

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATE OF CALIFORNIA (DEPARTMENT)
OF PERSONNEL ADMINISTRATION),)
)
Employer,) Case No. S-D-131-S
) (S-SR-7)
)
and)
) Request for Judicial Review
CALIFORNIA UNION OF SAFETY) PERB Order No. Ad-246-S
EMPLOYEES,)
) PERB Order No. JR-15-S
Exclusive Representative,)
)
August 9, 1993
and)
)
CALIFORNIA STATE SAFETY EMPLOYEES)
COUNCIL/CALIFORNIA STATE PEACE)
OFFICERS ASSOCIATION/LABORERS')
INTERNATIONAL UNION OF NORTH)
AMERICA,)
)
Employee Organization.)
_____)

Appearances: Carroll, Burdick & McDonough by Gary M. Messing, Attorney, for California Union of Safety Employees; Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for California State Safety Employees Council/California State Peace Officers Association/Laborers' International Union of North America.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on request of the California State Safety Employees Council/California State Peace Officers Association/Laborers' International Union of North America (CSSEC) for PERB to join in seeking judicial review of its decision in State of California (Department of Personnel Administration) (1993) PERB Order No. Ad-246-S.

In that decision, the Board determined that the release of the home addresses of employees in 14 classifications within State Bargaining Unit 7 would constitute inconsistent and unequal treatment of those employees and would, therefore, be "likely to be harmful" to them under the terms of PERB Regulation 32726(b).¹ The Board prohibited the release of the home addresses to the parties in the Unit 7 decertification election.

DISCUSSION

Prior requests for judicial review considered by the Board have generally involved unit determination issues under the Educational Employment Relations Act (EERA). EERA section 3542(a)² provides that judicial review of a unit

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32726 states, in pertinent part:

(b) A list of eligible voters which meets the requirements of subsection (a) above but which contains in lieu of the home address a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. Proof of service shall be filed with the regional office. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law, or if the Board shall determine that the release of home addresses is likely to be harmful to the employees.

²EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3542 states, in pertinent part:

(a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the

determination by PERB will occur only when the Board "agrees that the case is one of special importance and joins in the request for such review." Furthermore, the Legislature has emphasized the importance of insuring that representation elections are not delayed by including in EERA section 3542(a) the directive that an election shall not be stayed even if the Board joins in a request for judicial review. Consequently, the Board has applied a relatively strict standard in considering whether cases are of "special importance" because the fundamental rights of employees to form, join and participate in the activities of employee organizations, and of employee organizations to represent their members in their employment relations cannot be exercised if PERB's unit determination decisions are routinely subject to legal challenges and the significant delays in the implementation of those decisions which may result.

The Board has not agreed that the mere fact that a court has not ruled on an issue meets the "special importance" standard, stating that "such would be an abdication of our responsibility to interpret the statute which we enforce and would tend to render this Board simply another administrative hurdle to be cleared on the way to unit certification." (Livermore Valley

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.
(Emphasis added.)

Joint Unified School District (1981) PERB Order No. JR-9.) The Board has further noted that its "considerable discretion in the determination of appropriate units is demonstrated by the very-limited circumstances under which judicial review of its unit decisions may be obtained." (San Diego Unified School District (1981) PERB Order No. JR-10.)

Where a request for judicial review has been granted, the issue "was found to be of special importance because: (1) it was a novel issue; (2) primarily involving construction of a statutory provision unique to EERA; and (3) was likely to arise frequently." (Los Angeles Unified School District, (1985) PERB Order No. JR-13.)

The instant request for judicial review arises in the context of a representation election conducted under the Ralph C. Dills Act (Dills Act). Dills Act section 3520(a),³ governing judicial review requests, is nearly identical to the corresponding EERA provision including the "special importance" standard and the directive that a PERB-conducted representation

³The Dills Act is codified at Government Code section 3512 et seq. Section 3520 states, in pertinent part:

- (a) Judicial review of a unit determination shall only be allowed: (1) when the board, in response to a petition from the state or an 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.
(Emphasis added.)

election shall not be stayed pending judicial review. CSSECs request that the Board join in seeking judicial review of PERB Order No. Ad-246-S is made in accordance with PERB Regulation 32500 which states, in pertinent part:

(a) Any party to a decision in a representation case by the Board itself may file a request to seek judicial review within 20 days following the date of service of the decision. An original and 5 copies of the request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance.
(Emphasis added.)

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

This regulation describes the process of seeking judicial review of a Board decision in a representation case pursuant to the Dills Act. In considering CSSECs request, the Board must determine whether the strict standard it has applied in considering prior judicial review requests involving unit determinations is appropriately utilized in the current case involving a representation election.

