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Decision No. 89104

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Investigation on the Commission's own motion into the regulation of employment practices of PACIFIC TELEPHONE AND TELEGRAPH COMPANY, PACIFIC GAS AND ELECTRIC COMPANY, GENERAL TELEPHONE COMPANY, SOUTHERN CALIFORNIA GAS COMPANY, SAN DIEGO GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON, CALIFORNIA WATER COMPANY, SIERRA PACIFIC POWER COMPANY, SOUTHERN PACIFIC TRANSPORTATION COMPANY, WESTERN PACIFIC RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PACIFIC SOUTHWEST AIRLINES, INC. and AIR CALIFORNIA, INC., respondents. | ) | Case No. 10308 |

ORDER TERMINATING STAY

On September 20, 1977, by Decision No. 87884 in this proceeding, we noted the fact that petitions for writ of review of our order of April 12, 1977, instituting this investigation, and of Decision No. 87739, had been filed in the California Supreme Court by certain of the named respondents and suspended the order requiring reports and documents to be filed within 45 days, until further order of this Commission.

By orders filed on March 23, 1978, the California Supreme Court denied the before mentioned petitions for writ of review; those orders are now final. Therefore

IT IS ORDERED that the suspension of those portions of the order in Decision No. 87739 requiring all respondents to present comprehensive reports concerning efforts with respect to hiring and promoting women and minority employees, etc., and to provide the Commission with copies of all written affirmative action plans, programs, etc., is hereby terminated. Said reports are to be filed within 45 days after the effective date of this decision which is the date hereof.

Dated at San Francisco, California, this 25th day of JULY, 1978.

I will file a Dissent
William Symons Jr.

Robert Batinovich
President

I dissent
Vernon L. Sturgeon

Richard D. Gravelle
Claire T. Dedrick
Commissioners

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Investigation into the Regulation of Employment Practices.

COMMISSIONER WILLIAM SYMONS, JR., AND COMMISSIONER VERNON L. STURGEON, Dissenting

This case still stands where it began fifteen months ago. It is at the threshold of ordering that preliminary information be filed. We should recognize that two major changes have occurred in the intervening months and take advantage of the opportunity to turn the investigatory function over to the California Fair Employment Practices Commission. This is the California agency our legislature created to handle such inquiries.

Duplication Should be Avoided. Principles of efficient management dictate that work-load among state agencies be rationalized. Such a division of function is sensible and carries out the spirit of Proposition 13 which the people so overwhelmingly adopted in the June elections. Californians voted to end needless duplication in government. No matter how well-intentioned it is, this CPUC investigation is just the kind of boondoggle the people want eliminated.

This Investigation Should be Handled by Experts. A state agency without special expertise is on tricky, dangerous ground when it starts to promulgate guidelines on "affirmative action" programs.

We can learn from the recent embarassing situation of the Medical School of the University of California at Davis. There, U.C.'s administrators and lawyers operated and defended for eight years their own affirmative action admissions program only to have the Supreme Court of The United States strike the scheme down

on the grounds of illegal racial discrimination by the state. The Regents of the University of California v. Bakke, June 28, 1978 (52 Lawyers Ed. 2d___.)

Speaking for the court at page 21, Justice Powell reiterated:

> "Distinctions between citizen solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality".

Justice Powell raised serious questions as to legality of affirmative action plans which are defended with the distinction that the plans are based on "goals" rather than "quotas". He stated at page 19.

> "...the parties fight a sharp preliminary action over the proper characterization of the special admissions program. Petitioner prefers to view it as establishing a "goal" of minority representation in the medical school. Respondent, echoing the courts below, labels it a racial quota.
>
> This semantic distinction is beside the point: the special admissions program is undeniably a classification based on race and ethnic background. ...Whether this limitation is described as a quota or a goal, it is a line drawn on the basis of race and ethnic status".

What lies ahead for state-required affirmative action programs is deeply uncertain. While, a majority of the court in Bakke seemed to allow some consideration of race by universities, it appears that such activity was justified on the narrow grounds of the first amendment rights of teaching institutions to choose a diverse student body for academic reasons.

What this portends for utilities and transportation companies is anyone's guess. It appears to us that this will remain an unsettled and difficult area of the law for many years to come. Given the CPUC's other commitments we know that the legal resources available at this Commission for the project will be limited and certainly not commensurate with resources available at the California Fair Employment Practices Commission, where this investigation should be properly maintained.

San Francisco, California
July 25, 1978

/s/ William Symons, Jr.
WILLIAM SYMONS, JR.
Commissioner

/s/ Vernon L. Sturgeon
VERNON L. STURGEON
Commissioner