STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GROSSMONT EDUCATION ASSOCIATION, Charging Party, v. GROSSMONT UNION HIGH SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-1264 Request for Reconsideration PERB Decision No. 313 PERB Decision No. 313a June 6, 1984

Appearances; Richard J. Currier, Attorney (Littler, Mendelson, Fastiff & Tichy) for Grossmont Union High School District; Charles R. Gustafson, Attorney for Grossmont Education Association.

Before Tovar, Morgenstern and Burt, Members.

DECISION

TOVAR, Member: The Grossmont Education Association (Association) requests that the Public Employment Relations Board (PERB or Board) reconsider its decision in Grossmont Union High School District (5/26/83) PERB Decision No. 313. For the reasons which follow, that request is denied.

DISCUSSION

In Grossmont Union High School District, supra, the Board found that the Association had agreed, via a collectively negotiated contract, to a policy providing that all teachers in the District could be assigned a maximum of five periods per day of classroom instruction. On that basis, we dismissed the

Association's charge that, by increasing the work assignment of Educationally Handicapped (EH) teachers from four periods of classroom instruction to five, the District had violated subsection 3543.5(c) of the Educational Employment Relations Act (EERA).)[1]

The Association's arguments in the instant request for reconsideration raise two basic contentions: that it never contractually agreed to a policy permitting the District to increase the work assignment of EH teachers to five classes; and that, even if it did, the District's actions in this case not only affected the number of classes assigned, but unilaterally changed wage and class size levels.

In contending that the Board's interpretation of the contract was erroneous, the Association directs our attention to evidence of the parties' intent during the negotiation of that contract. This evidence was carefully considered in our underlying decision at pp. 10-11. We concluded that nothing in the bargaining history indicated that the contract provisions fixing the standard work assignment at five classes should be interpreted to exclude EH teachers. Upon reexamination of this evidence, we conclude that, with regard to the significance of the negotiating history, the underlying decision contains no

[1]The EERA is codified at Government Code section 3540 et seq.

prejudicial error of fact of the kind contemplated by section 32410(a) of PERB's regulations.[2]

The Association also asserts that the Board departed from its well-established standard for waiver of negotiating rights. This assertion mischaracterizes the Board's decision. We applied the standard requiring a showing of "clear and unmistakable language or demonstrable behavior" as we have in similar cases preceding Grossmont.[3] Contrary to the Association's argument in the instant request, we did not infer a waiver merely from the fact that the workload provision was silent with regard to EH teachers. Rather, our conclusion was that

> We find the wording of the workload provision sufficiently clear, in light of its treble repetition and the absence of any

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2pERB regulations are codified at California Administrative Code, title 8, section 31000 et seq. Subsection 32410(a) provides:

> (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.

3See, e.g., Amador Valley Joint Union High School District (10/2/78) PERB Decision No. 74; Walnut Valley Unified School District (2/28/83) PERB Decision No. 289.

> expressed exceptions such as those which occur elsewhere in the contract, to establish a "clear and unmistakeable" objective meaning. We conclude that by agreeing to these provisions, the Association waived its right to negotiate over the change in assignment.
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> (Grossmont, supra, at p. 17.)[4]

The Association next asserts that the Board committed error by ignoring evidence that some teachers received lower wages than they had the year before as a result of the District's modification of the work assignment. Again, the Association misstates the Board's decision. In its statement of facts, the Board acknowledged that for the year before the change in work assignment, the District had assigned only four classes to each EH teacher and that, when some EH teachers took on a fifth class in mid-year, they received a 25-percent addition to the standard salary. This evidence, however, without more, does

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[4]In connection with its claim that the Board erred in finding a contractual waiver, the Association points to certain misstatements of fact which appear in the underlying decision. Upon review, we acknowledge that the Board incorrectly asserted, at p. 6, that other teachers in the special education department, in addition to EH teachers, once taught only four classes a day. In fact, the evidence indicates that the EH teachers were unique within the special education department in being assigned only four periods of instruction a day. The Board also erred at p. 17 in describing the District's policy on release time for department chairpersons. In fact, the District has no discretion in determining the amount of release time awarded to department chairpersons, but is bound to a specific schedule set forth in the parties' contract. These factual matters, however, were not essential to the Board's resolution of the case, and thus do not constitute prejudicial error as contemplated by section 32410 of PERB's regulations.

not establish that the District thereby waived its right, as provided in the contract, to assign five classes as the standard work assignment compensated by the standard salary.

Finally, the Association contends in its request for reconsideration that the District's failure to negotiate before changing the work assignment was unlawful because the change resulted in an increase in class size for the affected teachers. In so arguing, the Association appears to have misinterpreted the term "class size" as it appears in section 3543.2 of the EERA, which defines the scope of representation. Thus, the Association points to evidence that, as a result of the increase in teaching periods, the number of students instructed by EH teachers over the course of their workday increased from an average of 18.2 to an average of 20.51. "Class size," however, does not refer to the total number of students instructed by a teacher over the course of the full workday. Rather, it signifies the number of students present in a classroom during any one instructional period. The Association does not argue, nor is there record evidence to establish, that the number of students present in an EH teacher's classroom at any one time increased. Thus, no increase in class size was demonstrated.

ORDER

For the foregoing reasons, the request of the Grossmont Education Association for reconsideration of PERB Decision No. 313 is DENIED.

Members Morgenstern and Burt joined in this Decision.