BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by **L[redacted] [redacted]. M[redacted]** From 2 step reduction in salary for 12 months as a Correctional Sergeant at the Correctional Training Facility, Department of Corrections at Soledad	)	SPB Case No. 31666 **BOARD DECISION** (Precedential) **NO. 94-08** March 8, 1994

Appearances: Mark A. Steinberg, Staff Legal Counsel and Mabel Lew, Staff Legal Counsel, California Correctional Peace Officers Association, on behalf of the appellant, L[redacted] [redacted]. M[redacted]; Joseph C. Basso, Employee Relations Officer, Correctional Training Facility, on behalf of the respondent, Department of Corrections, Soledad.

Before Carpenter, President; Stoner, Vice President; Ward, Bos and Villalobos, Members.

DECISION

This case is before the State Personnel Board (SPB or Board) after the Board granted a Petition for Rehearing filed by the Department of Corrections (Department) challenging the Board's decision assessing interest on a backpay award at a rate of 10 percent.

In its original decision in this case, the Board revoked a two-step reduction of Correctional Officer L[redacted] [redacted]. M[redacted]'s salary and awarded him backpay and interest pursuant to Government

Code §19584.[1] The Department paid the back salary for the period in question. A dispute arose between the parties, however, as to the proper rate of interest to be applied, and the issue was presented to an Administrative Law Judge (ALJ) who decided the matter upon written briefs. Being unpersuaded that the code sections relied upon by the parties to support their positions were determinative of the issue, the ALJ concluded that since the Board has the power to set the rate of interest through regulation, and since the Board and the parties regularly appearing before the Board had, in the past, followed an informal practice of awarding 10 percent interest, the 10 percent rate should stand "in the absence of further regulation."

The time has come for the Board to set a rate of interest to be applied to backpay awards rendered pursuant to Government Code §19584. As market interest rates have fallen, the propriety of the Board's practice of awarding 10 percent has been raised on a more frequent basis before our ALJs. Recent developments in case law give the Board further reason to reexamine whether current law supports a continuation of its past practice.

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[1]Government Code §19584 provides, in pertinent part, that:

> [W]henever the board revokes or modifies an adverse action and orders that the employee be returned to his or her position, it shall direct the payment of salary and all interest accrued thereto.... (emphasis added).

For the above reasons, the Board granted the Department's Petition for Rehearing, determining to rely on its authority to issue precedential decisions to determine the rate of interest to be applied to backpay awards. After a review of the written briefs of the parties, and having listened to oral arguments, the Board hereby determines that the rate of interest to be applied to back-pay awards rendered pursuant to Government Code §19584 is 7 percent based on the rationale set forth below.

ISSUE

What is the appropriate interest rate to be paid on a backpay award issued by the State Personnel Board pursuant to Government Code §19584?

DISCUSSION

Since Government Code §19584 does not specify the interest rate to be applied to a backpay award, we must look to other sources to render a "just and proper" decision as to the proper rate of interest. [See Government Code, § 19582(a)] In the instant case, the Department argues that the proper rate of interest is no more than 6 percent based on Government Code §926.10.[2] Appellant

[2]Government Code §926.10 provides:

> Any public entity...having a liquidated claim against any other public entity based on contract or statute of the State of California, or any person having such a claim against a public agency, shall be entitled to interest commencing the 61st day after such public entity or person files a liquidated claim known or agreed to be valid when filed pursuant to such statute or contract and such claim is due and payable. Interest shall be 6 percent per annum.

relies upon Code of Civil Procedure §685.010, subdivision (a)[3] to support his argument that the interest rate to be applied is 10 percent. We agree with the ALJ in this case that neither of these sections is determinative of the rate of interest State governmental departments should be paying on backpay awards.

Government Code Section 926.10

Government Code §926.10, which states that any person who "files" a liquidated claim against a public agency based on a contract or state statute is entitled to 6 percent interest per year, deals with claims required to be filed with the Board of Control under the California Tort Claims Act (Government Code §810 et seq.). The courts have generally held that backpay awards to public employees are not subject to the requirements of the California Tort Claims Act. (See Eureka Teacher's Assoc. v. Board of Education (1988) 202 Cal.App.3d 469.)

[3]Code of Civil Procedure § 685.010, subdivision (a) provides:

> Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.

Code of Civil Procedure Section 685.010

Appellant relies on Code of Civil Procedure §685.010, which sets the rate of interest to be paid on unsatisfied money judgments at 10 percent, to support his claim that the Board should retain the 10 percent rate. Appellant overlooks the fact that the law specifically provides that Section 685.010 cannot be enforced against the State or a State agency. Section 685.010 is found in Title 9 (Enforcement of Judgments) of the Code of Civil Procedure. Code of Civil Procedure §695.050, also found in Title 9, provides:

> A money judgment against a public entity is not enforceable under this division[4] if the money judgment is subject to Chapter 1 (commencing with Section 965)[5] of, or Article 1 (commencing with Section 970)[6] of Chapter 2 of, Part 5 of Division 3.6 of the Government Code.

