ASUCI JUDICIAL BOARD

Judicial Board Ruling

Nakamoto, et. al. v. ASUCI Elections Commission

Case #: JB-045-A02

Petitioned: 4/26/2010; Heard: 5/4/10 Decided: 5/5/2010

Chief Justice Dircks delivers the opinion of the Judicial Board, in which Justice Brown, Jain, Komeili, Plassaras, Dye, and Kunitskiy joined.

The matter brought before the Judicial Board in this case is an appeal from the petitioners Kirk Nakamoto, Ali Jangbarwala, Calvin Sung, and associates contesting multiple decisions made by the Associated Students of the University of California, Irvine Elections Commission. The petitioners contend that the Elections Commission incorrectly ruled on the complaints filed in Nakamoto v. Grace Poon and Jangbarwala v. Poon, as well as erring in the decision to dismiss Mr. Sung's complaint against Ms. Poon. The petitioners ask for the decisions of the Elections Commission to be overturned and that the Judicial Board grant remedy on the basis of its findings, including a "joint decision" as to the validity of the Elections Commission decision and as to a review of the evidence previously presented and the applicability of the relevant rules.

The petitioners argue that the decisions of the Elections Commission should be invalidated because proper procedure was not followed. The petitioners argued that the business the Elections Commission conducted was improper and invalid, including the evidentiary hearings they held and the decisions they made. According to the petitioners, the Deputy Elections Commissioners were never nominated and approved by Legislative Council, thus could not serve in an official, *legitimate* capacity. The Judicial Board agrees with this claim brought forth by the petitioners on this issue. Article IX, Section A, Clause 1 of the ASUCI Constitution requires that:

> "The Elections Commission shall be chaired by the Executive Vice-President and shall consist of the Elections Commissioner and three (3) Deputy Commissioners, nominated by the Executive Vice-President and approved by a majority vote of all the voting members of the Legislative Council present."

Additionally, Article XII, Section A of the ASUCI Elections Code reiterates this requirement:

> "The Elections Commissioner and the Executive Vice-President shall recommend three (3) Deputy Elections Commissioners to the ASUCI Legislative Council for approval including a Deputy Elections Commissioner for Compliance, a Deputy Elections Commissioner for Publicity, and a Deputy Elections Commissioner for Logistics.

The governing documents are explicit as to the proper process for the selection of members of the Elections Commission. The Commissioner and Deputy Commissioners *must* be nominated by the Executive Vice-President and approved by the Legislative Council. For the Spring 2010 Election this did not occur. R45-36 was legislation that was approved by Legislative Council for the nominations of Carissa Cruz, Sonia Park and Mark Francisco to the roles of Deputy Election Commissioners. This however, was only and explicitly for the Fall 2009 Election. No such legislation was ever introduced for the Deputy Election Commissioners for the Spring 2010 Election. The Executive Vice-President did not neglect either time to nominate the Elections Commissioner, Mr. Kim, as R45-60 confirmed he be the Elections Commissioner for the Spring 2010 Election, but no such effort was made for the Deputy Elections Commissioners. Whether this was a simple mistake or not, this cannot go ignored by the Judicial Board. While the Judicial Board realizes that the individuals acting as the deputies may be competent individuals, it does not legitimize their positions. The process followed was not proper, and the

violation of our governing documents requires the Judicial Board's consideration. The capacity in which the Elections Commission was making official decisions was undermined, not by their own actions or any questionable actions they took, but rather the basis in which they officially acted upon. Three of the five members of the Commission were not official members, casting a shadow over the legitimacy of the Commission and the decisions they make.

For this reason, and failure to follow the governing documents, the Judicial Board has set aside the official decisions made by the Elections Commission regarding the complaints at question. The Judicial Board finds it necessary for the sake of proper procedure to be followed, that we determine the outcome of the hearing on our own accord. However, the Elections Commission acted in *good faith*. The actions in itself of the Elections Commission were not procedurally improper. The evidence the Commission collected and the hearings conducted were not marred further improper procedure. Because of this, and due to the fact that both the petitioners and respondents agree that a rehearing is not necessary, the Judicial Board does not believe further litigation on the matter is needed. The Judicial Board deems it proper to adopt the proposal by both parties of a "dual decision," having rule on both the legitimacy of the Elections Commission decision and then making a decision as to the evidence and application of the relevant governing rules regarding the events brought forth in the complaints.

