STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the matter of the administrative appeal CALIFORNIA STATE EMPLOYEES' ASSOCIATION, Employee Organization, APPELLANT, State Employer-Employee Relations Act Unit Determination Hearings.	Case Nos. S-R-23-S, 24-S, 25-S, 26-S, 27-S, 28-S, 29-S, 30-S, 31-S, 32-S, 33-S PERB Order No. 54-S Administrative Appeal January 18, 1979

Appearances: William B. McLeod, Unit Services Manager for California State Employees' Association; William Grimm, Executive Director for California Association of Human Services Technologists; Jeff Paule, Attorney (Geffner & Satzman) for Administrative Law Judges' Council; Louis Burg, Attorney (Louis Burg, A Law Corporation) for Board of Equalization Tax Auditors Association, California Association of State Auditors and Board of Equalization Tax Auditors Association and California Association of State Auditors; Dorothy Cannon for California Association of State Hearing Reporters; Gary Robinson, Acting Coordinator for Union of American Physicians and Dentists; Frank Evans, President for Association of California State Attorneys, Inc.; Norman E. Hayden, President for California State Police Association; Valerie Tibbett, President for California Welfare Hearing Officers Association.

Before: Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

DECISION

California State Employees' Association (hereafter CSEA) appeals to the Public Employment Relations Board (hereafter PERB or Board) to set aside certain procedures established by the PERB general counsel for taking evidence and developing a record covering 54 petitions for representation units in State service filed by 38 employee organizations. Ten employee

organizations submitted responses. All opposed granting the appeal.

DISCUSSION

At a series of public hearings conducted by PERB prior to the development of the procedures in issue,[1] the various parties of interest were virtually unanimous in their preference for unit determination through case handling rather than by PERB rule making. Nevertheless, considerable concern was expressed over the prospect of long and protracted case hearings and the possible need to be in attendance over months of sessions in order to protect their interests. Though the petitioning process had not yet started, there was widespread conviction that a large number of petitions would be filed. A purely sequential disposition of these anticipated petitions was strongly opposed. There was a clear support for some shortened procedure which would not reflect or create a bias in favor of any particular unit configuration or improperly restrict the parties' opportunity adequately to "make their case." At the conclusion of the public hearings, the Board, by unanimous vote, opted for unit determination by adjudication

---

[1]Authority for the Board's and general counsel's actions derive from section 3520.5(b) of the State Employer Employee Relations Act (codified at Gov. Code sec. 3512 et seq) and California Administrative Code, title 8, sections 41120-41140.

process and further decided to consolidate all petitions filed into a single case.[2]

However, in recognition of the extraordinary volume of complex issues and conflicting evidence that would probably be presented, and mindful of the concerns expressed by the parties, the Board provided the general counsel with the flexibility in conducting the hearing that was deemed necessary for reasonable expedition of the total uniting process.[3]

Ultimately, 54 petitions were timely filed. Proposed units varied in many respects; some were departmental in scope, others were based on allegedly related classifications or related functions. The number of employees covered by individual petitions ranged from 21 to 30,340 in some 3,500 classifications.

Eventually, the general counsel, after meetings with the interested parties, decided to subdivide the consolidated hearing into 17 subhearings. Essentially, each of these subhearings encompasses a group of employment classifications covered by overlapping petitions. In some instances, the same issues may nevertheless arise in two or more subhearings. Though the 17 subhearings are obviously not congruent with the 54 petitions, 4 of them do square with specific petitions.

---

[2]Public hearings on the development of rules covering the unit determination process were held on January 3, February 7, March 7, April 4, April 19, June 21 and 22, and June 28 and 29, 1978. PERB adopted the current rules on June 29, 1978. They became effective July 1, 1978.

[3]Cal. Admin. Code, tit. 8, sec. 41140, supra.

There is no doubt that coping with the requirement of providing the parties with adequate opportunity to present their cases in full and arriving at a final resolution of the uniting process in reasonable time, in the face of the complexity of the problem already mentioned, will result in some inconvenience to some groups.

However, the Board will not consider whether the system developed by the general counsel is the best possible one under the circumstances. The Board will not interfere with the general counsel's management of cases which does not violate Board regulation or due process. Here, the general counsel has established a procedure which appears to guarantee to each party the right to examine witnesses and otherwise produce relevant evidence, as well as to make its case-in-chief before the conclusion of the consolidated hearing. Open and closing arguments are likewise authorized. A review of the general counsel's plan reveals to this Board no failure of due process nor any discernible bias towards predisposition of uniting issues. The Board considers the acknowledged inconvenience as an acceptable price for the realization of the mutual objectives sought by the parties and PERB.

Analysis of CSEA's objections on appeal fails to modify this conclusion. Those objections may be summarized as follows:

1. Because its proposed units are broader than the scope of certain subhearings (for example, its

general medical unit overlaps subhearings on registered nurses, doctors and dentists, technicians, other patient care personnel), CSEA is reduced to the status of an "intervenor."

2. CSEA must decide where to put on its case-in-chief; different hearing officers in different subhearings may hear the same issues.

3. The 17 subhearings constitute "back-door rule making" since the structure implies that 17 units will be determined and some of the parties so believe.

The fact that the general counsel has provided for subhearings should not obscure the fact that only a single hearing is being conducted. Only one final record will be established for review by the Board itself which will determine units directly from that record. That single record will be a compilation of the separate transcripts developed at the subhearings. While it is possible that individual parties may choose to see in the subhearing system a prediction of the final uniting outcome, that would apparently be true as well if the general counsel conducted only 5 subhearings, as CSEA requests in its appeal. At any rate, the Board cannot take responsibility for the speculations of individual parties, assuming that they do in fact exist. Furthermore, the Board considers the implication in the appeal language: "...the structure presumes that 17 units are appropriate..." and that

CSEA is concerned "...that 17 units will be forthcoming when all is said and done" to be unworthy of consideration.

Inasmuch as all petitions are merged into a single consolidated case, subdivided procedurally to facilitate the presentation of evidence, it is difficult to follow the argument that CSEA is reduced to "intervenor" status. All parties are full participants. All may participate in any portion of the presentations which touch their own interests, whether by cross-examination or rebuttal. All parties will be provided, if they so desire, with the opportunity to make their own case-in-chief, before the conclusion of the process.

Finally, as to the point that different hearing officers may hear the same evidence because of overlapping issues, the Board will not presume to instruct the parties on the management of their cases. It is sufficient to point out again that under the general counsel's procedure there will be a single record and duplication may be avoided by reference in a particular subhearing to evidence already produced in a different subhearing. Further, a party's total case can be made both in its case-in-chief and final argument and briefs.

In summary, the central problem faced by the general counsel was the control of the flow of anticipated evidentiary material. If the waters occasionally become choppy, the Board and apparently the other parties, consider them nevertheless navigable.

For the reasons stated above, CSEA's appeal is hereby dismissed.

ORDER

The Public Employment Relations Board ORDERS that the appeal filed by California School Employees' Association to set aside the PERB general counsel's hearing procedure is hereby dismissed.

By: Harry Gluck, Chairperson

Raymond J. Gonzales, Member

Jerilou Cossack Twoney, Member