STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED HEALTH CARE EMPLOYEES, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 660, AFL-CIO, CLC,	
Charging Party,	Case No. LA-CE-10-H
v.	Request for Reconsideration PERB Decision No. 267-H
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA),	PERB Decision No. 267a-H
Respondent.	May 17, 1983

Appearances: Susan M. Thomas, Attorney for the Regents of the University of California.

Before Tovar, Jaeger, and Morgenstern, Members.

DECISION

MORGENSTERN, Member: The Public Employment Relations Board (PERB or Board) having duly considered the request for reconsideration filed by the Regents of the University of California (University), hereby denies that request.

DISCUSSION

In Regents of the University of California (UCLA) (12/21/82) PERB Decision No. 267-H, the Board found that the University violated subsections 3571(a) and (b) of the Higher Education Employer-Employee Relations Act[1] (HEERA) by

[1]HEERA is codified at Government Code section 3560

unilaterally increasing the workday of laboratory technologists employed in the UCLA blood bank from 10 hours to 10.5 hours per day without providing United Health Care Employees, Service Employees International Union, Local 660, AFL-CIO, CLC (SEIU), the nonexclusive representative, with an opportunity to meet and discuss the change prior to implementation. We held that the obligation to meet and discuss matters fundamental to the fulfillment of the nonexclusive representative's representational function includes a requirement of good faith defined as meeting, listening and considering proposals' with an open mind prior to arriving at a determination of policy or course of action.

We found that the University evidenced bad faith by refusing to delay implementation of the change of hours until after the parties met on October 29 and by failing to inform

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et seq. All statutory references are to the Government Code unless otherwise specified.

Section 3571 provides, in pertinent part:

> It shall be unlawful for the higher education employer to:
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> (a) 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.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

SEIU of the procedure for applying for an exception to the University's policy and the grounds on which such exception could be granted. We, therefore, affirmed the hearing officer's conclusion that the University evidenced a lack of good faith, meeting in form only with a fixed course of action in mind and without openly seeking discussion that could bring about a deviation from that fixed course.

Board regulation 32410[2] provides in pertinent part as follows:

> (a) 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.

Here, the University does not seek to reverse the decision of the Board. It merely requests correction of certain alleged errors.

The University first argues that the Board erred in its factual finding that Greg Kramp, UCLA's labor relations

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[2]PERB rules and regulations are codified at California Administrative Code, title 8, section 310 01 et seq.

manager, failed to inform Carma Rippee, the blood bank supervisor, that SEIU had requested a delay of the October 29 implementation date to provide an opportunity to meet and discuss the change of hours. This finding is supported by the testimony of both Kramp and Rippee.[3]

The University points to another portion of Rippee's testimony where she states that, "What he [Kramp] told me is that the employee representative was trying to postpone the meet and consult for I don't know what reasons." This testimony, which clearly refers to "trying to postpone the meet and consult" scheduled for October 22 does not contradict Rippee's earlier testimony or our finding based thereon, which refers to SEIU's attempt to postpone implementation on October 29. Thus, Rippee's testimony is not internally inconsistent and, contrary to the University's contention, it does not evidence any confusion or misunderstanding on her part.

Moreover, Kramp's testimony is clear, direct and unambiguous. His testimony alone is sufficient to support our finding that he did not inform Rippee that SEIU had requested that implementation be delayed to permit meeting and conferring. Thus, our finding was not erroneous.

The University next objects to our finding that Kramp's failure to provide Rippee with this information raises an

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3see Reporter's Transcript pp. 161-162, 208.

inference of bad faith, given Rippee's resistance to the proposed change and given Kramp's previous conduct when he asked Rippee to postpone the October 15 implementation date and expressly advised her of the reason.

The University's objection to this inference on the grounds that it goes beyond the hearing officer's finding is without merit. It is well established that the Board is required to consider the entire record and is free to draw its own inferences from the evidence presented. Santa Clara Unified School District (9/26/79) PERB Decision No. 104; and see cases cited therein.

Inasmuch as our factual finding as to Kramp's conduct was without error, the inference is reasonably based on that finding and is also without error. Finding no error, we need not consider the University's further claim that this inference is prejudicial to Kramp personally in his long-term relations with employee organizations and to a fair assessment of his credibility in subsequent hearings. However, we note that, even if this inference were in error, we would not find this to be the sort of prejudice contemplated by regulation 32410 as providing grounds for reconsideration.

The University's final allegation of error has merit. The University correctly points out that the hearing officer who wrote the proposed decision had not conducted the hearing in this case and, therefore, did not observe the demeanor and

credibility of the witnesses. Thus, we erred in stating, at page 7 of the decision, that deferral to the hearing officer is appropriate here.

Nonetheless, as indicated in the sentence immediately following this erroneous statement and throughout the remainder of the decision, we, in fact, engaged in a de novo review of the entire record and based our decision on our own findings. Thus, this statement, though in error, neither caused substantial injury nor affected the result reached. Therefore, it was not prejudicial within the meaning of regulation 32410.[4]

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[4]In defining prejudicial error, we note California Code of Civil Procedure section 475 which provides as follows:

> No error or defect to be regarded unless it affects substantial rights
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> The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error , ruling instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is

ORDER

The request by the Regents of the University of California that the Public Employment Relations Board grant reconsideration of The Regents of the University of California (UCLA) (12/21/82) PERB Decision No. 267-H, is DENIED.

Members Tovar and Jaeger joined in this Decision.

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prejudicial, or that injury was done if error is shown.

See also Black's Law Dictionary; Witkin, California Civil Procedure, Appeal, section 289.