Although the decision of the Elections Commission has been set aside due to the lack of official capacity of its members, the facts presented to the Elections Commission and the evidence the Commission presented in its decisions is not invalid. The petitioners agree, and admit that they were not submitting any new evidence at the hearing and both parties suggest that the evidence accepted by the Elections Commission and used to render its decisions were correct. The evidence rejected by the Elections Commission, was rightfully excluded. Without corroborating evidence, neither the Elections Commission, nor the Judicial Board can accept hearsay evidence and use it against Ms. Poon (or any individual). Although there appeared to be ambiguity and different stories as to the events in the LARC sessions, the facts established by the Elections Commission are what the Judicial Board applies to the relevant governing documents and rules.

The complaint brought forth by Ali Jangbarwala against Grace Poon need not be addressed further by the Judicial Board, as the petitioners did not address it in their arguments. The facts and applicable rules in the case do not warrant any action taken against Ms. Poon, and she is cleared of all charges in the complaint by Mr. Jangbarwala.

The complaint brought forth by Mr. Nakamoto and Mr. Sung address the events that took place in a LARC study session. The petitioners claim that Ms. Poon had committed multiple violations of UC Irvine Housing Policy, Conduct Policy, and the ASUCI Elections Code. The Elections Commission found that she did not commit any violation of the rules given the evidence, but we have set aside the official decision by the Elections Commission and we are to apply the facts to the relevant rules, still using the evidence and facts presented in the Elections Commission decision. The first claim the petitioners make is that Ms. Poon was in violation of the Policy on Student Conduct and Discipline. Specifically, the petitioners claim, that Ms. Poon was in violation of Section 102.13, which states:

> "Chancellors may impose discipline for the commission or attempted commission (including aiding or abetting in the commission or attempted commission) of the following types of violations by students, as well as such other violations as may be specified in campus regulations:…Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other University activities."

Ms. Poon was working in her capacity as a LARC tutor for Math 2A, tutoring at the 4:00pm session, when Chris Koo came into the class late. At this time, there was a described "lull in the class period," and Ms. Poon asked Mr. Koo if he had voted. Mr. Koo responded that he was going to vote for Jun Wang, but

Ms. Poon still offered Mr. Koo an opportunity to vote, which he did on the laptop. The petitioners contend that asking individuals to vote during this time constitutes an "obstruction or disruption of teaching." While Ms. Poon was teaching, the time that individuals took to vote in this specific incident does not constitute such obstruction or disruption. At the very most, it constitutes an interruption, which Ms. Poon was not responsible for, as Mr. Koo arrived late to the LARC session himself. A mere interruption of teaching does not constitute a violation of Section 102.13 of the Policy on Student Conduct and Discipline. Ms. Poon must not be held responsible as to this claim. Additionally, LARC has no implemented policies that prohibit tutors asking tutees to vote in ASUCI elections.

The petitioners further claim that Ms. Poon was in violation of UCI Housing Policy, and point to Paragraph 26 of the policy. Paragraph 26 addresses posting and solicitation, and places such limits upon it in campus housing. Middle Earth, where the LARC sessions taught by Ms. Poon were being held, is an on-campus housing community that is subject to UCI Housing Policy. However, we find that UCI Housing Policy is not applicable to the case at hand. Although the room used by LARC is in Middle Earth Housing, Ms. Poon was confined to the room that was booked by LARC; and there is no evidence or complaints that state Ms. Poon did otherwise. Lacking evidence that shows Ms. Poon attempted to solicit votes by going into the dorms, commons, or approaching those who lived in Middle Earth, we cannot hold Ms. Poon in violation of Paragraph 26 of the UCI Housing Policy. Being within the strict confines of a LARC session, UCI Housing Policies do not have applicability to the actions done within those sessions, even though the physical location was within Middle Earth.

