

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION,)	
)	
Charging Party,)	Case No. LA-CE-3824
)	
v.)	Request for Reconsideration
)	PERB Decision No. 1278
LONG BEACH COMMUNITY COLLEGE)	
DISTRICT,)	PERB Decision No. 1278a
)	
Respondent.)	October 22, 1998
_____)	

Appearances: A. Alan Aldrich, Senior Labor Relations Representative, for California School Employees Association; Parker, Covert & Chidester by Spencer E. Covert, Attorney, for Long Beach Community College District.

Before Caffrey, Chairman; Dyer and Johnson, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on the Long Beach Community College District's (District) request that the Board reconsider its decision in Long Beach Community College District (1998) PERB Decision No. 1278 (Long Beach). In Long Beach, the California School Employees Association (CSEA) alleged that the District violated section 3543.5(a), (b) and (d) of the Educational Employment Relations Act (EERA)¹ by requiring unit members to

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 provides, in relevant part:

It shall be unlawful for a public school employer to do any of the following:

attend a severance presentation by a rival employee organization known as the Long Beach Community College Police Officer's Association (POA) . On August 14, 1998, the Board issued a decision holding that the District's actions violated EERA section 3543.5(a), (b) and (d) .

BACKGROUND

The District is a public school employer within the meaning of the EERA. CSEA is the exclusive representative of a unit of District employees which includes a dozen College Safety Officers (CSO) employed by the District. POA is a rival employee organization seeking to undertake representation of the District's CSO's.

During the week of February 24, 1997, the District required CSO's to attend forty (40) hours of in-service training. The last item on the official schedule for the training was a one-hour severance presentation by the POA. At 4:00 p.m. on Friday,

(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.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

February 28, 1997, the District informed employees that the training had ended and that they were free to go. The District representatives then turned things over to POA and left the classroom. The POA presentation took place immediately following a mandatory training session, in the classroom reserved for the mandatory in-service training. CSEA became vulnerable to decertification on the following day.

The Board noted that EERA section 3543.5(d) imposes on the District an unqualified requirement of strict neutrality with respect to employee choice of representation. (Long Beach at pp. 8-9 citing Sacramento City Unified School District (1982) PERB Decision No. 214 at p. 3.) The Board held that the inclusion of the POA's severance presentation on the official training schedule would lead a reasonable person to conclude that the District favored POA over CSEA. (Long Beach at p. 9.) Since the District failed to demonstrate that it had taken sufficient remedial actions to undo the effects of the training schedule, the Board held that the District's actions violated section 3543.5 (a), (b) and (d) . (ID. at p. 10.)

REQUEST FOR RECONSIDERATION

In its request for reconsideration, the District contends that the Board made a number of prejudicial errors of fact in Long Beach. The District's arguments essentially challenge three aspects of the Board's decision. First, the District contends that placing the POA presentation on the training schedule could not lead any reasonable person to conclude that the District

avored POA over CSEA. Second, the District argues that EERA section 3543.1(b)² required it to place the POA meeting on the training schedule. Finally, the District contends that it cured any appearance of bias when District representatives informed the CSOs that attendance was voluntary and left the classroom before the presentation began.

CSEA'S RESPONSE

CSEA responds that the District's request for reconsideration is without merit and should be rejected. This is so, CSEA argues, because the request for reconsideration consists of arguments already considered and rejected by the Board in Long Beach. Further, CSEA contends, the District's request is a thinly veiled attempt to challenge the Board's conclusions of law, rather than its findings of fact.

DISCUSSION

PERB Regulation section 32410³ provides that a party to a

²EERA section 3543.1 provides, in relevant part:

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

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

(a) Any party to a decision of the Board itself may, because of extraordinary

Board decision may request reconsideration on the grounds that the decision contains prejudicial errors of fact, or newly-discovered evidence or law. The Board will not grant a request for reconsideration where the party making the request has failed to establish any ground set forth in PERB Regulation 32410. (See, e.g., California State Employees Association. Local 1000 (Janowicz) (1994) PERB Decision No. 1043a-S at pp. 2-3.)

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

Here, the District challenges the Board's conclusion that it violated the EERA when it placed the POA's decertification presentation on the schedule for a week of mandatory in-service training. The District contends that no reasonable person could conclude that the training schedule indicated support for the

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.

POA. Further, the District contends that the voluntary nature of the presentation and the absence of District representatives at the presentation constitute an honestly given retraction sufficient to cure the effects of including the POA presentation on the training schedule. In the alternative, the District maintains that EERA section 3543.1(b) required it to place the POA decertification presentation on the training schedule.

As CSEA points out, however, the District does not actually challenge any of the Board's factual findings, focussing instead on the legal conclusions that the Board drew from those findings. Further, the District's request for reconsideration restates arguments considered and rejected by the Board in the underlying decision. Accordingly, the District's request for reconsideration fails to meet the standard set forth in PERB Regulation section 32410.

ORDER

The request for reconsideration in Case No. LA-CE-3824 is hereby DENIED.

Chairman Caffrey and Member Johnson joined in this Decision.