

Third District Decides Governor Exceeded Powers on Cal-OSHA

BY SIGRID BATHEN
RECORDER CAPITAL CORRESPONDENT

SACRAMENTO — Democratic legislative leaders Tuesday called a Third District Court of Appeal decision reinstating California's embattled Cal-OSHA worker safety program "an overwhelming defeat" for Republican Gov. George Deukmejian.

Deukmejian, who tried to eliminate the program with a budget veto that took effect in July, announced Tuesday that he would appeal to the state Supreme Court.

He earlier expressed frustration with the decision. "This shows how difficult it is in government to get rid of anything,

even if it is duplicated," Deukmejian said. "It's almost impossible to end things, despite the fact that taxpayers are paying for the program at the federal and state level."

Democratic leaders, who urged him to extend a scheduled special legislative session so that the budget for the state Occupational Health and Safety Administration (Cal-OSHA) can be restored, said they might seek a contempt citation against the governor if he appealed to the California Supreme Court.

In a 60-page ruling with the concurrence of Presiding Justice Robert Puglia and Justice Keith Sparks, Justice Coleman Blease wrote that Deukmejian ex-

ceeded his authority when he earmarked as Cal-OSHA funds the \$7 million that he vetoed from the \$140-million state Department of Industrial Relations budget and declared that the program was abolished.

The appellate court said the possibility that the federal government would preempt Cal-OSHA's jurisdiction — a move planned by the governor — necessitated a prompt decision.

"This invocation of concurrent federal jurisdiction presents a genuine prospect that federal pre-emption of Cal-OSHA may be forthcoming absent an expeditious resolution of this controversy,"

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the court said. "Moreover, expedition will prevent frustration of the relief we will grant by minimizing the loss of Cal-OSHA personnel to permanent commitments to other employment. Accordingly, this decision shall become final immediately."

"Obviously, I'm disappointed," said Ronald T. Rinaldi, Deukmejian's director of the state Department of Industrial Relations and a defendant in the successful suit by California Rural Legal Assistance (CRLA), which represents farmworkers. "We've maintained that the governor acted properly and within his authority."

Deputy Attorney General Alan Ashby, whose office defended the governor in the suit, said representatives of his office were meeting with the governor's legal staff Tuesday afternoon, presumably to decide whether to appeal the decision.

"I don't think that [an appeal] would surprise anyone," Ashby said. "It is the client's option."

CRLA general counsel Ralph Abascal, who filed the suit in behalf of farm workers and other laborers, said he was delighted. "It's the decision I expected," he said, "but I didn't expect it to be made effective immediately."

He said Deukmejian is governed "more by his viscera than by his cerebellum" if he chooses to appeal.

Abascal conceded that Deukmejian had authority to veto the \$7 million. But Abascal contended that the cuts should be spread among all of the 10 programs operated by the Department of Industrial Relations, rather than taken only from Cal-OSHA.

The court agreed with that argument in its order to reinstate the program, saying

that "repeal of existing statutes by fiscal strangulation in the budget bill is an extraordinary and constitutionally suspect mode of procedure.

"What may be reduced or eliminated [by a governor's veto] is quite obviously a dollar amount. It makes no sense to say that a purpose may be reduced," the ruling said. "Thus the governor's actions in reducing or eliminating a dollar amount leave intact the language by which the purpose for the appropriation is declared."

The governor pursued the dismantling of Cal-OSHA in the face of strong criticism from labor, the business community, legislators other state officials.

Assemblyman Richard E. Floyd, D-Lawndale, chairman of the Assembly Labor and Employment Committee and an outspoken critic of the governor's action, denounced the governor. Floyd said legislative leaders "will not hesitate to seek a contempt citation" against the governor if he fails to follow the court's order.

"No sitting governor has ever been found in contempt of court," Floyd said. "Such an event would have grave constitutional consequences which we would all hope to avoid. The bottom line is whether Deukmejian will be a law-and-order governor when the law issues an order against him."

Floyd said if the governor decides to appeal to the California Supreme Court, such action "would constitute the same kind of delaying tactics which Deukmejian condemns when employed by lawyers representing condemned criminals."

"Make no mistake," Floyd added, "Deukmejian has mutilated Cal-OSHA. Even in the best circumstances, it will take months or even years to bring Cal-OSHA back. If Deukmejian were to comply with the court order in good faith, he would extend next month's special session of the Legislature to include restoration of Cal-OSHA so that we can immediately put the people and the budgets back in place to run the program."

Floyd said the labor committee will hold hearings Nov. 19 in San Francisco to restore the program's budget and personnel.

State safety standards under the act are regarded widely as superior to federal standards, which Deukmejian said were sufficient to protect worker safety when he eliminated the state program from his proposed budget last spring.

Although federal authorities assumed "concurrent jurisdiction" over the state program at the governor's request, they awaited the resolution of various court actions before assuming final authority.

In another action, a federal district court judge twice this month blocked permanent federal takeover of the state program until the issue is resolved in state courts. A Sacramento Superior Court judge also ruled last spring that the governor acted illegally, but the judge said he had no authority to tell Deukmejian what to do. A San Francisco Superior Court judge ruled in favor of the governor in another suit.

While the court battles were fought, Cal-OSHA was decimated as a state agency, with only a fraction of its 500-plus employees remaining and many of its field offices closed. Deukmejian removed funding for all but the "public sector" portion of the program, which is a minor part of Cal-OSHA's responsibilities.

The appellate court Tuesday issued a peremptory writ of mandate directing Rinaldi "to allocate funds from the items of appropriation for the [Industrial Relations] Department from the Budget Act of 1987 to enforce Cal-OSHA." The court apparently relied heavily on a recent California Supreme Court decision that

Deukmejian did not have the authority to veto a section of a 1984 budget "trailer bill." The court also ruled that the trailer bill procedure violated the constitutional requirement that a bill contain a single subject.

Deukmejian eliminated Cal-OSHA by blue-penciling its \$8-million annual appropriation in the 1987-88 budget beginning July 1, and requesting federal takeover of OSHA responsibilities by the U.S. Department of Labor.

Although the Legislature restored the state funding in the budgetary process, the governor responded with a line-item veto, leaving \$1 million for public-sector enforcement and transition expenses. In that way, he effectively eliminated OSHA by cutting \$7 million from the Industrial Relations budget and stating that the remaining money not be used for private-sector Cal-OSHA enforcement — a tactic which CRLA successfully challenged in its suit.

Although there has been widespread criticism of the governor's action, the Legislature was unable to muster the necessary two-thirds vote to override the budgetary veto. The appellate court said he did not have the authority to veto because elimination of the program required legislative concurrence.

"What this suit really was about is the separation of powers," Abascal said. "The governor has usurped the Legislature's prerogative by legislating through the blue-pencil."

The CRLA lawsuit was filed in July when the cuts took effect.

Abascal said appellate court decisions generally are not effective for 40 days — to give the other side a chance to appeal — while Tuesday's decision is effective 10 days from the time it was issued.

Abascal said "there is enough sponge" in the Department of Industrial Relations budget to absorb the Cal-OSHA reinstatement, which he said will receive "considerable legislative oversight until this is resolved," as well as concurrent federal OSHA jurisdiction for the next three years.