

STATE OF CALIFORNIA  
 DECISION OF THE  
 PUBLIC EMPLOYMENT RELATIONS BOARD



MODESTO TEACHERS ASSOCIATION,  
 CTA/NEA,  
 Charging Party,  
 v.

MODESTO CITY SCHOOLS AND HIGH  
 SCHOOL DISTRICT,  
 Respondent.

)  
 )  
 ) Case No. S-CE-485  
 ) Request for Reconsideration  
 ) PERB Decision No. 414  
 )  
 ) PERB Decision No. 414a  
 )  
 ) January 16, 1985  
 )

) and

MODESTO TEACHERS ASSOCIATION,  
 CTA/NEA,  
 Charging Party, APPELLANT,  
 v.

MODESTO CITY SCHOOLS AND HIGH  
 SCHOOL DISTRICT,  
 Respondent.

)  
 )  
 ) Case No. S-CE-485  
 ) Request for Reconsideration  
 ) PERB Order No. Ad-143  
 )  
 ) PERB Order No. Ad-143a  
 )  
 ) January 16, 1985  
 )

Appearances; Kenneth W. Burt II, Attorney for Modesto Teachers  
 Association, CTA/NEA; Breon, Galgani, Godino & O'Donnell by  
 Mark W. Goodson for Modesto City Schools and High School District.  
 Before Tovar, Jaeger and Burt, Members.

DECISION

BURT, Member: The Public Employment Relations Board (PERB  
 or Board), having duly considered the request for  
 reconsideration filed by the Modesto Teachers Association,

CTA/NEA (Association) pursuant to Board Regulation 32410,1/<sup>1</sup>  
hereby denies that request.

DISCUSSION

On reconsideration, the Association argues that the Board should defer to findings in the arbitrator's decision issued in May 1984, allegedly resolving the same issues addressed by the Board in its decision here. In so urging, the Association raises a deferral issue that the Modesto City Schools and High School District (District) sought to raise initially.

The parties' negotiated agreement, submitted as an exhibit in this case, contains provision for a grievance procedure including advisory arbitration. The superintendent may appeal

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1/PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. PERB regulation 32410(a) provides:

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. An original and 5 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 upon. 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.

the decision of the arbitrator to the board of education, and the decision of that board is final.

When these charges were originally filed, the District sought by way of letter to the administrative law judge (ALJ) to have these proceedings deferred until the advisory arbitration process was complete.

The ALJ responded, by letter, correctly citing Board law to the effect that the Board would defer only to a procedure culminating in binding arbitration, or in response to a motion from both of the parties. Since there was no evidence that the Association agreed to defer, the ALJ concluded that the case should proceed.

The Association here tries to convert the arbitration in question to binding arbitration by attaching an agreement signed by the District in which it agreed to accept the arbitrator's award. It is clear from the agreement, however, that the District's acceptance goes to this particular award only and is in no sense a waiver or settlement of the unfair practice proceeding.

Not only could the Association have joined with the District in its initial request to defer and did not do so, but it could also have withdrawn its charges with PERB after the arbitrator's decision issued. The arbitrator, like the ALJ,

noting that the District's allegedly unlawful change actually resulted in more minutes of duty-free lunch on an annual basis, refused to award any back pay. Presumably, the Association chose to continue the proceeding before PERB in the hope that the Board would award back pay. Having lost the entire case before PERB, the Association now argues that the Board should defer to an arbitration award which it had ample opportunity to accept as final but refused to do so. We see no reason to defer to the arbitrator's decision, nor are we in any way bound by particular findings, and we decline to reconsider on that ground.

The Association's remaining grounds for reconsideration fail to demonstrate the "extraordinary circumstances" required by PERB's regulations, and are therefore also denied.

ORDER

For the reasons set forth above, the Modesto Teachers Association, CTA/NEA's requests for reconsideration of PERB Decision No. 414 and PERB Order No. Ad-143 are hereby DENIED.

Members Tovar and Jaeger joined in this Decision.