

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DEBBIE POLK,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

DEBBIE POLK,

Charging Party,

v.

TEAMSTERS CLERICAL, LOCAL 2010,

Respondent.

Case Nos. LA-CE-1182-H
LA-CE-1201-H
LA-CE-1202-H

Case No. LA-CO-533-H

Request for Reconsideration
PERB Order No. Ad-437-H

PERB Order No. Ad-437a-H

August 22, 2016

Appearance: Debbie Polk, on her own behalf.

Before Winslow, Banks, and Gregersen, Members.

DECISION

BANKS, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by Debbie Polk for reconsideration of the Board's decision in *Regents of the University of California and Teamsters Clerical Local 2010 (Polk)* (2016) PERB Order No. Ad-437-H.¹ In that decision, the Board reviewed and affirmed an

¹ Polk's filing is not titled as a request for reconsideration but as a request for an extension of time in which to file documents in support of an appeal from the dismissal of her four unfair practice charges in Case Nos. LA-CE-1182-H, LA-CE-1201-H, LA-CE-1202-H and LA-CO-533-H. However, whether Polk should be granted an extension of time in which to appeal the dismissal of these unfair practice cases was the issue already decided by the Board in *Regents/Teamsters (Polk)*, *supra*, PERB Order No. Ad-437-H. Because Polk's filing

administrative determination by PERB's Appeals Assistant that Polk was not entitled to any further extensions of time in which to appeal the dismissal of four unfair practice cases in which Polk was the charging party. The Board has reviewed Polk's request for reconsideration in light of the relevant law. Based on this review, and for the reasons discussed below, the Board denies Polk's request for reconsideration.

DISCUSSION

The Board has broad authority under Government Code section 3541.3, subdivision (n), to take any action the Board deems necessary to discharge its powers and duty to effectuate the purposes of the statutes it administers. (*County of Fresno* (2016) PERB Order No. Ad-433-M, p. 7, fn. 4.) However, a fundamental tenet of administrative law is that an agency must follow its own rules. (*Arizona Grocery Co. v. Atchison, T. & S. F. Ry. Co.* (1932) 284 U.S. 370, 387; *United States v. Nixon* (1974) 418 U.S. 683, 696; *Bonn v. California State University, Chico* (1979) 88 Cal.App.3d 985, 990; *Southern Pacific Transportation Co. v. State Bd. of Equalization* (1987) 191 Cal.App.3d 938, 957.) Even where the enabling statute grants broad discretion, if the agency has promulgated regulations which define more narrowly how it will carry out its mission, in effect, the agency has, by regulation, limited its own jurisdiction and it may not arbitrarily depart from its own regulations or repeal them through decisional law (*Arizona Grocery, supra*, 284 U.S. 370, 389; *U.S. v. Nixon, supra*, 418 U.S. 683, 696; *UPTE, CWA Local 9119 (Hermanson, et al.)* (2006) PERB Decision No. 1829-H, pp. 3-5; *State of California (Department of Corrections & Rehabilitation)* (2009) PERB Order No. Ad-382-S, pp. 4-5; *Regents of the University of California* (2014) PERB Decision No. 2398-H, p. 36.)

asks the Board to reevaluate its prior decision, we treat it as a motion for reconsideration. (*Los Angeles County Education Association, CTA/NEA (Burton)* (2000) PERB Decision No. 1358a, p. 1, fn. 1.)

The only reference to reconsideration in PERB’s regulations is Regulation 32410.² Despite the broad language of the regulation suggesting that “[a]ny party to a decision of the Board itself may, ... file a request [for the Board] to reconsider the decision,” as explained in PERB decisional law, the scope of PERB Regulation 32410 is considerably more limited. By its own terms, the regulation was intended to provide a party the opportunity to call to the Board’s attention prejudicial errors of fact or newly discovered evidence that was previously unavailable and could not have been discovered with reasonable diligence. A request for reconsideration “is not simply an opportunity to ask the Board to ‘try again.’” (*Chula Vista Elementary School District* (2004) PERB Decision No. 1557a.) The limited grounds on which a party may request reconsideration preclude a party from using the reconsideration process to re-argue or re-litigate issues that have already been decided. (*Redwoods Community College District* (1994) PERB Decision No. 1047a.) For example, parties may not use the reconsideration process to register disagreement with the Board’s legal analysis. (*California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479a-S.)

In *Trustees of the California State University (East Bay) (Liu)* (2013) PERB Order No. IR-56a-H, the Board held that, notwithstanding the broad language at the outset of the regulation, reconsideration is not available to challenge a Board decision granting or denying a request for injunctive relief. In *Berkeley Federation of Teachers, Local 1078 (Crowell)* (2015) PERB Decision No. 2405a (*Crowell*), we held that a dismissal/refusal to issue a complaint on an unfair practice charge is not a decision of the Board itself of the type that lends itself to the reconsideration process provided for in PERB Regulation 32410. (*Id.* at pp. 4-5.) The request

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

for reconsideration procedure is designed to allow the Board to reconsider a Board decision that is based on a proposed decision which results from the conduct of a formal hearing or from a stipulated record. The reconsideration procedure also allows the Board to consider new evidence that was not previously available and could not have been discovered with the exercise of reasonable diligence prior to the formal hearing before the administrative law judge. (*Id.* at p. 4.)

Crowell, supra, PERB Decision No. 2405a, holds that reconsideration is available only in the context of a proposed decision in which there is a developed factual record. (*Id.* at p. 13; cf. *Mt. Diablo Unified School District* (1984) PERB Decision No. 373b; *Los Angeles Unified School District* (1991) PERB Decision No. 860a; *Glendora Unified School District* (1991) PERB Decision No. 876a; *Monterey County Office of Education* (1992) PERB Decision No. 913a.) We find *Crowell* persuasive here because the decision that is the subject of Polk's request involved Board review of an administrative determination, which involved no evidentiary hearing or factual record. Accordingly, we summarily deny Polk's request, because PERB's regulations have deprived the Board of jurisdiction to reconsider its prior decision regarding Polk's administrative appeal.

Additionally, even assuming reconsideration were available here, Polk's request must be denied because it does not comply with the regulatory requirements. Although it asserts various grounds, Polk does not identify any newly-discovered and previously unavailable evidence or explain how such evidence would alter the Board's previous decision to deny her appeal from the administrative determination. Accordingly, we deny Polk's request for reconsideration.

ORDER

Debbie Polk's request for reconsideration of the Public Employment Relations Board's decision in *Regents of the University of California and Teamsters Clerical Local 2010 (Polk)* (2016) PERB Order No. Ad-437-H and/or for an extension of time is hereby DENIED.

Members Winslow and Gregersen joined in this Decision.