

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FALL RIVER EDUCATION ASSOCIATION,)
CTA/NEA,)
Charging Party,) Case No. SA-CE-1712
v.) Request for Reconsideration
PERB Decision No. 1259
FALL RIVER JOINT UNIFIED SCHOOL)
DISTRICT,) PERB Decision No. 1259a
Respondent.)
June 18, 1998

Appearance; California Teachers Association by Diane Ross,
Attorney, for Fall River Education Association, CTA/NEA.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public
Employment Relations Board (PERB or Board) on a request by the
Fall River Education Association, CTA/NEA (FREA) that the Board
reconsider its decision in Fall River Joint Unified School
District (1998) PERB Decision No. 1259 (Fall River JUSD). In
Fall River JUSD, the Board concluded that the Fall River Joint
Unified School District (District) unilaterally implemented a
teacher swap program without providing FREA with notice or the
opportunity to bargain over the decision or its effects, and
thereby violated section 3543.5(a), (b) and (c) of the
Educational Employment Relations Act (EERA).¹ The Board

¹EERA is codified at Government Code section 3540 et seq.
Unless otherwise indicated, all statutory references herein are
to the Government Code. Section 3543.5 states, in pertinent
part:

dismissed the allegation that by involuntarily transferring teacher John Lennon (Lennon), the District violated the EERA by retaliating against Lennon for his exercise of EERA-protected conduct. The Board also dismissed the allegation that the District violated the EERA by unilaterally changing its policy governing the involuntary transfer of teachers.

DISCUSSION

In dismissing the allegation that the District unlawfully retaliated against Lennon when it involuntarily transferred him, the Board stated:

. . . the involuntary transfer of Lennon resulted from the District's conclusion that it would be in the best interests of the special education program at Fall River High School because of the deterioration of the relationship between Lennon and [Fall River High School Principal Don] Sandberg. In view of that relationship, the transfer would have occurred regardless of Lennon's EERA-protected activity and was not motivated by the District's desire to retaliate against Lennon for that activity.

It shall be unlawful for a public school 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.
- (b) Deny to employee organizations rights guaranteed to them by this chapter.
- (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

In dismissing the allegation that the District unilaterally changed its involuntary transfer policy, the Board concluded that the District did not breach the policy established in the parties' collective bargaining agreement (CBA) with respect to the transfer of Lennon.

PERB Regulation 32410(a)² permits any party to a decision of the Board itself to request the Board to reconsider that decision. It 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 not have been discovered with the exercise of reasonable diligence.

On April 28, 1998, FREA filed the instant request seeking reconsideration of the Board's decision in Fall River JUSD. FREA asserts that "there is simply no evidence in the record" to support the Board's conclusion concerning the District's motive in transferring Lennon. Consequently, FREA argues that "PERB's finding regarding motive was a prejudicial error."

FREA also seeks reconsideration based on the Board's reversal in Fall River JUSD of the finding by a PERB administrative law judge (ALJ) that the District unilaterally changed its policy governing the involuntary transfer of teachers. FREA asserts that the District took no exception to this finding by the ALJ, and did not argue for the construction

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

of the parties' CBA which the Board adopted in dismissing the allegation. Consequently, FREA argues that the Board's reversal of the ALJ on this allegation constitutes prejudicial error.

In considering requests for reconsideration, the Board has strictly applied the limited grounds included in PERB Regulation 32410 specifically to avoid the use of the reconsideration process to reargue or relitigate issues which have already been decided. (Redwoods Community College District (1994) PERB Decision No. 1047a; State of California (Department of Corrections) (1995) PERB Decision No. 1100a-S.) Similarly, reconsideration will not be granted based on a claim of an alleged prejudicial error of law. (Jamestown Elementary School District (1989) PERB Decision No. Ad-187a.) In numerous request for reconsideration cases, the Board has declined to reconsider matters previously offered by the parties and rejected in the underlying decision. (California State University (1995) PERB Decision No. 1093a-H; California State Employees Association, Local 1000 (Janowicz) (1994) PERB Decision No. 1043a-S; California Faculty Association (Wang) (1988) PERB Decision No. 692a-H; Tustin Unified School District (1987) PERB Decision No. 626a; Riverside Unified School District (1987) PERB Decision No. 622a.)

In the instant request, FREA asserts that the record in Fall River JUSD contains no evidence to support the Board's conclusion regarding the District's motive in transferring Lennon. While FREA obviously disagrees with the Board's finding, this portion

of its reconsideration request essentially seeks to relitigate the issue of the District's motive. In reaching its finding with regard to this issue, the Board fully considered the record in Fall River JUSD and specifically referenced the facts of the case which led it to its conclusion. FREA's claim does not demonstrate that the Board's decision contains prejudicial error of fact as required by PERB regulations.

FREA's request for reconsideration is also based on the assertion that the Board's reversal of an ALJ's finding to which the District did not take exception constitutes "prejudicial error." Since FREA does not claim that the Board's decision contains prejudicial error of fact, as required by PERB Regulation 32410, its request fails for that reason alone. Additionally, FREA's assertion, that in considering the cases before it the Board is limited exclusively to exceptions and arguments raised by the parties, reveals a misunderstanding of the authority and role of PERB. In considering unfair practice charges or alleged violations of the EERA, the Board has the broad authority to "take such action and make such determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies" of the EERA (sec. 3541.3(i)). While the Board ordinarily gives deference to an ALJ's factual findings which incorporate determinations of witness credibility, the Board reviews the record of the cases before it de novo, and may review issues that have not been raised in a party's exceptions when it deems it appropriate to do

so. (Santa Clara Unified School District (1979) PERB Decision No. 104; Lake Elsinore School District (1987) PERB Decision No. 646; Mt. Diablo Unified School District (1984) PERB Decision No. 373b.) FREA's assertion that the Board's exercise of this authority constitutes prejudicial error is without merit.

In summary, FREA's request for reconsideration fails to demonstrate grounds sufficient to comply with PERB Regulation 32410.

ORDER

The request for reconsideration in Fall River Joint Unified School District (1998) PERB Decision No. 1259 is hereby DENIED.

Members Dyer and Amador joined in this Decision.