

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARIO MERCADO,

Charging Party,

v.

HART DISTRICT TEACHERS ASSOCIATION,

Respondent.

CANDICE BLOCH,

Charging Party,

v.

HART DISTRICT TEACHERS ASSOCIATION,

Respondent.

Case No. LA-CO-801-E

Request for Reconsideration
PERB Decision No. 1456

PERB Decision No. 1456a

November 20, 2001

Case No. LA-CO-802-E

Appearances: Mario Mercado and Candice Bloch, on their own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by Mario Mercado (Mercado) and Candice Bloch (Bloch) that the Board grant reconsideration of its decision in Hart District Teachers Association (Mercado and Bloch) (2001) PERB Decision No. 1456 (HDTA). In HDTA, the Board upheld the dismissal of Mercado and Bloch's unfair practice charges which alleged that the Hart District Teachers Association (Association) breached its duty of fair representation in violation of sections 3544.9 and 3543.6(b) of the Educational Employment Relations Act (EERA).¹

¹EERA is codified at Government Code section 3540 et seq. Section 3544.9 provides that:

After reviewing the entire record, the Board denies the request for reconsideration.

DISCUSSION

In HDTA, the Board concluded that the exceptions to the administrative law judge's (ALJ) proposed decision were without merit and adopted the ALJ's decision as its own. The ALJ had concluded that the Association had not breached its duty of fair representation when it settled grievances filed on behalf of Mercado and Bloch without notice to them and without their consent. Also dismissed was an allegation that the Association failed to provide Mercado and Bloch with post-settlement information.

Reconsideration requests are governed by PERB Regulation 32410.² PERB Regulation 32410(a) states:

(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. An original and five 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 on. Service and proof of service of the request

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 provides, in relevant part that:

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.

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

pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

Mercado and Bloch now seek reconsideration of the Board's decision on the grounds that there is newly discovered evidence which demonstrates that the Association entered into the settlement of the grievances with knowledge that Bloch's preference for new assignments was for Valencia High School, Hart High School or a new school which was to be built at a Stevenson Ranch site.

Mercado and Bloch offer new evidence in support of their request. They state, in part, that:

. . . the Association had reason to know that Golden Valley High School and not Stevenson Ranch was the next comprehensive high school to open in the District. The evidence in the record will show that Bloch had never expressed to the Association a desire to go to Golden Valley. Also, that the Association never discussed with Bloch at any time the subject of Golden Valley as a possible resolution option. The evidence will further show the Association was in possession of information as early as November 9, 1998 that indicated that Stevenson Ranch would not be the next comprehensive high school to open in the District. . . . Additionally, the evidence will show that the actions of the Association in reaching settlement were arbitrary. Finally, in reaching settlement the Association showed a total disregard for Bloch's health and safety by agreeing to offer her a position, without her knowledge or input, at a school site that the public at large had concerns whether the site posed a serious health and safety risks [sic] to persons.

The evidence provided in support of Mercado and Bloch's request includes a copy of the District's mailing list. The mailing list includes the Association's president and negotiating chairperson as individuals that receive agendas and minutes of all District board meetings. Mercado and Bloch draw the inference that the Association representatives, because they were on the District's mailing list, were in possession of and had read and understood District minutes for November 9, 1998 which indicate that Golden Valley was the next tentatively funded high school site to be built.

Mercado and Bloch attempt to portray the Association's settlement of a grievance as arbitrary because Bloch did not receive an offer to transfer to Valencia, Hart or Stevenson Ranch sites. Mercado and Bloch had ample opportunity at the hearing to question the Association president regarding his knowledge of the District's plans. The newly discovered mailing list may be evidence of how the Association is apprised of District business, however, Mercado and Bloch had the opportunity and capability of discovering the existence of the mailing list at the time of the hearing and could have questioned Association witnesses as to their knowledge of District building plans. The fact that Mercado and Bloch only recently discovered that Association officers are on a District mailing list does not warrant granting Mercado and Bloch's request.³ Hence, Mercado and Bloch's request does not establish that

³The other evidence submitted postdated the conclusion of the hearing in this matter and is not relevant to the Association's settlement of the grievances in January 1999.

there is new evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence as required by PERB Regulation 32410.

ORDER

Mario Mercado and Candice Bloch's request for reconsideration of the Board's decision in Hart District Teachers Association (Mercado and Bloch) (2001) PERB Decision No. 1456 is hereby DENIED.

Members Amador and Baker joined in this Decision.