The considerations which have led the Board to apply a strict standard in judicial review requests involving unit determinations are generally present in all representation cases.⁴ Just as in these prior cases, the fundamental rights of

⁴In fact, contrary to the views expressed in the dissent, it has been the Board's position that the term "unit determination" in Dills Act section 3520(a) describes all representation matters, thereby prohibiting judicial review of those matters unless the Board agrees they are of special importance and joins

employees to select an exclusive representative, and of exclusive representatives to represent employees in their employment relations, can be undermined by legal challenges to the Board's decisions in representation cases which can result in unnecessary delays in the resolution of the election process. Therefore, it is appropriate for the Board to apply the same strict standard in evaluating requests for judicial review in all representation cases that it has applied in the prior judicial review requests it has considered.

Accordingly, in this case CSSEC must demonstrate that PERB Order No. Ad-246-S presents a novel issue, primarily involving construction of a provision unique to the Dills Act, which is likely to arise frequently. (Los Angeles Unified School District, supra. PERB Order No. JR-13.)

CSSEC argues that judicial review is appropriate in this case because it involves the first opportunity for the Board to interpret its own regulation concerning nondisclosure of home addresses to parties to a representation election. Since the Board's interpretation resulted in the nondisclosure of the home addresses of employees in 14 classifications within State Bargaining Unit 7, CSSEC argues that "it is a matter of special importance and significance" justifying the Board joining in a request for judicial review. CSSEC also asserts that the Board's interpretation of its regulation is erroneous because it deviates

in the request for such review, or they are raised as a defense to an unfair practice complaint.

from the prior interpretation of that regulation by a Board agent. Finally, CSSEC indicates that the Board's ruling penalizes CSSEC for its "being cooperative and considerate of the time and resources of PERB and the other party to this proceeding" since CSSEC had previously stipulated that the home addresses of many other unit members would not be released.

CSSEC's arguments fail to meet the Board's standard in considering requests for judicial review. CSSEC argues that this case is novel in that it involves the Board's first formal interpretation of one of its regulations, an interpretation which resulted in the nondisclosure of some employee home addresses. But novelty alone does not distinguish a case as one of special importance (Livermore Valley Joint Unified School District, supra, PERB Order No. JR-9), and any exercise of the Board's discretion under PERB Regulation 32726(b) by definition affects the disclosure of employee home addresses. Furthermore, the interpretation by the Board of one of its own regulations is at issue in this case, and not construction of a statutory provision unique to the Dills Act which the Board might consider appropriate for judicial review.⁵ Finally, the issue in this

⁵The Board's discretion under PERB Regulation 32726(b) is specifically authorized by the Legislature. Government Code section 6254.3 states, in pertinent part:

- (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

case is not likely to arise frequently since it has never arisen previously despite the many representation elections conducted by PERB.

CSSEC has failed to demonstrate that the issue presented by this case is of special importance justifying the Board joining in a request for judicial review.

ORDER

The request that the Public Employment Relations Board join in seeking judicial review of its decision in State of California (Department of Personnel Administration) (1993) PERB Order No. Ad-246-S is hereby DENIED.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

CSSECs argument that the Board's interpretation of its regulation is erroneous because it differs from a Board agent's interpretation simply misunderstands the fundamental authority and responsibility of the Board vis-a-vis its staff, and is without merit.

CSSECs concern that it has been penalized for being cooperative and stipulating to non-release of home addresses for many Unit 7 classifications ignores the unique circumstances of this case as the Board stated in PERB Order No. Ad-246-S:

The Board emphasizes, however, that the finding in this case does not preclude a different result concerning the release of the home addresses of employees under other circumstances. The Board will consider the circumstances presented in each election setting on a case-by-case basis.

This statement reflects the Board's intent to judiciously exercise its discretion in this area.

Chair Blair joined in this Decision.

Member Carlyle's dissent begins on page 10.

Carlyle, Member, dissenting: I dissent with the majority-conclusion to deny the request for judicial review and with its underlying analysis, both stated and unstated.

The case before us is a representation case which does not involve an issue of unit determination. It involves a Public Employment Relations Board (PERB or Board) decision relative to Government Code section 6254.3 and the release of home addresses and home telephone numbers of state employees, whether those employees are performing law enforcement-related functions, and the factors which go into making such a decision. Accordingly, the only controlling language on the issue of judicial review, given the facts of this case, is found in PERB Regulation 32500.¹

Since April 29, 1977 to the present, PERB has issued 14 orders (decisions) concerning requests for judicial review (excluding the present case). A reading of those cases indicates that every one so previously decided by PERB involved a request

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32500 states, in pertinent part:

(a) Any party to a decision in a representation case by the Board itself may file a request to seek judicial review within 20 days following the date of service of the decision. An original and 5 copies of the request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance.

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

for judicial review of a unit determination under the Educational Employment Relations Act (EERA).²

In my opinion, the standard of proof required under Dills Act section 3520(a) or EERA section 3542(a) to a request for judicial review of a unit determination case is different and higher than the standard of proof required under PERB Regulation 32500 to a request for judicial review in a representation case which does not involve a unit determination issue.

