

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATE OF CALIFORNIA)
)
 Employer,)
)
 and)
)
 JUDICIAL AND LEGAL COALITION)
 (ADMINISTRATIVE LAW JUDGES')
 COUNCIL, STATE TRIAL ATTORNEYS)
 ASSOCIATION AND CALIFORNIA STATE)
 EMPLOYEES' ASSOCIATION),)
)
 Employee Organization,)
 APPELLANT,)
)
 and)
)
 ACSA - ASSOCIATION OF CALIFORNIA)
 ATTORNEYS AND HEARING OFFICERS,)
)
 Employee Organization.)
)

Case No. S-SR-2
PERB Order No. Ad-111-S
Administrative Appeal
August 7, 1981

Appearances: Christine A. Bologna, Attorney for the Judicial and Legal Coalition; Dennis M. Eagen, Representative for Association of California State Attorneys and Hearing Officers; Barbara T. Stuart, Attorney for Department of Personnel Administration, State of California.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (hereafter PERB or Board) on an appeal by the Judicial and Legal Coalition (hereafter Coalition) to the attached Notice of Partial Dismissal of Objections to Election by the Sacramento regional director. The Coalition also requested that the Board stay the hearing in the above-captioned matter which is to commence on August 10, 1981.

Although several of the Coalition's objections to the election in Unit 2 were dismissed by the regional director for failure to state a prima facie allegation of objectionable conduct, only the dismissal of paragraph 7 was appealed to the Board. For the purposes of determining whether the allegations state a prima facie case, this Board assumes the essential facts alleged in the charge are true.¹

The essence of objection number 7 is that the state employer interfered with the Coalition's efforts to reduce staffing ratios for attorneys working at the Department of Transportation (Caltrans) prior to the election. More specifically that an exemption regarding staffing ratios, similar to the one granted to the Department of Justice, was being prepared for Caltrans when an agent of the Department of Personnel Administration "contacted the State Personnel (sic) Board and interfered." This uncontested statement of facts presents an arguable case of employer misconduct. Making no judgment with respect to the merits of the case, the Board does find that the objection alleges facts sufficient to state a prima facie case. Accordingly, the Board reverses the regional director's determination, grants the appeal, and orders that evidence be taken on objection number 7.

The Coalition also requested that the Board stay the hearing in this case based on the administrative appeal decided above and a

¹San Juan Unified School District (3/10/77) EERB Decision No. 12. Prior to January 1, 1978, PERB was called the Educational Employment Relations Board (EERB).

Motion for Continuance filed on August 3, 1981, and denied by the regional director on the following day. Decision today on the Coalition's administrative appeal nullifies the need for a stay on that basis. An examination of the events surrounding the Motion for Continuance reveals that the hearing was noticed by PERB's Executive Director on July 13, 1981, almost a full month in advance of the hearing date. In addition, the parties were notified on July 13, 1981, by letter from the Chief Administrative Law Judge, that this matter was being expedited and that "[r]equests for continuances or other delays will be disfavored." In light of these factors, the date on which the continuance was sought, and the rationale for the continuance, the Board denies the request for stay. The regional director is ordered to proceed in accordance with this Decision and Order.

PER CURIAM

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA,)	
)	
Employer,)	
)	
and)	
)	
JUDICIAL AND LEGAL COALITION)	OBJECTIONS TO
(ADMINISTRATIVE LAW JUDGES' COUNCIL,)	ELECTION AND
STATE TRIAL ATTORNEYS ASSOCIATION)	CHALLENGED BALLOTS
AND CALIFORNIA STATE EMPLOYEES')	
ASSOCIATION),)	Case No. S-SR-2
)	(Expedited Case)
Employee Organization,)	
)	
and)	
)	
ACSA - ASSOCIATION OF CALIFORNIA STATE)	
ATTORNEYS AND HEARING OFFICERS,)	
)	
Employee Organization)	
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NOTICE OF PARTIAL DISMISSAL
OF OBJECTIONS TO ELECTION

NOTICE IS HEREBY GIVEN THAT the following portions of the Objections to Election filed on July 8, 1981 by the Judicial and Legal Coalition (hereafter Coalition), are dismissed: Subparagraphs 6 C, D, E, F and G, paragraph 7 in its entirety, paragraph 8 in its entirety, paragraph 9 in its entirety and paragraph 10 in its entirety. This action is taken because the above portions of the objections fail to state a prima facie allegation of objectionable conduct. This dismissal is made

under the authority of PERB Regulation 32738(d) (California Administrative Code, title 8, Div. I, Chapter 6, Art. 20).¹

DISCUSSION

These objections grow out of a mail ballot election held between May 11 and June 11, 1981 to determine exclusive representatives for state employees in 20 units. The objections concern the conduct of the election in Unit 2, the Attorney and Hearing Officer Unit. A hearing has been scheduled for August 10 through 21, 1981 to take evidence on challenged ballots in Unit 2 and those other objections which have not been dismissed by this order.

