

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JAMES ERIC FERGUSON,

Charging Party,

v.

OAKLAND EDUCATION ASSOCIATION,

Respondent.

Case No. SF-CO-638-E

Request for Reconsideration
PERB Decision No. 1646

PERB Decision No. 1646a

August 6, 2004

Appearances: William H. Hanson, Attorney, for James Eric Ferguson; California Teachers Association by Priscilla Winslow, Attorney, for Oakland Education Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by James Eric Ferguson (Ferguson) of the Board's decision in Oakland Education Association (Ferguson) (2004) PERB Decision No. 1646 (Ferguson). In Ferguson, the Board dismissed the unfair practice charge alleging the Oakland Education Association acted arbitrarily, discriminatorily and in bad faith.

Ferguson seeks reconsideration because he believes the decision ignores material facts and is based on prejudicial errors of fact.

For the reasons set forth below, the request for reconsideration is denied.

DISCUSSION

Requests for reconsideration are governed by PERB Regulation 32410.¹ PERB

Regulation 32410 provides, in pertinent part:

(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 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.

Simply arguing the same facts that were presented to the Board on appeal does not fill the requirements of the regulation. Ferguson has presented no new evidence and has only put forth the arguments he raised on appeal. Ferguson has not met either of the grounds for reconsideration and therefore the request is denied.

ORDER

James Eric Ferguson's request for reconsideration of the Board's decision in Oakland Education Association (Ferguson) (2004) PERB Decision No. 1646 is hereby DENIED.

Members Whitehead and Neima joined in this Decision.

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.