

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BURLINGAME ELEMENTARY SCHOOL
DISTRICT,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION,

Exclusive Representative.

Case No. SF-UM-611-E

Request for Judicial Review
PERB Decision No. 1847

PERB Order No. JR- 24

February 14, 2007

Appearances: Miller, Brown & Dannis by Lawrence M. Schoenke, Attorney, for Burlingame Elementary School District; Christina C. Bleuler, Attorney, for California School Employees Association.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration and request for judicial review filed by the Burlingame Elementary School District (District)¹ of the Board's decision in Burlingame Elementary School District (2006) PERB Decision No. 1847 (Burlingame). In Burlingame, the District filed a unit modification petition to remove the benefits/payroll specialist position from the California School Employees Association (CSEA) bargaining unit and designate the position as confidential under section 3540.1(c) of the Educational Employment Relations Act

¹The District filed one document captioned "Request for Judicial Review or Reconsideration or Both by Burlingame School District and Supporting Brief."

(EERA).² The Board adopted the proposed decision of the Board agent, which found that the benefits/payroll specialist position in the District was not a confidential position.

The Board has reviewed the entire record relevant to the District's requests for reconsideration and judicial review. We find that this record does not contain a basis for the Board to reconsider its previous decision in Burlingame, nor did the District present sufficient evidence for the Board to grant the request for judicial review. Therefore, the Board denies both the request for reconsideration and the request for judicial review.

DISCUSSION

The facts in this case are well-chronicled in Burlingame and we need not review them here. The issues before PERB at this juncture are solely whether or not the District has met the standards set forth in PERB case law and the statutes for reconsideration and judicial review.

Request for Reconsideration

Requests for reconsideration are limited to circumstances where "(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." (PERB Reg. 32410(a).³) We find that the District's request for reconsideration is not supported by the evidence. The District merely re-asserts the same arguments that were made and rejected at the hearing before the Board agent and that were denied in the District's appeal of the Board agent's proposed decision. Therefore, we deny the District's request for reconsideration.

²EERA is codified at Government Code section 3540, et seq. Unless otherwise stated, all statutory references are to the Government Code.

³PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

Request for Judicial Review⁴⁴

Under EERA section 3542(a), requests for judicial review are limited to situations in which the Board agrees that the case is "one of special importance and joins in the request for such review." A case has "special importance" if the Board determines that (1) there is a novel issue presented; (2) the issue primarily involves construction of a statutory provision unique to EERA; and (3) the issue is likely to arise frequently. (Los Angeles Unified School District/Lynwood Unified School District (1985) PERB Order No. JR-13 (Los Angeles).)

The District argues that it has met the standard for judicial review because the Legislature changed the definition of "confidential employee" in Section 3540.1(c) and judicial interpretation of the new definition has not occurred. Specifically, the District wants the opportunity to seek court determination that under the new definition, the Legislature intended that an employee may be deemed confidential even if the position only required access to confidential information and not the actual performance of confidential duties, as required by PERB.

The definition of "confidential employee" in Section 3540.1(c) prior to January 2004 was as follows: "any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations."

The definition of "confidential employee", effective January 1, 2004 to the present in Section 3540.1(c) is:

any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is

⁴⁴As noted in footnote 1 above, the District filed a single brief for both its request for reconsideration and its request for judicial review. In response, CSEA filed a document captioned "CSEA's Response to the District's Request for Reconsideration and Judicial Review of PERB Decision." The document was not timely filed for purposes of responding to a request for judicial review. Therefore, we only considered CSEA's response on the issue of the request for reconsideration.

used to contribute significantly to the development of management positions.

The District argues that judicial review is necessary, because "[t]he language does not indicate that the employee must already perform those [confidential] duties."

We do not agree that the change in definition for "confidential employee" presents an issue of "special importance" warranting the Board joining with the District to seek judicial review. First, The District's argument ignores the fact that the pre-2004 language in Section 3540.1(c) also did not state that an employee must perform confidential duties to be deemed a confidential employee. Second, the Board agent discussed the change in definition, but found that Higher Education Employer-Employee Relations Act (HEERA)⁵ cases interpreting "a definition of confidential employee virtually identical to that in the new EERA section, have applied the same principles", inter alia, that confidential employee status requires more than access to confidential information. Hence, the District's argument fails to meet the second prong of the test for "special importance" articulated in Los Angeles in that the statutory construction sought is not for language that is "unique to EERA" because nearly the same language already exists in HEERA.

The District further argues that an issue of special importance requiring judicial review is implicated because under current PERB law, school districts are not always afforded the right to have a sufficient number of confidential employees, contrary to PERB's decision in Sierra Sands Unified School District (1976) EERB⁶ Decision No. 2. The District argues that this right is being denied by PERB's requirement that employees actually perform confidential tasks in order to be deemed confidential employees. This argument merely recycles the same

⁵HEERA is codified at Section 3560, et seq.

⁶Prior to 1978, PERB was known as the Educational Employment Relations Board (EERB).

position presented by the District at hearing and in its exceptions to the Board agent's proposed decision and fails to rise to the level of special importance warranting judicial review.

Accordingly, we hereby deny both the District's request for reconsideration and its request for judicial review.

ORDER

The request of the Burlingame Elementary School District (District) that the Public Employment Relations Board (PERB) reconsider its decision in Burlingame Elementary School District (2006) PERB Decision No. 1847 (Burlingame) is DENIED.

The request of the District that PERB join its request for judicial review of Burlingame is DENIED.

Members Shek and McKeag joined in this Decision.