

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KENNETH L. PARISOT, JR.,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION and its SHASTA COLLEGE
CHAPTER #381,

Respondent.

Case No. S-CO-62

Request for Reconsideration
PERB Decision No. 280

PERB Decision No. 280a

March 24, 1983

Appearances; Edward L. Mann, Attorney (Tillman, Beasley & Mann) for Kenneth L. Parisot, Jr.; Madalyn J. Frazzini, Attorney for California School Employees Association and its Shasta College Chapter #381.

Before Gluck, Chairperson; Tovar and Morgenstern, Members.

DECISION

GLUCK, Chairperson: The California School Employees Association and its Shasta College Chapter #381 (CSEA) request that the Public Employment Relations Board (PERB) reconsider Case No. S-CO-62, PERB Decision No. 280 (1/31/83) and issue a stay of all proceedings ordered in that decision pending disposition of the motion for reconsideration.¹ In Decision No. 280, the Board ordered the general counsel to issue a

¹PERB rules and regulations are codified at California Administration Code, title 8, section 31001 et seq.

Section 32410 provides in part:

- (a) Any party to a decision of the Board itself may, because of extraordinary

complaint on the charge filed by Kenneth L. Parisot, Jr. The charge alleged that CSEA violated subsection 3543.6(b) of the Educational Employment Relation Act (EERA)² by suspending Parisot from membership in the organization for four years and barring him from holding office for twelve years because he worked to decertify the organization. The Board found that the charge alleged facts sufficient to establish a prima facie case,

The basis for the request for reconsideration is that "newly discovered evidence" exists which render the issues in the unfair practice charge moot. This evidence states that on June 25, 1982, PERB certified a unit modification which designated Parisot a supervisor. CSEA contends that its constitution precludes supervisors from membership and holding

circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and 5 copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to

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(c) The filing of a request for reconsideration shall not operate to stay the effectiveness of a decision of the Board itself unless otherwise ordered by the Board itself.

²EERA is codified at Government Code section 3540, et seq. All statutory references are to the Government Code unless otherwise noted.

office, thereby making it impossible for PERB to fashion an effective remedy should the Parisot complaint be upheld.

In his response, Parisot accepts CSEA's argument that, because he is a supervisor, he does not possess a present right to membership or to hold office. Nevertheless, he maintains that the charge is not moot because of the imposed duration of the suspension (12 years) and the possibility that he may once again occupy a classification that is represented by CSEA.

The charge before the Board has not become moot by the approved unit modification request excluding Parisot's position of food services supervisor from the classified unit. In Amador Valley Joint Union High School District (10/2/78) PERB Decision No. 74, the Board held:

A case in controversy becomes moot when the essential nature of the complaint is lost because of some superseding act or acts of the parties.

The essential nature of this complaint has not been lost. Although supervisors may be precluded from membership by the CSEA constitution, it is undisputed that at the time of Parisot's dismissal from the Association he was a member. The central issue of the charge was whether this dismissal was lawful, not whether Parisot has a present right to continue membership. We have recognized that a case is not moot when any material question concerning an alleged violation of the charging party's rights remains to be answered. The fact that

because of "changed conditions the relief originally sought . . . cannot be granted" does not lead to a contrary result. Amador Valley, supra; Hartke v. Abbott (1930) 106 Cal.App.388. One court has said regarding mootness of an appellate hearing:

The rather general and oft-repeated phrases that just because a judgment by the reviewing court may 'prove ineffectual' or that there is nothing 'on which its judgment can operate' travel in a circle . . . the true rule is that an appellant has a right to have settled on appeal whether there has been a ground of complaint against him and, what is more, that such a ground may not be deemed to be waived merely because a reversal of the judgment is 'ineffectual' to reinstate the original status quo. People v. Becker (1952) 108 Cal.App. 2d 764.

We find no reason not to apply the same principle to Parisot's right to make his case-in-chief.

Further, there exists the possibility that remedies other than reinstatement may be found appropriate should Parisot ultimately prevail; this is a matter which the Board cannot properly determine prior to a hearing.³

³Subsection 3541.5(c) provides that:

The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

For the foregoing reasons, the request for reconsideration and motion to stay are denied.

ORDER

The request of the California School Employees Association and its Shasta College Chapter #381 for reconsideration of the Public Employment Relations Board's Decision No. 280 and stay of proceedings is DENIED.

Members Tovar and Morgenstern joined in this Decision.