

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



IRA WARDLAW,	)	
	)	
	)	Case No. LA-CO-738
Charging Party,	)	
v.	)	Request for Reconsideration
	)	PERB Decision No. 1219
SERVICE EMPLOYEES INTERNATIONAL	)	
UNION, LOCAL 99,	)	PERB Decision No. 1219a
	)	
Respondent.	)	February 19, 1998
_____	)	

Appearance: Ira Wardlaw, on his own behalf.

Before Caffrey, Chairman; Johnson and Jackson, Members.

DECISION

JACKSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Ira Wardlaw (Wardlaw) of the Board's decision in Service Employees International Union. Local 99 (Wardlaw) (1997) PERB Decision No. 1219. In the appeal of dismissal in PERB Decision No. 1219, Wardlaw alleged that the Service Employees International Union, Local 99 (Local 99) breached its duty of fair representation in violation of section 3544.9 of the Educational Employment Relations Act (EERA).<sup>1</sup>

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq. Section 3544.9 provides:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

Specifically, Wardlaw alleged that Local 99 representative Floyd Lewis (Lewis) failed to file Wardlaw's grievance in a timely manner, causing a procedural default. He alleged further that Lewis acted arbitrarily in a Skelly<sup>2</sup> meeting, and failed to negotiate on Wardlaw's behalf, to talk to witnesses on Wardlaw's behalf and to represent him fully and fairly.

The Board dismissed the allegations because Wardlaw had failed to allege a prima facie case regarding Local 99's failure in its duty to represent him. Wardlaw was unable to allege how Local 99 acted in bad faith or discriminated against him. (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) Also, the Board noted that PERB's decisions do not extend the duty of fair representation to extra-contractual forums, such as Skelly meetings. (Los Angeles Unified School District (1994) PERB Decision No. 1061.)

#### REQUEST FOR RECONSIDERATION

In his request for reconsideration of PERB Decision No. 1219, Wardlaw contends that the decision contains prejudicial errors of fact. Wardlaw contends that the Board stated that Lewis "declined" to file a grievance on Wardlaw's behalf when Lewis actually "refused." In addition to repeating arguments made in his appeal of the dismissal in PERB Decision No. 1219, Wardlaw seeks to introduce five audio tapes of testimony which he

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<sup>2</sup>Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194 [124 Cal.Rptr. 14].

claims will prove that he should not have been disciplined or terminated by his employer.

#### DISCUSSION

PERB Regulation section 32410<sup>3</sup> provides that a party to a Board decision may request reconsideration on the grounds that the decision contains prejudicial errors of fact, or on the grounds of newly discovered evidence or law which was not previously available.

The Board will not grant a request for reconsideration where the party making the request has failed to establish any grounds set forth in PERB Regulation 32410. (California State Employees Association. Local 1000 (Janowicz) (1994) PERB Decision

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<sup>3</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Section 32410 provides, in relevant part:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and five copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

No. 1043a-S at pp. 2-3, (Janowicz).) Reconsideration is not appropriate where a party merely restates arguments considered and rejected by the Board in its underlying decision. (Janowicz; Regents of the University of California (1990) PERB Decision No. 829a-H at pp. 2-3.)

Wardlaw has merely repeated his original assertions or disagrees with the specific wording chosen by the Board agent. Further, he fails to explain why the five audio tapes were submitted now instead of submitting them during the investigation of his unfair practice charge. Accordingly, he fails to meet the Board's standard for reconsideration requests.

#### ORDER

The request for reconsideration in Service Employees International Union, Local 99 (Wardlaw) (1997) PERB Decision No. 1219 is hereby DENIED.

Chairman Caffrey and Member Johnson joined in this Decision.