislative history of Senate Bill 739 (Stats. 2000, c. 901), which brought the MMBA under the Board's jurisdiction, nor in the MMBA itself, which would indicate that the power under Section 3541.3(j) is not an appropriate power for the Board to exercise under the MMBA. The power under Section 3541.3(j) is therefore deemed to be an appropriate power of the Board under Section 3509(a) and the MMBA.

[5] EERA is codified at Government Code section 3540 et seq.

When PERB seeks injunctive relief from the courts, the appropriate test requires the establishment of two elements: (1) "reasonable cause" must exist to believe an unfair practice has been committed; and (2) injunctive relief must be "just and proper." (Public Employment Relations Bd. v. Modesto City Schools Dist. (1982) 136 Cal.App.3d 881, 892 [186 Cal.Rptr.634] (Modesto).)

Reasonable Cause

In Modesto, at pages 896-897, the court stated:

> In construing whether there is reasonable cause to believe an unfair labor practice has been committed . . . . it has been stated that PERB is required to sustain a minimal burden of proof: 'It need not establish an unfair labor practice has in fact been committed [citation], nor is the court to determine the merits of the case [citation] . . . .'

The court noted that, " . . . . the key question is *not* whether PERB's theory would eventually prevail, but whether it is *insubstantial or frivolous*." [Id. at p. 897.]

The unfair practice alleges violations on two theories. The first is that the County has illegally discriminated against Gran because of his union activity. The second theory is that the County has interfered with employee rights by suspending a union leader and ordering him not to talk to fellow employees during an election.

Discrimination

To demonstrate a violation of MMBA section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under the MMBA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Assn. v. City of Campbell (1982) 131 Cal.App.3d 416

[182 Cal.Rptr. 46] (Campbell); San Leandro Police Officers Assn. v. City of San Leandro (1976) 55 Cal.App.3d 553 [127 Cal.Rptr. 856] (San Leandro).)

Facts establishing one or more of the following nexus factors should be present: (1) the employer's disparate treatment of the employee (Campbell); (2) the employer's departure from established procedures and standards when dealing with the employee (San Leandro); (3) the employer's inconsistent or contradictory justifications for its actions (San Leandro); (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) employer animosity towards union activists (San Leandro). (Los Angeles County Employees Assn. v. County of Los Angeles (1985) 168 Cal.App.3d 683 [214 Cal.Rptr. 350].)

In this case, there is reasonable cause to believe that the County engaged in illegal discrimination against Gran. By openly campaigning on behalf of UAPD, Gran engaged in protected activity that was well known to the employer. He suffered an adverse action by being placed on administrative leave and being banned from the workplace. The July 24 memorandum could also serve as the basis for further disciplinary action. Improper motive has been demonstrated by the timing and the "vague or ambiguous reasons" given for the administrative leave. As Gran's declaration points out, several of the allegations are so vague that he was unable to respond to them.

A careful reading of the July 24 memorandum reveals animus in its content. The memorandum initially criticizes Gran, a seven year employee with no disciplinary history that we are aware of, for lack of "team work" and "dedication" in recent weeks. During those weeks, Gran spearheaded an organizing campaign on behalf of UAPD. The memorandum also

criticizes him for communications to fellow employees which make them feel "intimidated and fearful for their jobs." Typically, a union proponent discusses lack of job security and the benefits of a union contract. Gran is criticized for attending union meetings after cancelling patient appointments, an allegation he denies in his sworn declaration. Finally, the memorandum states that Gran has been "a vocal critic of Administration," generally protected conduct for a union organizer. Most telling is that Gran is not only placed on administrative leave, he is ordered "not to talk to hospital staff." Given that the memorandum does not explain the reason for such a restriction, it can only be assumed that it was for the purpose of silencing him during the balloting.

Interference

With regard to adverse action, the Court of Appeal in Campbell held that if the employer's conduct is "inherently destructive" of important employee rights, proof of unlawful intent is not required under the MMBA, even if the employer's conduct was motivated by business considerations. (Campbell at p. 423.) However, if the adverse effect on employee rights is "comparatively slight," unlawful intent must be proved if the employer produces evidence of legitimate and substantial business justifications. (Campbell at p. 424.) This test was further described as follows:

> All [a charging party] must prove to establish an interference violation of section 3506 is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons.
> (Public Employees Assn. v. Board of Supervisors (1985) 167 Cal.App.3d 797, 807 [213 Cal.Rptr. 491].)

