STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JEFFERSON SCHOOL DISTRICT, Employer, and JEFFERSON FEDERATION OF TEACHERS, LOCAL 3267, AFT, AFL-CIO Employee Organization, and JEFFERSON CLASSROOM TEACHERS ASSOCIATION, CTA/NEA, Employee Organization, APPELLANT.	Case Nos. SF-D-12; SF-D-41 (SF-CO-6; SF-CE-33) PERB Order No. Ad-82-a Administrative Appeal July 17, 1980

Appearances: Willian F. Kay, Attorney for Jefferson School District; Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for Jefferson Federation of Teachers, Local 3267 AFT, AFL-CIO; Kirsten L. Zerger, Attorney for Jefferson Classroom Teachers Association.

Before Gluck, Chairperson; Moore, Member.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on a request for reconsideration of Jefferson School District (3/7/80) PERB Order No. Ad-82 filed

by the Jefferson Teachers Association (hereafter Association). The Board denies this request.

In Jefferson, a majority of the Board affirmed a regional director's determination that pending unfair practice charges should no longer block a decertification election in a unit in which the Association was the exclusive representative. The Association failed to win this election.[1] Several weeks later, the Board issued Jefferson School District (6/19/80) PERB Decision No. 133, finding that the Jefferson School District had committed an unfair practice by refusing to negotiate certain items within the scope of representation with the Association. The Association bases its request for reconsideration on the issuance of this decision.

PERB rule 32410 governs requests for reconsideration.[2] This rule 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 within seven calendar days following the date of service of the

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[1]The decertification election was conducted on May 6, 1980. The results of that election have not been certified pending the resolution of objections to the election filed by the Association.

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

> decision. The party shall state with specificity the grounds claimed and where applicable shall specify the page of the record relied upon.

In the present case, the Board finds no extraordinary circumstances justifying either the untimely filing of the Association's request for reconsideration[3] or the request for reconsideration itself. The possibility that the Association would lose the decertification election and that the Board would later find that the District had committed an unfair practice against the Association was considered by the Board in reaching its decision in Jefferson, PERB Decision No. 133, supra. That these events did in fact occur does not constitute an extraordinary circumstance justifying this attempt to reargue a previously decided issue. The Association's request for reconsideration is therefore denied.

By: Barbara D. Moore, Member

Chairperson Gluck's concurrence begins on page 4.

[3]The Association's request for reconsideration was filed on July 2, 1980, more than three months after the time limit set for such requests in PERB rule 32410. PERB rule 32133, which governs late filings, provides:

> A late filing may be excused in the discretion of the Board only under extraordinary circumstances.

Harry Gluck, Chairperson, concurring:

I concur in the denial of this request for reconsideration. CTA has failed to show the requisite extraordinary circumstances which would justify either a waiver by the Board of the time limit imposed by rule 32410 or the reconsideration itself.

The "extraordinary circumstances" claimed by CTA is the issuance by the Board itself of an unfair practice decision finding the Jefferson School District to have violated EERA by refusing to negotiate in good faith on some 18 separate CTA proposals. That decision was issued after Ad-82, supra, upheld the regional director's decision to remove a blocking order to the decertification election which may result in CTA's loss of certification.

In its appeal of the regional director's election order, CTA vigorously urged on this Board the ultimate incongruity that would obtain if CTA were decertified and if, thereafter, its charges against the District were upheld.

In my dissent in Ad-82, I made the same point, though obviously unsuccessfully.[1] The majority in Ad-82 was thus fully aware of the potential for the "extraordinary circumstances" but rejected that possibility as negating the employees' opportunity to freely exercise their choice of representative. Whether that conclusion was correct

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[1]PERB Order No. Ad-82, p. 35, reads:

> In reaching its conclusion, the majority overlooks the potential incongruity of issuing a final order on the unfair

or incorrect is irrelevant. The decision was made in contemplation of the very event now pleaded by CTA to warrant reconsideration. CTA, thus, brings nothing new to this Board's attention. That a "prophesy" was fulfilled is not the "extraordinary circumstances" contemplated by rule 32410.

For all of the foregoing reasons, and despite my continued conviction that the majority erred in Ad-82, I must now concur in the rejection of CTA's instant request.

Harry Gluck, Chairperson

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practice charge affirming the hearing officer's finding that the District unlawfully refused to negotiate 27 items, after the decertification election has been conducted and the Association is decertified. What remedy would the Board then fashion? Such an order might amount to little more than a declaratory judgment. No affirmative obligation would be imposed on the violator. . . .