

Recent Cases from the Court of Appeal Construing Section 1759

(In Reverse Chronological Order)

5. *Pegastaff v. CPUC*

236 Cal. App.4th 374 (2015), 2015 Cal. App. LEXIS 359 (*“Pegastaff I”*)

The Court of Appeal (First District, Division 2) affirmed the Superior Court’s dismissal of Pegastaff’s claims that it was injured due to a preferential contracting program established by PG&E which sought to comply with the requirements of General Order (GO) 156. GO 156 implemented PU Code sections 8281-8286 (“Article 5”) designed to encourage and develop the use of women, minority, and disabled veteran owned business enterprises (WMDVBE’s). The Superior Court determined that (1) Section 1759, denied it jurisdiction to review constitutional challenges to Article 5 because in doing so it could interfere with the Commission’s performance of its “official duties” and (2) it was without jurisdiction to hear a challenge to GO 156 because to declare it unconstitutional would annul an order of the Commission. Pegastaff argued to the Court of Appeals, that the Superior Court erred in both jurisdictional determinations because (1) the Commission’s “official duties” were not implicated in its cause of action and (2) Section 1759 does not address original claims for relief from the effects of GO 156. The Court of Appeals disagreed. The court reasoned that (1) so long as a law is validly enacted by the Legislature, any duties that a statute imposes on the Commission are “official duties” within the meaning of 1759, and (2) the Superior Court is without jurisdiction to interfere with the duties which the statute imposes on the Commission. The court also determined that Pegastaff could have sought relief from the Commission and must first exhaust its administrative remedies before seeking a judicial remedy. Though the Commission itself could not have declared Article 5 unconstitutional,⁶¹ the court stated that Pegastaff could have sought a ruling from the Commission declaring that PG&E had exceeded the mandate of GO 156, thus committing a constitutional violation. It would have then been within the scope of the Commission’s power to revise GO 156 to address its constitutional concerns.⁶² Lastly, the Court of Appeals disposed of Pegastaff’s contention that Section 1759 does not preclude original claims for relief, but only bars Superior Court review of CPUC orders and decision. It stated that: But even if we were to read “order” to mean only orders issued in judicial or quasi-judicial proceedings, section 1759 limits more than review of decisions and orders. It also prevents superior court from “enjoin[ing], restrain[ing], or interfere[ing] with the commission in the performance of its official duties, as provided by law and rules of the court.” The Court reached a different conclusion with respect to the action against PG&E. See *Pegastaff II* (Para. 3, *supra*).

⁶¹Article III, §3.5 of the California Constitution prevents the Commission from declaring a statute unconstitutional or refusing to enforce it because it is unconstitutional absent an appellate court decision so holding. See discussion at Para. 25 and 58.

⁶²Citing *Regents of Univ. of Cal. v. Public Employment Relations Bd*, 139 Cal. App. 3d 1037, 1042 (1983), and *Cumero v. Public Employment Relations Bd.*, 49 Cal. 3d 575, 583 (1989), the court reasoned that the Commission, “still remained free to interpret the existing law in the course of discharging its statutory duties” in light of constitutional standards.