STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF YOUTH AUTHORITY), Respondent.	Case No. SA-CE-1201-S Request for Reconsideration PERB Decision No. 1403-S PERB Decision No. 1403a-S January 26, 2001

Appearances: Marcia Mooney, Senior Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Wendi L. Ross, Labor Relations Counsel, for State of California (Department of Youth Authority).

Before Amador, Baker and Whitehead, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by the California State Employees Association (CSEA) that the Board grant reconsideration of State of California (Department of Youth Authority) (2000) PERB Decision No. 1403-S (Youth Authority). In Youth Authority, the Board dismissed the unfair practice charge, which alleged that the State of California (Department of Youth Authority) (CYA or State) violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills

Act)[1] in various ways with regard to CYA employee Rosielyn Dyer-Browhaw (Dyer-Browhaw).

After reviewing the entire record, the Board hereby denies the request for reconsideration.

DISCUSSION

In Youth Authority, CSEA alleged that Dyer-Browhaw was discriminated against by CYA when it: (1) initiated an internal affairs investigation against her with insufficient justification; (2) failed to select her for promotion to a position of assistant principal; (3) denied her educational leave opportunities; (4) required her to receive permission from a co-worker to obtain classroom supplies; and (5) had insufficient justification to give her an annual review with low performance evaluation marks. After reviewing the entire record, the Board found that these allegations were without merit and dismissed all aspects of the charge and complaint.

CSEA then filed the instant request for reconsideration, offering "newly discovered evidence which was not previously available and could not have been discovered with the

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[1]The Dills Act is codified in the Government Code section 3512 et seq. Section 3519 states, in pertinent part:

> It shall be unlawful for the state to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

exercise of reasonable diligence." Specifically, CSEA offers letters written by managers of CYA which, it asserts, did not become available to CSEA itself until after the record closed in the underlying matter. CSEA further asserts that "due to the confidential and defamatory nature of the letters ... no amount of reasonable diligence would have made those letters available to Charging Party during the course of the hearing on the Unfair Labor Practice Complaint." According to CSEA, the administrative law judge (ALJ) would have made a decision in support of CSEA had he had access to the letters.

The State filed an opposition to CSEA's request for reconsideration, asserting that the newly discovered evidence does not satisfy the standard set forth in PERB's regulations.

In reviewing requests for reconsideration, the Board has strictly applied the limited grounds included in the regulation, specifically to avoid the use of the reconsideration process to reargue or relitigate issues which have already been decided. (San Bernardino Teachers Association. CTA/NEA (Cooksey) (2000) PERB Decision No. 1387a; Redwoods Community College District (1994) PERB Decision No. 1047a; State of California (Department of Corrections) (1995) PERB Decision No. 1100a-S; Fall River Joint Unified School District (1998) PERB Decision No. 1259a.)

CSEA offers new evidence in support of its request for reconsideration. PERB Regulation 32410[2] is quite specific regarding reconsideration requests based on offers of new evidence. It states, in pertinent part:

> A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not

[2] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

> previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

In a declaration attached to the request for reconsideration, Dyer-Browhaw states that she received the letters which constitute the purported "new evidence" on January 26, 2000, before the ALJ closed the record in her case. The request for reconsideration further states that Dyer-Browhaw did not forward copies of the letters to CSEA until after the administrative record closed on or about March 10, 2000. Plainly, these statements establish that the evidence was previously available.

The request for reconsideration provides an opportunity for CSEA to explain why Dyer-Browhaw's own delay in forwarding available documents that she believed to be helpful to her case renders those documents "unavailable"; CSEA has not done so. For this reason, the grounds in PERB Regulation 32410(a) are not met and the Board cannot grant reconsideration.[3]

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[3] The Board also notes that CSEA offered the same letters for the first time as an attachment to its statement of exceptions in Youth Authority. PERB Regulation 32300(b) provides that "Reference shall be made in the statement of exceptions only to matters contained in the record of the case." At that time, the letters were not part of the record.

Although PERB has authority to order the record reopened for the taking of further evidence (Reg. 32320(a)(2)), the standard to be applied is the same as that governing requests for reconsideration. (San Mateo Community College District (1985) PERB Decision No. 543 at pp. 2-3; see also, California State University (1990) PERB Decision No. 799a-H.) Thus, in offering the letters as part of its statement of exceptions, CSEA should have followed the process set forth in PERB Regulation 32410(a), including a declaration under the penalty of perjury which establishes grounds for consideration of the evidence. No such declaration was filed with the exceptions; hence, the letters were not considered by the Board in deciding Youth Authority.

ORDER

The California State Employees Association's request for reconsideration of the Board's decision in State of California (Department of Youth Authority) (2000) PERB Decision No. 1403-S is hereby DENIED.

Members Baker and Whitehead joined in this Decision.