STATE OP CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED TEACHERS - LOS ANGELES,	)	
	)	
Charging Party,	)	Case No. LA-CE-3227
	)	
v.	)	Request for Reconsideration
	)	PERB Decision No. 1041
LOS ANGELES UNIFIED SCHOOL DISTRICT,	)	PERB Decision No. 1041a
	)	
Respondent.	)	June 15, 1994
	)	

Appearances: Taylor, Roth, Bush & Geffner by Leo Geffner, Attorney, for United Teachers - Los Angeles; O'Melveny & Myers by Steven M. Cooper, Attorney, for Los Angeles Unified School District.

Before Blair Chair; Carlyle and Garcia, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration filed by the United Teachers - Los Angeles (UTLA) of the Board's decision in Los Angeles Unified School District (UTLA) (1994) PERB Decision No. 1041. The Board in its prior decision affirmed the proposed decision of an administrative law judge (ALJ) which held that a subject of an amendment to a complaint was not included in any of the various unfair practice charges filed by UTLA nor was any evidence introduced during UTLA's case-in-chief to warrant such amendment, thus denying such amendment as untimely and dismissing the complaint in question.

Having duly considered UTLA's request for reconsideration and the Los Angeles Unified School District's response, the Board hereby denies the request for the reasons that follow.

DISCUSSION

PERB Regulation 32410(a)[1] states, in pertinent part:

> 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 was not previously available and could not have been discovered with the exercise of reasonable diligence.

In its request for reconsideration, UTLA makes several claims that the matter it raised in the proposed amendment was part of its amended charges and complaint and was included in the evidence and testimony of the case. However, these same arguments were previously rejected by the ALJ and the Board itself. Further, UTLA attempts to rely on Member Garcia's dissent in the underlying case to substantiate its position.

Reconsideration is not appropriate when a party simply restates arguments which were considered and rejected by the Board in its underlying decision. (California State Employees Association (Janowicz) (1994) PERB Decision No. 1043a-S; California Faculty Association (Wang) (1988) PERB Decision No. 692a-H, p. 4; Tustin Unified School District (1987) PERB Decision No. 626a, p. 3; Riverside Unified School District (1987) PERB Decision No. 622a, p. 2.)

UTLA's arguments were properly rejected by the Board in the underlying decision. No newly discovered evidence or law is

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

cited. Relative to presenting evidence of prejudicial errors of fact, the Board has reviewed Member Garcia's dissent in the underlying decision as relied upon by UTLA. Unfortunately for UTLA, if there has been the commission of prejudicial errors of fact, it is not located in either the ALJ's denial of amendment and dismissal of complaint or in the majority decision.

Accordingly, the Board finds that UTLA's request for reconsideration does not meet the criteria in PERB Regulation 32410(a).

ORDER

There being no proper grounds for reconsideration stated, the request for reconsideration of Los Angeles Unified School District (UTLA) (1994) PERB Decision No. 1041 is hereby DENIED.

Chair Blair joined in this Decision.

Member Garcia's dissent begins on page 4.

GARCIA, Member, dissenting: I dissent because I find that the United Teachers - Los Angeles (UTLA) has met the criteria set forth in the Public Employment Relations Board (PERB or Board) regulation governing grounds for reconsideration.[1]

UTLA is not merely seeking to have the Board reconsider issues previously considered and rejected by the Board, as in the cases cited by the majority. Instead, UTLA's request for reconsideration identifies prejudicial errors of fact contained in the administrative law judge's (ALJ) decision adopted by the Board.

As I stated in my original dissent, the term "salaries" should be read as including the concept of differentials based on several sources in the file.[2] The Board's handling of this

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[1]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. See PERB Regulation 32410(a), which states, in pertinent part:

> Any party to a decision of the Board itself may . . . 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 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.

