

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



IN RE THE STATE EMPLOYER-)
)
EMPLOYEE RELATIONS ACT, PHASE)
)
III UNIT DETERMINATION PROCEEDING.)
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Case No. S-R-1-56S
PERB Order No. Ad-79-S
Administrative Appeal
October 18, 1979

Appearances: Barbara T. Stuart, Attorney for Governor's Office of Employee Relations; Gary P. Reynolds, Attorney for California State Employees' Association; Russell L. Richeda, Attorney (Carroll, Burdick & McDonough) for California Department of Forestry Employees and California Correctional Officers Association.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION AND ORDER

By letter dated July 9, 1979, the Governor's Office of Employee Relations (hereafter GOER) requested that a declaration be issued by the Public Employment Relations Board (hereafter PERB or the Board) prior to the commencement of the Phase III subhearings to be conducted in connection with unit determinations under the State Employer-Employee Relations Act (hereafter SEERA).¹ The declaration requested was as follows:

¹The State Employer-Employee Relations Act is codified at Government Code section 3512 et seq.

In deciding issues presented at the State Employer-Employee Relations Phase III Unit Determination Proceedings, the Public Employment Relations Board finds that it has jurisdiction to determine only whether an employee is or is not properly included in an appropriate bargaining unit, and that it does not have jurisdiction to determine the proper managerial, supervisory or confidential designation of an employee.

On August 16, 1979, PERB's General Counsel refused to issue the declaratory relief requested by GOER. Viewing the issue as one of the admissibility of evidence at Phase III subhearings, the General Counsel indicated that all evidence relevant to any exclusionary issue would be admitted. The Board affirms the General Counsel's determination and, in accordance therewith, notes that it likewise views the focus of the Phase III unit determination proceedings to be a determination of those rank and file employees who are to be included in the designated appropriate units. However, the burden is on the State--and any other party which may seek to exclude employees from units because of alleged managerial, supervisory or confidential status--to affirmatively justify their exclusion. This can be done by showing evidence of actual job requirements which would disqualify the subject employees from placement in representation units irrespective of which exclusionary category those employees may fit. It is therefore unnecessary to respond to GOER's contention that the Board is without jurisdiction to specifically designate an employee as managerial, confidential or supervisory in order to formulate appropriate units. Such a response would concern a

matter outside of the scope of the Phase III subhearings and, for that reason, would confront an issue not currently in controversy.

Based on the foregoing, the General Counsel's determination is hereby AFFIRMED.

~~By: Barbara D. Moore, Member~~

~~Harry Glück, Chairperson~~

~~Raymond J. Gonzales, Member~~

PUBLIC EMPLOYMENT RELATIONS BOARD

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August 16, 1979

Barbara T. Stuart, Esq.
Governor's Office of Employee Relations
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In re: The State Employer-Employee Relations Act Phase III
Unit Determination Proceeding, Request for Declaratory
Ruling

Dear Ms. Stuart:

GOER in its Request for Declaratory Ruling, dated July 6, 1979, has requested that the General Counsel declare that PERB does not have jurisdiction in the SEERA Phase III unit hearings to determine the proper managerial, supervisory or confidential designation of an employee, but only to determine whether the employee is or is not properly included in an appropriate bargaining unit. PEGG and CSEA have filed opposition to this request.

To the extent that this request presents an issue of how a hearing officer will rule on the admissibility of evidence at the Phase III subhearings, it has been and continues to be my opinion that any evidence offered by any party which is relevant to any exclusionary issue will be admitted. This is, of course, subject to any other proper objection to such testimony. However, to the extent that GOER's request presents an issue of what questions the Board itself will address in its final decision, obviously that depends upon the decisions of the individual Board members, not mine. In its decision No. 86-S, CSEA v. State of California, Department of Health, the Board stated:

Since the statutory scheme indicates an intention to exclude supervisors from PERB jurisdiction, CSEA must look elsewhere to vindicate the rights granted supervisory employees.

If the Board follows that reasoning, it may well determine that if it decides a particular employee(s) is excluded on any theory, then it has by that decision determined that such employee(s) is outside of its jurisdiction.

Sincerely,

William P. Smith
General Counsel