

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BASSETT UNIFIED SCHOOL DISTRICT,)
)
Employer,)
)
and)
)
BASSETT EDUCATORS ASSOCIATION,)
CTA/NEA,)
)
Employee Organization,)
)
and)
)
BASSETT FEDERATION OF TEACHERS,)
AFT LOCAL 727, AFL-CIO,)
)
Employee Organization.)
)
)
)

Case No. LA-R-587
PERB Order No. Ad-67
Administrative Appeal
July 3, 1979

Appearances: Richard N. Fisher, Attorney (O'Melveny & Myers) for Bassett Unified School District; Charles R. Gustafson, Attorney for Bassett Educators Association, CTA/NEA; Lawrence Rosenzweig, Attorney (Levy & Goldman) for Bassett Federation of Teachers, AFT Local 727, AFL-CIO.

Before: Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

This case comes before the Public Employment Relations Board (hereafter PERB or Board) on appeal by the Bassett Federation of Teachers (hereafter BFT) from the Executive Assistant's dismissal of BFT's request for reconsideration of PERB's decision in Bassett Unified School District (3/23/79) PERB Order No. Ad-63. Ad-63 resulted from the Board's reconsideration of its decision in Bassett Unified

School District (1/30/79) PERB Order No. Ad-57.¹ The Executive Assistant dismissed BFT's request for reconsideration because:

[T]here is no provision in the California Administrative Code, Title 8, Part III, enabling the Board itself to reconsider its order (Ad-63), issued following the reconsideration of its decision in . . . Ad-57, . . .

The Board disagrees with the Executive Assistant's interpretation of PERB's rules in this case, but finds no extraordinary circumstances justifying a reconsideration of its decision in Ad-63, and thus dismisses BFT's Motion for Reconsideration.

FACTS

On April 3, 1978, BFT filed a decertification petition in a unit represented by the Bassett Educators Association (hereafter BEA). A dispute arose as to whether the petition was timely filed under section 3544.7(b)(1) of the Educational Employment Relations Act (hereafter EERA),² since the

¹This decision was vacated in Ad-63. See Bassett Unified School District (3/23/79) PERB Order No. Ad-62 for the Board's decision to reconsider Ad-57.

²The EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

Section 3544.7(b)(1) provides:

No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and

contract between the Bassett Unified School District (hereafter District) and BEA expired on June 30, 1980. The Board, in Ad-57, decided that, given the language of the reopener clause in the contract, a window period during which a decertification petition could be filed existed in 1978. In finding the petition timely filed, the Board noted in a footnote that the window period closed on April 1, a Saturday, so that the filing on the following Monday, April 3, was timely.

BEA and the District filed requests for reconsideration under PERB rule 32410.³ Among the grounds for reconsideration presented by BEA was the argument that March 31, a Friday, was the final day of the window period and that the decertification petition had been untimely filed. The Board granted reconsideration in Ad-62, supra, basing its decision on the argument that substantial errors in law or fact such as the alleged error by the Board in calculating the deadline for filing the decertification petition constitute grounds for reconsideration.

another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement

³PERB rules are codified at California Administrative Code, title 8, section 31000 et seq.

PERB rule 32410 provides in pertinent part:

Any party to a decision of the Board itself may because of extraordinary circumstances file a request to reconsider the decision with the Board itself

In Ad-63, supra, the Board acknowledged that it had made a mistake in calculating the filing deadline. It therefore vacated Ad-57 and dismissed BFT's decertification petition.

On March 26, 1979, BFT filed a request for reconsideration of Ad-63; the request was dismissed by the Executive Assistant for the reasons noted above, and BFT has appealed that dismissal to the Board itself.

DISCUSSION

PERB overrules the decision of the Executive Assistant to dismiss the request for reconsideration. Under the circumstances of the case, PERB rule 32410⁴ gives BFT the right to have its request for reconsideration reviewed by the Board itself.

As we interpret our rule, the same party cannot repeatedly file requests for reconsideration. If the Board had rejected BEA's request for reconsideration of Ad-57, for example, BEA would have had no right to file another request for reconsideration of the same decision. Such a right would waste the time and resources of the Board and the parties.

In this case, however, the situation is different. The Board has issued a completely revised decision in Ad-63, supra, in which BFT has become the aggrieved party. BFT should now have an opportunity to present any extraordinary circumstances which might convince the Board to reconsider its revised decision.

⁴PERB rule 32410 is quoted in pertinent part at note 3, ante.

As the California Supreme Court stated in Goodrich v. Ind. Acc. Com. (1943) 22 Cal.2d 604, 611:

Generally, if a party does not prevail on the original hearing and his petition for rehearing is denied, he may not again petition for a rehearing. He must seek relief in the courts. [Citations.] However, if one party prevails in the original hearing and on rehearing the other party prevails, the first party may petition for rehearing of the order because he has for the first time become the aggrieved party . . . though it may be that such petition is not a condition precedent to court review.

PERB rule 32410 does not require a different result. It makes no distinction in its reference to a "decision of the Board itself" between an original decision and a new decision issued after a reconsideration. Therefore, the Board finds that it can properly entertain BFT's request for reconsideration.

