

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SACRAMENTO COUNTY SUPERIOR COURT,

Charging Party,

v.

UNITED PUBLIC EMPLOYEES, LOCAL 1,

Respondent.

Case No. SA-CO-5-C

PERB Order No. IR-59-C

December 30, 2015

Appearances: Renne Sloan Holtzman Sakai by Timothy Yeung, Attorney, for Sacramento County Superior Court; Leonard Carder by Arthur W. Liou, Attorney, for United Public Employees, Local 1.

Before: Huguenin, Winslow, Banks, and Gregersen, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for injunctive relief filed with PERB on December 7, 2015, by the Sacramento County Superior Court (Court). The Court's request asks PERB to seek injunctive relief against the United Public Employees, Local 1 (Local 1), which represents various non-supervisory office and technical employees of the Court, including court reporters, courtroom clerks, deputy clerks, and judicial secretaries, for a strike which was set to occur on December 8, 2015, but which in fact did not occur. On December 8, Local 1's executive director provided the Court with written notice of a two-day strike by Local 1-represented employees to take place on December 15 and 16. A Memorandum of Understanding between the Court and Local 1 expired September 30, 2015.

The Court's unfair practice charge against Local 1 and accompanying request for injunctive relief allege, among other things, that the anticipated strike would be unlawful

under *County Sanitation District No. 2 v. Los Angeles County Employees Association* (1985) 38 Cal.3d 564 (*County Sanitation*) and PERB precedent, because it would involve certain “essential” employees represented by Local 1, including court clerks and court reporters assigned to the Court’s Criminal Division, Juvenile Dependency/Delinquency courtrooms, and Department 47 (Presiding Judge’s Calendar).

On December 10, 2015, the Board denied the Court’s request for injunctive relief for the reasons set forth below.

DISCUSSION

When PERB seeks injunctive relief from the courts, the appropriate test requires the establishment of two elements: (1) “reasonable cause” must exist to believe an unfair practice has been committed; and (2) injunctive relief must be “just and proper.” (*Public Employment Relations Bd. v. Modesto City Schools Dist.* (1982) 136 Cal.App.3d 881, 895-896.)

The Court alleges that a two-day strike by Local 1-represented employees on December 15 and 16, 2015 is unlawful because of the essential functions the Court performs, and the roles that court clerks and court reporters play in those essential functions. *County Sanitation* holds that “strikes by public employees are not unlawful ... unless or until it is clearly demonstrated that such a strike creates a substantial and imminent threat to the health or safety of the public.” (*Id.* at p. 586.) Two categories of public employees – police and firefighters – are statutorily prohibited from striking because the nature of their duties makes them “essential” to the health and safety of the public. (Lab. Code, §§ 1138.5 [peace officers] and 1962 [fire fighters]; *County Sanitation, supra*, at pp. 572-573.) For all other public employees, the *County Sanitation* standard requires that it be “clearly demonstrated,” on a case-by-case basis, that their participation in a strike would create an *imminent* and *substantial* threat to public health and safety. (*County Sanitation, supra*, at pp. 586-587.) The Court in *County Sanitation* further

explained that the availability of replacement workers goes into the determination of whether an employee or a class of employees is “essential.” (*Id.* at p. 587.)

Based on the Court’s charge and supporting declarations, we reject the Court’s “essential employees” theory because the Court has not clearly demonstrated that, without employees in the seven positions it seeks to enjoin from striking, the Court’s essential functions cannot or will not be performed. The Court has not demonstrated that it could not use managers or supervisors to perform the functions of court clerks. The Court’s moving papers do not disclose how many supervisors or managers are qualified and available to perform the work of those employees the Court identifies as “essential.”

Additionally, the Court has also not explained why court reporters cannot be reassigned from courtrooms that would be closed during a strike to courtrooms that the Court intends to keep open. According to the Court, it needs only four reporters to cover the allegedly essential functions during the strike. While the Court has provided some information on its efforts to procure qualified court reporters from agencies in Sacramento or the surrounding area, there remains some time before the start of the anticipated strike to determine whether the Court can procure sufficient replacement personnel.

The Court has also failed to identify the specific level and nature of services that must be maintained to preserve public health and safety. A declaration submitted by the Court’s interim executive director states that the ten courtrooms will remain open during any strike, but then identifies only five courtrooms that will be operational: two felony arraignment departments, one juvenile dependency, one juvenile delinquency, and the Presiding Judge’s department. In addition to this discrepancy between the number of departments ostensibly necessary to protect public health and safety and the number of departments that would maintain operations during the two-day strike, the Court has provided no specific evidence that

the absence of a courtroom clerk in the Presiding Judge's department would create an imminent and substantial threat to public health and safety.

As with other requests for injunctive relief, our decision to deny the Court's request is made without prejudice and, as the date of the anticipated strike draws closer, the Court is free to provide additional or supplemental information in the event it is unable to procure sufficient replacement personnel to perform any essential services.

ORDER

The Sacramento County Superior Court's request for injunctive relief in PERB Case No. SA-CO-5-C is hereby DENIED.

Members Huguenin, Winslow, and Gregersen joined in this Decision.