Here the County has placed Gran on administrative leave and ordered him "not to talk to hospital staff or come to the workplace." With regard to restrictions which infringe on the

rights of employees to freely discuss organization, the U.S. Supreme Court has stated, "No restriction may be placed on the employees' right to discuss self-organization among themselves, unless the employer can demonstrate that a restriction is necessary to maintain production or discipline". (National Labor Relations Bd. v. Babcock & Wilcox (1956) 351 U.S. 105, 111.)

The County's justification for banning Gran is that he was disruptive, cancelled appointments and had clinical problems. However, the clinical problems are not referenced in Speed's letter to Gran and are only vaguely described in a memorandum to Speed from Gregory Lee, M.D., Chairperson, Department of Obstetrics and Gynecology, dated July 31. The disruption described appears to relate to discussions Gran had regarding union representation. These facts do not support a dismissal of this allegation.

Thus, there is reasonable cause to believe that the County has interfered with employee rights to organize when it suspended Gran, banned him from coming onto the grounds, and prohibited him from talking to other employees.

Just and Proper

To meet the second prong of the test set forth in Modesto, PERB must demonstrate to the court that injunctive relief is "just and proper", i.e., that the purposes of the MMBA would be frustrated absent injunctive relief.

> Although injunctive relief is an extraordinary remedy, it may be used whenever either an employer or union has committed unfair labor practices which, under the circumstances, render any final order of the Board meaningless or so devoid of force that the remedial purposes of the Act will be frustrated.
> (Modesto at pp. 902-903, citations omitted.)

In Modesto, the court held that "preservation and restoration of the status quo are then appropriate considerations in granting temporary relief pending determination of the issues by

the Board." (Citations omitted.) The status quo is defined as the last uncontested status, which preceded the pending controversy. As stated by the court in Agricultural Labor Relations Bd. v. Ruline Nursery Co. (1981) 115 Cal.App.3d 1005, 1016-1017 [171 Cal.Rptr. 793]:

> If employees who have suffered unfair labor practices must wait, in some instances, years before a final disposition by the Board is rendered, the clear message to remaining employees . . . is that the [Board] is not able to meaningfully aid those [workers] who are unlawfully discharged or penalized for participating in collective bargaining.

The National Labor Relations Board (NLRB) often seeks injunctive relief to prevent delays in the NLRB's administrative process from frustrating the National Labor Relations Act's remedial objectives. (See Solien v. Merchants Home Delivery Serv., Inc. (1977) 557 F.2d 622 [95 LRRM 2596]). The NLRB seeks such injunctive relief under Section 10(j) of the National Labor Relations Act (NLRA)[6]. Section 10(j) provides:

> [Injunctions] The Board shall have power, upon issuance of a complaint as provided in subsection (b) [of this section] charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

Although not worded identically, a simple reading of the language of Section 3541.3(j) indicates it derives directly from Section 10(j) of the NLRA and grants similar authority to PERB to seek injunctive relief as that granted to the NLRB. (Modesto, at p. 895.) Pursuant to Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, 617 [116 Cal.Rptr. 507] and

[6] The NLRA is found at 29 U.S.C. Sec. 151-169 [Title 29, Chapter 7, Subchapter II, United States Code].

Modesto, reliance on NLRB and federal court precedent for enlightenment in the area of injunctive relief is therefore appropriate.

The NLRB has recurrently sought injunctive relief in situations where an employer's unfair labor practices, such as threats, interrogations, and discharges are designed to undermine a union's organizational campaign before the union obtains majority support. In such cases, the NLRB will typically seek orders enjoining further violations and reinstating any employees discharged because of union activities. (See Angle v. Sacks (1967) 382 F.2d 655 [66 LRRM 2111] (Angle) [employer who interviewed employees to discern their views on the union campaign, expressed his displeasure with the union, and indicated that union "malcontents" and "agitators" would be discharged was enjoined from interfering with employees' exercise of their Sec. 7 rights and was ordered to reinstate employees who had been discharged for their union activities]; Dunbar v. Northern Lights Enterprises, Inc. (1996) 942 F.Supp. 138 [153 LRRM 2457] (Dunbar) [employer illegally discharged employee to halt union organizing activity after learning about her role in organizing fellow employees, despite contention that employee had received warnings of deficient work performance and had become abusive and harassing to other employees following receipt of written warning; NLRB ordered employer to reinstate organizer pending outcome of unfair labor practice proceedings].)

Most significant and enlightening with regard to the case we have at bar, the NLRB has found an injunction warranted on occasions in the union organizational campaign setting where even though an employer discharged only one employee, that employee was the sole union organizer. (NLRB v. Ona Corporation (1985) 605 F.Supp. 874, 886 [118 LRRM 3257]; Hoffman v. Cross Sound Ferry Service (1982) 109 LRRM 2884, 2888.)