The only permissible bases for objections to an election are set forth in PERB Regulations 32738(c) which reads as follows:

Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of is tantamount to an unfair practice as defined in Government Code sections 3543.5 or 3543.6 of the EERA, 3519 or 3519.5 of the SEERA, or 3571 or 3571.1 of the HEERA, or

(2) Serious irregularity in the conduct of the election.

¹Public Employment Relations Board procedures for dismissal of objections prior to hearing are similar to Agricultural Labor Relations Board procedures which have been upheld by the California Supreme Court. See J.R. Norton Co. v. ALRB (1979) 26 Cal.3d 1 [160 Cal.Rptr. 710].

Paragraphs 1, 2 and 3 of the Judicial and Legal Coalition's July 8 "objections and challenge to the conduct of the election in unit 2" actually concern challenged ballots. These paragraphs state a prima facie challenge to the ballots. Paragraphs 4, 5 and subparagraphs 6 A, B and H state prima facie objections to the conduct of the election. However, all remaining paragraphs in the July 8 filing fail to allege a prima facie case.

Subparagraphs 6 C, D, E, F and G

Beginning with subparagraph 6 C, the Coalition raises complaints about actions, or inactions, of the Public Employment Relations Board (hereafter PERB) itself. In subparagraph 6 C, the Coalition complains that the PERB denied a request for injunctive relief sought by the Coalition. This complaint is continued in subparagraphs 6 D, E, F and G which detail various alleged delays in the PERB's processing of unfair practice case S-CE-2-S. Several of the subparagraphs also contain the allegation that these delays show that the PERB is acting in concert with the Governor's Office to deny the Coalition its rights.

Through the operation of Section² 3513(g), the PERB has the power "(u)pon issuance of a complaint charging that any person has engaged in an unfair practice . . . [to] petition the court for appropriate temporary relief or restraining order." This is a discretionary power which PERB may exercise or decline to exercise. That the PERB refused to seek injunctive relief upon the request of the Coalition does not state a prima facie objection to the election. The refusal of the PERB to seek injunctive relief at the Coalition's request is not conduct "tantamount to an unfair practice" nor is it "serious irregularity in the conduct of the election." It thus states no prima facie objection to the election.

As to the contention that the PERB "acted in concert with the Governor's Office to deny" the Coalition its right of access, it is assumed that this alleged misconduct by the PERB was through its refusal to seek injunctive relief. The fact that the PERB delayed its decision and ultimately declined to seek injunctive relief is no basis for an allegation that it was acting in concert with the Governor's Office to deny rights to the Coalition. All the Coalition has alleged is that the

²All references are to the Government Code unless otherwise indicated.

PERB exercised its discretion in a manner adverse to the Coalition. Such an allegation is not conduct "tantamount to an unfair practice" or a "serious irregularity in the conduct of the election."

For these reasons, subparagraphs 6 C, D, E, F and G are hereby dismissed for failure to state a prima facie case.

Paragraph No. 7

In paragraph no. 7, the Coalition complains of unequal treatment in the application of staffing formulas between the Department of Justice and Caltrans. According to the allegation, the principal strength of the Coalition is at Caltrans whereas the principal strength of the rival organization, Association of California State Attorneys and Hearing Officers, is at the Department of Justice.

The staffing formula is important because it determines how many attorneys within a department may be promoted to the higher-paying Grade IV classification. Historically, according to the allegation, Caltrans and Justice have had the same ratio. However, the Coalition alleges, in December of 1980 the Department of Justice requested and subsequently received from the Personnel Board an exemption from the staffing ratio. Caltrans, which earlier had requested a similar staffing exemption for its attorneys, has not received an exemption.

The Coalition alleges that on May 8, 1981 its representatives met with Rebecca Taylor of the Department of

Personnel Administration and presented this problem of disparate treatment. Ms. Taylor, according to the allegation, said it was wrong that the Department of Justice had obtained the staffing ratio change because that issue should have been bargained about later. Still, she refused to act on behalf of the Caltrans request.

