

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY,

Employer,

and

CALIFORNIA FACULTY ASSOCIATION,

Exclusive Representative.

CALIFORNIA ALLIANCE OF ACADEMIC
STUDENT EMPLOYEES/UAW,

Joined Party.

Case No. LA-UM-723-H

Request for Judicial Review
PERB Order No. Ad-342-H

PERB Order No. JR-23-H

December 29, 2004

Appearances: Joel Block, Labor Relations Manager, for Trustees of the California State University; Rothner, Segall & Greenstone by Bernhard Rohrbacher, Attorney, for California Faculty Association; Schwartz, Steinsapir, Dohrmann & Sommers by Margo A. Feinberg, Attorney, for California Alliance of Academic Student Employees/UAW.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request for judicial review by the California Faculty Association (CFA) of Trustees of the California State University (2004) PERB Order No. Ad-342-H (Trustees of CSU). In Trustees of CSU, the Board clarified the 1991 unit modification order as to the definition of excluded employees. CF A and the Trustees of the California State University (CSU) both submitted proposed orders to the Board agent to clarify the unit. The Board agent selected the language submitted by CSU.

BASIS FOR REQUEST FOR JUDICIAL REVIEW

CFA maintains that there is a need for judicial review because the order issued by the Board agent and adopted by the Board as its own decision was written contrary to the statutes of construction. It is CFA's position that the order as it reads now impinges on the original 1991 order and makes portions of it "meaningless".

DISCUSSION

CFA bears the burden of establishing there is special importance in this case to meet the necessary standard for the Board to agree to join in the request for judicial review. However, it does not even indicate which canon of construction the order allegedly violates.

The Higher Education Employer-Employee Relations Act (HEERA)¹ section 3564(a) provides:

No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

PERB Regulation 32500(c)² states:

The Board may join in a request for judicial review or may decline to join, at its discretion.

It is the sole discretion of the Board to determine if a case is, in fact, one of special importance.

(San Diego Community College District (2002) PERB Order No. JR-20.)

Special importance is established by a showing that the case presents: (1) a novel issue; (2) primarily involves construction of a unique statutory provision; and (3) was likely to arise frequently. (The Regents of the University of California (1999) PERB Order No. JR-19-H.)

¹HEERA is codified at Government Code section 3560, et seq.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

We agree with the California Alliance of Academic Student Employees/UAW that CFA has not met its burden to show this is a case of special importance, meeting the narrow criteria establishing the basis for the Board to join in a request for judicial review. We do not find that this is a case of unique statutory provision but agree this is a unit clarification issue that does not meet the elements necessary to establish special importance.

ORDER

The California Faculty Association's request for judicial review of the Board's decision in Trustees of the California State University (2004) PERB Decision No. Ad-342-H is hereby DENIED.

Members Whitehead and Neima joined in this Decision.