In Aguayo v. Tomco Carburetor Co. (1988) 853 F.2d 744 [129 LRRM 2086], the Ninth Circuit discussed the "just and proper" standard in a case where union supporters were fired during an organizing campaign. Quoting from prior federal cases, the Court stated that interim reinstatement is "just and proper where an employer has terminated an employee for union activities because such termination has a 'serious adverse impact on employee interest in unionization'."

Similarly, in this case months will pass before there is a final order in the underlying unfair practice proceeding. Gran may well be reinstated.[7] However, the Board would be unable to remedy the "serious impact" of the suspension of the primary union supporter during the election balloting if injunctive relief is not sought. The Board's order at that point would be a hollow administrative formality. If injunctive relief is not sought, Gran's removal from the workplace would have a severe chilling effect on any organization efforts. (Dunbar at p. 2463.)[8]

The dissent in this case argues that because of PERB's charge to preserve the integrity of the election process, the Board should not presume or speculate that the election process has

[7] We note that while Gran was not terminated, he was placed on administrative leave, banned from coming onto the grounds and prohibited him from talking to other employees.

[8] The Board notes that while the facts of this case include a pending ballot period in an organizing election, such a factor is not necessary for PERB to determine an injunction is appropriate. If, for example, the election was completed and the UAPD lost, continued organizing efforts, which may have included a challenge to the election, could possibly have warranted an injunction if a key union supporter was placed on administrative leave and banned from the workplace. If the UAPD won the election, it would need to organize to begin to fulfill its role as the representative of the unit, including bargaining with the employer and other representation duties. Placing a key union supporter on administrative leave and banning him from the workplace in this factual setting is conduct that, depending on the specific facts of the case, could be enjoined. The nature and extent of alleged violations and the impact or "chill" upon statutory rights which will likely continue until the Board issues a final order should determine whether an injunction is appropriate in such cases.

been impaired. Apparently, the dissent would require an actual showing of harm to the election process before the Board should intervene. In light of the NLRB precedent we have found to be both relevant and persuasive, no such actual showing is necessary when applying the "just and proper" test to the facts of this case.

The dissent points out that the ballot period was more than half over when the Board ruled on this request for injunctive relief. Based upon this factual statement the dissent concludes, "[T]he harm, if any, had already occurred" thus granting the request cannot prevent irreparable harm. Inherent in the dissent's factual statement that the balloting was more than half over is the countervailing fact that almost half of the balloting period was still available. It cannot be said that the harm in this case has occurred and the parties cannot be returned to the status quo. If and only if the balloting were complete, the dissenting Member would be correct that interim relief would not be proper because the Board's final order would likely be as effective as any interim order obtained through injunctive relief. (Dunbar at p. 2458.) While obviously an injunction before the ballot period began would be more desirable to prevent irreparable harm, the fact that balloting was still taking place, if even for a day, warrants action by this Board to preserve an effective remedy under the MMBA.

The cases relied upon in the dissent are inapposite to the case before the Board. Neither San Ysidro School District (1978) PERB Order No. IR-4 (San Ysidro) nor Compton Community College (1978) PERB Order No. IR-7 (Compton) concerned an election setting, much less a union organizing election setting. In San Ysidro, the union sought an injunction challenging a district's refusal to grant three days of release time to four members of the union's negotiating team. In Compton, the union sought reinstatement of one of 19 employees laid off for budgetary reasons.

Finally, the Board's decision in granting this request for relief should not be viewed as lending assistance to one of the parties; it is nothing more than lending assistance to, and preserving, the integrity of the Board's process of effectively administering the provisions of the MMBA. As discussed above, the process of seeking injunctive relief is a process the Legislature provided to the Board under Section 3541.3(j). Injunctive relief is appropriate in light of the facts of this case which create a reasonable apprehension that the efficacy of the Board's final order may be nullified, or the Board's procedures may be rendered meaningless by the passage of time. Temporary relief, which is nothing more than preservation and restoration of the status quo pending a hearing on the unfair practice charge, is therefore appropriate. (Angle at p. 2114.) As the dissenting Member knows, following a ruling on a request for injunctive relief by the courts, the Board and its agents would still process and, if necessary, adjudicate the underlying unfair practice charge in the same neutral manner the Board would process any other charge.

