

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOHN SHEK,)
)
 Charging Party,) Case No. SF-CO-46-H
)
) Request for Reconsideration
 v.) PERB Decision No. 1173-H
) PERB Decision No. 1173a-H
 AMERICAN FEDERATION OF STATE,)
 COUNTY & MUNICIPAL EMPLOYEES,)
 COUNCIL 57,) February 5, 1997
)
 Respondent.)
 _____)

Appearance: John Shek, on his own behalf.
Before Garcia, Johnson, and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on John Shek's (Shek) request that the Board reconsider its decision in American Federation of State. County & Municipal Employees. Council 57 (Shek) (1996) PERB Decision No. 1173-H (AFSCME, Council 57).¹ In that case,

¹Shek makes his request pursuant to PERB Regulation 32410. PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation section 32410 provides, in relevant part:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and five 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

the Board found that the American Federation of State, County & Municipal Employees, Council 57 (AFSCME) did not violate section 3571.1(b) of the Higher Education Employer-Employee Relations Act (HEERA² when it represented Shek in a series of grievances against his employer, the University of California at San Francisco.

BACKGROUND

In AFSCME, Council 57. Shek contended that AFSCME breached its duty of fair representation by inadequately representing him in a number of grievances dating back to 1993. (See HEERA section 3578.)³ The Board dismissed the bulk of Shek's

32140 are required. 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.

²HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3571.1 states, in relevant part:

It shall be unlawful for an employee organization to:

(b) 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.

³Section 3578 states:

The employee organization recognized or certified as the exclusive representative shall represent all employees in the unit, fairly and impartially. A breach of this

allegations as untimely because they occurred beyond HEERA's six-month limitations period. (HEERA section 3563.2(a).)⁴ The remaining allegations concerned the grievance AFSCME filed to challenge Shek's termination.

Shek contended that AFSCME had failed to supply him with documents necessary to challenge his termination and had failed to adequately pursue the grievance. The Board held that AFSCME had no duty to provide information to Shek. (See Oxnard School District (1988) PERB Decision No. 667 at p. 9.) The Board also held that Shek had failed to allege facts sufficient to support a finding that AFSCME's conduct had been arbitrary, discriminatory, or in bad faith. (See United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258 at p. 5.)

SHEK'S REQUEST FOR RECONSIDERATION

In his request for reconsideration, Shek contends that the Board abused its discretion by failing to follow its "Governing Statute" (apparently HEERA) and by "Converting 'Substantial evidence'." Specifically, Shek claims: (1) that the Board based its dismissal only on information submitted by AFSCME; (2) that the Board ignored the undisputed fact that AFSCME refused to

duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

⁴HEERA section 3563.2(a) states, in relevant part:

. . . the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

provide Shek with documents necessary to challenge his dismissal; and (3) that the Board's October 31, 1996 dismissal incorrectly states that Shek attended a hearing.

DISCUSSION

PERB Regulation 32410 provides that a party to a Board decision may request reconsideration on the grounds that the decision contains prejudicial errors of fact, or newly discovered evidence or law. The Board will not grant a request for reconsideration where the party making the request has failed to establish any ground set forth in PERB Regulation 32410. (See, e.g., California State Employees Association, Local 1000 (Janowicz) (1994) PERB Decision No. 1043a-S at pp. 2-3.) Further, reconsideration is not appropriate where a party merely restates arguments considered and rejected by the Board in its underlying decision. (Id.; Regents of the University of California (1990) PERB Decision No. 829a-H at pp. 2-3.)

As noted above, Shek raises three arguments in his request for reconsideration. We will address these serially.

Without any citation to the record or to any specific portion of the Board's decision, Shek challenges all of the Board's factual findings. Shek contends that the Board based its findings solely on information submitted by AFSCME. A review of the record, however, indicates that the Board's factual findings stem from Shek's unfair practice charge and the exhibits attached thereto. (See Regents of the University of California (1996) PERB Decision No. 1157-H at pp. 3-4.) Shek's blanket challenge

to the Board's factual findings has no basis in fact and does not comply with PERB Regulation 32410. Accordingly, Shek's first challenge is insufficient to support a request for reconsideration.

Shek next argues that the Board ignored his claim that AFSCME denied his requests for information. As noted above, the Board agent specifically addressed this claim on page 3 of the dismissal letter. Because Shek's second argument has no basis in fact and does not comply with PERB Regulation 32410, it is also insufficient to support a request for reconsideration.

Shek's final contention is somewhat of a mystery. Shek appears to believe that the Board held a hearing before it issued PERB Decision No. 1173-H.⁵ Shek apparently contends that he was prejudiced because he was not present at the Board's hearing. Since the Board rendered its decision without a hearing, Shek's final assertion is also insufficient to support a reconsideration request.

ORDER

The request for reconsideration in Case No. SF-CO-46-H is hereby DENIED.

Members Garcia and Johnson joined in this Decision.

⁵Shek's misapprehension may stem from the fact that his name is listed in the decision's "Appearances" section. This section identifies those individuals who filed written pleadings with the Board itself.