

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ELIZABETH KISZELY,)
)
 Charging Party,) Case No. LA-CO-773
)
 v.) Request for Reconsideration
) PERB Decision No. 1343
 UNITED FACULTY ASSOCIATION OF)
 NORTH ORANGE COUNTY,) PERB Decision No. 1343a
)
 Respondent.) December 2, 1999
 _____)

Appearance; Elizabeth Kiszely, on her own behalf.
Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by Elizabeth Kiszely (Kiszely) that the Board grant reconsideration of United Faculty Association of North Orange County (Kiszely) (1999) PERB Decision No. 1343 (UFA). In UFA, the Board dismissed the unfair practice charge, in which Kiszely made a request for repugnancy review of an arbitration award, and also alleged that the United Faculty Association of North Orange County (Association) denied her the right to fair and impartial representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA), in violation of section 3543.6(b).¹

¹**EERA** is codified at Government Code section 3540 et seq. Section 3544.9 states:

The employee organization recognized or certified as the exclusive representative for

After reviewing the entire record, the Board hereby denies the request for reconsideration.

DISCUSSION

In UFA, the Board concluded that Kiszely's charge was untimely because she had waited over a year after learning of the arbitrator's opinion before filing her charge. The statute of limitations is six months. (EERA sec. 3541.5 (a) (1).)² The Board also concluded that, even if the charge were timely, Kiszely had failed to produce facts which demonstrated that the Association's handling of her grievance was arbitrary, discriminatory or in bad faith, as required. (American Federation of State, County and Municipal Employees, Council 10 (Olson) (1988) PERB Decision No. 682-H.)

the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

Section 3543.6 states, in part:

It shall be unlawful for an employee organization to:

(b) 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.

²EERA section 3541.5(a)(1) provides that the Board shall not:

Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

Reconsideration requests are governed by PERB Regulation 32410(a),³ which states:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. . . . 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 or law which was not previously available and could not have been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

On September 13, 1999, Kiszely filed the instant request seeking reconsideration of the Board's decision in UFA. The request consists of a lengthy document which contains references to matters outside the Board's jurisdiction as well as matters outside the scope of this unfair practice charge. In the portions of the request which pertain to the instant charge, Kiszely asks that the Board grant reconsideration because her charge is timely, based on the same arguments she raised earlier.

The grounds offered by Kiszely do not constitute grounds for reconsideration pursuant to PERB Regulation 32410. In reviewing

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

requests for reconsideration, the Board has strictly applied the limited grounds included in that regulation, 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. 11000a-S; Fall River Joint Unified School District (1998) PERB Decision No. 1259a.) 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.)

Based on this precedent, the Board concludes that Kiszely's request fails to comply with PERB Regulation 32410.

ORDER

Elizabeth Kiszely's request for reconsideration of the Board's decision in United Faculty Association of North Orange County (Kiszely) (1999) PERB Decision No. 1343 is hereby DENIED.

Chairman Caffrey and Member Dyer joined in this Decision.