

It all started innocently enough when an anonymous part time umpire was laid off from his regular job as an auto detailer. It was soon to become the pink slip heard 'round the Golden State, prompting three sports officials to begin ...

The Fight For Independence

by David Knopf

The umpire, a member of the Metropolitan Officials Association (MOA) in Santa Clara, Calif., filed a routine unemployment claim with the California Employment Development Department (EDD). When he was asked about any other sources of income, he mentioned that he umpired for MOA.

The wheels began turning in the spring of 1994 when an EDD interviewer advised the laid-off auto detailer to file unemployment claims against his employer and the officials association. The man was reluctant to file against MOA since it was his understanding — and the association's — that its members were independent contractors, not employees. The umpire had even signed an agreement with MOA stating such a relationship.

The EDD entered MOA in its computer and concluded — based on agency criteria — that the association maintained an employer/employee relationship with its member umpires. That decision left MOA liable for more than \$50,000 in back unemployment and workman's compensation taxes. Other associations were hit with similar assessments.

What had begun innocently had chilling implications for California's officiating community. Budgets, already stretched, faced a new financial burden that associations would have to pass on to their members and, eventually, to the colleges, school districts and rec leagues that used their officials.

The outlook was bleak when stockbroker Bob Summers, attorney Don Collins and athletic director Jim Jorgensen entered the picture.

The Choir Director

Summers was no stranger to officiating, or to the legislative process. Umpire-in-chief of Metro San Francisco for the Amateur Softball Association (ASA) and a member of the Northern California Umpires Association, Summers was the driving force behind California's 1991 adoption of assault legislation that protected the state's sports officials.

Shepherding the assault bill from rough draft to law provided Summers with more than personal satisfaction. It served as a road map when reports of EDD assessments began filtering in early in 1994. He decided to do something about it. Summers understood how the political process worked and knew how to muster support for legislation that affected officiating.

“Sports officials have never demanded much of anybody,” said Summers. “What I found out in the assault legislation was that these people in Sacramento really liked us, they liked what we do. We as officials needed to sing together.” Summers saw himself as choir director, a catalyst who could gather the voices of California’s officiating community and convince them to sing as one.

But he was concerned that the independent contractor/employee issue lacked the emotional appeal of the assault legislation. Despite the money at stake, he wondered if he could marshal the necessary support — particularly a letter-writing campaign to state legislators — to champion a bill that dealt with a complicated tax issue.

“My initial thought was that this was going to be much more difficult to get support for because of the dry taxation nature of it,” Summers said.

Fortunately for the officiating community, Summers’ fears were unfounded. Word of EDD assessments was spreading quickly in officiating circles around the state. A report on EDD’s involvement with the MOA in Santa Clara confirmed for Summers that the situation was, indeed, serious.

“There was a really mean-spirited comment made at that meeting (between MOA and an EDD auditor),” he said. “The auditor said, ‘Don’t worry, we’re going to get them all (officials’ groups).’ That’s what really got me thinking that we had a big problem on our hands.”

An Alliance Forged

About the time that Summers was wondering where the EDD issue was heading, a young San Francisco attorney was pondering the same question. Don Collins, a high school basketball official, also served as president of the Northern California Basketball Officials Association.

Collins had learned of EDD assessments through news reports. A Yale Law School graduate and former attorney for the United States Court of Appeals, Collins knew his way around a law library. He began researching the independent contractor/employee issue and found that a handful of states already had legislation in place that classified amateur sports officials as independent contractors.

Having learned of Summers’ activities through a mutual acquaintance, Collins gathered his legislative models and invited Summers to lunch. Collins’ impressive credentials and preparation convinced Summers that it was time for the men to join forces.

“He was a guy who was obviously passionate about officiating and sports in general,” said Summers.

Collins recalled Summers’ enthusiasm for the combined effort. “He was happy as hell and said, ‘This is what we need,’” Collins said.

The men agreed that state legislators, EDD officials and California’s officiating community needed to be better educated about the independent contractor/employee issue and the role sports officials play in amateur athletics. Based on his research, Collins told Summers that the effort would be particularly important in California since tax assessments had been levied against officiating groups rather than against state institutions, something that had been the case in several other states that already had legislation.

“The problem in California is we walked in as sports officials doing this, without the credentials of the state, opposing a regulatory agency,” Collins said. “We had to make it less of an officials’ issue and more of an issue that affected everyone, and that’s what it was.”

Summers realized they could only accomplish their goals through a focused effort. He would take care of legislative contacts and a letter-writing campaign and Collins would draft legislation and monitor events in the courts and in other states. But Summers’ experience with assault legislation convinced the two men that a project of this magnitude would require more help.

“I learned that the process was very, very time consuming, and if I was ever to do this again, I’d want a committee of people involved,” he said.

Enter Jim Jorgensen, the team’s man in Sacramento.

The Capitol Contact

Jorgensen had been a member of Summers’ team on the assault bill and was familiar with the capitol, a skill that would prove invaluable once the legislative process began and in-person appearances at committee meetings or legislator conferences occurred on short notice. Jorgensen would be the team’s local contact.