There is reasonable cause to believe that the County violated the MMBA, PERB Regulation 32603(a) and Section 13 1A(1) and (2) of the San Joaquin County Employer-Employee Relations Policy by placing Gran on administrative leave in the midst of UAPD's organizing drive and election. An injunction under these circumstances is just and proper under the MMBA.

ORDER

Based on the foregoing facts, conclusions of law, and the entire record in this case, the Board hereby GRANTS the request to seek injunctive relief in Case No. SA-CE-6-M.

Member Whitehead joined in this Decision.

Member Amador's dissent begins on page 17.

AMADOR, Member, dissenting: I respectfully dissent from the majority's decision to grant the request of theUnion of American Physicians and Dentist's (UAPD) that the Public Employment Relations Board (PERB or Board) seek injunctive relief.

Without prejudging the outcome of the unfair practice charge, I agree with the majority that, for purposes of applying the two-part injunctive relief test, there is reasonable cause to believe that an unfair practice has been committed.

In my view, however, UAPD has not provided sufficient facts to establish that injunctive relief is just and proper. That is not to say that such relief has no place where discipline is discriminatorily imposed on visible union activists during an organizing effort. For example, in Aguayo v. Tomco Carburetor Co. (1988) 853 F.2d 744 [129 LRRM 2086] (Tomco Carburetor), eleven union supporters were fired during a key phase of the organizing effort. The court stated that interim reinstatement is just and proper where an employer has terminated an employee for union activities because such termination has a serious adverse impact on employee interest in unionization. In that case, employee interest in the union's organizational program ended with the firing of the eleven union committee members. Based on these facts, the court found that if injunctive relief were not sought, any eventual order of reinstatement would be an empty formality.

The facts in the case at bar are quite different from those in the Tomco Carburetor decision. Here, one union activist has been placed on paid administrative leave; no one's employment has been terminated. By the time injunctive relief was sought, PERB's general counsel analyzed the request and presented its recommendation to the Board, and the Board ruled on the request, the balloting period was more than half over. The harm, if any, had

already occurred. Thus, one of the main purposes of injunctive relief, the prevention of irreparable harm, cannot occur by granting the relief sought by UAPD.

In Tomco Carburetor, the record contained facts that the unionization movement essentially ended subsequent to the firing of eleven key organizers. Here, by contrast, UAPD has not demonstrated that the conduct of the County of San Joaquin (Health Care Services) (County) had a serious adverse impact on employee interest in unionization; in fact, they have not shown any linkage between the County's conduct and any discernible damage to the election process or to employees' interest in unionization. It is not appropriate for the Board to speculate, or presume, that an election has been tainted without supporting evidence. One could just as easily speculate that placing Dr. David Gran (Gran) on administrative leave served as a catalyst for increased interest in unionization. Speculation as to any particular impact on the election is not warranted.

Although there is little PERB caselaw involving injunctive relief requests, it is clear that the charging party bears the burden of providing sufficient facts in support of its allegations to permit the Board to render a decision without engaging in speculation. For example, in San Ysidro School District (1978) PERB Order No. IR-4, the Board denied a request for injunctive relief because the charging party failed to provide facts in support of its assertion that it was in jeopardy of losing its support among members of the unit as a result of the employer's conduct, or that the employer's conduct had a chilling effect on other employees' participation in union activities. Likewise, in Compton Community College (1978) PERB Order No. IR-7 (Compton), the Board denied a request for injunctive relief in which the union sought reinstatement of a terminated employee. The union argued that termination irreparably harmed the organizational rights of the other unit members. The Board found that

this assertion was not supported by evidence, and noted that the mere fact that the effect of the discharge continues does not, in and of itself, render the harm irreparable; nor does it preclude remedy by the Board's normal processes. (Compton at p. 5.)

There are several sound reasons that injunctive relief is rarely used in the labor and employment context. In addition to the reasons discussed above, absent stronger facts, I am concerned that if PERB goes to court to seek reinstatement of an employee to the workplace prior to resolution of the underlying unfair practice charge, there is a risk that PERB may be viewed as lending assistance to one of the parties. As a neutral adjudicative body that must refrain from prejudging the merits of an unfair practice charge, this is a risk we must avoid.

In conclusion, without more solid facts, I would not ask a court to take the extraordinary step of imposing injunctive relief by asking it to presume that the election process has been impaired. One of PERB's functions is to preserve the integrity of the election process. It would be speculative to say that harm to this process has, or has not, occurred. If, after a hearing, it is determined that an unfair practice occurred, the Board's remedial powers are broad enough to remedy any harm to Gran, to UAPD or to the elections process. Injunctive relief is not warranted on these facts.