

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KOFI OPONG-MENSAH,)
)
Charging Party,) Case No. SA-CE-1074-S
)
v.) Request for Reconsideration
) PERB Decision No. 1290-S
STATE OF CALIFORNIA (DEPARTMENT)
OF FOOD AND AGRICULTURE),) PERB Decision No. 1290a-S
)
Respondent.) January 14, 1999
_____)

Appearances: Kofi Opong-Mensah, on his own behalf; State of California (Department of Personnel Administration) by Warren C. Stracener, Labor Relations Counsel, for State of California (Department of Food and Agriculture).

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 Kofi Opong-Mensah (Opong-Mensah) that the Board reconsider its decision in State of California (Department of Food and Agriculture) (1998) PERB Decision No. 1290-S (Food and Agriculture). In Food and Agriculture, the Board concluded that the State of California (Department of Food and Agriculture) did not violate section 3519 of the Ralph C. Dills Act (Dills Act)¹

¹The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3519 states, in pertinent part:

It shall be unlawful for the state 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

by denying Opong-Mensah's requests for information or by discriminating against him for his exercise of protected activity.

DISCUSSION

PERB Regulation 32410² permits any party to a decision of the Board itself to request reconsideration of its decision. Regulation 32410 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.

The Board has strictly applied these limited grounds in considering reconsideration requests 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

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.

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

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.)

On October 29, 1998, Opong-Mensah filed the instant request seeking reconsideration of the Board's decision in Food and Agriculture based on his claim of "new evidence," consisting of copies of documents provided to him on June 24, 1998. Opong-Mensah filed the original unfair practice charge in this case on January 13, 1998, and amended the charge on July 13, 1998. Since his amended charge was filed after the date Opong-Mensah obtained the documents he describes as "new evidence," it is clear that Opong-Mensah could have included this evidence in his amended charge and brought it to the attention of the Board agent.

(Regents of the University of California (1998) Decision No. 1271-H at p. 3.)

Opong-Mensah has not demonstrated that the information he presents as new evidence was not previously available with the exercise of reasonable diligence. Additionally, some of the evidence included in his reconsideration request was previously included in his appeal in the underlying case, and has already

been considered by the Board. Therefore, Opong-Mensah's request fails to demonstrate grounds for reconsideration sufficient to comply with PERB Regulation 32410.

ORDER

The request for reconsideration in State of California
(Department of Food and Agriculture) (1998) PERB Decision
No. 1290-S is hereby DENIED.

Members Dyer and Amador joined in this Decision.