

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ELMER (JOHN) SANDER,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION
OF TEACHERS,

Respondent.

Case No. SA-CO-321

Request for Reconsideration
PERB Decision No. 1111

PERB Decision No. 1111a

May 14, 1997

ALFRED J. GUETLING,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION
OF TEACHERS,

Respondent.

Case No. SA-CO-322

ELENE E. HOLMES,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION
OF TEACHERS,

Respondent.

Case No. SA-CO-323

BILL K. MONROE,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION
OF TEACHERS,

Respondent.

Case No. SA-CO-324

MINA-MAY BROWN ROBBINS,)	
Charging Party,)	Case No. SA-CO-325
v.)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
Respondent.)	
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JOHN R. DARLING,)	
Charging Party,)	Case No. SA-CO-326
v.)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
Respondent.)	
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DOUGLAS F. GARDNER,)	
Charging Party,)	Case No. SA-CO-327
v.)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
Respondent.)	
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WILLIAM P. DIONISIO,)	
Charging Party,)	Case No. SA-CO-328
v.)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
Respondent.)	
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GLOYD ZELLER,)	
Charging Party,)	Case No. SA-CO-329
v.)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
Respondent.)	
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FRANK BAKER,)	
Charging Party,)	Case No. SA-CO-330
v.)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
Respondent.)	
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ROBERT E. PROAPS, JR.,)	
Charging Party,)	Case No. SA-CO-331
v.)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
Respondent.)	
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DONALD BRYANT KENT,)	
Charging Party,)	Case No. SA-CO-332
v.)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
Respondent.)	
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NOEL LANCE BERNATH,)	
Charging Party,)	Case No. SA-CO-334
)	
V.)	
)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
)	
Respondent.)	
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RYAN POLSTRA,)	
Charging Party,)	Case No. SA-CO-335
)	
V.)	
)	
LOS RIOS COLLEGE FEDERATION)	
OF TEACHERS,)	
)	
Respondent.)	
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Appearances: Elmer (John) Sander and Annette Deglow for **Elmer** (John) Sander, Alfred J. Guetling, Elene E. Holmes, Bill K. Monroe, Mina-May Brown Robbins, John R. Darling, Douglas F. Gardner, William P. Dionisio, Gloyd Zeller, Frank Baker, Donald Bryant Kent, Noel Lance Bernath and Ryan Polstra; Law Offices of Robert J. Bezemek by Adam H. Birnhak, Attorney, for Los Rios College Federation of Teachers.

Before Chairman Caffrey; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request by Elmer (John) Sander, Alfred J. Guetling, Elene E. Holmes, Bill K. Monroe, Mina-May Brown Robbins, John R. Darling, Douglas F. Gardner, William P. Dionisio, Gloyd Zeller, Frank Baker, Donald Bryant Kent, Noel Lance Bernath and Ryan Polstra (Charging

Parties)¹ that the Board accept their late filed request to reconsider its decision in Los Rios (Sander, et al.). In Los Rios (Sander, et al.), the Board dismissed the Charging Parties' unfair practice charges which alleged that the Los Rios College Federation of Teachers (Federation) breached its duty of fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA), thereby violating section 3543.6(b).²

¹John R. Darling withdrew his exceptions to the administrative law judge's (ALJ) proposed decision in Los Rios College Federation of Teachers (Sander, et al.) (1995) PERB Decision No. 1111 (Los Rios (Sander, et al.)). Robert E. Proaps, Jr. did not file exceptions to the proposed decision in Los Rios (Sander, et al.). The Board's Order in Los Rios (Sander, et al.) did not apply to these two parties and under PERB Regulation 32410 they may not request reconsideration of that decision.

²EERA is codified at Government Code section 3540 et seq. Section 3544.9 states:

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.

Section 3543.6 states, in pertinent part:

It shall be unlawful for an employee organization to:

(b) 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.

BACKGROUND

Charging Parties are instructors within the Los Rios Community College District (District), employed prior to 1967, who filed grievances asserting that the District failed to properly account for their seniority and retirement credits. They alleged that the Federation did not fairly represent them in their seniority and retirement credit grievances, and that the Federation refused to pursue the grievances to a board of review hearing. The board of review hearing was the last step in the District's grievance procedure, which did not provide for binding arbitration. The District's Board of Trustees has the authority to accept or reject recommendations of a board of review.

In Los Rios (Sander, et al.), the Board adopted the ALJ's proposed decision finding that Charging Parties failed to show that the Federation breached its duty of fair representation in its handling of their grievances. The abbreviated December 1994 hearing in Los Rios (Sander, et al.) incorporated by reference the transcript and exhibits of the August 1994 hearing in Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133 (Los Rios (Deglow)) which involved similar allegations made by Annette Deglow (Deglow), another pre-1967 instructor in the District. No transcripts were prepared, and no post-hearing briefs were submitted, due to the incorporation of the Los Rios (Deglow) record.

