

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LENA IGGERS MOSZKOWSKI,)
)
 Charging Party,) Case No. LA-CO-583
)
 v.) Request for Reconsideration
) PERB Decision No. 946
 UNITED TEACHERS - LOS ANGELES,)
) PERB Decision No. 946a
 Respondent.)
)
) September 11, 1992

Appearance: Lena Iggers Moszkowski, on her own behalf.
Before Hesse, Chairperson, Caffrey and Carlyle, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on request for reconsideration filed by Lena Iggers Moszkowski (Moszkowski) of the Board's decision in United Teachers - Los Angeles (Moszkowski) (1992) PERB Decision No. 946. In that decision, the Board affirmed the Board agent's dismissal of the unfair practice charge on the grounds that Moszkowski failed to state a prima facie case that United Teachers - Los Angeles (UTLA) breached the duty of fair representation in violation of the Educational Employment Relations Act (EERA) section 3543.6(b).¹ Having duly considered

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. 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

the request for reconsideration, the Board denies Moszkowski's request for the reasons that follow.

DISCUSSION

PERB Regulation 32410(a)² states, in pertinent part:

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.

In her request for reconsideration, Moszkowski contends, that because UTLA failed to respond to her appeal to the Board, the allegations are to be taken as true and cannot be challenged. Therefore, Moszkowski argues that she should prevail.

This contention is simply incorrect. There is no requirement that parties to actions before the Board respond to arguments presented by opposing interests. In order to state a prima facie violation of EERA section 3543.6(b), the charging party must show that the exclusive representative's conduct was arbitrary, discriminatory, or in bad faith. (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) Based upon

discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

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

the information submitted to the Board agent, Moszkowski failed to meet this burden.

Moszkowski also argues that she did not have the opportunity to appear before the Board to argue her case.

Moszkowski has misinterpreted the term "Appearances" as used in PERB Decision No. 946 to mean that the Board heard oral argument in this case without notifying Moszkowski.

"Appearances" in this context is simply meant to describe all parties who have presented evidence to the Board for its consideration. No oral argument was heard in this case.

Further, PERB Regulation 32315 states:

A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file, with the statement of exceptions or the response to the statement of exceptions, a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument.
(Emphasis added.)

PERB Decision No. 946 was a review of a dismissal by a Board agent. As PERB Regulation 32315 does not provide for oral argument on review of dismissals, the Board finds this argument without merit.

Accordingly, Moszkowski has failed to demonstrate appropriate grounds for reconsideration of PERB Decision No. 946.

ORDER

There being no proper grounds for reconsideration stated, the request for reconsideration of PERB Decision No. 946 is hereby DENIED.

Chairperson Hesse and Member Caffrey joined in this Decision.