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ORIGINAL

Decision No. 86943

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HOSPITAL & SERVICE EMPLOYEES UNION, LOCAL 399, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Complainant, vs. PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, Defendant.	Case No. 10106 (Filed May 28, 1976)

Geffner & Satzman, by Howard Z. Rosen, Attorney at Law, for complainant.
Clay C. Burton, Attorney at Law, for defendant.

O P I N I O N

Hospital & Service Employees Union, Local 399, Service Employees International Union, AFL-CIO (Union) seeks an order to require The Pacific Telephone and Telegraph Company (Pacific) to ascertain the prevailing wage for labor of a custodial and janitorial nature as determined by the Bureau of Labor Statistics in the United States Department of Labor, and to require the entities with whom Pacific contracts for such labor to pay the prevailing wage to its employees performing such work for Pacific, pursuant to Section 465 of the Public Utilities Code.

In addition to its answer, Pacific filed a motion to dismiss on July 30, 1976 on the grounds that:

(1) Pacific has complied with Section 465;

(2) Complainant lacks capacity to bring this complaint before the Commission; and

(3) An injured party's remedy lies within another forum, not within the Public Utilities Commission.

On September 28, 1976 Pacific filed a motion to dismiss for satisfaction of the complaint.

Hearings were held in Los Angeles on August 17 and October 12, 1976 and the matter was submitted on the latter date.

Pacific's motions to dismiss are comparable to and should be treated the same as a general demurrer in the courts of this State. It is not inappropriate for the Commission to draw upon the experience and precedent of the courts. (Regulated Carriers, Inc. v L. A. Farnham, et al. (1935) 39 CRC 323, 326.)

Pacific's motions to dismiss test the complaint alone and lie only where the defects appear on the face of the pleading. Objections which do not so appear are raised by the answer. Pacific may not make allegations of fact in its motion to dismiss which, if true, would disclose a defect in the complaint. Pacific cannot strengthen its motion by bringing in evidentiary material which discloses a defect in the complaint. Provisionally and solely for the purpose of testing the question of law raised, all material facts properly pleaded in the complaint are admitted, however improbable they may be. (See Witkin California Procedure Volume 2 Pleading, Sections 482, et seq.)

Union's complaint alleges that Pacific has violated a provision of law, to wit, Section 465, and therefore Union has capacity to file this complaint pursuant to the provisions of Section 1702 of the Public Utilities Code and Rule 9 of the Commission's Rules of Practice and Procedure.

The Commission is not required to dismiss a complaint because of the failure to allege direct damage to the complainant. (Davis v Pacific Tel. & Tel. Co. (1972) 74 CPUC 260.)

The other grounds for dismissal improperly seek to have the determination based upon some matter contained in Pacific's motion to dismiss and not in Union's complaint.

Pacific's motions to dismiss are denied.

Pacific's district manager for Los Angeles, Ventura, and Santa Barbara counties (pursuant to the provisions of Section 776 of the Evidence Code) and Mrs. Ermlinda Lopez, a former employee of Empire Window Cleaning and Maintenance Company, testified for Union.

Exhibit 1, a letter from Interstate Building Maintenance Company (Interstate) to Pacific dated August 10, 1976; Exhibit 2, a letter from Interstate to Pacific dated August 13, 1976; Exhibit 3, a letter from Interstate to Pacific dated September 7, 1976; Exhibit 4, a letter from Interstate to Pacific dated September 27, 1976; Exhibit 5, a letter from Pacific to Interstate dated August 30, 1976; and Exhibit 6, an excerpt from the October 1975 Bureau of Labor Statistics area wage survey for the Los Angeles-Long Beach area, were received in evidence. Exhibit 7, a letter purporting to be from Assemblyman Wadie P. Deddeh to the president of the Commission dated March 29, 1976, was marked for identification.

Union requested that the Commission take official notice of Exhibit 7 and the request was objected to by Pacific. The objection was sustained and Union's request was denied.

Section 465 provides in part:

> "(a)...whenever any labor of a custodial or janitorial nature is not performed by the employees of a public utility, such labor shall be let out under contract to the lowest responsible bidder with the provision that prevailing wages be a condition of any such contract."
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> * * *
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> "(c) As used in this section, 'prevailing wage' means the wage determined by the Bureau of Labor Statistics in the United States Department of Labor."

Pacific has a contract with Interstate which requires the latter to provide certain service to maintain the custodial and janitorial requirements at Pacific's area headquarters in Pasadena. The work is performed by employees of Interstate who are not employees of Pacific.

Union does not contend and there was no evidence to show that Pacific had entered into any contract with Interstate or any person or organization which supplied labor of a custodial or janitorial nature (supplier) to it, which did not contain a provision to the effect that the supplier would pay the prevailing wages for such work, as determined by the Bureau of Labor Statistics in the United States Department of Labor.

