

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES')
ASSOCIATION, CSU DIVISION,)
SEIU LOCAL 1000, AFL-CIO,) Case No. LA-CE-328-H
)
Charging Party,) Request for Reconsideration
) PERB Decision No. 1093b-H
v.)
) PERB Decision No. 1093c-H
CALIFORNIA STATE UNIVERSITY,)
)
Respondent.)
)
_____)

Appearances: California State Employees' Association by Howard L. Schwartz, Attorney, for California State Employees' Association, CSU Division, SEIU Local 1000, AFL-CIO; William G. Knight, University Counsel, for California State University.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request by the California State Employees' Association, CSU Division, SEIU Local 1000, AFL-CIO (CSEA), for reconsideration of California State University (1997) PERB Decision No. 1093b-H. In that decision, on remand from the California Court of Appeal, Second Appellate District (Court), the Board ordered the California State University (CSU) to pay eligible bargaining unit members the merit salary adjustments (MSAs) unlawfully suspended on June 1, 1992, plus interest at the rate of 7 percent per annum.

PROCEDURAL HISTORY

In California State University (1995) PERB Decision No. 1093-H, the Board dismissed the complaint alleging that

CSU violated section 3571(a) and (c) of the Higher Education Employer-Employee Relations Act (HEERA)¹ by unilaterally suspending CSEA-represented employees' MSAs on June 1, 1992. In California State Employees' Assn. v. Public Employment Relations Bd. (1996) 51 Cal.App.4th 923 [59 Cal.Rptr.2d 488], the Court reversed the Board's decision and remanded the case to PERB for an order of back pay, plus interest. The Court stated that CSEA was to recover its costs. In California State University, supra. PERB Decision No. 1093b-H, the Board ordered CSU to cease and desist from failing to meet and confer in good faith with CSEA over the MSA suspension and from denying bargaining unit members the right to be represented by CSEA. CSU was ordered to pay eligible bargaining unit members the unlawfully suspended MSAs, including 7 percent interest per annum.

CSEA'S REQUEST FOR RECONSIDERATION

CSEA requests reconsideration on two grounds. First, CSEA contends that PERB erred by failing to order recovery of costs

¹HEERA is codified at Government Code section 3560 et seq. Section 3571 states, in pertinent part:

It shall be unlawful for the higher education employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

by CSEA. In its remand to PERB, the Court ordered back pay, plus interest, and indicated "Petitioner to recover its costs." PERB ordered back pay, plus 7 percent interest, but made no mention of costs.

Second, CSEA argues that the appropriate interest rate to be applied to PERB's back pay order is 10 percent pursuant to Code of Civil Procedure section 685.010.² CSEA asserts that the exemption from section 685.010 provided in the Government Code for "local public entities" does not apply to CSU because it is a division of the state "claims against which are paid by warrants drawn by the Controller."

CSU does not challenge CSEA's request for costs. However, CSU asserts that the Government Code limits the rate of interest applicable to CSU to 7 percent. (Ellis v. State of California (1996) 51 Cal.Rptr.2d 458 review granted 51 Cal.Rptr.2d 42 [917 P.2d 1165].)

DISCUSSION

PERB Regulation 32410³ states, in pertinent part:

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

²Code of Civil Procedure section 685.010 states, in pertinent part:

Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.

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

not have been discovered with the exercise of reasonable diligence.

The Board denies requests for reconsideration that fail to establish that the Board decision contained prejudicial errors of fact or newly discovered evidence or law. (Redwoods Community College District (1994) PERB Decision No. 1047a.) CSEA's claim that the Board erred by not awarding 10 percent interest under Code of Civil Procedure section 685.010 fails to meet regulation 32410's requirements and the request for reconsideration of the Board's interest rate award is denied.⁴

As noted, the Court's decision in California State Employees' Assn. v. Public Employment Relations Bd., supra, 51 Cal.App.4th 923 stated, "Petitioner to recover its costs." The Board concludes that the omission of CSEA's cost recovery from the Order constitutes prejudicial error of fact within the meaning of PERB Regulation 32410. Accordingly, it is appropriate to amend the Order in California State University, supra, PERB Decision No. 1093b-H to provide for recovery of CSEA's costs pursuant to the Court's decision.

⁴The Board notes that there are no circumstances under which CSU would be subject to Code of Civil Procedure section 685.010. As a division of the state with claims paid by warrants drawn by the Controller, CSU is exempt from section 685.010 under Government Code sections 965.5(b) and 940.6. (Union Pacific Railroad Co. v. State Bd. of Equalization (1991) 231 Cal.App.3d 983 [282 Cal.Rptr. 745]; California Federal Savings & Loan Assn. v. City of Los Angeles (1995) 11 Cal.4th 342 [45 Cal.Rptr.2d 279].)

ORDER .

The request for reconsideration of the interest rate in California State University (1997) PERB Decision No. 1093b-H is hereby DENIED.

The request for reconsideration of the award of costs is GRANTED and the Order in California State University (1997) PERB Decision No. 1093b-H is amended as follows:

Pursuant to the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3563.3 it is hereby ordered that the California State University (CSU) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Taking unilateral action and failing to meet and confer in good faith with the California State Employees' Association, CSU Division, SEIU Local 1000, AFL-CIO (CSEA), about the suspension of merit salary adjustments; and

2. By this same conduct, denying bargaining unit employees the right to be represented by CSEA.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OF HEERA:

1. Pay eligible bargaining unit members the merit salary adjustments unlawfully suspended by CSU beginning on June 1, 1992. Payments to eligible employees shall be subject to interest at the rate of seven (7) percent per annum.

2. Pursuant to the Court's direction in California State Employees' Assn. v. Public Employment Relations Bd. (1996)

51 Cal.App.4th 923 [59 Cal.Rptr.2d 488], CSEA is to recover its costs.

3. Within thirty (30) days following service of this Decision and Order, post at all work locations where notices to employees are customarily placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, defaced, altered or covered by any material.

4. Within thirty (30) days of service of this Decision and Order, notify the Sacramento Regional Director of the Public Employment Relations Board, in writing, of the steps the employer has taken to comply with the terms of this Order. Continue to report in writing to the Regional Director thereafter as directed. All reports to the Regional Director shall be served concurrently on CSEA.

Members Johnson and Dyer joined in this Decision.



APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An agency of the State of California**

In Unfair Practice Case No. LA-CE-328-H, California State Employees Association. CSU Division SEIU Local 1000. AFL-CIO v. California State University, in which all parties had the right to participate, it has been found that the California State University (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571(a) and (c) when it unilaterally suspended merit salary adjustments for employees represented by the California State Employees Association, CSU Division, SEIU Local 1000, AFL-CIO (CSEA) on June 1, 1992, prior to the completion of bargaining with CSEA.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Taking unilateral action and failing to meet and confer in good faith with the CSEA about the suspension of merit salary adjustments; and

2. By the same conduct, denying bargaining unit employees the right to be represented by CSEA.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS
DESIGNED TO EFFECTUATE THE PURPOSES OF HEERA:

1. Pay eligible bargaining unit members the merit salary adjustments unlawfully suspended by CSU beginning on June 1, 1992. Payments to eligible employees shall be subject to interest at the rate of seven (7) percent per annum.

2. Pursuant to the Court's direction in California State Employees' Assn. v. Public Employment Relations Bd. (1996) 51 Cal.App.4th 923 [59 Cal.Rptr.2d 488], CSEA is to recover its costs.

Dated: _____

CALIFORNIA STATE UNIVERSITY

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.