STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT,	)	
Charging Party,	)	Case No. LA-CE-398-S
v.	)	Request for Reconsideration PERB Decision No. 1299-S
STATE OF CALIFORNIA (DEPARTMENT OF INDUSTRIAL RELATIONS),	)	PERB Decision No. 1299a-S
Respondent.	)	January 14, 1999

Appearance; Dennis F. Moss, Attorney, for Professional Engineers in California Government.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request by Professional Engineers in California Government (PECG) that the Board reconsider its decision in State of California (Department of Industrial Relations) (1998) PERB Decision No. 1299-S (Industrial Relations). In Industrial Relations, the Board dismissed the unfair practice charge and complaint alleging that the State of California (Department of Industrial Relations) (State) violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act)[1] by retaliating against employee Michael

[1]The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3519 states, in pertinent part:

> It shall be unlawful for the state to do any of the following:

Chevalier (Chevalier) for his exercise of protected activity.

DISCUSSION

In Industrial Relations, the Board reversed, the decision of an administrative law judge (ALJ) and dismissed the unfair practice charge and complaint, stating:

> Based on a review of the record as a whole, the Board concludes that the State's actions in sending Chevalier a performance deficiencies memorandum, rating him unacceptable on his second probationary report, and rejecting him on probation were not motivated by Chevalier's protected activity, and would have occurred irrespective of it.

PERB Regulation 32410(a)[2] permits any party to a decision of the Board itself, because of extraordinary circumstances, to request reconsideration of the Board's decision. Regulation 32410(a) 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.

> (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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

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

On November 24, 1998, PECG filed the instant request seeking reconsideration of the Board's decision in Industrial Relations. PECG asserts that the Board's conclusion that the actions taken by the State against Chevalier were not motivated by his protected activity is not supported by the record and, therefore, constitutes prejudicial error of fact. PECG also argues that the Board should have deferred to the judgment of the ALJ who, according to PECG:

> . . . was clearly in a much better position to assess the motivation of the [State] managers who testified, than this Board is, given that the Board is dealing with no more than transcripts and exhibits.

In considering requests for reconsideration, the Board has strictly applied the limited grounds included in PERB Regulation 32410 specifically to avoid the use of the reconsideration process to reargue or relitigate issues which have already been decided. (Redwoods Community College District (1994) PERB Decision No. 1047a; State of California (Department of Corrections) (1995) PERB Decision No. ll00a-S; Fall River Joint Unified School District (1998) PERB Decision No. 1259a.) Similarly, reconsideration will not be granted based on a claim of an alleged prejudicial error of law. (Jamestown Elementary School District (1989) PERB Decision No. Ad-187a.) In numerous request for reconsideration cases, the Board has declined to reconsider matters previously offered by the parties and rejected in the underlying decision. (California State University (1995) PERB Decision No. 1093a-H; California State Employees

Association, Local 1000 (Janowicz) (1994) PERB Decision No. 1043a-S; California Faculty Association (Wang) (1988) PERB Decision No. 692a-H; Tustin Unified School District (1987) PERB Decision No. 626a; Riverside Unified School District (1987) PERB Decision No. 622a.)

PECG asserts that the record in Industrial Relations does not support the Board's conclusion regarding the State's motive in rejecting Chevalier on probation. While PECG obviously disagrees with the Board's finding, its request for reconsideration essentially seeks to relitigate the issue of the State's motive. The Board fully considered the record in Industrial Relations in reaching its finding on this issue. PECG's disagreement does not demonstrate that the Board's decision contains prejudicial error of fact as required by PERB regulations.

PECG also asserts that the Board erred when it did not defer to the ALJ's judgment in assessing the State's motivation. This claim, which presumably could be made in all cases which require the assessment of a party's motivation, reveals a misunderstanding of the role of PERB. In considering unfair practice charges or alleged violations of the Dills Act, the Board has the broad authority to "take such action and make such determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies" of the Dills Act. (Gov. Code sec. 3541.3(i).) Furthermore, in considering exceptions to a proposed decision by an ALJ, the

Board may "affirm, modify or reverse the proposed decision . . . or take such other action as it considers proper." (PERB Reg. 32320.) While the Board gives deference to an ALJ's factual findings which incorporate determinations of witness credibility, the Board reviews the record of the cases before it de novo, and has the duty and responsibility to take the actions based on that review which it deems appropriate to take. (Santa Clara Unified School District (1979) PERB Decision No. 104; Mt. Diablo Unified School District (1984) PERB Decision No. 373b; Lake Elsinore School District (1987) PERB Decision No. 646.)

PECG's request for reconsideration fails to demonstrate grounds sufficient to comply with PERB Regulation 32410.

ORDER

The request for reconsideration in State of California (Department of Industrial Relations) (1998) PERB Decision No. 1299-S is hereby DENIED.

Members Dyer and Amador joined in this Decision.