If an employer under Dills Act section 3520(a) (or a school district under EERA section 3542(a)) had the right, on its own, to seek judicial review of every unit determination, the ability of workers to form, organize and collectively bargain would be seriously jeopardized if not totally undermined by incessant and repetitive legal challenges to the composition of such units. Accordingly, since the power and potential for abuse was so great, the Legislature put a "gatekeeper" in charge of hopefully ensuring that such legal actions were permitted only in cases "of special importance." To put it bluntly, judicial review is barred under Dills Act section 3520(a) and EERA section 3542(a)

²EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

In order not to obfuscate the real issue, I will stipulate for this case only that the standard applied by PERB in deciding a request for judicial review of a unit determination is the same under EERA section 3542(a) and under the Ralph C. Dills Act (Dills Act) section 3520(a) (the Dills Act is codified at Government Code section 3512 et seq.).

unless PERB joins in the request.³ Naturally, it logically follows that the Board has applied a relatively strict standard in considering requests for judicial review in these cases.

But, as previously noted, the instant matter is a request for judicial review of a representation case solely under PERB Regulation 32500. A plain and clear reading of said regulation contains no prohibition to subsequent judicial review, regardless of PERB's decision on said request. Why is that? A non-unit determination representation case does not contain the same elements which would give rise to the potential for abuse noted previously herein. Accordingly, this case should not be subject to the same strict standard applied in prior PERB judicial review determinations even though said regulation has the phrase "of special importance" because to do so would demonstrate a failure to understand the reason and rationale, the origins so to speak, of why there is a bar without PERB approval in unit determination cases and thus why PERB has applied a stricter standard in those cases.

Having read the prior 14 judicial review decisions, I am troubled by the majority's application of the reasoning and rationale from those decisions involving unit determination issues to the instant case. For instance, the majority asserts that relative to PERB Regulation 32500, "[T]he considerations which have lead the Board to apply a strict standard in judicial review requests involving unit determinations are generally

³The alternative under section 3520(a) and section 3542(a) of the issue being "raised as a defense to an unfair practice complaint" is not relevant to this case or to this argument.

present in all representation cases." This is simply not true. As noted previously, constant legal challenges to the composition of a unit preclude the affected employees from even getting to the bargaining table. That is why such challenges are barred unless PERB joins the request for judicial review in such unit determination cases.

But in representation cases governed by PERB Regulation 32500, there is no bar to subsequent legal action, regardless of whether or not PERB joins in the request for judicial review.⁴ Accordingly, the position of the majority concerning "similar considerations" is not valid nor is it persuasive.

The majority further asserts that "the fundamental rights of employees to select an exclusive representative, and of exclusive representatives to represent employees in their employment relations, can be undermined by legal challenges to the Board's decisions in representation cases which can result in unnecessary delays in the resolution of the election process. Therefore, it is appropriate for the Board to apply the same strict standard in evaluating requests for judicial review in all representation

⁴Notwithstanding the majority's assertion (stated or implied) in its footnote 4 to the contrary, the Board has never denied a request for judicial review of a non-unit determination case under PERB Regulation 32500 and then argued that said denial was a bar to subsequent court action or review. For the majority to argue on the one hand that the fundamental rights involved in representation cases are of paramount importance but to then argue on the other hand that court review of a lay Board decision adversely affecting those fundamental rights is barred even though there is no express statutory language to support that position (by defining "unit determination" in Dills Act section 3520(a) to mean all representation matters, thus clearly attempting to invoke the same bar found in statute to PERB Regulation 32500), does not appear to assist the majority in its position and should lead one to the opposite conclusion.

cases that it has applied in the prior judicial review requests it has considered."

While the language sounds nice, the problem is that it "does not square with reality." Again, there is no bar to subsequent "legal challenges" under PERB Regulation 32500 if the Board denies a request for judicial review. Further, such a legal challenge does not stay an election, absent an additional court order. Thus, the election proceeds and any such challenge is ruled on in due course by the courts without inappropriately delaying the labor relations representation process. I can find no compelling reason or rationale to blindly apply a legitimate strict standard of proof culminating in a three-part test to prevent abuse in unit determination cases to the instant matter.

I am therefore forced to reluctantly conclude that the analysis of the majority represents an unsuccessful attempt to take specific words and thoughts from the past and transplant them to the present. And like the movie "Jurassic Park," this is another instance of a similar experiment which has gone bad.

While a burden of proof still exists and must be met by the party requesting judicial review of a representation case under PERB Regulation 32500, it is my considered opinion that the California State Safety Employees Council/California State Peace Officers Association/Laborers' International Union of North America (CSSEC) has made a proper and sufficient presentation to warrant a showing "of special importance" in this matter.

It is further noted for the record that the instant case has been before the Board on more than one occasion, and the

particular issue now before us was in part present and ruled upon in other prior Board actions. The history of the parties and this case, which was part of the rationale in my concurrence to PERB Order No. Ad-246-S, has had more twists and turns than the Mississippi River, even given its current swollen condition, thus providing additional support for meeting the standard "of special importance" in the case at bar.

Accordingly, based upon the above, I would join the request for judicial review made by CSSEC in this non-unit determination representation case.