As athletic director for the nine high schools in the San Juan Unified School District and a former NASO board member, Jorgensen offered impressive officiating and administrative contacts. He’d officiated Division I basketball and still worked high school football. As commissioner of the Northern California Athletic Conference, an NCAA Division II league, Jorgensen was well-connected with college administrators and officials. He was also up to speed on the threat posed by EDD assessments.

Jorgensen learned of a \$200,000 assessment against the Sac-Joaquin Section of the California Interscholastic Federation (CIF) at a quarterly meeting chaired by section commissioner Pete

Saco. "It was like, 'Houston, we've got a problem,'" Jorgensen recalled. If unchallenged, EDD's assessment could impact the athletic budgets of Sac-Joaquin's 90 member high schools.

Saco explained that the EDD had based its assessment on a determination that Sac-Joaquin's organizational structure placed it in an employer-employee relationship with officials in the Northern California Officials Association (NCOA). As a result, Saco formed a restructuring committee to review other organizational models that would remove the section from tax liability. Jorgensen served on the committee and was versed in EDD issues when Summers called to see if he'd be willing to join the team.

"I said, 'Hell, it's really going big here in our area,'" Jorgensen said. The team was now complete.

Politicking and Legislative Reality

It was during the busy Christmas season that Summers, Collins and Jorgensen met for the first time with Tom Hannigan, a Democrat and then-majority leader of the state assembly. The meeting took place in Hannigan's district office in Fairfield and was the first step in a tedious process of political give-and-take. The legislator listened to the men's concerns, was brought up to date on legislation in other states and asked what Summers characterized as "some very good questions." Hannigan said he would research the issue further and get back in touch with the three men.

A direction for the proposed legislation began to emerge at a second meeting. "He wasn't willing to go along with a blanket bill that would just say amateur sports officials shall be independent contractors," said Summers. Hannigan, intimately aware of the political forces that shape legislation, was interested in a bill that would remove state agencies, as well as colleges and local school districts, from tort liability that would result if sports officials were defined as employees. Hannigan argued that if a sports official-as-employee were to be found negligent in a game situation that resulted in injury or death, potential damages could be disastrous for state schools or other public hiring bodies.

"In the law, if you're an employee, your employer is liable for any damage you're responsible for on the job," Summers said. Hannigan knew the state would be better served if sports officials were classified as independent contractors, but he opposed a bill that would be construed as an attack on the EDD.

"We sensed some reluctance and we discovered the source of that reluctance was political," said Collins. "He (Hannigan) didn't want to battle a state agency and wanted the changes accomplished behind closed doors."

To that end, a meeting was arranged within a month with the EDD's deputy director. In what proved to be a turning point in the legislative effort, Summers and Collins provided information

that brought the state agency into the officials' corner. Summers, careful not to place EDD on the defensive, explained how the officiating industry worked — the ins and outs of associations, assignments, supervision and payment.

"Summers made them realize we weren't bad guys and weren't trying to cheat anyone," Collins said.

Collins followed Summers' "Officiating 101" talk with the results of his legal research. His message was simple: Law in other states was on the side of officials-as-independent contractors.

"I think that's what the EDD needed," said Collins. "They needed someone to show them how we worked and they needed someone to show them the law was on our side. After being convinced, it was rather clear sailing and the EDD wanted to save face."

Cheers for the System

While Collins, Hannigan's staff and the EDD were ironing out the legal verbiage of the proposed bill, Summers, the choir director, was drumming up support. Through phone contact and speeches, the stockbroker/umpire was getting California's officials to "sing as one." That meant motivating them to write local legislators in support of the bill. "At that early stage, Summers was the most valuable person we had," Collins said.

The Summers-orchestrated letter-writing campaign paid off. California bill AB 1655, which safeguarded sports officials' independent-contractor status while protecting public employers from tort liability, won near unanimous support in the legislature. Remarkably, only one "no" vote was cast.

Final assembly approval came in May 1995. In September of that year, Hannigan wrote to Governor Pete Wilson to explain the intent of AB 1655 and to request the Governor's signature. Wilson signed the bill into law the next month.

In a nutshell, AB 1655 accomplished two things: It added sports officials to a list of exclusions from the state Labor Code's definition of "employee." The bill also spelled out an agreement in which the EDD agreed to adopt new regulations specifying the circumstances under which sports officials could be considered employees. The new regulations, adopted in July 1996, were developed with input from the sports officials themselves.

More than two years had passed from the time Summers, Collins and Jorgensen first learned of EDD assessments until the agency adopted new regulations. Their efforts may have saved California officials associations hundreds of thousands of dollars in assessments and legal fees.

"We're talking about special people, and for me it was a lot of fun," said Summers. "We're talking about something I'm passionate about: sports officials getting the treatment they deserve."

Thanks to his effort researching and drafting AB 1655, Collins has since gone on to build a reputation as a consultant on officiating law. And Jorgensen, the team's "man in Sacramento," continues to appreciate a system that rewards citizen participation.

"We just had a good feeling about the process," Jorgensen says of the team's effort to change state law. "That's just a warm feeling. Hey, it does work."

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