

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARILYN K. MAYER,)
)
Charging Party,)
)
v.)
)
ASSOCIATION OF CALIFORNIA STATE)
ATTORNEYS AND ADMINISTRATIVE LAW)
JUDGES,)
)
Respondent.)
)
_____)

Case No. LA-CO-27-S
PERB Decision No. 637-S
October 6, 1987

Appearances; Marilyn K. Mayer, Attorney, on her own behalf.
Before Hesse, Chairperson; Craib and Cordoba, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by charging party of the Board agent's dismissal, attached hereto, of her charge alleging that the Association of California State Attorneys and Administrative Law Judges violated section 3515.7(c) of the Ralph C. Dills Act (Act).¹

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself, insofar as the Board agent concludes that the

¹The Act, formerly known as the State Employer-Employee Relations Act, is codified at Government Code section 3512 et seq.

allegations in the instant charge fail to state a prima facie violation of the Act.

By the Board.²

²Members Porter and Shank did not participate in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, CA 958)4-4174
(916) 322-3068



April 27, 1987

Marilyn K. Mayer
Deputy Attorney General
2528 Carman Crest Drive
Los Angeles, CA 90068

RE: Marilyn Mayer v. Association of California State Attorneys & Administrative Law Judges. Case No. LA-CO-27-S, First Amended Charge, Dismissal of Charge

Dear Ms. Mayer:

You have filed a charge against Respondent Association of California State Attorneys and Administrative Law Judges (ACSA) alleging that it violated the State Employer-Employee Relations Act (SEERA) by refusing to grant your request that your fair share contributions be donated to a charity.

I indicated to you in my attached letter dated April 3, 1987, that the charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to April 14, 1987, they would be dismissed. On April 8, 1987 you requested an extension of time to file an amendment until April 24, 1987. That request was granted.

On April 24, 1987, this office received your First Amended Charge in which you urge that Government Code section 3515.7(c) is unconstitutional under both the California and United States Constitutions to the extent that it requires membership in a religious body in order to have fair share fees diverted from an employee organization to a charitable organization. To the extent that the PERB's decision in California State Employees Association (Graham) (1984) PERB Decision No. 434-S interprets section 3515.7(c) to require membership in a religious organization, the First Amended Charge asserts that it also is unconstitutional. The document cites various California and U.S. Supreme Court decisions which: (1) prohibit government entanglement in religion and (2) prohibit government promotion of religious purpose. The charge presents no new factual information relating to the dispute.

Ms. Marilyn K. Mayer
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The PERB is an administrative agency whose jurisdiction is limited to interpretation of certain provisions contained in the Government Code. In interpreting the Government Code section 3515.7(c), the PERB must assume that the provision, "suffers no constitutional infirmity." Cumero v. King City High School District, et. al., (1982) PERB Decision No. 197. The PERB has no authority to declare that the provision is unconstitutional. Article III, section 3.5 of the California Constitution provides:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

Under this provision of the Constitution, the PERB is unable to declare section 3515.7(c) unconstitutional. For these reasons, and the reasons stated in my letter of April 3, 1987, your charge does not state a prima facie case of a SEERA violation.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for

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filing. Code of Civil Procedure section 1013 shall apply (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See section 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JEFFREY SLOAN
General Counsel

By

Jorge A. Leon
Staff Attorney

Attachment
8882d

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



April 3, 1987

Marilyn K. Mayer
Deputy Attorney General
2528 Carman Crest Drive
Los Angeles, CA 90068

RE: Marilyn Mayer v. Association of California State Attorneys & Administrative Law Judges, Case No. LA-CO-27-S

Dear Ms. Mayer:

You have filed a charge against Respondent Association of California State Attorneys and Administrative Law Judges (ACSA) alleging that it violated the State Employer-Employee Relations Act (SEERA) by refusing to grant your request that your fair share contributions be donated to a charity.

My investigation has revealed the following information.

You are employed as a Deputy Attorney General in Los Angeles and are included in State bargaining Unit 2. On January 22, 1986 you wrote to ACSA requesting that fair share fees collected from you by ACSA be paid instead to Dedication and Everlasting Love to Animals (DELTA), a charitable organization, based on the fact that you hold "conscientious objections to Union activities and/or being a member of a Union." Your request was based on Government Code section 3515.(c).¹ On January 27, ACSA Staff Consultant Chris Voight replied stating that your request did not comply with section 3515.7(c)

1. Section 3515.7(c) provides:

Notwithstanding subdivision (b), any employee who is a member of religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the State Board of Control for receipt of charitable contributions by payroll deductions.

