STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

COLLEGE OF THE REDWOODS FACULTY ORGANIZATION, Charging Party, v. REDWOODS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. SF-CE-1583 Request for Reconsideration PERB Decision No. 1047 PERB Decision No. 1047a October 13, 1994

Appearances: Law Offices of Robert J. Bezemek by Robert J. Bezemek, Attorney, for College of the Redwoods Faculty Organization; School and College Legal Services by Patrick D. Sisneros, Attorney, for Redwoods Community College District.

Before Blair, Chair; Caffrey and Garcia, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by the College of the Redwoods Faculty Organization (CRFO)[1] of the Board's decision in Redwoods Community College District (1994) PERB Decision No. 1047 (Redwoods CCD). In that decision, the Board dismissed the unfair practice charge filed by CRFO, finding that the Redwoods Community College District (District) did not violate section 3543.5(a), (b) and (c) of the Educational

[1]The Board denied CRFO's request for oral argument which was filed with the request for reconsideration. Informational briefs supporting CRFO's request for reconsideration were submitted by the AFT College Guild, Local 1521, CFT, AFT, AFL-CIO; the California Community College Independents Association; and the California School Employees Association.

Employment Relations Act (EERA)[2] when it adopted a policy-affecting the hiring of part-time, temporary instructors in future semesters.

DISCUSSION

PERB Regulation 32410[3] provides parties the opportunity to request the Board to reconsider its decisions. It 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.

The Board has strictly applied these limited grounds in acting upon requests for reconsideration. PERB has denied requests for reconsideration which merely repeat legal arguments already offered, or which argue that the Board decision contains errors of law. (Riverside Unified School District (1986) PERB Decision No. 562a; Jamestown Elementary School District (1989) PERB Order No. Ad-187a.) To a great extent, CRFO's reconsideration request repeats arguments already presented and offers additional legal argument in opposition to the conclusions reached by the Board in Redwoods CCD. These legal arguments are not newly discovered and were previously available to CRFO.

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[2]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

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

Therefore, they do not represent appropriate grounds for requesting reconsideration of the Board's decision under PERB Regulation 32410.

CRFO does assert that the Redwoods CCD decision contains a specific prejudicial error of fact in that it misconstrues facts concerning cancellation of classes in the District. CRFO asserts that class cancellation procedures have been negotiated by the parties and embodied in their collective bargaining agreement (CBA) at Article 3.2. CRFO argues that this Article governs class cancellation in the District, and that the Board erred in finding that classes may be cancelled as a result of the exercise of management prerogative.

This argument is without merit. CBA Article 3.2 is entitled "Minimum class size." It contains a provision stating that minimum class size in the District shall be 20 registrants for most classes and provides for exceptions. Article 3.2 does not contain a comprehensive class cancellation policy, nor does it indicate that the parties intended through this article to define the only circumstances under which classes could be cancelled.[4] Therefore, CRFO's assertion that the Board's Redwoods CCD decision contains a prejudicial error of fact because the Board ignored a negotiated class cancellation policy is simply incorrect and is rejected.

[4]The Board has held that decisions to cancel classes fall within management's prerogative. (Mt. San Antonio Community College District (1983) PERB Decision No. 297.)

CRFO also asserts that the Board's consideration of past practice in Redwoods CCD contains prejudicial errors of fact because the District did not dispute that a change in policy and practice was adopted in this case. CRFO argues that the District's unilateral change unlawfully affected the negotiated limitation on the number of hours part-time, temporary instructors could teach, which was 60 percent of a full-time teaching load as described in CBA Article 3.9.

This argument begs the question posed by the underlying case. It is undisputed that the District adopted a new practice and/or policy in this case. The issue considered by the Board in Redwoods CCD was whether that adoption constituted a unilateral change in a matter within the scope of representation in violation of EERA. In addressing this issue, the Board applied the test it enunciated in Grant Joint Union High School District (1982) PERB Decision No. 196, and gave consideration to the terms of the parties' CBA and the practice within the District with regard to part-time, temporary instructors.

CBA Article 3.9 states, in pertinent part:

> Part-time faculty will not be assigned to teach courses in excess of 60% of the 22.5 TLU's per semester (13.5 TLU's).

This article incorporates into the CBA the limitation of Education Code section 87482.5.[5] The parties stipulated that

[5]Education Code section 87482.5 states, in pertinent part:

> Notwithstanding any other provision of law, any person who is employed to teach adult or community college classes for not more than

part-time, temporary instructors are hired on a semester-by-semester basis pursuant to this Education Code provision. Article 3.9 establishes the maximum level at which any part-time, temporary instructor may be hired. It does not address the assignment of any particular part-time, temporary instructor to teach any particular course, nor does it address the assignment of any specific or minimum level of teaching load units (TLU) to a part-time, temporary instructor. The Board in Redwoods CCD concluded that the District applied financial and management considerations and adopted a policy regarding the future hiring of part-time, temporary instructors. That policy did not alter the maximum number of TLU's for which part-time, temporary instructors could be hired and, therefore, does not represent a breach of CBA Article 3.9, which remains fully in effect. CRFO's assertion that the Board made a prejudicial factual error in not concluding that the policy adopted by the District altered the maximum assignment level described in Article 3.9 is rejected.

CRFO also argues that the Board erred in failing to recognize that CRFO demanded that the District negotiate not only over the new policy, but also over the method of calculating work hours per week for part-time, temporary instructors, a negotiable effect of its change in policy. In Redwoods CCD, the Board reversed the proposed decision of a PERB administrative law

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> 60 percent of the hours per week considered a full-time assignment for regular employees having comparable duties shall be classified as a temporary employee . . .

judge (ALJ). The ALJ did not address this issue in his proposed decision. CRFO did not except to the ALJ's decision, and did not raise this issue in its brief opposing the exceptions to the proposed decision filed by the District. Exceptions to a proposed decision are the subject of PERB Regulation 32300 which states that "An exception not specifically urged shall be waived." Accordingly, since CRFO failed to raise this issue as an exception to the ALJ's proposed decision, the Board finds that this argument does not constitute proper grounds for a request for reconsideration.[6]

ORDER

The request for reconsideration in Redwoods Community College District (1994) PERB Decision No. 1047 is DENIED.

Chair Blair joined in this Decision.

Member Garcia's concurrence begins on page 7.

[6]The Board in Redwoods CCD. and in acting on this request for reconsideration, does not reach the issue of whether CRFO issued a valid demand to negotiate over the method of calculating work hours per week of part-time, temporary instructors which was refused by the District; or whether that refusal represents a breach of the District's duty to bargain in good faith over a matter within the scope of representation, in violation of EERA.

GARCIA, Member, concurring: Without jurisdiction there is nothing to reconsider. As stated in my dissent in Redwoods Community College District (1994) PERB Decision No. 1047, the Public Employment Relations Board does not have jurisdiction over this case until the College of the Redwoods Faculty Organization shows that it has either exhausted the grievance agreement which covers the dispute or that pursuit of the grievance process would be futile. Had the grievance process been pursued, many of the contractual issues could have become more clearly defined or resolved.