



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

CRIMINAL JUSTICE ATTORNEYS
ASSOCIATION OF VENTURA COUNTY,

Charging Party,

v.

COUNTY OF VENTURA,

Respondent.

Case Nos. LA-CE-1260-M
LA-CE-1268-M

Request for Reconsideration
PERB Decision No. 2758-M

PERB Decision No. 2758a-M

July 20, 2021

Appearances: Rains Lucia Stern St. Phalle & Silver by Richard A. Levine, Attorney, for Criminal Justice Attorneys Association of Ventura County; Tiffany N. North, County Counsel, and Matthew A. Smith, Assistant County Counsel, for County of Ventura.

Before Banks, Chair; Shiners and Krantz, Members.

DECISION

BANKS, Chair: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on a request by Criminal Justice Attorneys Association of Ventura County (Association) that the Board reconsider its decision in *County of Ventura* (2021) PERB Decision No. 2758-M. In that decision, we found the County of Ventura violated the Meyers-Milias-Brown Act (MMBA) and PERB Regulations by implementing constructive receipt taxation of accrued leave without affording the Association adequate notice and a meaningful opportunity to bargain over the negotiable effects of that decision; and by bargaining in bad faith over

amending the parties' leave redemption plan.¹ We determined that the extensive record developed over 10 days of hearing warranted tailoring the make-whole remedy to specify the nature of appropriate relief. We thus refined the remedial order to match the harms caused by the County's violations. The Association now asks us to grant reconsideration and broaden the scope of the make-whole order.

The Board has reviewed the record in this matter, including the Association's request for reconsideration and the County's opposition, in light of the applicable law. Based on that review, we deny the Association's request for the reasons explained below.

DISCUSSION

The "grounds for requesting reconsideration of a final Board decision 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.'" (*Alliance Judy Ivie Burton Technology Academy High, et al.* (2020) PERB Decision No. 2719a (*Alliance*), p. 3, quoting PERB Reg. 32410, subd. (a).) An error or omission in a remedial order is a proper subject of reconsideration under the newly discovered evidence standard. (*County of Riverside* (2018) PERB Decision No. 2591a-M, p. 3; *Regents of the University of California (Davis)* (2011) PERB Decision No. 2101a-H, p. 5.) However, this is a narrow avenue that does not allow parties to reassert remedy

¹ The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

arguments that we have already considered and rejected.² (See, e.g., *Alliance, supra*, PERB Decision No. 2719a, p. 6 [the reconsideration process may not be used by a party “to register its disagreement with the Board’s legal analysis, to re-litigate issues that have already been decided, or simply to ask the Board to ‘try again’”], citing *Jurupa Unified School District* (2015) PERB Decision No. 2450a, p. 3; *Chula Vista Elementary School District* (2004) PERB Decision No. 1557a, p. 2; *Redwoods Community College District* (1994) PERB Decision No. 1047a, pp. 2-3.)

In the underlying decision, we ordered make-whole relief, among other remedies. We discussed at length what harms directly flowed from the County’s violations, partially granted a County exception to the proposed decision’s remedial order, and tailored the make-whole remedy to address the harms supported by the record. The make-whole order requires the County to:

“Reimburse Association unit members for any accountancy and/or related professional fees incurred in relation to the County’s implementation of its constructive receipt tax withholding decision. Compensation for these fees shall be augmented by interest at a rate of seven percent per

² PERB precedent demonstrates the limited types of errors that are appropriate subjects for reconsideration. In *County of Riverside, supra*, PERB Decision No. 2591a-M, the Board initially ordered an employee to be reinstated on the date she was terminated, rather than the date she was placed on administrative leave. (*Id.* at p. 2.) The Board found that reconsideration was warranted in order to modify the order to require reinstatement to the day she was placed on administrative leave, as that would track the complaint allegations and restore all lost earnings. (*Id.* at pp. 4-5.) In *Desert Sands Unified School District* (2004) PERB Decision No. 1682a, the District was found to have unlawfully transferred work, but the remedial order erroneously omitted an order to return the work to the employees pending bargaining. (*Id.* at pp. 4-5.) On reconsideration the Board corrected the omission in order to restore the status quo ante. (*Ibid.*) In *Alliance, supra*, PERB Decision No. 2719a, the certification of a bargaining unit was corrected by deleting a classification that was not included in the petition for recognition. (*Id.* at p. 6.)

annum. The period of reimbursable fees shall commence on September 22, 2017, and continue until the earliest of: (1) the date the parties reach an agreement as part of complying with our effects bargaining order; (2) the date the parties have reached impasse and exhausted any post-impasse procedures that may be required or agreed upon; or (3) failure by the Association to request bargaining or to bargain in good faith.”

(*County of Ventura, supra*, PERB Decision No. 2758-M, pp. 57-58.)

In its request for reconsideration, the Association asks the Board to replace the first sentence of the above remedial paragraph with the following substantially broader language from the administrative law judge’s proposed order:

“Compensate Association unit members for any financial losses incurred as a direct result of its decision to implement its constructive receipt income tax withholdings decision before completing negotiations over the negotiable effects of that decision.”

(Emphasis removed.)

The Association contends it should have the opportunity, in compliance proceedings, to establish multiple categories of damages beyond reimbursement of professional fees. But the Association argued for these same damages in its response to the County’s exceptions, and the Board declined to award them. Because these arguments do not point out an error in the remedial order, but instead ask the Board to try again, they are not appropriate grounds for reconsideration. (*Alliance, supra*, PERB Decision No. 2719a, pp. 5-6; *Jurupa Unified School District, supra*, PERB Decision No. 2450a, p. 3; *Chula Vista Elementary School District, supra*, PERB Decision No. 1557a, p. 2; *Redwoods Community College District, supra*, PERB Decision No. 1047a, pp. 2-3.)

Moreover, as we explained in our underlying decision, the Association seeks reimbursement of losses that were not caused by the narrow violations found, or which the taxing authorities have already reimbursed when unit members have hired tax professionals to file amended tax returns.³ (*County of Ventura, supra*, PERB Decision No. 2758-M, pp. 54-56.) For this reason, we ordered the reimbursement of accountancy and/or related professional fees, whose services were obtained in relation to the County's implementation of constructive receipt taxation. (*Id.* at pp. 57-58.) The remedial order's reimbursement for these services adequately addresses the harms. To the extent the Association takes issue with the Board's exercise of its discretion in fashioning this remedy, that is not an appropriate subject for reconsideration.

ORDER

The Criminal Justice Attorneys Association of Ventura County's request for reconsideration of the Public Employment Relations Board's decision in *County of Ventura* (2021) PERB Decision No. 2758-M is DENIED.

Members Shiners and Krantz joined in this Decision.

³ As explained in the decision, the only claim before us was the County's failure to bargain the effects of implementing constructive receipt taxation, so we had neither cause to determine whether the County failed to provide notice and an opportunity to bargain over its decision, nor reason to determine if the County was correct in its application of the constructive receipt doctrine. (*County of Ventura, supra*, PERB Decision No. 2758-M, p. 54.)