STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: BUD ANTLE, INC. Employer and General Teamsters , Warehousemen and Helpers, Local 890 Petitioner, and United Farm Workers of America, AFL-CIO Intervenor .	)	CASE NO. 75-RC-19-M 2 ALRB No. 35

Bud Antle, Inc. filed a motion to disqualify Board Members, LeRoy Chatfield and Roger Mahony, from participating in the hearing and disposition in the matters before this Board to which it is a party. The motion was accompanied by a memorandum of points and authorities and declarations and documentary exhibits. Subsequently that portion of the motion to disqualify Roger Mahony was withdrawn. The Board has considered the motion and accompanying documents as to LeRoy Chatfield and hereby denies such motion.

The denial of the motion is based on the grounds that the Governor and the State Senate were fully apprised of Mr. Chatfield's association with the UFW (one of the parties herein)

at the time of his appointment and confirmation[1] and for this Board to disqualify Mr. Chatfield in this and other matters involving the UFW would be- outside our jurisdiction as an infringement on the powers of the Governor and the State Legislature.

Discussion

The subject of disqualification of judges has a long history.[2] Chief Justice John Marshall heard and wrote his most far reaching decision in Marbury v. Madison[3] although the case arose out of his actions when he was Secretary of State under President Madison. More recently, Justice Rehnquist refused to disqualify himself in a case in which as an attorney for the Department of Justice he presented the Departments' views on the subject matter of the litigation before the court.[4] (That case was subsequently decided by a one vote margin.) Conversely,

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[1]Labor Code §1141(b) states "The members of the Board shall be appointed by the Governor with the advice and consent of the Senate." The Senate, through its Rules Committee held hearings on the confirmation of the present members on September 10, 1975. At that time members of the public were invited to address the Rules Committee on the appointments. Several persons and organizations presented to the Committee the essence of the facts concerning Mr. Chatfield and Bishop Mahony's involvement with the UFW which are related in Bud Antle's moving papers herein.

At these hearings it was also brought out that Member Johnsen had been an agricultural industry spokesman and was referred to as "The grower representative." Member Grodin's association with a law firm which had represented the Teamsters Union was also alluded to at the hearings.

The full Senate confirmed and all five members on September 10, 1975.

[2]It was Coke who set the standard "No man shall be a judge in his own case", Alcquis non debet esse judex in propria causa. Co. LITT 141a, but on the other hand Blackstone said, ". . .it is held that judges and justices cannot be challenged. For the law will not suppose the possibility of bias or favor in a judge." 3 BL. Comm 361, both cited in Frank, John P., Disqualification of Judges 56 Yale L. 605 (1947).

[3]1 Cranch 137 (1803).

[4]Laird v. Talum, 409 US 824.

because administrative agencies are a relatively new invention, the reported cases on disqualification of agency members are few. Most of the cases reported deal with the application of specific statutes on disqualification of agency members.[5] The California Administrative Procedure Act disqualification provision (Government Code §11512(c)) and cases decided under it are not directly applicable in this case as the Agricultural Labor Relations Board is not one of the named agencies covered by that Act. However, constitutional and due process principles require that we consider the issues raised herein.

Administrative Agencies such as ALRB are created by the Executive and Legislative branch of government and are delegated certain legislative and judicial powers. They are given the power to implement the general statute that creates them, promulgate rules, prosecute the alleged violations, provide a hearing and sit as a judge at such hearing and issue remedial orders. Both the Federal and State Courts have approved this scheme for Administrative Agencies despite the fact such a scheme appears contrary to the maxim that no man should judge his own case.

Part of this scheme for administrative agencies has been the practice of appointing agency members that have some connection with the industry affected. The underlying theory is that such members bring an expertise and an understanding of the problems of the industry to their task. In considering who to select for appointment to agency positions the Governor and the

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[5]A great many of the cases reported on disqualification of trial judges turn on whether the challenge was timely made under the statue rather than on the merits of alleged bias and prejudice,

Legislature seek persons knowledgeable in the industry regulated. Even "public members" are usually not appointed unless they have some knowledge and understanding of the problems the agency will try to resolve. As Mr. Justice Rehnquist said speaking about Supreme Court appointments, "Proof that a Justice's mind at the time he joined the court was a complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias."[6] Similarily, an agency member apointee is expected to join the agency not with a tabula rasa mind but with knowledge and understanding of the issues and parties facing the agency. Except where involvement with the industry involves pecuniary interest of the member, the courts have generally accepted and condoned such involvement with the industry.

An even further departure from the notion that an administrative judge should be disqualified for alleged bias because of prior industry contacts is the so called "rule of necessity." The rule is that even if the agency member is biased, he nevertheless is permitted to sit in judgment if his disqualification would prevent the existence of a quorum qualified to act. That rule has been adopted by the Courts and made part of the California Administrative Procedure Act.[7] This departure is an indication of the

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[6]Laird v. Tatum, infra, at p. 835.

