**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, STATE CENTER CHAPTER 379,<br><br>Charging Party,<br><br>v.<br><br>STATE CENTER COMMUNITY COLLEGE DISTRICT,<br><br>Respondent. | Case No. SA-CE-1908-E<br><br>Request for Reconsideration<br>PERB Decision No. 1471<br><br>PERB Decision No. 1471a<br><br>February 28, 2002 |

Appearances: California School Employees Association by Douglas Herbek, Attorney, for California School Employees Association, State Center Chapter 379; Law Firm of Zampi and Associates by Mary E. Foster, Attorney, for State Center Community College District.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by the State Center Community College District (District) that the Board grant reconsideration of State Center Community College District (2001) PERB Decision No. 1471 (State Center). In State Center, the Board adopted the proposed decision of an administrative law judge (ALJ) which found the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] by withholding unit members'

[1] EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:

home telephone numbers from the California School Employees Association, State Center Chapter 379 (CSEA).

After reviewing the entire record in this matter, including the District's request for reconsideration and CSEA's response to the request, the Board denies the request for reconsideration based on the following.

## DISCUSSION

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.

In reviewing requests for reconsideration, the Board has strictly applied the limited grounds included in PERB Regulation 32410, specifically to avoid the use of the reconsideration

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> (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.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[2] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The regulations and statutes administered by the Board may be found at www.perb.ca.gov.

process to reargue or relitigate issues which have already been decided. (Redwoods Community College District (1994) PERB Decision No. 1047a.)

In its request for reconsideration, the District claims that the Board's State Center decision contains prejudicial errors of fact. According to the District:

> The predominant error is that the meaning which the CSEA attributed to the nondisclosure clause of an existing settlement agreement was that understood by the parties at the time of contracting.

The District argues that once the Board concluded that the meaning attributed to the nondisclosure clause by CSEA was the correct one, the Board readily found that the clause did no more than reiterate existing law regarding disclosure of personal information to CSEA, thereby rendering the settlement agreement a nullity.

The "prejudicial error of fact" argument made by the District first requires a finding that weighing extrinsic evidence for the purpose of contract interpretation presents a question of fact. Basically, the District argues that because the Board adopted the ALJ's proposed decision which concluded the settlement language was ambiguous, the ALJ (and then the Board through adoption of the ALJ's decision) must have weighed the conflicting evidence presented by the parties and decided that CSEA, through its witness Derek Pullinger (Pullinger), presented persuasive proof of the parties' actual understanding of the disputed contract term.

The District's request for reconsideration lists three alleged prejudicial errors of fact made by the Board in support of its argument that the Board accepted CSEA's position:

> (1) The Board erred in concluding that Mr. Pullinger believed that the 1997 settlement agreement did nothing more than incorporate statutory requirements for disclosure.

(2) The Board erred in finding that the District condends that the parties understood the District Directory form to be the sole basis for withholding telephone numbers under the 1997 settlement agreement.

(3) The Board erred in finding facts regarding the intent of individual CSEA bargaining unit members in order to determine the meaning of the 1997 settlement agreement.

CSEA responds that the District has not pointed to anything in the record where the District made clear to CSEA that it would not have to disclose home phone numbers of members who asked that such numbers not be given to particular entities other than CSEA, if those members did not specify CSEA. CSEA argues the District's position relies on subjective evidence not in the record. CSEA responded to each of the District's three specific "prejudical error of fact" arguments and can be summarized as: (1) PERB did not err in stating Pullinger's intent, and the District has failed to prove that his intent was other than PERB has already found. Rather, PERB properly focused on the insufficiency of the District Directory form as a means of deciding when to withhold employees' home contact information as the pivotal issue; (2) CSEA argues that even assuming the ALJ and the Board misstated the District's argument, it is not an error of fact, since argument is not fact and even if it were, the District has failed to show how it suffered prejudice as a result of the alleged error, and (3) CSEA argues that the District not only had an opportunity to present evidence regarding the intent of individual employees, but actually did present evidence on this point. CSEA argues it is the employees who decide who gets their home contact information and the settlement agreement governs how such requests are interpreted and honored, therefore the information was highly relevant.

