

In the **Judicial Board** of the Undergraduate Students Association
of UCLA

LIPKIN & HUDDY vs. ROTH

Decided 25 November 2008

CHIEF JUSTICE NGUYEN delivered the majority opinion of the Board

Petitioners Boris Lipkin and Addison Huddy filed against USAC Facilities Commissioner Galen Roth alleging a violation of recently updated ASUCLA USA Bylaw Article IV, Section E.2.b., that “Elected USAC Officers, Program Directors and Project Directors shall be ineligible to be members of [the Office Space Allocation Committee],” after Roth had presented a set of OSAC guideline changes to council, which the council did approve. The petitioners also contested that, using Article IV, Section E.3.a, which states that one of the responsibilities of the OSAC is that it “review[s] the OSAC Guidelines and, if necessary, recommend changes to the existing document,” Roth was ineligible to do so because she is not on OSAC. Petitioners also cited Article IV, Section E.4.a., which states that the responsibilities of the OSAC Chair include “present[ing] Committee guidelines to USAC.” The Petitioners argued that because Roth is an elected official, she is not eligible to be apart of the OSAC Committee and because she is not the OSAC Chair, she could not present OSAC Guideline changes to Council. Roth argued that her actions were legal because under the previous (and no longer in effect) Bylaw Article IV, Section E, 1, it states that “The Facilities Commissioner shall chair the OSAC,” and she was not made aware of the revised bylaws. Though the petitioners did make a sound argument in their petition and though the Judicial Board agrees that had Roth proposed the guidelines changes in her capacity as Facilities Commissioner, she would have been doing so illegally, it is only because Roth is a member of the Constitutional Review Committee (CRC), which can, under Article IV, Section D.3.a “review and, if necessary, recommend changes or additions to the Constitution,

Bylaws and Election Code of the Undergraduate Students Association Council” that she was able to propose these changes. Although the Judicial Board agrees with the Petitioners in that the OSAC is an independent body, it is still within the jurisdiction of the USAC, and thus constitutionally, the CRC does have the ability to recommend changes to OSAC Guidelines.

An important part of Roth’s case was that she was not made aware of the bylaw changes, which had previously stated that Facilities Commissioners chaired the OSAC, while the current bylaw says that elected officials cannot even serve on OSAC. She, and other council members, testified that the bylaws with which they follow are the ones posted on the USAC website, which currently shows the outdated bylaws. Student Union Director Roy Champawat, in a brief presented to the Judicial Board, said that “the information regarding the Council’s vote in the 2006-07 term to amend the bylaws related to OSAC was not uncovered until October 17, 2008 or the subsequent week. It was not reflected in the USAC Bylaws posted on the website.” He said that this is due to administrative error. These changes were not available publicly, as before they were uncovered by Champawat, they were in an inaccessible obscure place. The majority of the Judicial Board believes that despite council being unaware of the newly revised bylaw, this does not mean that this bylaw did not exist and that it was not in effect for the reason being that according to Robert's Rules of Order, by-laws come into effect immediately after their passage. However, even though Roth, in her capacity as Facilities Commissioner, cannot do any actions pertaining to the OSAC, the Judicial Board cannot reprimand her for not knowing these changes.

Roth never denied that she had suggested guideline changes to the OSAC guidelines. However, Roth did not present the guideline changes as a result of her position as Facilities Commissioner, but she did so as a member of the CRC. OSAC was created by USAC and falls under USAC’s jurisdiction. When the CRC deems it necessary, the CRC may propose changes to

the Constitution and Bylaws, which includes OSAC guidelines. OSAC Guidelines are of the same kind, class or nature as the Constitution, By-Laws and Election Code and thus can be applied to Article IV, Section D.3.a. Further, OSAC Bylaws Article IV, Section E, 3a and 4a are not strongly worded enough to disallow the CRC from making and presenting these guideline changes. Roth in her case also cited Article IV, Section D.3.c. which states that the CRC also “[carries] out any additional responsibilities delegated to it by the Undergraduate Students Association Council” and throughout her case had said that she had proposed these changes as a result of her being assigned that task by USAC. The USAC Minutes of September 15, 2008, state that “[Ex-Oficio Member Dr. Rick] Tuttle said [the revision of the guidelines] was tacitly delegated to CRC by council.” Also looking under the minutes of September 30th and October 21st in addition to the September 15th minutes, all discussion pertaining to OSAC and OSAC changes came under the heading of the CRC, and not under Facilities Commissioner-Galen Roth, as it would be had it been her own agenda. In her testimony, Community Service Commissioner Valerie Sien, also a member of the CRC, said that the process of making the changes was a “collaborative effort” of all the members of the CRC, which consists of Roth, Sien, and External Vice President Evan Schulman. Sien’s testimony shows that Roth was not acting alone in making these changes. As stated above, the Judicial Board believes that it is only as a result of Roth being a member of CRC that she was able to present these changes.

The Judicial Board would like to note that in the September 15th minutes, under the CRC headline, it states “[General Representative 3 Natalie] Gonzalez asked if these changes were under the jurisdiction of CRC. Roth said the members of OSAC can submit guideline changes, and Roth is the only member of OSAC at the moment.” The Judicial Board would like to stress that Roth is not and cannot be a member of the OSAC, as a result of her position as an elected

official, and that dealings within OSAC are not to be designated to a Facilities Commissioner. It is only because Roth was a member of CRC that she was able to legally propose the changes.