[7]Government Code §11512(e), See also U.S. v. Morgan, 313 US 409 where it was sought to disqualify the Secretary of Agriculture on the ground he had prejudged an issue, and Montana Power Co. v. Public Service Commission DC 12F Supp. 946 where the court said, "even where he has an interest, where no provision is made for calling another in, or where no one else can take his place, it is his duty to hear and decide however disagreeable it may be." See also Mays v. Beber, 177 CA 2d 544 (1970) on power of legislature to limit right to move for disqualification of judges.

exercise of legislative power to grant or deny to litigants the right to disqualify a trier of facts. Since the legislature has that power, absent constitutional questions, only it can exercise such powers. This view was clearly articulated in Marguette Cement Mfg. Co. v. Federal-Trade Commission[8] in which the court said:

> "In our view, the right to disqualify a trier of facts created by Congress, whether it be a judge or an administrative agency is a matter for Congress. Such a right may be conferred or withheld as Congress deems advisable."

The Court in that case cited Tumey v. Ohio,[9] the leading Supreme Court case for the proposition that a fair and impartial tribunal requires at least that the trier of fact be disinterested. In that case the Supreme Court held that a judge who derived his compensation in part from fines collected in cases he heard had a direct and substantial pecuniary interest in the judgment of the case before him and such judgement deprived a defendant of due process of law under the Fourteenth Amendment. The court went on to say, however (at page 523 of 273 U.S.):

> "All questions of judicial qualification may not involve Constitutional validity. Thus matters of kinship, personal bias, state policy, remoteness of interest would seem generally to be matters of merely legislative discretion."

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[8]147 F 2d 589.

[9]273 US 510 (1927).

This legislative discretion was clearly exercised in the Senate "advise and consent" confirmation of the five present members of the ALRB. Specifically the State Senate Rules Committee at its confirmation hearings received detailed information on Mr. Chatfield's prior association with the United Farm Workers and with the principals of that union.[10] This information was supplied by Mr. Chatfield during his appearance before the Committee, as well as by interested parties who were opposed to Mr. Chatfield's appointment and who testified and submitted other evidence. The Senate was aware not only *of* Mr. Chatfield's connection with the UFW but also of the fact that the UFW would be involved in the majority of cases coming before this Board. After the Rules Committee recommended confirmation of Mr. Chatfield, the full Senate debated the question at length and voted to confirm his appointment.[11]

This Board cannot in effect invalidate the Governor's and the Legislature's decision by disqualifying Mr. Chatfield on the same issue and the same facts that they considered in appointing him. This Board does not have the jurisdiction to invalidate acts of the legislature.

As to the specific allegations of bias and prejudice, the basic complaint is that Mr. Chatfield was a close and intimate confidant of the UFW leadership at a time when the UFW and Bud Antle

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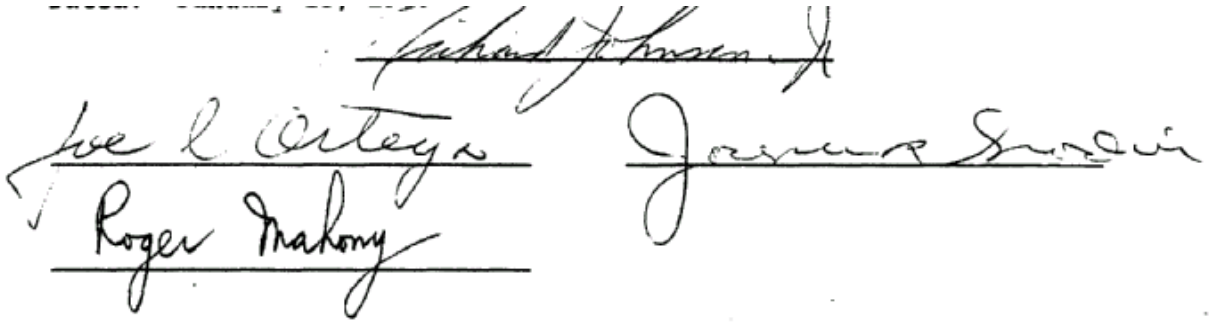
[10]The Governor was also fully aware of those facts at the time he submitted Mr. Chatfield's name to the Senate.

[11]Senate Journal, September 10, 1975.

were involved in an intense struggle. While we assume that the allegations are true for the basis of this proceeding, we find that the connection between Mr. Chatfield and the UFW is sufficiently removed in time so as not to constitute a bar to his hearing this case.[12] We also find that the specific issues before this Board in the Bud Antle matters are not the same issues that petitioner has indicated that Mr. Chatfield participated in while with the UFW.[13]

For these reasons then, the motion to disqualify member Chatfield is hereby denied.

Dated: January 13, 1976



Mr. Chatfield did not participate in this discussion.

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[12]The declaration asserts Mr. Chatfield was associated with the UFW "from 1965 to at least 1973." Testimony at the Senate hearings corroborate that he left the UFW in August 1973 and thereafter worked in real estate and then in the Governor's Office as Director of Administration prior to his appointment.

[13]The question here is unique in that the cases usually involve former clients of attorney-judges. Mr. Chatfield is not an attorney. However using the same principles we find that the cases before us were not the "cases" Mr. Chatfield participated in for UFW.