

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



WENJIU LIU,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY (EAST BAY),

Respondent.

Case No. SF-CE-995-H

Request for Reconsideration
PERB Order No. IR-56-H

PERB Order No. IR-56a-H

October 16, 2013

Appearances: Wenjiu Liu, on his own behalf; Dawn S. Theodora, University Counsel, for Trustees of the California State University (East Bay).

DECISION

This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Wenjiu Liu (Liu) of the Board's decision in *Trustees of the California State University (East Bay)* (2013) PERB Order No. IR-56-H (*Liu v. Trustees*). In that decision, the Board denied with prejudice Liu's fifth request for injunctive relief on the ground that the request had not met the "just and proper" standard as set forth in *Public Employment Relations Bd. v. Modesto City Schools Dist.* (1982) 136 Cal.App.3d 881, 886 (*Modesto*).

In its decision, the Board assumed, *arguendo*, that there was reasonable cause to believe an unfair practice had been committed by the employer. However, the harms Liu alleged -- lost wages and benefits, emotional pain and suffering and harm to reputational interests -- were either beyond PERB's jurisdiction to remedy, or could be remedied by a reinstatement order and back pay, should he ultimately prevail in the administrative proceedings before PERB, and therefore do not warrant injunctive relief under the "just and proper" standard in *Modesto*. As

the Board stated: “there is no allegation that [Liu’s] protected activity was critical to some other collective action such as a union organizing drive during a representation election. Nor is there any allegation or evidence that CSUEB’s alleged retaliation against Liu was likely to chill the rights of other employees to engage in protected activity.” (*Liu v. Trustees*, at p. 6.)

Liu now requests reconsideration of our decision to deny his request for injunctive relief, claiming that his protected activity was undertaken with the support of his fellow faculty members and that the employer’s retaliation against him chilled his fellow employees from engaging in similar conduct.

The Board has reviewed Liu’s request for reconsideration in light of the relevant law. Based on this review, and for the reasons discussed below, the Board holds that reconsideration is not available for decisions by the Board regarding requests for injunctive relief. On that basis, the Board summarily denies Liu’s request for reconsideration.

DISCUSSION

Requests for reconsideration of a final Board decision are governed by PERB Regulation 32410(a)¹, which states, in pertinent part:

- (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. . . . [T]he request for reconsideration . . . shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. . . . 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

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

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.

[¶ . . . ¶]

- (c) Unless otherwise ordered by the Board, the filing of a Request for Reconsideration shall not stay the effectiveness of a decision of the Board itself except that the Board's order in an unfair practice case shall automatically be stayed upon filing of a Request for Reconsideration.

(Emphasis added.)

Because reconsideration may only be granted under “extraordinary circumstances,” the Board applies Regulation 32410 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.) The limited grounds on which a party may request reconsideration preclude a party from using the reconsideration process to reargue or re-litigate issues that have already been decided. (*Redwoods Community College District* (1994) PERB Decision No. 1047a.) Neither may a party use the reconsideration process to register disagreement with the Board’s legal analysis. (*California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479a-S.)

On its face, PERB Regulation 32410 is intended to provide a party the opportunity to call to the Board’s attention prejudicial errors of fact or newly discovered evidence that was previously unavailable and could not have been discovered with reasonable diligence.

Given the unique nature of proceedings for seeking injunctive relief, which require expeditious investigation by the Office of the General Counsel (see PERB Regs. 32455 and

32460), we conclude that the reconsideration procedure was neither intended nor designed to permit review of Board decisions granting or denying a request for injunctive relief.

Subsection (c) in particular supports our conclusion. It provides for an automatic stay of Board orders in unfair practice cases upon the filing of a request for reconsideration.

If PERB Regulation 32410 applied to injunctive relief requests, PERB's authority to seek injunctive relief would be effectively nullified. All requests for injunctive relief must be accompanied by an unfair practice charge, and therefore any order issued by the Board on a request for injunctive relief is an "order in an unfair practice case." (PERB Reg. 32450(a)(2).) If PERB Regulation 32410 applied to requests for injunctive relief, a party opposing such a request could easily thwart a Board determination to seek injunctive relief simply by filing a request for reconsideration. The Board's decision to seek injunctive relief would then be stayed automatically, pursuant to PERB Regulation 32410(c).

Clearly, this is an absurd result, as a request for reconsideration of PERB's decision concerning a request for injunctive relief would effectively deny PERB the power and duty explicitly granted to it in the Educational Employment Relations Act (EERA) section 3541.3(j).²

For these reasons, we hold that PERB Regulation 32410 does not apply to determinations the Board has made regarding injunctive relief requests. Consequently, we do not address Liu's claims and arguments raised in his request for reconsideration of PERB Order IR-56-H.

² EERA section 3541.3(j) provides, in pertinent part: "Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order." (EERA is codified at Gov. Code § 3540 et seq.)

ORDER

Wenjiu Liu's request for reconsideration in Case No. SF-CE-995-H of the Public Employment Relations Board's decision in *Trustees of the California State University (East Bay)* (2013) PERB Order IR-56-H is hereby summarily DENIED.

PER CURIAM