Thus, the enforceability of a money judgment against a state agency is specifically governed by Government Code §965.5, subdivision (b), which provides:

> A judgment for the payment of money against the state or a state agency is not enforceable under Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure but is enforceable under this chapter. (emphasis added).

[4]Division 2, entitled "Enforcement of Money Judgments" consists of Code of Civil Procedure §§695.010 through 709.

[5]Chapter 1 of Part 5 of Division 3.6 of the Government Code, is entitled "Payment of Claims and Judgments Against the State."

[6]Article 1 of Chapter 2 of Part 5 of Division 3.6 of the Government Code is entitled "Payment of Judgments Against Local Public Entities."

Even assuming, arguendo, that at some point a backpay award constitutes a "judgment for the payment of money,[7] " Chapter 1 does not specify a rate of interest to be paid on such a judgment. Neither is there any case law specifically addressing the issue of the proper rate of interest to be applied to backpay awards rendered against state entities in light of the inapplicability of the interest rate set forth in Section 680.010.

The case of San Francisco Unified School District v. San Francisco Classroom Teachers Assoc. (1990) 222 Cal.App.3d 146, however, is instructive as it addresses the issue of the inapplicability of the interest rate set forth in Section 680.010 to backpay awards rendered against local public entities. In that case, a teacher's union had moved the trial court to assess interest on the judgments it obtained against a school district for backpay. The trial court had granted the union's motions at the rate of 10 percent a year. One of the issues on appeal was the propriety of the 10 percent rate of interest.

The court examined the language of Government Code §970.1, subdivision (b), which is nearly identical to the language in Section 965.5, subdivision (b). Section 970.1 provides:

> A judgment is not enforceable under Title 9 (commencing with section 680.010) of Part 2 of the Code of Civil

[7]See discussion, infra, p.9.

Procedure but is enforceable under this article after it becomes final.

The court held that since Section 970.1, subdivision (b) exempts local governmental entities from the provisions for enforcement of judgments in Code of Civil Procedure, Section 680.010 et seq., the 10 percent interest rate provided in Section 680.010 was inapplicable to the award of backpay assessed against the school district. The court specifically noted:

> Although there is no indication in the legislative history of any intent to exclude public entities from the statutory scheme governing interest on judgments, that appears to be the effect of the plain language of Government Code section 970.1, subdivision (b). Id. at p. 151.

The court then looked to article XV, section 1 of the California Constitution for guidance. Article XV, section 1 provides:

> The rate of interest upon a judgment rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum...In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the state shall be 7 percent per annum.

Citing Harland v. State of California (1979) 99 Cal.App.3d 839, 842-848, the court held that article XV, section 1 mandates postjudgment interest, that public entities are not excluded from the mandate, and that the interest begins to accrue when the

judgment is entered.[8] Since the legislature had not enacted a statute governing the interest rate in a case of the type before the court, the court concluded that interest should be calculated at the rate of 7 percent. [See also Union Pacific Railroad Co, v. State Board of Equalization (1991) 232 Cal.App.3d 983, 1007 (finding Government Code §970.1 (b) exempts local public entities from Code of Civil Procedure §680.010 and that a 7 percent interest rate applied, per article XV, section l of California Constitution.)]

Since the language of Section 965.5, subdivision (b) tracks that of Section 970.1, we find the rationale set forth in San Francisco Unified School District as to the inapplicability of the interest rate set forth in Section 680.010 to be persuasive. The question of the applicability of the court's analysis of article XV, section 1 to the issue before us is somewhat less clear, both because the article specifically refers to court judgments and because the article has been specifically interpreted as referring to postjudgment interest.

In Sandrini Brothers v. Agricultural Labor Relations Board (1984) 156 Cal.App.3d 878, the Agricultural Labor Relations Board

[8]The court recognized that the holding in the case of Morris v. Department of Real Estate (1988) 203 Cal.App.3d 1109, that the constitutional provision does not create an entitlement, but merely sets a ceiling on the post-judgment rate, is contrary to Harland, but held that the case before it was governed by Harland rather than Morris.

(ALRB) had rendered a backpay award and had computed interest at a rate exceeding 10 percent.[9] The employer challenged the rate of interest, contending that the ALRB's order violated the 10 percent and 7 percent limitations on interest rates set forth in article XV, section 1 of the California Constitution.

The court in Sandrini, noting that the constitutional language, by its terms, refers to "a judgment rendered in any court in this state," held:

> A board, such as the ALRB, is not a "court" in the normal usage of the term. The Board is an administrative agency over which appellate courts exercise original jurisdiction in a proceeding in the nature of mandamus. [citation omitted]. It has promulgated its own procedural rules in the form of regulations [citation omitted]; it is not bound by the provisions of the Code of Civil Procedure. Its orders are not "judgments" in the normal sense of the word, for they must be enforced by a superior court under the last paragraph of Labor Code section 1160.8. Id. at pp. 882-883.

