

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



APPLE VALLEY UNIFIED SCHOOL)
DISTRICT,)
Employer,) Case No. LA-D-245
and) Request for Reconsideration
CALIFORNIA SCHOOL EMPLOYEES) PERB Order No. Ad-209
ASSOCIATION CHAPTER #653,)
Exclusive Representative,) PERB Order No. Ad-209a
and) September 19, 1990
APPLE VALLEY CLASSIFIED EMPLOYEES)
ASSOCIATION, CTA/NEA,)
Employee Organization.)

Appearance: Harry J. Gibbons, Attorney, for California School Employees Association Chapter #653.

Before Craib, Shank and Cunningham, Members.

DECISION

CRAIB, Member: This matter is before the Public Employment Relations Board (PERB or Board) on a request by the California School Employees Association Chapter #653 (CSEA) that the Board reconsider its decision in Apple Valley Unified School District (1990) PERB Order No. Ad-209. In that decision, the Board found that a decertification petition filed by the Apple Valley Classified Employees Association, CTA/NEA, was not barred by a 3-month contract extension entered into by CSEA (the incumbent exclusive representative) and the Apple Valley Unified School District. Overruling Alum Rock Union Elementary School District

(1986) PERB Order No. Ad-158 (Alum Rock), the Board held that contracts of less than 120 days duration (i.e., those which are not long enough to create their own window periods) do not bar representation petitions.

DISCUSSION

PERB Regulation 32410, subdivision (a)¹ provides, 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.

CSEA asserts that, since no party had attacked the validity of the Alum Rock decision, the Board's decision to overrule that case constitutes "newly-discovered law" about which CSEA should have the opportunity to submit argument. CSEA then offers several arguments in favor of retaining the approach set out in Alum Rock. In addition, CSEA requests that the Board stay its earlier order while the present reconsideration request is being considered, in order to avoid holding a potentially unnecessary election.²

A reversal of precedent by the Board does not constitute "newly-discovered law" within the meaning of Regulation 32410. That provision of the regulation is designed to allow a party to

¹PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

²As of the date of this decision, the decertification election has yet to be scheduled.

submit previously unavailable legal authority which the party believes would have a bearing on the Board's underlying decision. Moreover, the Board is not constrained from applying legal analysis not urged by the parties, or from considering sua sponte legal issues not raised by the parties when necessary to correct a serious mistake of law. (Mt. Diablo Unified School District (1983) PERB Decision No. 373, pp. 39-40; Fresno Unified School District (1982) PERB Decision No. 208, pp. 23-24.) Nor do we see how CSEA could have been prejudiced by the Board's determination that it did not desire briefing on the merits of the Alum Rock decision.

CSEA's remaining arguments simply reflect disagreement with the Board's legal rationale for overruling Alum Rock. As such claims do not involve prejudicial errors of fact or newly-discovered evidence or law, but instead involve only purported errors of law, they are not proper grounds for reconsideration. (South Bay Union School District (1990) PERB Decision No. 791a, p. 7; State of California (California Department of Forestry and Fire Protection) (1989) PERB Decision No. 734a-S, pp. 2-3.)

ORDER

For the reasons stated above, CSEA's request for reconsideration of PERB Order No. Ad-209 and its request for a stay of that order are hereby DENIED.³

Members Shank and Cunningham joined in this Decision.

³Immediately prior to the issuance of this Order, the Board received a request from the Apple Valley Classified Employees Association, CTA/NEA (AVCEA) that the Board excuse the late filing of its response to CSEA's request for reconsideration. AVCEA claims that it was not served with a copy of CSEA's request and was only recently made aware of it. As it has been determined that the request for reconsideration must be denied on its merits, it is unnecessary to address AVCEA's late filing request or consider its response to the request for reconsideration.