The Council approved the changes that Roth proposed on September 30, 2008 with a vote of 6-1-3. The changes needed a 2/3 majority to pass. The petitioners argued that the changes needed to pass with a 2/3 majority of all total members, meaning that abstentions should be included. Thus the changes would have been needed to be approved with at least nine votes, which did not occur. However, the USAC Constitution delineates the precedence of law as Constitution, By-Laws, and then policy of USAC. Because neither the Constitution nor Bylaws clearly define who 2/3 of voting members are, the Judicial Board decided that policy of Council took precedence. At the beginning of each term, the Council decides whether or not to include abstentions in their voting process, and this year's Council deemed that abstentions would not count.

The Judicial Board ruled that Roth never presented the changes in bad faith. In her own testimony, Roth said that there was "openness throughout the process," and that she proposed these changes because it was delegated to the CRC, of which she is a member. The changes she made were to better clarify the OSAC process for student groups. She was not aware of the new bylaws as she was preparing the OSAC guideline changes because they had not been available for public access nor were they ever made known to her, and the existence of revised bylaws was not made known to council until Champawat released it on October 21st.

Although Petitioners Lipkin and Huddy made a sound argument that Roth, as Facilities Commissioner, was not eligible to propose changes to OSAC guidelines, her position as a CRC member enabled her to do so. The majority of the Judicial Board agrees with the Petitioners in that the newly revised OSAC bylaws regarding elected officials being ineligible to be on OSAC

and thus not being able to propose or present guidelines changes were already in effect when Roth made OSAC guideline changes, as they had been approved by the 2006-2007 USAC Council. However, OSAC was created by USAC and comes under USAC's jurisdiction. Thus under Article IV, Section D.3.a, it was in Roth's, as a member of CRC, authority to make those changes. The Judicial Board unanimously agreed that Roth acted in accordance with CRC's bylaws. The Judicial Board also believes this case may have been averted if there was an OSAC and thus would like to see a fully functioning OSAC so that it can carry on with its duties.

CHIEF JUSTICE IRENE NGUYEN, ASSOCIATE CHIEF JUSTICE MICHAEL KELSO, and JUSTICE BRITTANI YRIARTE for the Board.

JUSTICE GOODARZI-PANAH, concurring

I join the judgment of the Judicial Board and agree with much that has been said in its Opinion. I write separately because I disagree with part of the Board's decision. In the case of *Lipkin & Huddy v. Roth*, the Board had a determination to make when deciding the case. Petitioners Lipkin & Huddy filed petition against Facilities Commissioner Roth alleging an abuse of power. For a more in-depth review of the case, refer to the Opinion of the Board by Chief Justice Irene Nguyen. The instance that I disagree with the Judicial Board is in the determination of whether the collected bylaws by Roy Champawat were in effect at the time petitioners filed suit against Commissioner Roth. It is the opinion of the Board that the bylaws presented to Undergraduate Students Association Council (USAC) by Roy Champawat, bylaws which he collected from the 2006-2007 USAC minutes, were in effect when petitioners filed suit. It is here that I disagree with the majority opinion of the Judicial Board.

Whenever a legal body votes to approve of a set of proposed changes to the law, the proposed changes then replace the preexisting law. This set of new laws is then enforced appropriately by the legal body. In this instance, we have a disconnect with the case of *Lipkin & Huddy v. Roth*. When the 2006-2007 USAC voted to approve new bylaws, specifically changes dealing with the operation of Office Space Allocation Committee (OSAC), those new bylaws never replaced the 2005-2006 bylaws because the USAC bylaws document itself was never updated to reflect the new changes by the 2006-2007 USAC. Whenever USAC refers back to its own bylaws, it does so by obtaining the bylaws from the Undergraduate Students Association website because that is where they are made publicly available. The bylaws on the USA website were last updated in 2005. Even the 2007-2008 USAC would refer back to the 2005 bylaws which were the only bylaws available. It is then the case that the 2007-2008 USAC was operating under the 2005 bylaws, making it their own legal convention. As mentioned earlier, a

set of laws is enforced when those laws are available to those enforcing the law. It is then the case here, that Council was not enforcing the bylaw changes proposed in 2006-2007, effectively making those changes null and void. Council was operating under the 2005 bylaws, making those bylaws their legal convention. It is the 2005 bylaws that Council was enforcing, not the updated bylaws which Roy Champawat would later obtain for Council. Various Council members had commented that they believed the bylaws had been changed since 2005, yet the bylaws on the USA website were those 2005 bylaws and since Council was not aware of which portions of the 2005 bylaws had been altered, they continued enforcing the statutes in the 2005 bylaws. In essence, the 2006-2007 USAC had created phantom bylaws, which existed yet were not being enforced. It was after the hard work of Roy Champawat and Student Support Services who collected previous Council minutes, that they were able to clarify specific portions of the 2005 bylaws which had been updated. Council then voted and “reaffirmed” that previous Councils had made changes to the bylaws since 2005. It was after this vote of “reaffirmation” that Council could enforce the changes made by the 2006-2007 USAC, because the bylaws document had been updated to reflect the changes, which means that Council has changed its legal convention.

JUSTICE AMIR P. GOODARZI-PANAH concurring.