

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FISH AND GAME WARDENS ASSOCIATION,)
)
Employee Organization,) Case No. S-R-27-S
)
and) PERB Order No. Ad-60-S
)
CALIFORNIA STATE EMPLOYEES' ASSOCIATION,) Administrative Appeal
)
Employee Organization.) March 9, 1979
)
_____)

Appearances: Christopher Lee, Attorney for Fish and Game Wardens Association; Loren E. McMaster, Attorney for California State Employees' Association.

Before Gluck, Chairperson; Gonzales, Member.

DECISION

This case comes before the Public Employment Relations Board (hereafter PERB or Board) on a challenge by the Fish and Game Wardens Association (hereafter FGWA) to a petition to determine an appropriate unit filed by California State Employees' Association (hereafter CSEA). For the reasons stated below, the Board dismisses FGWA's challenge.

FACTS

Pursuant to PERB rule 41010,¹ both CSEA and FGWA timely filed petitions to determine an appropriate unit. CSEA petitioned for a "Law Enforcement, Public Safety and Regulatory

¹PERB rules are codified at California Administrative Code, title 8, section 32000 et seq. Rule 41010 sets forth the requirements for filing petitions to determine an appropriate unit.

unit" consisting of, but not limited to, state park rangers, state forest rangers, foresters, firefighters, security guards, fish and game wardens, criminal intelligence specialists, special agents (DOJ), insurance officers and tax representatives. FGWA petitioned for an overlapping unit consisting of all sworn peace officer personnel of the Department of Fish and Game.

FGWA then challenged CSEA's petition on three grounds: (1) The proposed unit does not meet the criteria set forth in section 3521 of the State Employer-Employee Relations Act (hereafter SEERA);² (2) CSEA does not have the support of 30 percent of the public safety officers of the Department of Fish and Game; and (3) The public safety employees in the Department of Fish and Game have "separate and non-parallel functions which are unique to that Department"

DISCUSSION

The Board finds FGWA's challenge to be inappropriate and without merit. Pursuant to section 3520.5(b),³ the Board has established procedures for determining appropriate units in

²SEERA is codified at Government Code section 3512 et seq. All statutory references are to the Government Code unless otherwise noted. Section 3521 sets forth the criteria the Board shall take into consideration in determining an appropriate unit.

³Section 3520.5(b) provides:

The board shall establish reasonable procedures for petitions and for holding elections and determining appropriate units pursuant to subdivision (a).

state employment.⁴ Within this framework, PERB decides whether or not a petition is proper;⁵ no provision is made for the employer or other employee organizations to challenge the validity of a petition. In contrast, PERB rule 41071⁶ sets out a specific procedure for challenges to the status of a

⁴See PERB rules 41000-41150.

⁵PERB rule 41050 provides:

If the Executive Director determines that the petition or supplementary submission is improperly filed or that the proof of support is inadequate the petition shall be dismissed. The petitioner may file an appeal to the Board itself within 10 days following service of the dismissal notice.

⁶PERB rule 41071 provides:

(a) Any challenge to the status of a petitioner as an employee organization within the meaning of Government Code section 3513(a) must be filed within 15 days following service of petitions by the Board. Any challenge not filed at this time shall be waived. The Board shall serve copies of a challenge to an employee organization's status upon the challenged petitioner.

(b) Challenged organizations shall file their response to the challenge to their status with the Board itself within ten days following service of the challenge.

(c) The Board itself shall promptly conduct such inquiries, investigations or hearings necessary to determine the status of a challenged employee organization.

(d) No hearing on an appropriate unit shall be delayed pending determination of the status of any challenged employee organization.

petitioner as an employee organization as defined by section 3513(a).⁷ This rule, however, is inapplicable here as FGWA makes no claim that CSEA is not such an employee organization. Given PERB's unit determination procedures under SEERA, the Board finds that the challenge in the present case is inappropriate.

Furthermore, FGWA's first and third grounds for challenging CSEA's petition, dealing with the appropriateness of the units requested by CSEA and FGWA, go to the heart of what the Board itself will determine based on the record made at the SEERA unit determination hearings. The appropriate place for FGWA to make its arguments that the Department of Fish and Game public safety officers form a separate appropriate unit and should not be included in a larger public safety unit is at the unit determination hearings. There, FGWA also has a full opportunity to rebut CSEA's evidence and arguments in support of the larger unit. FGWA cannot be allowed to short circuit the unit determination process by challenging CSEA's petition on the basis that the unit petitioned for is inappropriate.

Whether or not CSEA has 30 percent support among the public safety employees of the Department of Fish and Games is irrelevant to the validity of its petition. Neither SEERA nor PERB rules require an employee organization to demonstrate

⁷Section 3513(a) provides:

"Employee organization" means any organization which includes employees of the state and which has as one of its primary purposes representing such employees in their relations with the state.

support among each or any specific classification included in its proposed unit, and FGWA provides no support for its novel argument that such a requirement should be imposed. The only requirement is that the employee organization have proof of support of at least 30 percent of the state employees in the proposed unit.⁸ The Board has no reason to doubt CSEA's declaration that it possesses proof of support of at least 30 percent of the approximately 8,784 employees in its proposed unit. Therefore, the Board has no reason to dismiss CSEA's petition.

⁸PERB rule 41010(b)(3)(C) provides:

The petition shall contain the following information:

· · · · ·
(3) For each unit petitioned for; · · · · ·

· · · · ·
(C) An accompanying declaration executed by the authorized agent of the employee organization under penalty of perjury stating that the employee organization possesses to the best of its knowledge and belief, as of the date of filing the petition, proof of support of at least 30 percent of the state employees in the unit proposed. The proof of support shall be maintained by petitioner and made available for inspection during normal working hours by the Board. (Emphasis added.)

ORDER

The Public Employment Relations Board ORDERS that the challenge by the Fish and Game Wardens Association to the petition for a law enforcement, public safety, and regulatory unit filed by the California State Employees' Association is dismissed.

By: Raymond J. Gonzales, Member

Harry Gluck, Chairperson