

-JUDICIAL APPEAL PENDING-
STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CASTAIC UNION SCHOOL DISTRICT,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 401,

Exclusive Representative.

Case No. LA-UM-799-E

Request for Judicial Review
PERB Order No. Ad-384

PERB Order No. JR-25

December 7, 2010

Appearances: Margaret A. Chidester & Associates by Margaret A. Chidester, Attorney, for Castaic Union School District; California School Employees Association by Maureen C. Whelan, Staff Attorney, for California School Employees Association & its Chapter 401; Weinberg, Roger & Rosenfeld by Vincent A. Harrington, Jr., Attorney, for Amicus Curiae Service Employees International Union Local 1021; Law Offices of Robert J. Bezemek by Robert J. Bezemek, Attorney, for Amicus Curiae California Federation of Teachers, AFT, AFL-CIO.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on requests for reconsideration and judicial review filed by the California School Employees Association & its Chapter 401 (CSEA) of the Board's decision in *Castaic Union School District* (2010) PERB Order No. Ad-384. In that decision, the Board dismissed CSEA's petition to add part-time playground monitor positions, also known as noon-duty aides, to its wall-to-wall classified bargaining unit. The Board held that, because the Castaic Union School District's (District) noon-duty aides are excluded from the classified

service, they do not have representation rights under the Educational Employment Relations Act (EERA)¹ and therefore cannot be placed in a classified bargaining unit.

The Board has reviewed the entire record in light of CSEA's requests, the District's response to the requests, the amicus curiae filings, and the relevant law. Based on this review, the Board denies CSEA's request for reconsideration but grants CSEA's request for judicial review.

DISCUSSION

1. Request for Reconsideration

Under PERB Regulation 32410(a),² 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." Because reconsideration may be granted only under "extraordinary circumstances," the Board strictly applies the regulation's criteria. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H.)

CSEA asserts that the Board made a prejudicial error of fact when it found that CSEA sought to represent volunteer playground monitors. This assertion is based on statements in the Board's decision about the possible effects on volunteers of holding that part-time playground monitors have representational rights under EERA. These statements in support of the Board's legal analysis do not amount to a factual finding. In fact, because no hearing was held in this case, the Board could not make any factual findings about the positions CSEA

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

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

sought to add to the bargaining unit. Therefore, there is no prejudicial error of fact in the Board's decision. Because CSEA has failed to satisfy the criteria in PERB Regulation 32410(a), its request for reconsideration must be denied.

Additionally, other than its initial one sentence petition, CSEA did not file any documents during the course of the Board agent's investigation, nor did it file a response to the District's appeal of the Board agent's grant of CSEA's petition. Instead, CSEA waited until after the District prevailed on its appeal and then sought reconsideration of the Board's decision. "[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.) Nor does a request for reconsideration allow a party "to reargue or relitigate issues which have already been decided." (*Redwoods Community College District* (1994) PERB Decision No. 1047a.) In other words, reconsideration does not provide a "do over" for parties or the Board. Therefore, a party cannot use a request for reconsideration to make its first opposition to an appeal, as CSEA has done here.

2. Request for Judicial Review

Under EERA section 3542, subdivision (a), judicial review of a unit determination decision is limited to situations where the Board agrees that the case is "one of special importance and joins in the request for such review." A case has "special importance" if the Board determines that: (1) there is a novel issue presented; (2) the issue primarily involves construction of a statutory provision unique to EERA; and (3) the issue is likely to arise frequently. (*Los Angeles Unified School District/Lynwood Unified School District* (1985) PERB Order No. JR-13.) "The Board may join in a request for judicial review or may decline to join, at its discretion." (PERB Reg. 32500(c).) The Board has exercised its discretion to join in a request for judicial review when the case "is primarily one of statutory interpretation."

(Fairfield-Suisun Unified School District, et al. (1980) PERB Order No. JR-8; see Palomar Community College District (1992) PERB Order No. JR-14 [declining to join in a request for judicial review when the case turned on factual evidence regarding particular employees “rather than primarily involving the interpretation of a provision of EERA”].)

The issue in this case is whether individuals in part-time playground positions who hold no other classified position within the same school district, and who are thus excluded from the classified service by Education Code section 45103, subdivision (b)(4), have representational rights under EERA. This is a novel issue that has not been addressed by any court. (See *Regents of the University of California (1998) PERB Order No. JR-18-H [holding that the status of student academic employees under HEERA was not a novel issue because it had been addressed by the California Supreme Court and a California court of appeal].*) The issue is unique to EERA because part-time playground positions exist only at K-12 school districts, which are not subject to any of the other six collective bargaining statutes administered by PERB. Furthermore, the issue is likely to arise frequently because a significant number of existing classified bargaining units contain part-time playground positions, as well as other positions excluded from the classified service by Education Code section 45103, subdivision (b). Finally, unlike the many cases in which the Board has declined to join in a request for judicial review, this case does not involve primarily the application of settled law to particular facts but rather the interpretation of EERA provisions. For these reasons, the issue in this case is “one of special importance” that justifies the Board joining in CSEA’s request for judicial review.

ORDER

California School Employees Association & its Chapter 401's (CSEA) request for reconsideration of *Castaic Union School District* (2010) PERB Order No. Ad-384, is hereby DENIED.

CSEA's request that the Public Employment Relations Board join in its request for judicial review of *Castaic Union School District* (2010) PERB Order No. Ad-384, is hereby GRANTED.

Members McKeag and Wesley joined in this Decision.