

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LAURA FOWLES,

Charging Party,

v.

OFFICE & PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 29,
AFL-CIO & CLC

Respondent.

Case No. SF-CO-229-M

Request for Reconsideration
PERB Decision No. 2236-M

PERB Decision No. 2236a-M

April 25, 2012

Appearances: National Right to Work Legal Defense Foundation, Inc., by W. James Young, Attorney, for Laura Fowles; Beeson, Tayer & Bodine by Andrew H. Baker, Attorney, for Office & Professional Employees International Union, Local 29, AFL-CIO & CLC.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by the Office & Professional Employees International Union, Local 29, AFL-CIO & CLC (OPEIU) of the Board's decision in *Office of Professional Employees International Union, Local 29, AFL-CIO & CLC (Fowles)* (2012) PERB Decision No. 2236-M. The underlying charge alleged that OPEIU violated the Meyers-Milias-Brown Act (MMBA)¹ and PERB Regulation 32992² by failing to inform Laura Fowles (Fowles) of her right not to become a member of OPEIU, failing to provide notice of her rights as an agency fee payer, and by affirmatively misrepresenting to Fowles that full union membership was required as a condition of employment. Initially, a Board agent

¹ The MMBA is codified at Government Code section 3500 et seq.

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

dismissed the charge, finding that it failed to state a prima facie violation of the MMBA or PERB regulations. On February 7, 2012, the Board issued its decision reversing the dismissal of the charge and remanding it to the Office of the General Counsel for issuance of a complaint in order to develop a full record upon which it may be determined whether OPEIU complied with its obligations under the MMBA, PERB Regulation 32992, and the standards set forth in *Chicago Teachers Union v. Hudson* (1986) 475 U.S. 292 (*Hudson*) and *Abood v. Detroit Bd. of Education* (1977) 431 U.S. 209 (*Abood*).

OPEIU requests reconsideration on the following grounds: (1) it did not receive either the appeal filed by Fowles or the letter from the Appeals Assistant notifying the parties that the appeal filings were complete, but first learned of the existence of the appeal upon receipt of the Board's February 7, 2012 decision; and (2) the charge was properly dismissed because the evidence presented established that Fowles received adequate notice of her right to be a non-member of OPEIU and pay a reduced amount. Fowles opposes the request for reconsideration on the basis that the request fails to set forth proper grounds for reconsideration pursuant to PERB Regulation 32410.

The Board has reviewed OPEIU's request for reconsideration and supporting documentation, and Fowles's response thereto, in light of the relevant law. Based on this review, the Board denies OPEIU's request for reconsideration for the reasons discussed below.

DISCUSSION

Under PERB Regulation 32410(a), the grounds for requesting reconsideration of a final Board decision 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." Because reconsideration may only be granted under "extraordinary circumstances,"

the Board applies the regulation's criteria strictly. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H.) A request for reconsideration is not simply an opportunity to ask the Board to "try again." (*Chula Vista Elementary School District* (2004) PERB Decision No. 1557a (*Chula Vista*)). Accordingly, PERB Regulation 32410(a) does not allow a party to reargue or relitigate issues which have already been decided. (*Chula Vista; San Bernardino Teachers Association, CTA/NEA (Cooksey)* (2000) PERB Decision No. 1387.)

OPEIU's request for reconsideration fails to provide grounds for reconsideration under Regulation 32410(a). OPEIU argues that the charge was properly dismissed by the Board agent because a January 8, 2010 "Welcome" letter provided by OPEIU in its position statement "clearly apprised Fowles of her legal right to be a non-member and her legal right, as a non-member, to pay fees that did not include fees for expenses not germane to collective bargaining; that is, her right to pay 'a reduced amount.'" As indicated by the Board in its prior decision, Fowles's allegations raised both a disputed factual issue of whether she received notice of her rights as an agency fee payer, including the document relied on by OPEIU, as well as the legal issue of whether the materials she did receive adequately apprised her of her rights, thereby stating a prima facie violation of the MMBA and PERB Regulation 32992. Thus, OPEIU's argument merely reasserts the legal argument considered previously by the Board and does not establish a prejudicial error of fact upon which reconsideration may be granted.³ (*Redwoods Community College District* (1994) PERB Decision No. 1047a ["PERB has denied requests for reconsideration which merely repeat legal arguments already offered, or which argue that the Board decision contains errors of law."].) Instead, it simply expresses disagreement with the Board's legal determination that the allegations of the charge were

³ OPEIU does not assert that reconsideration should be granted based upon the discovery of new evidence that was not previously available and could not have been discovered with the exercise of reasonable diligence. (PERB Reg. 32410(a)(2).)

sufficient to state a prima facie case and to warrant issuance of a complaint in order to develop a full record upon which it may be determined whether OPEIU complied with its obligations under the MMBA, PERB Regulation 32992, and the standards set forth in *Hudson* and *Abood*. Accordingly, we find no basis for granting reconsideration.⁴

ORDER

The request of the Office & Professional Employees International Union, Local 29, AFL-CIO & CLC for reconsideration of the Public Employment Relations Board's decision in *Office of Professional Employees International Union, Local 29, AFL-CIO & CLC (Fowles)* (2012) PERB Decision No. 2236-M is hereby DENIED.

Chair Martinez and Member Huguenin joined in this Decision.

⁴ Given our conclusion that the charge states a prima facie case sufficient to warrant issuance of a complaint and that no grounds for reconsideration under PERB Regulation 32410(a) have been established, we do not address OPEIU's additional claims.