This allegation states neither an unfair practice nor serious irregularity in the conduct of the election. In essence, two state departments went to the Personnel Board seeking a change in staffing formulas. The Personnel Board granted the request of one department and did not grant the request of the other department. Whether or not the Personnel Board acted correctly is a matter for some forum other than the PERB. Whether correct or not, the Personnel Board's decision constitutes no unfair practice under Section 3519. Nor do the allegations about Ms. Taylor's refusal to become involved state an unfair practice. The Department of Personnel Administration, as agent of the Governor, can hardly be accused of disparate treatment for refusing to try to convince the Personnel Board, a constitutional agency, to act in a certain fashion.

For these reasons, paragraph no. 7 is hereby dismissed for failure to state a prima facie case.

Paragraph No. 8

In paragraph no. 8, the Coalition alleges that "employees in unit 2 designated 'confidential' should have received ballots and been allowed to vote." The Coalition argues that many attorneys are designated as confidential and thus disenfranchised.

In Section 3513(c), "state employee" is defined so as to specifically exclude confidential employees. The effect of this definition is to exclude confidential employees from the coverage of the State Employer Employee Relations Act. Persons not covered by the act are not eligible to vote.

If it is the Coalition's complaint that confidential employees should not have been excluded from coverage of the SEERA, that complaint should be addressed to the Legislature. Excluding confidential employees from the election process was required by the terms of the statute and was not either an unfair practice nor a serious irregularity in the conduct of the election.

If it is the Coalition's complaint that certain individual employees, incorrectly classified as "confidential;" requested and were denied the opportunity to vote challenged ballots, the Coalition should have so stated. The Coalition did not so state and it is assumed therefore that the objection goes to the statutory definition. It is therefore, not a proper objection.

For these reasons, paragraph no. 8, is hereby dismissed for failure to state a prima facie case.

Paragraph No. 9

In paragraph no. 9, the Coalition alleges that following the tally of ballots a PERB agent requested each party to sign a statement attesting to the regularity of the election. The Coalition alleges that it was required to sign the statement and did so only under duress. It alleges that this procedure was not in conformance with the law.

This paragraph deals with conduct alleged to have occurred after the tally of ballots was completed. The conduct was not tantamount to an unfair practice and, since it occurred after the tally of ballots, it could not have been a "serious irregularity in the conduct of the election." [Emphasis added.] Because it occurred after the tally of ballots, the Act alleged could not possibly have affected the result of the election and it therefore is not a valid basis for setting the election aside.

For this reason, paragraph no. 9 is hereby dismissed for failure to state a prima facie case.

Paragraph No. 10

In paragraph no. 10, the Coalition alleges that following the tally of ballots, PERB Regional Director Janet Caraway

revealed to an employee organization the names of 60 attorneys in the Office of Attorney General who did not cast ballots. The Coalition alleges that although it refused to receive the list of the 60 non-voters, revelation of the names to the Association of California State Attorneys destroyed the "laboratory conditions" required for the conduct of a fair election.

The Coalition further alleges that following the revelation of names a "senior member in the Office of the Attorney General" who was present threatened to impose reprisals upon, discriminate against, restrain and coerce the 60 employees.

As with the allegations in paragraph no. 9, paragraph no. 10 deals with conduct alleged to have occurred after the tally of ballots. The conduct was not tantamount to an unfair practice and, since it occurred after the tally of ballots, it could not have been a "serious irregularity in the conduct of the election." The act alleged could not possibly have affected the result of the election and it therefore is not a valid basis for setting the election aside. As to the allegations of threats of reprisal, the appropriate remedy is not an objection to the election but an unfair practice charge filed by any one who was the victim of such threat or reprisal.

For these reasons, paragraph no. 10 is hereby dismissed for failure to state a prima facie case.

An appeal of this action may be made to the Board itself within 10 calendar days following the date of service. See title 8, California Administrative Code, section 32360. The appeal must be made by the filing of a statement with the Executive Assistant to the Board of the specific issues of procedure, fact, law or rationale upon which the appeal is based together with a statement of the grounds for the appeal. Copies of any appeal must be concurrently served upon all parties and the Sacramento Regional Office. Proof of service of the appeal must be filed with the Executive Assistant.

DATE: July 22, 1981

JANET E. CARAWAY
Regional Director

BY: Ronald E. Blubaugh
Hearing Officer