CHARGING PARTIES' REQUEST

On February 20, 1997, Charging Parties filed their request to reconsider Los Rios (Sander, et al.). The request is based on the same assertions made by Deglow in her late filed request to reconsider Los Rios (Deglow).³ Charging Parties contend that testimony offered by a key witness for the Federation in the case was "false - misleading and untrue." They assert that the Federation witness testified that the Federation's February 1994 decision not to pursue Deglow's seniority and retirement credit grievances to a board of review resulted, at least in part, from the Federation's view that the District's general counsel, Sue Shelley (Shelley), would ensure that any favorable board of review ruling would not be accepted by the District's Board of Trustees.

Charging Parties refer to a January 23, 1997, letter from the Federation to PERB, concerning another unfair practice charge, which states that Shelley "ended her professional relationship with the District in December 1993." Since Shelley was no longer employed by the District, Charging Parties assert that the Federation's decision not to pursue seniority and retirement credit grievances to a board of review could not, or should not, have been based on its view of Shelley's advice to the District. Therefore, either the Federation witness intentionally provided false and misleading testimony in the

³See Los Rios College Federation of Teachers (Deglow) (1997) PERB Decision No. 1133a.

August 1994 PERB hearing, or the Federation was unaware of Shelley's status and its representation was grossly negligent. Charging Parties believe this information supports their claim that the Federation failed in its duty of fair representation.

Charging Parties assert that they only became aware of these circumstances when they received a copy of the January 23, 1997, letter. Therefore, they argue that good cause exists to excuse their late filed request that the Board reconsider its decision in Los Rios (Sander, et al.).

FEDERATION'S RESPONSE

In response, the Federation asserts that good cause does not exist to excuse Charging Parties' late filing for several reasons. Citing California State Employees Association, Local 1000 (Janowicz) (1996) PERB Order No. Ad-276-S, the Federation argues that the Charging Parties did not make a conscientious effort to file their request on time. The Federation offers a June 13, 1994, memo from the District to all faculty and staff announcing the appointment of a new District general counsel. The Federation states that the Charging Parties received this memo in June 1994, prior to the August 1994 PERB hearing in Los Rios (Deglow), and prior to the December 1994 hearing in Los Rios (Sander, et al.). Since the District notified them that a new general counsel had been appointed prior to the PERB hearing, their assertion that they only became aware in January 1997 of Shelley's 1993 retirement shows a lack of conscientious effort.

The Federation further asserts that the testimony of the Federation witness concerning Shelley's employment status with the District is not referenced in, and had no bearing on, the ALJ's or Board's decision to dismiss Charging Parties' charges. Therefore, the Charging Parties have not explained how and why the allegedly misleading witness statements are relevant to the Board's decision.

The Federation also asserts that the witness' August 1994 testimony correctly reflects Shelley's potential role in the seniority and retirement credit grievances. The Federation offers a February 18, 1997, letter from the District that states:

While Ms. Shelley has been retired for several years, she remains the sole resource for information regarding [this] series of actions against the District. As a result, the District staff must continue to rely on her expertise.

DISCUSSION

PERB Regulation 32410⁴ states, in pertinent 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. . . . 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.

⁴PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The Board issued Los Rios (Sander, et al.) on July 21, 1995. Charging Parties filed their request to reconsider that decision on February 20, 1997, approximately 18 months after the due date for filing a request for reconsideration. Accordingly, the Board must address the issue of Charging Parties' late filing of their request.

PERB Regulation 32136 provides that:

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

In applying this regulation, the Board has found good cause to excuse late filings when a party has demonstrated a conscientious effort to timely file. (North Orange County Regional Occupational Program (1990) PERB Decision No. 807; Trustees of the California State University (1989) PERB Order No. Ad-192-H.)

Charging Parties argue that good cause exists because they only became aware that "false - misleading and untrue" testimony was offered by a key Federation witness during the August 1994 PERB hearing when they received a copy of a January 23, 1997, letter from the Federation to a Board agent.

Charging Parties' argument is not persuasive. The District apparently sent an announcement of the appointment Of Shelley's replacement to all faculty and staff of the District in June 1994. Given the announcement, and the ensuing period of more than two and one-half years, it appears reasonable that Charging Parties could have discovered Shelley's departure prior to January 1997 through a conscientious effort. Accordingly, the

Board finds that Charging Parties have not demonstrated good cause to excuse their late filing.

ORDER

The Charging Parties' request to accept their late filed request for reconsideration of the Board's decision in Los Rios College Federation of Teachers (Sander, et al.) (1995) PERB Decision No. 1111 is hereby DENIED.

Members Johnson and Dyer joined in this Decision.