

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL
ENGINEERS, LOCAL 21, AFL-CIO,

Charging Party,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT AND CITY AND COUNTY OF
SAN FRANCISCO,

Respondent.

Case No. SF-CE-2282-E

Request for Reconsideration
PERB Decision No. 1721

PERB Decision No. 1721a

March 2, 2005

Appearances: Davis & Reno by Duane W. Reno, Attorney, for International Federation of Professional and Technical Engineers, Local 21, AFL-CIO; Martin R. Gran, Deputy City Attorney, for San Francisco Unified School District and City and County of San Francisco.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration filed by the San Francisco Unified School District (District) and City and County of San Francisco (City) of the Board's decision in San Francisco Unified School District and City and County of San Francisco (2004) PERB Decision No. 1721. In that decision, the Board considered an unfair practice charge filed by the International Federation of Professional and Technical Engineers, Local 21, AFL-CIO (Local 21) which alleged that the District and the City violated the Educational Employment Relations Act (EERA)¹ and/or the Meyers-Milias-Brown Act (MMBA)² by refusing to

¹EERA is codified at Government Code section 3540, et seq.

²MMBA is codified at Government Code section 3500, et seq.

implement salary increases pursuant to a City charter process. Finding that Local 21 had stated a prima facie case, the Board reversed the dismissal and remanded the matter to the Office of the General Counsel for issuance of a complaint.

The District now seeks reconsideration of the Board's decision based on several arguments. After reviewing the entire record in this case, including the District's request for reconsideration and Local 21's response, the Board hereby denies the request for reconsideration based on the discussion below.

DISCUSSION

PERB Regulation 32410(a)³, states in part that:

The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence.

The District makes three arguments in support of its request for reconsideration. First, the District argues that the Board's decision contains a prejudicial error of fact because it fails to consider Local 21 's actions as evidence of bad faith. This argument must be rejected. Local 21 's motives for seeking to take advantage of Proposition B were not relevant in determining whether a prima facie case was stated. The only issue considered by the Board was whether Local 21 waived its rights, if any, under Proposition B by not asserting them earlier.

Next, the District takes issue with the Board's description of the affected bargaining unit as all 1,650 class accountants employed by the City and the District. The District argues

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

that the Board's description "fails to capture the size of the bargaining unit". Again, this argument must be rejected. The size of the affected unit was not relevant to the Board's determination that Local 21 had stated a prima facie case.

Finally, the District argues that laches should be invoked at this stage of the proceedings because a finding that the District is bound by the arbitration decision between Local 21 and the City would pose a financial hardship on the District. This argument must also be rejected. As the Board's decision noted, invoking laches at this stage is generally inappropriate since a factual finding of prejudice must first be made. Such a factual finding is more appropriate at a hearing before an administrative law judge.

In conclusion, all the District's arguments appear to assume that the Board has already determined that an unfair practice has been committed. This is not true. The Board has merely found that a prima facie case has been stated and that this matter must now proceed to an evidentiary hearing. The arguments made by the District in this motion are better saved for that hearing. Accordingly, the District's motion for reconsideration is denied.

ORDER

The District's request for reconsideration of the Board's decision in San Francisco Unified School District and City and County of San Francisco (2004) PERB Decision No. 1721 is hereby DENIED.

Chairman Duncan and Member Whitehead joined in this Decision.