

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KING CITY HIGH SCHOOL TEACHERS
ASSOCIATION, CTA/NEA,

Charging Party,

v.

KING CITY JOINT UNION HIGH SCHOOL
DISTRICT,

Respondent.

Case No. SF-CE-2272-E

Request for Reconsideration
PERB Decision No. 1777

PERB Decision No. 1777a

February 16, 2007

Appearances: California Teachers' Association by Ramon E. Romero, Attorney, for King City High School Teachers Association, CTA/NEA; Lozano Smith by Thomas R. Manniello, Attorney, for King City Joint Union High School District.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a joint request for reconsideration (joint request) by the King City High School Teachers Association, CTA/NEA (CTA) and King City Joint Union High School District (District) of the Board's decision in King City Joint Union High School District (2005) PERB Decision No. 1777 (King City). In King City, the Board determined that the District violated the Educational Employment Relations Act (EERA)¹ when it improperly calculated the negotiated salary formula. The Board's decision included an Order requiring the District to make affected employees whole for lost wages plus interest. On October 13, 2005, the District filed a petition for writ of review in the California Court of Appeal seeking review and reversal

¹EERA is codified at Government Code section 3540, et seq. Unless otherwise stated, all statutory references are to the Government Code.

of the Board's decision in King City. The Court of Appeal proceedings are fully briefed and pending a date for oral argument.²

The Board has reviewed the record in this matter, including the joint request and supporting declarations, and finds that the joint request should be granted, and that the Board's Order in King City should be modified because of the extraordinary circumstances in this case.

BACKGROUND

The evidence provided by the parties indicates that during the course of discussions on how to comply with the Board's make whole order in King City, it was discovered by the parties that the cost to the District of complying with the remedy would be about \$5.2 million plus interest. The District has a total budget of \$17-\$18 million. Therefore, compliance with the make whole order would likely cause the District to go into bankruptcy and result in the District going into State receivership. The impact of such an outcome would be catastrophic to both the District and its employees, by all accounts. The school board would lose control of the District and the State would take control of District finances, operations and collective bargaining, which could significantly impact the employees' ability to recover under PERB's make whole order at all. Based on these likely consequences, the parties have jointly requested that PERB modify its Order to address the amount to be paid to the employees and allow the District to pay the debt off over an extended period of time.

CTA asserts that resolving the dispute in this manner would be beneficial to employees. According to former CTA Chief Negotiator, Timothy Swoverland (Swoverland), this approach would "... ensure the maximum payment of back pay to current and former bargaining unit

²Because of the writ pending before the Court of Appeal, PERB does not have jurisdiction to modify its order absent an order of the court. (EERA sec. 3542(c).) The Court of Appeal, Sixth Appellate District, has granted PERB limited jurisdiction to consider the joint request.

members." Swoverland also stated that the proposed remedy is "fair to all of our [CTA's] current and former bargaining unit members and has been ratified by a substantial representation of both groups."

The parties seek reconsideration and modification of PERB's Order based on the dire and unusual circumstances that would result from complying with the current Order, were it to remain unchanged.

DISCUSSION

PERB Regulation 32410(a)³ provides, in part, that: "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." The joint request was filed on January 9, 2007, well past the deadline to file a request for reconsideration. However, PERB Regulation 32136 provides that "a late filing may be excused in the discretion of the Board for good cause only." The facts in this case are an aberration. Because of the unusual and extraordinarily dire nature of the circumstances resulting from the Board's make whole order and the fact that it took the parties nearly a year since the issuance of King City to discover these circumstances and to negotiate a compromised remedy, the Board finds that good cause exists to excuse the late filing of the joint request.

Requests for reconsideration may only be granted under extraordinary circumstances. Consequently, the Board has strictly applied the limited grounds included in PERB Regulation 32410 to avoid the use of the reconsideration process to reargue or relitigate issues which have already been decided. (San Bernardino Teachers Association. CTA/NEA

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

(Cooksey) (2000) PERB Decision No. 1387a.) According to PERB Regulation 32410(a), the grounds for 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. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

Reconsideration based on newly discovered evidence is to allow the Board "to have access to evidence which was unavailable at the time of hearing which could affect the underlying determination." (Pittsburg Unified School District (1984) PERB Decision No. 318a.) In this case, the dire consequences on the District and its employees resulting from complying with the remedy in King City could not be ascertained by the parties at the outset. In addition, there is evidence that the District's financial condition has worsened substantially from the time of the filing of the unfair practice charge to the present. We find these factors are directly relevant and thus conclude that reconsideration is warranted.

Considering all of the evidence, including the compromise and remedy suggested by the parties, we find that the compromise is intended to include all individuals who would have been entitled to relief pursuant to the Order in King City and apply the same percentage salary increase to each group of eligible employees and former employees. Accordingly, we conclude the proposed remedy adequately protects the rights of the impacted parties. Therefore, we find that the compromised proposed remedy is fair, will promote harmonious labor relations, and is consistent with the purposes of EERA.

Based upon the dire financial consequences that the parties agree would result from the Board's decision in King City , the Board grants the joint request and modifies the Order in King City to conform to this decision.

ORDER

The request for reconsideration of King City Joint Union High School District (2005) PERB Decision No. 1777 is GRANTED and the Order is hereby AMENDED to read as follows:

Based on the foregoing and the entire record in this case, it is found that the King City Joint Union High School District (District) violated the Educational Employment Relations Act (EERA).

Pursuant to EERA section 3541.5(c) it is hereby ORDERED that the District, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the King City High School Teachers Association, CTA/NEA (CTA) as the exclusive representative of its certificated employees by unilaterally changing the manner of calculating the negotiated salary formula.

2. By the same conduct described in paragraph 1 above, interfering with bargaining unit employees' right to participate in the activities of an employee organization of their choosing.

3. By the same conduct described in paragraph 1 above, denying to CTA rights guaranteed by EERA, including the right to represent its members.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF EERA:

1. Upon request, meet and negotiate with CTA over any future decision and the effects thereof of changing the policies contained in Article 17 as they pertain to the "salary formula."

2. Immediately following the date this decision is no longer subject to appeal, make payment to affected employees in accordance with the remedy agreed to by the parties and presented to the Board as evidence supporting the parties' joint request for reconsideration.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of PERB, or the General Counsel's designee. The District shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on CTA.

It is further Ordered that all other allegations in Case No. SF-CE-2272-E are hereby DISMISSED.

Members Shek and McKeag joined in this Decision.