

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



PROFESSIONAL ENGINEERS IN)
CALIFORNIA GOVERNMENT,)
)
Charging Party,) Case No. SA-CE-1083-S
)
v.) Request for Reconsideration
) PERB Decision No. 1337-S
STATE OF CALIFORNIA (WATER)
RESOURCES CONTROL BOARD),) PERB Decision No. 1337a-S
)
Respondent.)
) December 2, 1999

Appearances: Gerald James, Attorney, for Professional Engineers in California Government; State of California (Department of Personnel Administration) by Paul M. Starkey, Labor Relations Counsel, for State of California (Water Resources Control Board).

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a motion for reconsideration filed by the State of California (Water Resources Control Board) (WRCB) of the Board's decision in State of California (Water Resources Control Board) (1999) PERB Decision No. 1337-S (Water Resources Control Board). In that decision the Board found that the WRCB violated section 3519(b) and (c) of the Ralph C. Dills Act (Dills Act)¹ when it unilaterally implemented a new

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519 provides, in relevant part:

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

(b) Deny to employee organizations rights guaranteed to them by this chapter.

internet/intranet usage policy without providing the Professional Engineers in California Government (PECG) with notice or an opportunity to bargain over that change.

DISCUSSION

In Water Resources Control Board, the Board concluded that the WRCB's internet/intranet usage policy constituted a negotiable departure from its existing statement of incompatible activities. In reaching this decision, the Board rejected, inter alia, WRCB's claim that the charge had been untimely filed, stating:

The earliest date on which the record establishes that PECG had actually seen any portion of the WRCB's internet policy is August 11, when PECG faxed a partial copy of the policy to the WRCB and requested an explanation. Based on the foregoing, we conclude that PECG has filed its charge in a timely manner.

PERB Regulation 32410(a)² permits any party to a decision of the Board itself, because of extraordinary circumstances, to request the Board to reconsider that decision. It states, in pertinent part:

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.

(c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

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

On August 6, 1999, WRCB filed the instant request seeking reconsideration of the Board's decision in Water Resources Control Board. WRCB asks that the Board revisit its ruling in this matter for the exclusive purpose of determining whether the Board, as a matter of law, has jurisdiction in this case. WRCB maintains that the decision contains prejudicial errors of fact and erroneous conclusions of law. The motion is specifically limited to the Board's finding that the earliest date PEGC had actually seen any portion of WRCB's internet policy, as established in the record, was August 11, 1997. WRCB maintains that, "The date that PEGC 'had actually seen any portion of the WRCB's Internet policy' is irrelevant." It goes on to argue that it is "irrefutable" that PEGC had the requisite knowledge no later than July 31, 1997, when PEGC made a written demand to WRCB that it withdraw its intended internet policy, and that the letter bearing this date shows the charge was untimely. WRCB finally claims that by failing to find that this letter triggered the statute of limitations, the Board has abandoned its own precedent, and has impermissibly expanded its statutory jurisdiction.

These are not appropriate grounds under which WRCB may request reconsideration from the Board.

In reviewing requests for reconsideration, the Board has strictly applied the limited grounds included in PERB Regulation 32410, supra. 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. 1100a-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 Order 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.)³

The WRCB has raised the same argument, and has relied upon the same facts, at every stage of these proceedings. The claim was presented to the administrative law judge by WRCB at the

³The letter of July 31 is noted in the decision. WRCB's argument, which was based upon that letter, was rejected by our finding that August 11 was the triggering date of the limitations period. Notice of a proposed change must be given to an official of an employee organization who has the authority to act on behalf of the organization, and that "notice must be communicated in a manner which clearly informs the recipient of the proposed change." (Emphasis added.) (Victor Valley Union High School District (1986) PERB Decision No. 565.) The Board's review of the entire record in this case discloses that, although PEGC was aware that something was stirring on or about July 31, the exact nature of the impending change by WRCB was unknown. The letter of July 31 does not dispel this conclusion.

hearing of July 27, 1998, in WRCB's post-hearing brief, and in its statement of exceptions to the proposed decision. It has now been repetitiously renewed in the motion for reconsideration.⁴

WRCB's request for reconsideration fails to demonstrate grounds sufficient to comply with PERB Regulation 32410.⁵

ORDER

The request for reconsideration in State of California (Water Resources Control Board) (1999) PERB Decision No. 1337-S is hereby DENIED.

Member Amador joined in this Decision.

Chairman Caffrey's concurrence begins on page 6.

⁴WRCB has also argued during the course of these proceedings that PEGC was notified of the intended change on or about April 4, 1997, when Dennis Alexander received a letter setting forth the new internet policies at State of California (Department of Transportation) (Caltrans). This argument is no more persuasive, regarding actual knowledge of the pending changes in WRCB policy, than is the claim arising from the July 31 letter. The information in the April 4 correspondence addressed policies which had been adopted by Caltrans. It was irrelevant to changes being contemplated by WRCB.

⁵In confirming our finding that PEGC did not have notice of the proposed changes until August 11, and not on July 31, the Board also rejects WRCB's claim that PERB has impermissibly expanded its statutory jurisdiction. The Board denies WRCB's request for oral argument. PEGC's request for costs is also denied.

CAFFREY, Chairman, concurring: I concur in the majority's denial of the request by the State of California (Water Resources Control Board) (State) that the Public Employment Relations Board (Board) reconsider its decision in State of California (Water Resources Control Board) (1999) PERB Decision No. 1337-S. In numerous cases cited by the majority, the Board has explained that reconsideration is not available to parties merely seeking to relitigate issues already decided in the underlying decision. In its request for reconsideration, the State simply reargues the issue of the timeliness of the unfair practice charge filed by the Professional Engineers in California Government, an issue decided by the Board in the underlying decision. Consequently, the State has failed to demonstrate appropriate grounds for reconsideration and its request must be denied.