

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of the Administrative
Appeal of)

CALIFORNIA STATE EMPLOYEES'
ASSOCIATION, et al,)

Employee Organizations,
APPELLANTS,)

and)

STATE OF CALIFORNIA,)

Employer.)

State Employer-Employee Relations
Act Unit Determination Hearings.)

Case Nos. S-R-1-S
thru S-R-54-S

PERB Order No. Ad-59-S

Administrative Appeal

March 5, 1979

Appearances: William McLeod, Unit Services Manager for California State Employees' Association; Ray Tharp, International Union Representative for American Federation of State, County and Municipal Employees, AFL/CIO; Ron Yank, Attorney (Carroll, Burdick & McDonough) for California Department of Forestry Employees Association, Association of Special Agents of the California Department of Justice and California Correctional Officers Association; Russell Richeda, Attorney (Carroll, Burdick & McDonough) for California Correctional Officers Association; Neil Bodine, Attorney (Beeson, Tayer & Kovach) for State Employees Printing Trades Alliance, Teamsters Local 960, Board of Equalization Tax Auditors Association and California Association of State Auditors; Richard T. Baker for Professional Engineers in California Government, Association of California State Attorneys, California Medical Technical Assistants Association and California State Police Association; Morris R. Evenson for Painters Union Local #4, I.B.D.A.T., AFL/CIO; Herbert A. Drosdat, President for California Association of Planners; Martin Morgenstern, Director and Angela Pickett and Barbara Stuart, Counsel for Governor's Office of Employee Relations.

Before: Gluck, Chairperson; Gonzales, Member.

DECISION

This is an appeal from certain procedural determinations made by the general counsel to the Public Employment Relations Board (hereafter PERB or Board), applicable to unit hearings

under the State Employer-Employee Relations Act (hereafter SEERA).¹ Fifteen employee organizations filed objections to a determination by the general counsel as to the place in such hearings for the presentation of the State's cases-in-chief.

Fifty-four petitions for negotiating units were filed by thirty-eight employee organizations subsequent to the implementation of SEERA on July 1, 1978. The State, through the Governor's Office of Employee Relations, responded by proposing that six units be established. The general counsel, faced with the prospect of dealing with an extraordinary volume of complex issues and conflicting evidence, designed a system of subhearings intended to consider overlapping petitions in reasonable continuity. These subhearings would deal with basic questions of appropriateness and were given the overall designation of "Phase II hearings." Phase I hearings were concerned with certain procedural matters and Phase III hearings was the term assigned to specific exclusionary issues based on managerial, supervisory or confidential status of specific classifications or individuals.

The general counsel's plan called for the State to present its cases-in-chief as to the appropriateness of its six units at the conclusion of Phase III. The appeals here were predicated on this latter decision of the general counsel. Before these appeals were heard by the Board itself, the general counsel modified his plan to require that the State

¹The State Employer-Employee Relations Act is codified at Government Code section 3512 et seq.

present its cases-in-chief at the conclusion of Phase II. The appellants nevertheless continued their appeal and oral argument was heard by the Board itself on February 15, 1979.²

The essence of their objections is that the State was given unfair advantage in being afforded the extra time to prepare its positions on units and by being able to withhold its presentations until all other Phase II subhearings were concluded, being able thereby to withhold the grounds for its opposition to the individual units petitioned for, until all the parties adverse to its interests had concluded their cases.

While the parties also raise other objections concerning the negative effect of an apparent bias on the public attitude toward the hearings, the potential for additional costs to the parties and the question of Board convenience in reviewing transcripts from proceedings which are not contiguous in time, it is not necessary to reach these matters in deciding this appeal.

The State's response to these appeals is to emphasize the reasoning used by this Board in the administrative appeal filed

²One of the appellants also objected to the general counsel's decision to hold Phase III hearings, where possible, before the conclusion of all Phase II hearings. Phase III hearings are limited to the determination of managerial, supervisory and confidential status of specific classifications and employees. The Board notes that the general counsel actually had modified the procedure to provide that Phase III hearings would be held after all Phase II hearings were concluded. The Board agrees with this modified procedure and will include it in the Order.

by the California State Employees Association (hereafter CSEA), PERB Order No. 54-S (January 18, 1979). That appeal dealt with the decision to subdivide the unit hearing into seventeen subhearings. In responding to that appeal, the Board indicated that it would not override the general counsel simply for the purpose of seeking a better or best procedure to deal with the unit question, and that barring evidence of a denial of due process or a violation of Board rule, the general counsel's management of the hearing would not be interfered with. The State acknowledged that it could accommodate itself to a revised procedure, but doubted that any particular advantage would be served. It suggested that adoption of a new procedure would probably cause a delay in proceeding with Phase II resulting from the State's need for time to prepare its cases-in-chief.

DISCUSSION

A bench decision³ was issued sustaining the objections to the General Counsel's procedures. The following discussion and order memorializes that decision.

To warrant an order directing the general counsel to modify his procedures, it is not necessary, in our view, to find that those procedures actually deny due process in the strictest or most commonly cited sense of that term of art. It would be

³At the time of oral argument and issuance of the bench decision, Ms. Cossack Twohey was present and voted with the majority. At the time this bench decision was memorialized herein, Ms. Cossack Twohey was not a member of the Board and did not participate in the written decision.

sufficient to conclude that they raise substantial questions of procedural bias.

We do conclude that inadvertent advantage has been gained by the State both in the time it will have to prepare its cases as well as in its ability to withhold its specific objections to the units for which the parties have petitioned until some indefinite date in the future, which in some cases at least will be long after the petitioners' cases-in-chief have been concluded. To maximize the fair and equitable nature of these administrative proceedings, the State should present its individual unit cases-in-chief during the Phase II hearings. Further, each of its cases-in-chief should be presented in conjunction with the appropriate subhearings grouped according to overlapping classifications. The Board is mindful that the State's timetable for preparation and presentation of its cases will be affected by this decision and therefore finds that it shall be entitled to present its applicable case-in-chief at the conclusion of each of the group subhearings. Finally, the Board takes cognizance of the State's position that an important part of its total case involves argument with respect to efficiency of government operations and other matters of statewide implication which may well cut across all unit issues and it agrees that it would be appropriate for such argument to be made at the conclusion of all Phase II presentations. The Board also acknowledges that similar issues may be of interest to individual employee organizations which therefore should have an opportunity at the conclusion of Phase II hearings to present evidence and argument on those matters which transcend individual unit considerations.

ORDER

The Public Employment Relations Board ORDERS that the appeals filed by the California State Employees Association and others from the general counsel's determination of the order in which cases-in-chief are to be presented in the hearings under the State Employer-Employee Relations Act are sustained to the extent reflected hereafter:

The Board ORDERS that the general counsel shall require the State to present its individual cases on the appropriateness of its proposed units during the course of the general counsel's "Phase II hearings;" and

It is further ORDERED that the State shall be entitled to present its individual cases-in-chief at the conclusion of each pertinent group of subhearings; and

It is further ORDERED that the State and any employee organization which is a party to said hearings may at the conclusion of all Phase II hearings present evidence and argument on matters relating to efficiency of government operations and other considerations which transcend individual unit matters.

It is further ORDERED that the general counsel shall conduct "Phase III hearings" after all Phase II hearings have been concluded.

This Order shall be effective February 15, 1979.

By: Harry Gluck, Chairperson

Raymond J. González, Member