

Seventh Supplement to Memorandum 94-11 (Part 2)

**Administrative Adjudication: Exemption Request of Public Employment
Relations Board (Additional Information)**

Attached to this memorandum as an Exhibit is a letter from the Public Employment Relations Board supporting the staff recommendation that PERB be exempted from the general administrative procedure act.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
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CALIFORNIA COMMISSION



February 7, 1994

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Adjudications Under Administrative Procedures Act

Dear Mr. Sterling:

The Public Employment Relations Board (PERB) respectfully requests that the Commission adopt its staff's recommendation that PERB continue to be exempt from the administrative adjudication provisions of the Administrative Procedure Act (APA). (Seventh Supplement to memorandum 94-11, issued on February 1, 1994.)

The Legislature's decision in 1976 to allow PERB to adopt alternative procedures similar to those of the National Labor Relations Board (NLRB) is as valid now as it was then. These procedures provide for timely action in establishing bargaining units and conducting elections, protecting employee witnesses from employer and labor organization pressures, and resolving unfair practice disputes. As outlined in our letter of September 23, 1993, coverage by the proposed APA would seriously impair PERB's ability to provide these prerequisites to effective enforcement of collective bargaining rights.

In considering our request for exemption, we also ask the Commission to consider the Agricultural Labor Relations Board's (ALRB) letter of September 14, 1993. As much of PERB's and the ALRB's substantive law and procedures are patterned after those enforced by the NLRB, both agencies face similar problems under the proposed APA. These arguments were found persuasive by the Commission staff which recommended that both PERB and the ALRB be exempted from the APA.

In Memorandum 94-11, Commission staff outlined the "Arguments For Broad Scope" at page 3. The factors favoring the inclusion of all state agency hearing procedures under the APA are: 1) the inaccessibility of procedural rules; 2) disadvantaged outside groups, particularly community and public interest organizations; 3) inconsistent application of uncodified procedures; and 4) the quality of judicial review. For the Commission's convenience

these considerations, which argue for PERB's exclusion under the APA, are reviewed below.

Accessibility of Procedural Rules

All of the important elements of PERB's procedures in both unfair practice and representation proceedings are clearly stated in Title 8 of the California Code of Regulations. Additionally, copies of these procedures are readily available through any of PERB's three offices.

Disadvantages for Outsiders

The only parties in PERB hearings are employees, employers, and labor organizations. They are represented by attorneys and labor relations representatives who specialize in labor law, not general administrative law. These specialists are familiar with PERB procedures, having practiced extensively before the agency or other agencies such as the NLRB where similar procedures are employed. In some cases, PERB procedures were designed and/or greatly influenced by these specialists through the regulatory review and enactment process. PERB's Advisory Committee, consisting of representatives of employers and employee organizations, frequently provides valuable input concerning changes in procedure. Community or public interest organizations rarely appear before PERB.

Inconsistent Application

There is little threat of inconsistent application of PERB's procedures because they are codified and well established. Consistent application is further assured by the availability of review by the Board itself and the California Court of Appeal. Review of final staff decisions is a matter of right to the aggrieved party.

Judicial Review

Judicial review of PERB's unfair practice and representation case decisions lies with the California Courts of Appeal. These courts are familiar with and experienced in the application of labor law concepts, having applied them in numerous PERB and ALRB cases. A well developed scheme of precedents, both state and federal, provides the courts with ample guidance.

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PERB's mission is to promote improved employee/employer relations, providing an opportunity for employees to participate in collective bargaining through the selection of a representative, and providing employees, employers and employee organizations a neutral forum for cost-effective dispute resolution. It is our strong belief that this mission can best be accomplished by PERB's continued exemption from the APA.

I hope this information and our previous submissions have been helpful to the Commission. Should you have any questions, we will have a representative present for your hearings on February 10 and 11.

Sincerely,

A handwritten signature in cursive script that reads "Sue Blair".

Sue Blair, Chair
Public Employment Relations
Board

SB:gr