



CLIENT ADVISORY

Court: PERB Must Decide If Union Breached Duty of Fair Representation to Probation Officer

In *Paulsen v. Local No. 856 of Intern. Broth. of Teamsters* (Cal. Ct. App., Mar. 18, 2011) 11 Cal. Daily Op. Serv. 3366, the Court of Appeal decided PERB's exclusive jurisdiction extends to probation officers and to duty of fair representation cases.

Paulsen was a deputy probation officer with the Marin County Probation Department. She, and other probation officers, sued the Teamsters in Superior Court for allegedly entering into a secret agreement with the County to misclassify them and deny them overtime.

Most public employees have to file complaints with PERB, rather than in Superior Court. Paulsen's lawyers argued those rules do not apply to probation officers or to cases about the duty of fair representation. First, they argued Government Code section 3511 exempts them from having to go to PERB.

Under Government Code section 3511, the requirement to file complaints with PERB "shall not apply to persons who are peace officers as defined in Section 830.1 of the Penal Code." (Gov. Code § 3511.) The Court decided this provision does not apply to Paulsen, a Penal Code section 830.5 peace officer, because the Code is "clear and unambiguous" that it "does not include deputy probation officers."

Second, Paulsen's lawyers argued the rule requiring public employees file complaints with PERB does not apply when members accuse their union of violating the duty of fair representation. They reasoned the rule only applies to MMBA claims and since the MMBA does not specifically mention the duty of fair representation, the rule does not apply.

The Duty of Fair Representation requires unions to:

- 1) Serve the interests of all members without hostility or discrimination;
- 2) Exercise discretion with complete good faith and honesty; and,
- 3) Avoid arbitrary conduct.

(*Hussey v. Operating Engineers Local Union No. 3* (1995) 35 Cal.App.4th 1213, 1219.)

The Court disagreed with the plaintiffs, noting the duty of fair representation is implied in the MMBA because unions are the exclusive representatives of employees and owe them a special duty as a result. Therefore, the Court concluded, most public employees, including probation officers, must file complaints against their union with PERB.

Unions representing Penal Code section 830.1 peace officers, however, may still face lawsuits from members in Superior Court.

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