



STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATION OF CALIFORNIA STATE)
 ATTORNEYS AND ADMINISTRATIVE LAW)
 JUDGES AND PROFESSIONAL ENGINEERS)
 IN CALIFORNIA GOVERNMENT,)

Charging Party,)

v.)

STATE OF CALIFORNIA,)

Respondent.)

Case No. S-CE-498-S

Motion to Expedite

PERB Order No. Ad-251-S

March 3, 1994

CALIFORNIA STATE EMPLOYEES)
 ASSOCIATION,)

Charging Party,)

v.)

STATE OF CALIFORNIA,)

Respondent.)

Case No. S-CE-503-S

CALIFORNIA DEPARTMENT OF FORESTRY)
 EMPLOYEES' ASSOCIATION, LOCAL 2882,)
 IAFF,)

Charging Party,)

v.)

STATE OF CALIFORNIA,)

Respondent.)

Case No. S-CE-506-S

Appearances: Dennis F. Moss, Attorney, for Association of California State Attorneys and Administrative Law Judges and Professional Engineers in California Government; Howard Schwartz, Attorney, for California State Employees Association; Department of Personnel Administration by K. William Curtis, Deputy Chief Counsel, for State of California.

Before Blair, Chair; Caffrey and Garcia, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on a motion filed by the Department of Personnel Administration on behalf of the State of California (State) requesting that the Board itself hear and decide this consolidated case on an expedited basis.¹

The Ralph C. Dills Act (Dills Act or Act)² assigns broad powers and duties to the Board, including the power to adopt regulations to carry out its responsibilities and effectuate the purposes of the Act.³ Accordingly, the Board has adopted regulations which govern its unfair practice proceedings.⁴ PERB Regulation 32680 provides that when attempts to voluntarily settle an unfair practice charge have failed, formal proceedings are conducted in accordance with Board regulations commencing at section 32165 and including section 32215, which states in pertinent part:

A Board agent shall issue a written proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself.

¹The State withdrew its request for a stay of the briefing schedule.

²The Dills Act is codified at Government Code section 3512 et seq.

³Dills Act section 3513(h) incorporating Government Code section 3541.3.

⁴PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The State's motion essentially requests the Board to instruct its agent to submit the record of the case to the Board itself for decision, and to expedite its decision in accordance with PERB Regulation 32147.⁵

The authority to instruct a Board agent to submit a case record to the Board itself for decision is exercised at the sole discretion of the Board. The Board has infrequently taken this action. In earlier cases the Board used its authority in this area on several occasions involving issues of first impression such as: the original unit determinations under the Dills Act⁶ and the Higher Education Employer-Employee Relations Act (HEERA)⁷ (Unit Determination for the State of California (1979) PERB Decision No. 110-S; Unit Determination for the University of California (1982) PERB Order Ad-114a-H); and to consider the business necessity defense raised by numerous school districts in response to refusal to bargain charges filed after the passage of

⁵PERB Regulation 32147 states, in pertinent part:

The Board itself, the Chief Administrative Law Judge or the General Counsel may expedite any matter pending before the Board pursuant to policy established by the Board itself.

The State fails to cite PERB Regulation 32215 in its motion, relying instead on the Board's broad authority and jurisdiction, and on PERB Regulation 32147. The California State Employees Association argues that under PERB Regulation 32147 "[i]n the absence of a duly promulgated regulation or policy," the Board is without authority to grant the State's motion, apparently overlooking the specific provisions of PERB Regulation 32215.

⁶Prior to January 1, 1987, the Ralph C. Dills Act was known as the State Employer-Employee Relations Act.

⁷HEERA is codified at Government Code section 3560 et seq.

Proposition 13 (San Francisco Community College District (1979) PERB Decision No. 105).

The Board has also declined to exercise its discretion in this area in cases of first impression, preferring its normal process for unfair practice proceedings when the issue involved the legality of employee strikes under the Educational Employment Relations Act. (Fresno Unified School District (1979) PERB Order No. Ad-72.) In Riverside Unified School District (1985) PERB Order No. Ad-152, the Board denied a similar motion, stating that its authority in this area had been rarely exercised "and primarily for reasons of administrative efficiency."

In the present case, the State argues that its motion should be granted because this case presents an issue of first impression involving an ongoing controversy of great importance. It further asserts that judicial economy would be served by expediting the decision in this case since the parties have stipulated to the material facts.

The Board declines to exercise its discretion under PERB Regulation 32215 to grant the State's motion. The Board believes that the deliberative decision of a PERB administrative law judge (ALJ) will be of benefit to both the parties and the Board itself in this case. Additionally, since the parties have stipulated to the material facts, the Board anticipates expeditious consideration of the case by the ALJ.

ORDER

The Board hereby DENIES the State's motion in consolidated Case Nos. S-CE-498-S, S-CE-503-S and S-CE-506-S.

Chair Blair and Member Garcia joined in this Decision.