Sakuma v. Borja, 11 ROP 286 (Tr. Div. 2004)

TADASHI SAKUMA and PAUL UEKI,
Plaintiffs,

v.

SANTOS BORJA, in his capacity as Chairman of the Palau Election Commission, and PALAU ELECTION COMMISSION,
Defendants.

CIVIL ACTION NOS. 04-242 & 04-243

Supreme Court, Trial Division
Republic of Palau

Decided: September 29, 2004

ARTHUR NGIRAKLSONG, Chief Justice:

Plaintiff Tadashi Sakuma is the current elected Governor of Ngaraard State. Plaintiff Paul Ueki is an elected member of the Koror State Legislature. Defendants are Mr. Santos Borja in his official capacity as Chairman of the Election Commission and the Commission itself. ⊥287

Plaintiff Sakuma filed his petition with the defendants to run for the House of Delegates of the Olbiil Era Kelulau (OEK) in this coming November election. Plaintiff Ueki at a different time filed his petition to run for the Senate of the OEK.

Defendant Borja informed both plaintiffs at different times that they would have to resign from their respective office within 14 days from their filing to run. Plaintiffs were further informed that their failure to resign would render their petition to run invalid and their names would not appear on the ballot. Refusing to resign their current elective office, the plaintiffs filed this suit. Before the court are the parties' cross-motions for summary judgment which the court heard on September 28, 2004.

Defendants state that the basis for their decision is provided in the statute as follows:

> An *employee* of the national government covered under the National Public Service System Act, or of the state governments, or their agencies, shall not:
>
> (a) use his official authority or influence for the purpose of interfering with or affecting the result of any national election; or
>
> (b) accept the nomination and become a candidate for any elective office in the national government without resigning from his job within 14 days of the filing of nomination papers making him an official candidate for any elective office in the national government.

23 PNCA 1104 (emphasis added). Defendants then argue that the rationale behind the statute is to protect the efficiency and the integrity of the public service system as well as to ensure that officeholders do not abuse their current position or neglect their duties while aspiring to (running for) higher or better elective office. Plaintiffs argue that they are not "employees" under the statute, and if they are deemed as such, then the statute is unconstitutional. Given that there are only days before the ballots are going to be printed, the Court issues this order now, and a fuller decision will follow which will deal with the other issues raised by the parties, including constitutional issues.

The Court believes that the plaintiffs, elected officials of the State Government, are not "employees" under the statute. The word "employee" is defined as a "person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." *Black's Law Dictionary* 543 (7th ed. 1999). Applying this definition to Governor Sakuma and Legislator Ueki, the obvious difficulties would be to find the "contract of hire," expressed or implied, and the "employer" who has the right "to control the details of (their) work performance." An argument, however, could be made that the people of Ngaraard and Koror States are the plaintiffs' "employers" under the definition. Such reading of the word "employer" would go beyond the common meaning of the word, especially when it is used in the context of public service statutes. The Court believes the definition applies to the public service employees and not the plaintiffs, who are not "employees" under the statute.

⊥288

Accordingly, the Court concludes that the statute relied upon by the defendants does not apply to the plaintiffs. Defendants are ordered to print the names of the plaintiffs in appropriate places on the ballots for the November election.

Finally, on the day of the hearing, September 28, 2004, plaintiff Ueki filed a motion to amend his pleading to essentially have another ballot placement "lottery" which decides the order of candidate's name on the ballot for the Senate race. This has already been done and the campaign has begun with candidates' designated number on the ballot. The Court denied the motion because evidence would be required to show advantages of certain places on the ballot before the Court can decide the motion. Counsel for Ueki admitted that he will not be able to produce such evidence. The Court also believes that to do another "lottery" would be unfair for the 21 senatorial candidates whose campaigning has included their designated number on the ballot.