[2]See PERB Regulation 32320, which states, in pertinent part:

> (a) The Board itself may:
>
> (1) Issue a decision based upon the record of hearing, or
>
> (2) Affirm, modify or reverse the proposed decision, order the record reopened for the

evidence amounted to a prejudicial error of fact. Those sources included:

1. The District's final offer, which covered:

> . . . all salary schedules and rates, including those which are not calculated as a percentage of regular base salary, such as differentials, professional expert rates, substitute rates, temporary personnel rates, etc. [District's Final 1992-93 Economic Offer, implemented October 2, 1992; emphasis added.]

2. The District's hearing testimony. During the hearing, the District's Chief Negotiator testified as follows:

> Q. At some point after the September 22 offer was made, did the District offer to change the way it treated non-hourly based differentials?
>
> A. Yes. . . . our proposals up to this point had been to reduce . . . the pay-out by the District on the basic salary account and so . . . we had made a proposal previously about picking up other payments that are made to employees . . .
>
> Q. What do you mean by other payments made to employees?
>
> A. Differentials. lump sum and hourly rated differentials of various kinds and we had [up to that point] really just made proposals affecting . . . base pay and not things like . . . what they call differential pay for performing additional services, so what we suggested was a so[-]called broadening [of] the base for cuts. And what that amounted to was, instead of just zeroing in on basic

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taking of further evidence, or take such other action as it considers proper.

> pay, that we would propose that all pay rates, including all the differentials, . . . all of these payments for extra duties, should themselves be reduced by the same percentage that the salary schedule itself was being hit. [R.T., Vol. V, pp. 121-122; emphasis added.]

This testimony proves beyond question that, at the time it implemented its Final Offer, the District intended differentials to be included in the description of salary -- both types of pay were to be cut by the same percentage, since both were "pay rates."

3. The settlement between the parties. On May 25, 1993, the parties executed a settlement document containing this key language:

> Both parties shall withdraw/dismiss all 1992-93 negotiations-related litigation, or claims, whether asserted or unasserted, including . . . PERB charges, except for UTLA's PERB complaint regarding coordination of benefits under the health plan and the dispute over bilingual salary differential reduction. [Agreement, Art. II, sec. 1.0.]

Given the evidence in the file, I find that the intent of the underlined language conforms to the interpretation advanced by UTLA, which is, the parties agreed to pursue the PERB complaint containing two unsettled issues. If the parties had intended to separate from the complaint the dispute over the bilingual salary differential reduction, they could have done so by recasting the language to more clearly delineate the two

categories. As written, the phrase "PERB complaint" included both issues and the parties agreed to reserve UTLA's right to have PERB adjudicate the health and differentials issues.

The ALJ's failure to focus on evidence of the parties' intent, such as the items listed above, was prejudicial error, which the Board continued when it adopted the ALJ's decision as the decision of the Board itself, and continues today by denying UTLA's request for reconsideration. Furthermore, since the Board does not require technical precision in pleading[3] and since it has the power to look at all documents in the file, it was appropriate to carefully consider the types of evidence listed above in construing the meaning of the term "salary." While it can be expected in the environment of an adversarial hearing that the ALJ will focus on the evidence proffered by each adversary, and let each develop its own case, the review board has a broader responsibility under PERB regulations. UTLA has identified

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[3]See Moreno Valley Unified School Dist. v. Public Employment Relations Bd. (1983) 142 Cal.App.3d 191, 202-203, citing National Labor Relations Board precedent:

> Actions before the [NLRB] are not subject to the technical pleading requirements that govern private lawsuits. [Citation.] The charge need not be technically precise as long as it generally informs the party charged of the nature of the alleged violations. [Citations.]

Similarly, PERB Regulation 32615(a)(5) only requires that the charge contain "[a] clear and concise statement of the facts and conduct alleged to constitute an unfair practice." UTLA's charge clearly and concisely referenced the District's unilateral implementation of its offer as the conduct giving rise to the alleged unfair practice.

prejudicial errors of fact in the prior Board decision, and the request for reconsideration should be granted.