STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA FACULTY ASSOCIATION, Charging Party, v. CALIFORNIA STATE UNIVERSITY, Respondent.	)	Case No. LA-CE-239-H Request for Reconsideration PERB Decision No. 799-H PERB Decision No. 799a-H May 11, 1990

Appearances: Reich, Adell & Crost by Peter Hink, Attorney, for the California Faculty Association; William B. Haughton, Attorney, for the California State University.

Before Craib, Shank and Camilli, Members.

DECISION

CRAIB, Member: This matter is before the Public Employment Relations Board (PERB or Board) on a request from the California Faculty Association (CFA) for reconsideration of that portion of California State University (California Faculty Association) (1990) PERB Decision No. 799-H in which the Board denied CFA's motion to reopen the record. In Decision No. 799-H, the Board affirmed a PERB administrative law judge's proposed decision which held that the California State University (CSU) did not engage in surface bargaining over its proposal to increase parking fees.

As part of its appeal of the proposed decision, CFA asked that the record be reopened to admit evidence that, contrary to CSU's stated disinterest at the bargaining table, CSU was involved in offering public transit subsidy programs for

employees. In CFA's view, this evidence would further demonstrate CSU's bad faith bargaining. The Board denied the motion to reopen the record, on the basis that the proffered evidence was previously available[1] and could have been discovered with the exercise of reasonable diligence.

As explained below, we deny the request to reconsider our denial of CFA's motion to reopen the record.

DISCUSSION

PERB Regulation 32410[2] states, in pertinent part:

> . . . 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.

CFA's request for reconsideration centers on its assertion that the Board made a prejudicial error of fact by equating evidence of existing subsidy programs, which was discoverable with the exercise of reasonable diligence, with the "newly-discovered" evidence that CSU was involved in discussions with the South Coast Air Quality Management District (SCAQMD) that resulted in the expansion of the subsidy programs at CSU's Long Beach and Fullerton campuses. CFA asserts that CSU's discussions with SCAQMD and the resulting subsidy expansion, more so than the mere

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[1]The subsidy programs were mentioned in information provided to CFA during bargaining, in response to an information request.

[2]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

existence of subsidy programs, demonstrate that CSU was acting in bad faith when it claimed it had no interest in pursuing public transit subsidy programs as an alternative to a parking fee increase.

In its earlier motion to reopen the record, the gravamen of CFA's claim was not that CSU had expanded existing subsidy programs, but that CSU had concealed their very existence. Since information regarding their existence was previously provided to CFA, the Board's denial of the motion was well-founded. In its request for reconsideration, CFA now attaches a different significance to its proffered evidence, i.e., that the documents belie CSU's stated disinterest in exploring expansion of subsidy programs as a solution to the parking shortage. Therefore, given the content of CFA's earlier motion to reopen the record, the Board's decision contained no error of fact.

Assuming that a factual error was made in focussing on the existence of subsidy programs rather than their expansion, CFA nonetheless fails to establish that the error was prejudicial. The expansion of the subsidy programs at the two campuses was the result of simply extending the programs to cover the entire calendar year, rather than just the academic year. The total projected increase in users at the two campuses due to this change was 27.

In our view, this evidence is not inconsistent with CSU's stated disinterest in exploring public transit subsidies as an alternative to a parking fee increase. The record revealed a

substantial systemwide parking shortage. In light of that, the minor expansion of the existing subsidy programs at two campuses was insignificant. Since CFA was given information reflecting the existence of subsidy programs, it was not in any way constrained from making proposals involving such subsidies. Therefore, we find that the proffered evidence does not indicate bad faith on the part of CSU and, thus, the evidence would not change our earlier finding that CSU did not engage in surface bargaining. Consequently, even if a factual error was made in the underlying decision, the error was not prejudicial.

ORDER

In accordance with the discussion above, the request for reconsideration of PERB Decision 799-H is DENIED.

Members Shank and Camilli joined in this Decision.