

unit. The regional director's order was issued pursuant to Board rule 32726.¹

¹Rule 32726 is codified at California Administrative Code, title 8, section 32726 and reads as follows:

32726. List of Voters.

(a) At a date established by the Regional Director, the employer shall file with the regional office a list of names of all employees included in the voting unit as of the cutoff date for voter eligibility. Unless otherwise directed by the Regional Director, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and mailing address of each eligible voter. Unless otherwise directed by the Regional Director, the voter list for a mailed ballot election shall be in alphabetical order and include the job title and mailing address of each eligible voter, and shall be accompanied by two sets of name and mailing address labels for each eligible voter. For purposes of this section, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law, or if the Board itself shall determine that the release of home addresses is likely to be harmful to the employees.

(b) A copy of a list which meets the requirements of subsection (a) above and which is approved by the Regional Director pursuant to subsection (a) above shall be served concurrently by the employer on each employee organization appearing on the ballot. A statement of service shall be sent to the regional office with the list.

(c) Unless otherwise authorized by the employer, any employee organization which

Under this rule, the regional director is without discretion either as to the requirement that a list be provided or as to the identity of employees whose names and home addresses must be included on that list. Briefly, the regional director must comply with the rule and may not modify its terms. Thus, an appeal from a regional director's order of this type, absent an allegation that the order violated the rule, may not be appealable under Board rule 32380² which reads, in pertinent part:

32380. Limitation of Appeals

The following administrative decisions shall not be appealable:

- (a) A decision by a Regional Director regarding the mechanics of an election as long as the decision does not affect standing of a party to appear on a ballot;

However, rule 32726 does provide that the Board itself may exclude employees' home addresses if it is determined "that the release of such information is likely to be harmful to the employees" or, when the release of such information is prohibited by law. A party seeking such a determination from the Board itself must, therefore, have the opportunity to bring

receives the mailing addresses of eligible voters pursuant to this Regulation shall keep these addresses confidential and shall not distribute them to any other organization or individual.

²California Administrative Code, title 8, section 32380.

pertinent evidence to the Board's attention. An appeal from the regional director's order is, therefore, appropriate where the basis of that appeal is an allegation of harm to the employees sought to be excluded or the existence of law precluding the use of the release of certain employees' home addresses.

Here, the District does not allege harm. It really seeks the Board to adjudicate that its entire rule is unlawful, relying on an opinion of the California Attorney General³ which in turn cites Civil Code Section 1798 et seq. (Information Practices Act).

While entitled to considerable weight, the Attorney General's opinion is not law and is not necessarily controlling.⁴ The Board adopted rule 32726 after extensive public testimony and consideration of the very question raised by the District.

Further, the Board will not adjudicate the legality of its own rules. The District is in the wrong forum. Repeal of its rules, assuming the Board so desires, should be accomplished only through its quasi-legislative process; at a public meeting, pursuant to public notice and with the opportunity afforded to the public to present its views.

The District's appeal is DISMISSED.

PER CURIAM

³Opinion of the Attorney General No. 80-108.

⁴Smith v. Anderson (1967) 67 Cal.2d 635, 641, fn.5; Hutchins v. County Clerk (1934) 140 Cal.App.348; People v. Berry (1956) 147 Cal.App.2d 33.

PUBLIC EMPLOYMENT RELATIONS BOARD

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February 26, 1980

Michael S. Sorgen - Legal Advisor
Oakland Unified School
1025 2nd Avenue
Oakland, CA 94606

Re: Case #SF-OS-74 (R-258H)
Oakland Unified School District Paraprofessional Organizational Security
Election

Dear Mr. Sorgen:

As I mentioned in our phone conversation prior to receiving your letter dated February 21, the purpose of including home addresses on voter lists is to provide for an informed electorate, facilitating a free and reasoned choice. For purposes of PERB Regulation 32726(a), I find that Gov. Code section 6254(c) does not prohibit putting home addresses on the voter list. Furthermore, a Regional Director has no authority to determine that the release of home addresses is likely to be harmful to the employees. That determination can only be made by the Board itself. I am therefore directing that you include home addresses on the voter list which is to be received by PERB no later than March 17, 1980.

An appeal of this decision may be made to the board itself within 10 days of service of this letter by filing a statement of the facts upon which the appeal is based with the executive assistant to the board at 923 12th St., 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.

Should you have any questions concerning this matter please contact me.

Very truly yours,

James W. Tamm
Regional Director

JWT/fjw

enclosures

cc: Andrew Thomas Sinclair, Attorney