The Board has reviewed the request for reconsideration filed by BFT. Under PERB rule 32410, such a request must be based on extraordinary circumstances. In Ad-62, supra, the Board held that "[s]ubstantial errors of law or fact constitute grounds for reconsideration." After full consideration of the arguments presented by BFT in its request for reconsideration, the Board finds that BFT has not made the necessary strong showing that the Board made a substantial error in Ad-63, supra, nor has it presented any extraordinary circumstances justifying a reconsideration of that decision by the Board. PERB therefore denies BFT's request.

ORDER

The Public Employment Relations Board ORDERS that the Bassett Federation of Teachers' request for reconsideration of Bassett Unified School District (3/23/79) PERB Order No. Ad-63 is denied.

By _____

Barbara D. Moore, Member

Harry Gluck, Chairperson

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
23 12th Street, Suite 201
Sacramento, California 95814
(916) 322-3088

CERTIFIED MAIL

March 30, 1979

Lawrence Rosenzweig
Levy and Goldman
3550 Wilshire Blvd., Ste. 1020
Los Angeles, CA 90010

Richard Fisher
O'Melveny & Myers
611 W. 6th Street
Los Angeles, CA 90017

Charles R. Gustafson
1125 W. 6th Street
Los Angeles, CA 90017

Re: BASSETT UNIFIED SCHOOL DISTRICT and
BASSETT EDUCATORS ASSOCIATION, CTA/NEA, and
BASSETT FEDERATION OF TEACHERS, AFT LOCAL 727,
AFL-CIO - Case No. LA-R-587 -
MOTION FOR RECONSIDERATION OF BOARD DECISION Ad-63

Dear Parties:

The following is a memorialization of a mailgram sent to all the parties in the above-captioned case on March 29, 1979.

"Re: Bassett Unified School District;
Motion for Reconsideration of Board
Decision Ad-63

Upon advice of General Counsel, there is no provision in the California Administrative Code, Title 8, Part III, enabling the Board itself to reconsider its order (Ad-63), issued following the reconsideration of its decision in the above-captioned case, Ad-57, therefore, I dismiss the motion.

Further, even in the event that such a procedure were determined to be available, there is no evidence that other parties to this case have been served pursuant to Section 32410 of the California Administrative Code. This failure to comply with Section 32410 causes the filing to be deficient on its face and cannot otherwise be submitted to the Board itself.

Please be advised that pursuant to Sections 32350 and 32360 of the California Administrative Code, you have a right to appeal this decision to the Board itself. Should you choose to do so, your appeal is due in this office on or before ten (10) days from date of service of this mailgram, April 9, 1979."

Sincerely,

J. STEPHEN BARBER
Executive Assistant to the Board

cc: Bassett USD, Dr. L. C. Pacheco, Supt.
Bassett Federation of Teachers, Harold E. Day, Pres.
California Teachers Assn., Gerald W. Pearson
Bassett Teachers Assn., CTA/NEA
Bassett Educators Assn., Ms. Penny Howard, Pres.
Raoul Teilhet, California Federation of Teachers

Attachment (Proof of Service)

PROOF OF SERVICE BY MAIL
C.C.P. 1013a

I declare that I am employed in the County of Sacramento, California.

I am over the age of eighteen years and not a party to the within
entitled cause; my business address is 923 - 12th Street, Suite 201,
Sacramento, California 95814.

On March 30, 1979, I served the attached letter regarding

Bassett Unified School District and Bassett Educators Association, CTA/NEA,
and Bassett Federation of Teachers, AFT Local 727, AFL-CIO - Case No.
LA-R-587 - MOTION FOR RECONSIDERATION OF BOARD DECISION Ad-63

on the parties to the case by placing a true copy thereof enclosed
in a sealed envelope with postage thereon fully prepaid, in the
United States Mail at Sacramento, California addressed as follows:

Lawrence Rosenzweig
Levy and Goldman
3550 Wilshire Blvd., Ste. 1020
Los Angeles, CA 90010

Bassett Federation of Teachers
Harold E. Day, Pres.
AFT Local 727, AFL-CIO
P. O. Box 214
LaPuente, CA 91746

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O'Melveny & Myers
611 W. 6th Street
Los Angeles, CA 90017

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1125 W. 6th Street
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Raoul Teilhet
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2412 West Magnolia Blvd.
Burbank, CA 91506

Bassett Teachers Association, CTA/NEA
315 N. Azusa Avenue
West Covina, CA 91790

Charles R. Gustafson
1125 W. 6th Street
Los Angeles, CA 90017

Bassett Educators Association
Ms. Penny Howard, President
315 N. Azusa Avenue, Suite 1
West Covina, CA 91790

Bassett Unified School District
Dr. L. C. Pacheco, Supt.
904 N. Willow Avenue
LaPuente, CA 91746

I declare under penalty of perjury that the foregoing is true and correct,
and that this declaration was executed on March 30, 1979

at Sacramento, California.

JACQUELINE DIEGLE
(Type or print name)

(Signature)