After setting forth several other reasons to support its determination that an ALRB order is not in the nature of a judgment, and citing precedent for rejecting any analogy between backpay awards and money judgments [Perry Farms, Inc. v. Agricultural Labor Relations Board (1978) 86 Cal.App.3d 448, 464], the court upheld the ALRB's Lu-Ette Farms formula for computing

[9]The ALRB computes interest on its awards in accordance with its decision in Lu-Ette Farms, Inc. (1982) 8 A.L.R.B. No. 55. In that decision, the ALRB adopted the interest rate formula used by the National Labor Relations Board (NLRB). The interest rate is that charged or paid by the Internal Revenue Service on delinquent or overpaid taxes.

interest on its own awards, notwithstanding the fact that the formula yielded an interest rate exceeding 10 percent.

The court further held, however, that once a court order is obtained, or upon enforcement by an appellate court, the backpay award becomes vested with enough attributes of a judgment so that the constitutional rate should apply. Thus, the court concluded, the Lu-Ette Farms rate of interest should be applied up until the time of compliance or a superior court enforcement order is obtained or the award is enforced by an appellate court. Thereafter, the legal rate should apply to the sum of the backpay award and accrued interest. (Id. at p. 889). The court concluded, without further explanation, that the "legal rate" was 10 percent.

We find the Sandrini analysis persuasive in most respects. Like the ALRB, the SPB is a quasi-judicial agency that is not bound by the Code of Civil Procedure, but is governed by its own procedural statutes and regulations. Further, enforcement of a Board order may be accomplished through the Board's application to the superior court for an order compelling compliance. (Government Code §18710). Thus, we conclude that while a court may be bound to apply the constitutional rate of interest to a backpay award after an enforcement order is obtained or after judgment is rendered on a petition for writ of mandate, the Board itself is not bound by the interest rates set forth in the California Constitution in assessing interest on its own awards.

Notwithstanding the unsupported conclusion in Sandrini that the legal rate is 10 percent, we find the rationale set forth in San Francisco Unified School District, supra, supporting use of the 7 percent rate once a backpay award becomes a judgment, more persuasive. In enacting Code of Civil Procedure §685.010, the legislature "set the rate of interest upon a judgment rendered in any court of this state" pursuant to article XV, section 1 of the California Constitution. Since Section 685.010 is inapplicable to judgments against state agencies [Government Code §965.5 (b)], and since there appears to be no other applicable statutory rate of interest, the constitutional default rate of 7 percent would apply under the rationale of San Francisco Unified School District, supra, [See also Union Pacific Railroad Co. v. State Board of Equalization (1991) 231 Cal.App.3d 983 at 1007.]

Having concluded that the proper postjudgment interest rate is 7 percent for court ordered backpay awards, we note that at least one court has recognized the irrationality of determining the rate of interest based on whether the backpay was rendered in an administrative proceeding as opposed to a judicial one. (See Goldfarb v. Civil Service Commission (1990) 225 Cal.App.3d 633). We do not believe the amount of interest payable on a backpay award should be dependent upon whether an employee is vindicated before the State Personnel Board or in court after having filed a petition for writ of administrative mandate. Neither should the fact that

the constitutional provision deals with postjudgment interest only steer us away from reliance on the guidance provided by the constitution. Government Code §19584 makes no distinction between prejudgment and postjudgment interest. Assuming the constitutional provision sets the postjudgment interest rate at 7 percent on all backpay awards rendered pursuant to Section 19584, we see no reason that application of the same rate of interest for the period of time between the date of the initial deprivation of salary to the date of judgment would not be "just and proper."

We therefore determine that 7 percent is a "just and proper" rate of interest to be applied to all orders of the Board pursuant to Government Code §19584 rendered on or after the date this decision becomes final.[10] We make this determination prospective only in that there is currently no law that clearly governs the rate of interest to be applied to backpay awards rendered by the Board, and in that a 10 percent rate has been relied upon by the parties and the Board in the conduct of its business for many years. Furthermore, there is ample precedent to support the Board's position that changes in interest rates should be given prospective effect only. Hersch v. Citizens Savings & Loan Assn. (1985) 173 Cal.App.3d 373; 66 Ops. Cal. Atty. Gen. 217 (1983).

[10]Since the backpay award in the instant case was rendered prior to the date this decision becomes final, the interest rate should be computed at 10 percent in accordance with the Board's past practice.

ORDER

Upon the foregoing conclusions of law, it is hereby ORDERED that:

1. The interest on the backpay award at issue in this case is set at 10 percent;

2. The interest rate on backpay awards rendered on or after the date this decision becomes final is set at 7 percent;

3. This opinion is certified for publication as a Precedential Decision (Government Code §19582.5).

THE STATE PERSONNEL BOARD*

Richard Carpenter, President
Alice Stoner, vice President
Lorrie Ward, Member
Floss Bos, Member
Alfred R. Villalobos, Member

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on March 8, 1993.

GLORIA HARMON
Gloria Harmon, Executive Director
State Personnel Board