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and asked "the nature of the traditional tenants [sic] or teachings which prevent your fair share fees from going to ACSA."

On February 4, you wrote to Voight stating your opinion that section 3515.7(c) is unconstitutional insofar as it requires that an employee be a member of a religious body in order to be exempt from the fair share provisions. You assert in that letter that "one's own personal 'religious' or 'conscientious objections' rise to an appropriate level to qualify for the exemption." You repeat your request that the fair share fees be paid to DELTA. Voight did not respond. After some further correspondence between the two of you in March, April and May, on June 3, Voight wrote to advise you that the ACSA Board of Directors had ruled at its May 17, meeting to accept your application based on personal religious beliefs "provided you can demonstrate by objective proof that your personal religious beliefs are bona fide." He also explained that DELTA was not on the State Board of Control's list of approved charitable organizations.

On July 2, you wrote to Voight insisting that DELTA does qualify as a charitable organization, and objecting to the fact that ACSA was now deducting \$5 more per month than the previous \$16 per month deduction which you had not authorized and requesting a return of the "wrongful contribution." Voight responded on July 14 stating that before the question whether DELTA qualifies as a charitable deduction can be reached, the question whether your fair share fees should be diverted to any charity based on your religious beliefs had to be resolved. He repeated the instructions he had given in his June 3 letter and set a deadline of July 28, after which your request would be denied. Further, the extra \$5 assessment which was effected to fund an anti-Gann measure campaign was terminated and the money refunded to you.

By letter dated August 14, Voight acknowledged that his letters of June 2 and July 14 apparently did not reach you. He included copies of those two letters and set a new deadline of August 29 for you to file a complete request as directed in the June 2 letter. On August 24, you submitted a declaration which noted, in full, as follows:

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1. That my own personal religious/conscientious beliefs prohibit my supporting and/or paying for either unions and or employee organizations.
2. That I have held these beliefs since approximately 18 years of age.
3. That as a result of my own personal religious/conscientious beliefs, I have never belonged to an employee organization and/or union.

On September 25 Voight wrote you a letter advising you that your request had been denied by the ACSA Board on September 20 on the basis that the declaration you provided "did not provide evidence of a bonafide religious belief" The decision was also based on your membership in an organization known as the Association of Deputy Attorneys General, which he notes preceded ACSA in acting on behalf of Deputy Attorneys General in matters concerning their terms and conditions of employment. You wrote to Voight on December 1 requesting an appeal of the ACSA Board's ruling. That request was denied.

ANALYSIS

The charge alleges that the above conduct violates Government Code section 3515.7(c). In a similar case, the PERB analyzed an allegation that the employee organization refused to grant an employee's request under 3515.7(c) as an alleged violation of 3543.5(b).² The PERB determined that 3515.7(c) requires

²Section 3543.5(b) provides that it is an unfair practice for an employee organization to:

impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

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that an employee who requests diversion of fair share fees to a charitable organization establish two things: (1) that he/she is a member of a religious body, and (2) the traditional tenets or teachings of that body include objections to joining or financially supporting employee organizations. The employee in that case failed to establish membership in a religious body and on that basis, the PERB held that the employee organization's refusal to grant the request did not constitute a violation of section 3543.5(b). California State Employees Association (Graham) (1984) PERB Decision No. 434-S.

The charge does not contain facts showing that you have demonstrated to ACSA the requirements set forth in Graham, supra, in order to qualify for diversion of your fair share fees. To the contrary, the charge and the exhibits attached make plain that you assert a religious objection based on your individual beliefs. As in Graham, these facts do not establish a violation of section 3543.5(b). Even if you did qualify for diversion of fair share fees to a charitable organization, the charge does not contain facts from which it can be determined that DELTA qualifies as a charitable organization for the purposes of section 3515.7(c).

For these reasons, the charge as presently written does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before April 14, 1987, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely,

Jorge Jorge A. Leon
Staff Attorney

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