The District argues that had the Board found the parties intended that the District could refuse to disclose home contact information for any employee who submitted any request that the District not release the information, CSEA's case would have been dismissed. Rather, the Board found that the parties agreed to require release of the information except where an employee requested nondisclosure either to CSEA or to anyone. The District further argues that this conclusion was based largely on the error of fact as to Pullinger's understanding at the time of entering into the 1997 settlement agreement. The District claims that "Ultimately, this error of fact was the basis for concluding that the District Directory did not satisfy the intent of the parties as to requests for privacy."

The Board need not resolve whether the District's argument that this situation presents a question of fact is correct because neither the ALJ nor the Board accepted CSEA's evidence regarding intent in reaching the 1997 settlement agreement as true in adjudicating the dispute. Instead, the dispute was resolved against the District based on the content of the District Directory form itself even when read in the context of the 1997 settlement agreement. At pages 4-5 of State Center the Board stated:

> The form, titled 1999 District Directory Data Entry Form, very clearly on its face concerns nothing more than the District Directory which includes home addresses and phone numbers. Nowhere on this form is there an indication that an employee's expression on this form intends to express his or her statutory right to withhold this information from CSEA or from anywhere other than the District home directory.

As neither the ALJ nor the Board relied upon Pullinger's testimony in reaching the decision, it is not possible that the Board's decision contains a "prejudicial error of fact" and therefore, the District's request for reconsideration merely reargues the case, thus failing to demonstrate grounds sufficient to comply with PERB Regulation 32410(a).

The District also argues in its request for reconsideration that:

> Once the ALJ found that the District contended that the parties understood the District Directory form to be the sole basis for withholding personal information under the 1997 settlement agreement, he then held the District to proving the point. (Emphasis added.)

This argument misrepresents the position of the ALJ and the Board. The word "sole" does not appear in the ALJ's decision nor in the Board's decision. The Board's decision is essentially that notwithstanding the settlement agreement and its "in any case" language, the District Directory form is insufficient to extinguish CSEA's right to the information.

On its face, the District Directory form concerns only publishing the home contact information in the District Directory, not withholding the information from CSEA or from anywhere other than the District Directory. The only issue before the ALJ and the Board was whether the District was justified in withholding the home numbers from CSEA based upon the District Directory form. The Board very clearly held the District is not justified in doing so. In other words, the Board decision did not make a judgment as to what type of form or other written manifestation of intent could be used to determine whether an employee has expressed his or her statutory right to withhold information; it only held that the District Directory form on its face was insufficient to express the statutory right.

The parties' 1997 settlement agreement reads:

> [T]elephone numbers will not be provided in any case where the unit member has requested such information not be disclosed by the District.

In its request for reconsideration, the District states "[t]hat the District's position is that in 1997 the parties agreed to continue the past practice whereby the District would not disclose

a home telephone number to CSEA for any employee who had made any request that the number not be disclosed."

In order for the District to prevail in this matter, the Board would have to accept that "for any employee who had made any request" means that once any request is made, no matter how narrow or specific, that request could be interpreted by the District to extinguish CSEA's right to the information. For example, if an employee provided a written statement to the District stating narrowly that she did not want her home contact information released to a supplemental life insurance carrier, the District could use this narrow request to also keep the information from CSEA. Clearly, neither the supplemental life insurance carrier hypothetical nor the District Directory form at issue in this case is sufficient to express an employee's desire to withhold information from CSEA under Government Code section 6254.3. As such, the District's position in this case is untenable and the request for reconsideration must be denied.

ORDER

The State Center Community College District request for reconsideration of the Board's decision in State Center Community College District (2001) PERB Decision No. 1471 is hereby DENIED.

Member Whitehead joined in this Decision.

Member Amador's concurrence begins on page 8.

AMADOR, Member, concurring: I concur in the majority's conclusion that the State Center Community College District (District) has failed to demonstrate grounds sufficient to comply with PERB Regulation 32410(a).

As I wrote a dissent to the underlying decision, I disagree with portions of the majority's rationale in the instant reconsideration request. I would not grant this reconsideration request because I view it as an attempt to reargue issues which have already been decided by the Public Employment Relations Board. (Redwoods Community College District (1994) PERB Decision No. 1047a.)