

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SANTA CLARA UNIFIED SCHOOL DISTRICT,)
)
Employer,)
APPELLANT,) Case No. SF-CE-13
)
and)
)
SANTA CLARA FEDERATION OF TEACHERS,) PERB Decision No. 104a
LOCAL 2393, AFT, AFL-CIO,) Request for Reconsideration
)
Employee Organization,)
)
and) May 7, 1980
)
)
UNITED TEACHERS OF SANTA CLARA,)
CTA/NEA,)
)
Intervenor.)
)
_____)

Appearances: Richard J. Loftus and Larry P. Schapiro, Attorneys (Littler, Mendelson, Fastiff & Tichy) for Santa Clara Unified School District; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg & Roger) for Santa Clara Federation of Teachers, Local 2393, AFT, AFL-CIO.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

The Santa Clara Unified School District (hereafter District) requests reconsideration of PERB Decision No. 104 (9/26/79), Case No. SF-CE-13. The request is made pursuant to rule 32410 which reads:

Request for Reconsideration. 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 decision. The party shall state with specificity the grounds claimed and where applicable shall specify the page of the record relied upon. A copy of the request must have been actually served upon each party of record prior to filing the request and a statement of such service shall accompany the request. Any party shall have five calendar days from actual service to file a response with the Board itself. "Actual service" as used in this section means actual receipt by the party or their agent. The filing of a request for reconsideration shall not operate to stay the effectiveness of a decision of the Board itself unless otherwise ordered by the Board itself.

The District wishes to submit new and additional evidence and argument pertaining to the merits of the case. It further wishes to prove that it is legally incapable of complying with the Board-ordered remedy, citing certain Education Code obligations which allegedly preclude its compliance in full.

The Santa Clara Federation of Teachers, Local 2393, AFT, AFL-CIO (hereafter AFT) the original Charging Party, responds by denying that there are grounds for reconsideration of the merits and further offers refutation of the District's claim that it is legally precluded from compliance with the Board order.

After a careful review of the District's request, the Board finds no "extraordinary circumstances" have been presented justifying reconsideration of the merits of the case. However, the District has presented an arguable basis for its claim that it cannot fully comply with the ordered remedy. While the

Board considers AFT's response to be arguably valid, the resolution of certain factual matters and legal issues raised would best be accomplished by remanding to the Chief Administrative Law Judge the single issue of the District's legal capacity to comply with the Board remedy. The Chief Administrative Law Judge is directed to conduct a hearing on this issue and to forward the entire record, together with his recommendations, to the Board itself. This order is predicated on a finding that the District's claim of legal incapacity constitutes "extraordinary circumstances" within the meaning of rule 32410.

ORDER

The Public Employment Relations Board hereby ORDERS that the request for reconsideration filed by the Santa Clara Unified School District on the merits of PERB Decision No. 104 (9/26/79), Case No. SF-CE-13 is dismissed; and,

It is further ORDERED that the Chief Administrative Law Judge conduct a hearing solely on the issue of the Santa Clara Unified School District's legal capacity to comply in full or in any part with the aforementioned order of this Board; and,

It is further ORDERED that upon conclusion of said hearing, the Chief Administrative Law Judge shall forward to the Board itself the entire record including briefs, if any, together with his recommendation for final disposition.

PER CURIAM