



STATE OF CALIFORNIA  
 DECISION OF THE  
 PUBLIC EMPLOYMENT RELATIONS BOARD

MICHAEL A. GOFFREDO,	)	
	)	
Charging Party,	)	Case No. LA-CE-3055
	)	
v.	)	Motion to Reopen Record
	)	
SADDLEBACK COMMUNITY COLLEGE	)	PERB Order No. Ad-235
DISTRICT	)	
	)	October 27, 1992
Respondent.	)	

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Appearances: Gail Goffredo and Michael A. Goffredo, for Michael A. Goffredo; Parker, Covert & Chidester by Spencer E. Covert, Attorney, for Saddleback Community College District.

Before Hesse, Chairperson; Camilli and Carlyle, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on a motion by Michael A. Goffredo (Goffredo) to reopen the record in Case No. LA-CE-3055. Goffredo alleges in his motion that the State of California (Department of Fair Employment and Housing) (DFEH) is in possession of documents that contradicts testimony given by the Saddleback Community College District representatives in his hearing before the PERB administrative law judge (ALJ).<sup>1</sup> Goffredo requests the Board to subpoena the documents for inclusion in his case.

In considering motions to reopen the record, the Board has reviewed such motions in the form of a request for

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<sup>1</sup>Goffredo's discrimination case before the DFEH was closed on August 10, 1992 based on insufficient evidence.

reconsideration. (San Mateo Community College District (1985) PERB Decision No. 543.) PERB Regulation section 32410<sup>2</sup> provides that reconsideration may be granted by the Board on the basis of, inter alia, "newly discovered evidence . . . which was not previously available and could not have been discovered with the exercise of reasonable diligence."

In his motion to the Board, Goffredo fails to provide specifics or substance to his allegations. Further, the Board will not consider a bare assertion that more documents are available when there is no showing that the evidence was previously unavailable. (Los Angeles Unified School District (1989) PERB Decision No. 705a.) Therefore, the Board denies the request to reopen the record.<sup>3</sup>

ORDER

The motion to reopen the record in Case No. LA-CE-3055 is DENIED. Goffredo has 14 days<sup>4</sup> from the date of service of this

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<sup>2</sup>PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

<sup>3</sup>Goffredo failed to serve the District with papers concerning his extension of time request and his motion to reopen the record. In both instances, the District was informed of Goffredo's action by PERB's appeal assistant. As no objection was made by the District to the extension of time and as the District filed a statement of opposition to the motion to reopen the record, the Board finds no prejudice to the District.

<sup>4</sup>Goffredo has previously been granted one extension of time to file his statement of exceptions. At the time Goffredo made his motion to reopen the record, 14 days remained on the extension. As good cause has not been shown, the Board declines to extend the filing deadline.

decision to file exceptions to the ALJ's proposed decision with no further extension of time to be granted.

Member Camilli joined in this Decision.

Chairperson Hesse's concurrence begins on page 4.

Hesse, Chairperson, concurring: Based on the following discussion, I would deny the request to reopen the record.

Michael A. Goffredo (Goffredo) requests the Board to reopen the record in Case No. LA-CE-3055 for the taking of further evidence which allegedly proves that the Saddleback Community College District's witnesses committed perjury during the formal evidentiary hearing before the Public Employment Relations Board's (PERB or Board) administrative law judge.

PERB Regulation section 32320(a)<sup>1</sup> provides:

(a) The Board itself may:

(1) Issue a decision based upon the record of hearing, or

(2) Affirm, modify or reverse the proposed decision, order the record reopened for the taking of further evidence, or take such other action as it considers proper.

In determining whether the Board should grant or deny a request to reopen the record in a given case, the Board has utilized the standard applied to requests for reconsideration based on new evidence. (See San Mateo Community College District (1985) PERB Decision No. 543.)

PERB Regulation 32410 provides that reconsideration may be granted by the Board on the basis of "newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence." Applying this standard to the present request to reopen the record,

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<sup>1</sup>PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Goffredo has failed to provide any facts to support his request to reopen the record. He merely states that the evidence or information is located at the Department of Fair Employment and Housing, and requests PERB to subpoena this evidence or information. As Goffredo has failed to demonstrate that the evidence was not previously available or could not have been discovered with the exercise of reasonable diligence, the Board must deny Goffredo's request to reopen the record.

As a result of the Board's denial of Goffredo's motion to reopen the record, I would allow Goffredo the opportunity to file exceptions to the proposed decision. Consistent with PERB Regulation 32300<sup>2</sup>, any exceptions to the proposed decision must be filed within 20 days following the date of service of the Board's decision.

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<sup>2</sup>PERB Regulation 32300(a) provides, in pertinent part:

A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to section 32215, and supporting brief, within 20 days following the date of service of the decision or as provided in section 32310.