Union contends and Pacific denies that Section 465 requires Pacific not only to include a provision in its contracts with suppliers that the suppliers will pay the prevailing wages for such labor, but also to enforce the provisions of such a contract. Pacific contends that such a provision in a contract is for the benefit of the employees of the supplier and enforceable by them as third party beneficiaries, and that Pacific has no duty or obligation to enforce the provision of such a contract.

Union argues that if Pacific is not required to enforce the provision in a contract requiring the supplier to pay the prevailing wage, Section 465 would be of no effect and the legislature would have performed a meaningless act in enacting the code section, but its argument is not sound. Section 1559 of the Civil Code provides: "A contract made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." The provision required by Section 465 is expressly for the benefit of the employees of a supplier providing labor for Pacific and can be enforced by them. On the other hand, Pacific's rights for the breach of such a provision by the supplier are damages for injury to Pacific, which it cannot show, as it is not Pacific but the employees of the supplier who are injured by the breach; or if such a breach, even though partial, is material, Pacific may be excused from further performance and may rescind the contract. (See Witkin, Eighth Edition, Summary of Calif. Law, Vol. 1, Contracts, Sec. 499 et seq.) But unless Section 465 requires Pacific to enforce the provision of such a contract it has no duty to do so, and in the absence of statutory authority which does not appear to exist unless in Section 465, the Commission does not have power to regulate contracts by which a utility secures labor, materials, and services for the conduct of its business, except where such contracts result in disabling the utility from performing its public duty. (Pacific Lighting Gas Co. (1959) 57 CPUC 230.) (Unreported opinion.) (Also see Cortez v Pacific Tel. & Tel. (1966) 66 CPUC 197; California Water & Tel. Co. v Public Utilities Commission (1959) 5 C 2d 478; AT&SF v Railroad Commission (1916) 173 CRC 577; California Southern RR (1919) 16 CRC 449.)

There was no evidence that Section 465 had any meaning other than that expressed by the language contained therein.

Section 1858 of the Code of Civil Procedure provides in part:

> "In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; ..."

Where no ambiguity exists, and the language permits only one construction, the intent of the legislature in enacting a statute is to be gathered from the words and language employed read as a whole. When statutory language is clear, legislative intent must be ascertained therefrom, and there is no room for construction or interpretation. Where the language of a statute is so clear that reasonable minds could not differ on the meaning of the words used, there is no alternative but to enforce it as written. General words should be given a general construction unless the manifest intention of the legislature is otherwise. (45 Cal. Jur. 2d Statutes, Sections 113, 127, 136, 140, and 145.)

Legislative enactments should be construed in accordance with the ordinary meaning of the language used. The better rule of construction is to construe a legislative enactment in accordance with the ordinary meaning of the language used and to assume that the legislature knew what it was saying and meant what it said. (Pacific Gas & Elect. Co. v Shasta Dam Area Public Utility Dist. (1955) 135 CA 2d 463; Gilbert v City of Los Angeles (1973) 33 CA 3d 1082.)

Criticism of policy, wisdom, or technique, inherent in any legislative enactment are matters with which courts have no concern, such arguments being proper ones to address to the legislature for its determination. (Rakow v Swain (1960) 178 CA 2d 895; Richardson v San Diego (1961) 193 CA 2d 648.)

Rules of interpretation in conflict with the plain meaning of a statute are void. (George v Dept. of Alcoholic Beverage Control (1957) 149 CA 2d 702.)

A reading of Section 465 shows that to adopt Union's interpretation of that section would require the insertion of language requiring Pacific to enforce the applicable provision of contracts with the suppliers.

Section 465 appears clear, certain, and unambiguous. Pacific is required to have a provision that "prevailing wages be a condition of any such contract". There is no express or implied requirement that Pacific enforce such a provision.

Findings

1. Section 465 requires that whenever custodial or janitorial services in excess of ninety days are not performed by the employees of a public utility, such services shall be let out under contract to the lowest responsible bidder, and that a condition of any such contract shall be that the supplier pay the prevailing wage as determined by the Bureau of Labor Statistics in the United States Department of Labor.

2. Pacific has not entered into any contract for work set forth in Section 465 during the time involved in the complaint herein that did not contain a provision that the supplier would pay prevailing wages as set forth in Finding 1.

3. Section 465 does not require Pacific to enforce the provision of any such contract in the event that the supplier does not comply with the provision.

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The Commission concludes that Pacific has complied with and has not violated Section 465 of the Public Utilities Code and that the relief requested by Union should be denied.

O R D E R

IT IS ORDERED that the relief requested by Hospital & Service Employees Union, Local 399, Service Employees International Union, AFL-CIO is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Diego, California, this 8th day of FEBRUARY, 1977.

[redacted] President

William Symons Jr

Vernon L. Sharp

[redacted]

Richard D. Gravelle

Commissioners

I dissent; this decision effectively nullifies Sec. 465

Leonard Ross

Robert Batinovich

Commissioners