

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



AFSCME LOCAL 2620,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
PERSONNEL ADMINISTRATION),

Respondent.

Case No. SF-CE-230-S

Administrative Appeal

PERB Order No. Ad-359-S

February 22, 2007

Appearance: Jennifer M. Garten, Legal Counsel, for State of California (Department of Personnel Administration).

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: The State of California (Department of Personnel Administration) (DPA) requests special permission, pursuant to Public Employment Relations Board (PERB or Board) Regulation 32155(d),¹ to appeal the refusal of an administrative law judge (ALJ) to disqualify himself from presiding over an administrative hearing.

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32155(d) provides:

If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing or investigation and the issuance of the decision. The party requesting the disqualification may, within ten days, file with the Board itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file an appeal, after hearing or investigation and issuance of the decision, setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

PERB Regulation 32155(d) is intended to permit the Board to grant immediate interlocutory appeal of a Board agent's refusal to disqualify him or herself whenever the Board determines that permitting such an immediate appeal would effectuate the purposes of the Ralph C. Dills Act (Dills Act).² (Gonzales Union High School District (1984) PERB Decision No. 379.) Where such special permission to appeal is denied, the moving party is free to reassert its arguments concerning disqualification in its exceptions, if any, to the ALJ's proposed decision.

We have reviewed DPA's request for special permission, including its grounds for urging disqualification of the ALJ, and we find that it would not effectuate the purposes of the Dills Act to grant interlocutory review.

ORDER

The request for special permission to appeal its motion for disqualification of an administrative law judge by the State of California (Department of Personnel Administration) in Case No. SF-CE-230-S is DENIED.

Members Shek and McKeag joined in this Decision.

²The Dills Act is codified at Government Code section 3512, et seq.