Finally, the petitioners state that Ms. Poon violated the Elections Code by being in violation of Article XVIII, Section B, which states: "Candidates are prohibited from soliciting votes inside and within fifty (50) feet of any unofficial polling location." An unofficial voting location is defined by the Elections Code as including "any computer labs or study areas with computers on campus." Additionally, Article XXI, Section B states that those in violation of this provision are subject to censure or disqualification. It is the contention of the petitioners that the room where the LARC meets is a study room. The petitioners state that this room is treated as a study room by Middle Earth housing and operates as one, additionally there a laptops, thus meeting the criteria for an unofficial polling location. According to LARC, the room is a classroom and they had the room booked for the specific hours of 3pm to 5pm where Ms. Poon tutors.

The Judicial Board determined that the room in question was a classroom and not a study room, thus it cannot be defined as an unofficial polling location. The Board found this to be true because LARC had booked the room for these particular LARC sessions, and the capacity of the room was used as a classroom, rather than a study room. [I, as the Chief Justice, disagree and believe that the room in question is a study area, but nonetheless find this disagreement irrelevant to the conclusions in this case, as to which we unanimously agree.] The Judicial Board unanimously believes, even if the room in question is an unofficial polling location, there was no violation of the Elections Code. Article XVIII requires that the solicitation of votes occur. Ms. Poon merely asked students to vote in the ASUCI election. There is no evidence to show that she courted votes for herself as a candidate. The meaning of solicitation of votes under the Elections Code is to actively urge and ask other individuals to vote for his or her self, not merely asking students to participate in the Student Government electoral process.

The petitioners do indeed admit that Ms. Poon did not ever explicitly ask her tutees to vote for her, but the pressure and atmosphere that she created was conducive to doing so by suggesting students vote in her presence. While intended or unintended, this is may be true, but it is something the Judicial Board cannot gauge or determine. There is no evidence to suggest students felt compelled, coerced, or pressured into voting for Ms. Poon. It is a determination that this Judicial Board cannot make, especially lacking

evidence. These are valid concerns as to the capacity an individual may be acting in, such as a tutor; however, the Elections Code is also silent on this issue. The standard the Elections Code establishes is the solicitation of votes. Since the majority of the Board holds that the LARC classroom in question is not an unofficial polling location, and since the Board unanimously holds that no solicitation occurred, Ms. Poon is not in violation of this claim brought against her.

It is clear that the proper procedure to select the members of the Elections Commission was not followed. The three deputy commissioners were never nominated by the Executive Vice-President nor confirmed by the Legislative council for the Spring 2010 Elections. The petitioners highlight a great problem in ASUCI, that proper procedure is continually failed to be adhered to. A simple, specified process is made clear in our governing documents. These procedures are put in place to give members of ASUCI an opportunity to examine those who will be on the Elections Commission. The Legislative Council had the opportunity to do so with the Elections Commissioner, but never had the opportunity to review those serving as the deputy election commissioners for the Spring 2010 Election. The continual disregard for the procedure in this organization is troublesome and is why we have decided to review this merits of the case ourselves by setting aside the Elections Commission decision, not by fault of their own, but rather by the improper selection of the deputies. However, Ms. Poon cannot be held responsible solely for the fact that ASUCI failed to abide its own governing documents. It was our duty to review this case on its own merits, apply the evidence that was established to the relevant rules.

After applying the facts to the rules in question, there is no evidence to suggest that Ms. Poon was in violation of the Student Conduct Policy, Housing Policy or the Elections Code. We, the Judicial Board, find that Grace Poon is cleared of all charges and must not be held responsible. Grace Poon shall be allowed to continue her candidacy for ASUCI Student Services Vice-President.

The Judicial Board of the Associated Students of the University of California, Irvine, on this day, May 5, 2010, has ruled on this issue.

It is so ordered.

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Jeremy Dircks
Judicial Board Chair