STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DR. CHENG T. WANG, Charging Party, v. CALIFORNIA FACULTY ASSOCIATION, Respondent.	Case No. LA-CO-11-H Request for Reconsideration PERB Decision No. 692-H PERB Decision No. 692a-H December 29, 1988

Appearances; Dr. Cheng T. Wang, on his own behalf.

Before Hesse, Chairperson; Porter, Craib, and Shank, Members.

DECISION

HESSE, Chairperson: Dr. Cheng T. Wang requests reconsideration of Decision No. 692-H, issued by the Public Employment Relations Board (PERB or Board) on July 26, 1988. Having duly considered the request for reconsideration, the Board itself hereby denies the request for the reasons that follow.

In Decision 692-H, the Board affirmed the Board agent's dismissal of charging party's unfair practice charge that the respondent, California Faculty Association (Association), violated section 3571.1(b) and (e) of the Higher Education Employer-Employee Relations Act (HEERA or Act).[1] Finding the

[1]HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3571.1 reads, in pertinent part:

> It shall be unlawful for the higher education employer to:
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> . . . . . .

dismissal to be free of prejudicial error, the Board adopted it as the Decision of the Board itself, and dismissed the unfair practice charge without leave to amend. Specifically, the Board found that the Association did not breach its duty of fair representation in its representation of the charging party concerning a disciplinary dismissal.

DISCUSSION

PERB Regulation 32410(a)[2] 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 . . . The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

In his Motion for Reconsideration, the charging party (1) requests the Board to reconsider its decision based on "new evidence and law"; (2) asserts that the Board's decision is not supported by the facts; and (3) argued that the Board's

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> (b) Deny to employee organizations rights guaranteed to them by this chapter.
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> . . . . . .
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> (e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

[2]PERB regulations are codified at California Administrative Code, title 8, section 31001 et seq.

conclusion that the Board agent's statements are free from prejudicial error is erroneous and prejudicial.

The charging party claims that on August 2, 1988, he noticed that under section 3563(h) of HEERA, PERB is authorized to investigate alleged violations of HEERA and to take such action as the Board deems necessary to effectuate the policies of the Act. The charging party alleges that the purposes of HEERA have been violated by the failure of the memorandum of understanding (MOU) to provide for a faculty hearing for a faculty member facing disciplinary action, in violation of Education Code section 89542.5(a). Additionally, the charging party asserts that the Association has failed to adequately represent the charging party and the interest of other faculty members in grievance and disciplinary proceedings.[3] In adopting the Board agent's dismissal as its decision, the Board, like the Board agent, considered charging party's allegation that the MOU's failure to provide for a faculty hearing constitutes a violation of the Education Code. The Board has held, based on PERB

[3]In his Motion for Reconsideration, the charging party requested PERB to seek injunctive relief to: (1) restore the rights of faculty members facing dismissal charges; and (2) reinstate the charging party as a professor at California State University at Long Beach. This request for injunctive relief was denied by the General Counsel by letter dated August 9, 1988, based on: (1) the fact that there is no jurisdictional basis for PERB to seek injunctive relief as no unfair practice complaint has issued; and (2) the failure of the charging party to comply with the requirements established by PERB Regulation 32450 (Calif. Admin. Code, title 8, secs. 32450-32470) which sets forth the procedures for requesting the Board to seek injunctive relief.

Regulation 32410(a), that reconsideration is not appropriate when a party merely restates an argument previously considered and rejected by the Board in its underlying decision. (Rio Hondo Community College District (1983) PERB Decision No. 279a.) Reconsideration is also not appropriate based on charging party's argument that he first became aware of section 3563(h) of HEERA on August 2, 1988. This argument must fail, as the provisions of HEERA do not constitute law that was not previously available, or could not have been discovered with the exercise of reasonable diligence.

Charging party next contends that the Board's decision is not supported by the facts, and that the Board agent's statements are not free from prejudicial error. Charging party disagrees with the Board agent's findings, and cites specific examples of prejudicial error concerning the Board agent's statements contained in the Board agent's dismissal. Charging party concludes that, had the Board reviewed the file, the Board would not have made its decision to dismiss the unfair practice charge without leave to amend. In reaching its decision in the underlying case, the Board reviewed the file, including the Board agent's dismissal, and ultimately adopted the dismissal as the decision of the Board itself. Although charging party disagrees with the Board's decision, there is no evidence that the Board's decision contains prejudicial errors of fact.

Therefore, having rejected the charging party's arguments in support of its request for reconsideration, for the reasons set

forth above, we find that the charging party has failed to demonstrate extraordinary circumstances warranting reconsideration.

ORDER

The request by charging party that the Public Employment Relations Board grant reconsideration of California Faculty Association (Wang) (1988) PERB Decision No. 692-H is DENIED.

Members Porter, Craib, and Shank joined in this Decision.