

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNITED TEACHERS - LOS ANGELES,)	
)	
Charging Party,)	Case No. LA-CE-2751
)	
v.)	Request for Reconsideration
)	PERB Decision No. 860
LOS ANGELES UNIFIED SCHOOL)	
DISTRICT,)	PERB Decision No. 860a
)	
Respondent.)	February 26, 1991
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Appearances: Taylor, Roth, Bush & Geffner, by Jesus E. Quinonez, Attorney, for United Teachers - Los Angeles; O'Melveny & Myers, by Craig A. Horowitz, Attorney, for Los Angeles Unified School District.

Before Hesse, Chairperson; Shank and Cunningham, Members.

DECISION

CUNNINGHAM, Member: The Los Angeles Unified School District (District) requests reconsideration of PERB Decision No. 860, issued by the Public Employment Relations Board (PERB or Board) on December 19, 1990. In that decision, the Board affirmed and adopted a proposed decision by an administrative law judge (ALJ) wherein it was found that the District unlawfully and unilaterally established the wage rate payable to certificated employees participating in an after-school Early Education Program (EEP) in violation of section 3543.5(b) and (c) of the Educational Employment Relations Act¹ (EERA). The ALJ also

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Prior to January 1, 1990, section 3543.5 stated, in pertinent part:

concluded that this matter was not subject to mandatory deferral pursuant to Lake Elsinore School District (1987) PERB Decision No. 646. The Board adopted this conclusion on the ground that the relevant contract provision did not "arguably prohibit" the District's conduct in this instance; thus, the standard set forth in Lake Elsinore is not met by these facts.

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 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 its request for reconsideration, the District argues:

(1) there is no policy justification for deferral purposes to distinguish between conduct "arguably prohibited" by a collective bargaining agreement (CBA) and conduct "arguably required" by a CBA; (2) several critical factual matters, not considered in the PERB decision, establish that the District

It shall be unlawful for a public school employer to:

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

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

properly applied Section 6.0 of the CBA to the EEP and, therefore, acted lawfully in this instance; and (3) in view of the express terms of the "zipper clause" and the language of Section 6.0 of the CBA, United Teachers - Los Angeles waived its right to negotiate about the wage rate applicable to the EEP during the life of the current CBA.

The District's first and third grounds for the request, as referenced above, do not contend that the Board's decision contains prejudicial errors of fact, nor do they offer newly discovered evidence or law. Instead, the District argues that the decision contains errors of law. This ground does not fall within the purview of Regulation 32410(a) and is, therefore, an inappropriate basis for this request.

As to the second ground for the request for reconsideration, the District has listed ten factual statements allegedly not considered by the Board in arriving at its substantive legal conclusions in this case.

to the District's assertions, however, all of the factual matters set forth in its request for reconsideration are directly or indirectly referred to and considered in the ALJ's findings of fact. Those findings were adopted by the Board in its decision. Thus, the District's argument that the Board's decision contains prejudicial errors of fact must be rejected. Moreover, although the District has couched this argument in terms of prejudicial error of fact, it appears that this is actually a legal argument in that the District claims that the relevant contract language or past

practices permitted its conduct in this instance. Again, an alleged error of law is not a proper ground for a request for reconsideration, pursuant to Regulation 32410(a).

ORDER

The request for reconsideration of PERB Decision No. 860 is hereby DENIED.

Chairperson Hesse and Member Shank joined in this Decision.