

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

POWAY UNIFIED SCHOOL DISTRICT,

Employer,

and

POWAY COUNCIL OF CLASSIFIED
EMPLOYEES, CFT/AFT, AFL-CIO,

Petitioner,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION AND ITS POWAY
CHAPTER 80,

Exclusive Representative.

Case No. LA-DP-333-E

Request for Reconsideration
PERB Order No. Ad-306

PERB Order No. Ad-306a

March 5, 2001

Appearances: California School Employees Association by David J. Dolloff, Attorney, for California School Employees Association and its Poway Chapter 80; Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for Poway Council of Classified Employees, CFT/AFT, AFL-CIO.

Before Amador, Baker and Whitehead, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by the California School Employees Association and its Poway Chapter 80 (CSEA) that the Board grant reconsideration of Poway Unified School District (2000) PERB Order No. Ad-306 (Poway USD). In Poway USD, the Board affirmed an administrative determination which found that the objections filed by the Poway Council of

Classified Employees, CFT/AFT, AFL-CIO concerning serious irregularities in the conduct of a decertification election warranted setting aside the election results. The Board also ordered a new election.

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

DISCUSSION

Reconsideration requests are governed by PERB Regulation 32410.¹ PERB Regulation 32410(a) 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 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.

CSEA now seeks reconsideration of the Board's decision in Poway USD based on a claim that the decision "affirmed without comment the underlying administrative determination which contains two critical, prejudicial errors of fact." In reviewing Poway USD, the Board considered these identical allegations and adopted the hearing officer's determination that "the only reasonable conclusion is that the totality of circumstances

¹ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et al.

surrounding the three ballot counts establishes that serious irregularities occurred in the conduct of the election which had a probable or actual impact upon the election results." (Id. at p. 14.)

Understandably, CSEA disagrees with the Board's ruling in Poway USD. However, its request for reconsideration is little more than a vehement restatement of the arguments raised earlier in its appeal. In reviewing requests for reconsideration, the Board has strictly applied the limited grounds included in the 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. 1100a-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, we decline to reconsider the matters previously considered in Poway USD.

ORDER

California School Employees Association and its Poway Chapter 80's request for reconsideration of the Board's decision in Poway Unified School District (2000) PERB Order No. Ad-306 is hereby DENIED.

Members Baker and Whitehead joined in this Decision.