

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LABORERS LOCAL 1276, LIUNA, AFL-CIO)
and ALAMEDA COUNTY BUILDING AND)
CONSTRUCTION TRADES COUNCIL,)
Charging Parties,) Case No. SF-CE-2-H
v.) Request for Reconsideration
REGENTS OF THE UNIVERSITY OF) PERB Decision No. 212-H
CALIFORNIA, LAWRENCE LIVERMORE)
NATIONAL LABORATORY,) PERB Decision No. 212a-H
Respondent.) August 24, 1982

Appearances: Donald L. Reidhaar, James N. Odle, Claudia Cate and Susan M. Thomas, Attorneys for the Regents of the University of California.

Before Jensen, Jaeger and Tovar, Members.

DECISION

The Public Employment Relations Board (hereafter PERB or Board), having duly considered the request for reconsideration filed by the Regents of the University of California (hereafter Regents), hereby denies that request.

DISCUSSION

In Regents of the University of California, Lawrence Livermore National Laboratory (4/30/82) PERB Decision No. 212-H, (hereafter Regents) the Board held, inter alia, that Laborers Local 1276, Laborers International Union of North America, AFL-CIO, and Alameda County Building and Construction

Trades Council (hereafter referred to jointly as Charging Parties) had the right to access to the employee lunchroom in the "321" exclusion area with reasonable advance notice and with reasonable frequency, and that Charging Parties could not be required to reimburse the Regents for the cost of escort services utilized when gaining access to the restricted areas of the Laboratory. (Regents, supra, at pp. 16-18.) Regents, supra, is incorporated by reference herein.

To demonstrate that reconsideration is warranted under PERB rule 32410,¹ the Regents must show the existence of "extraordinary circumstances." Livermore Valley Joint Unified School District (10/21/81) PERB Order No. JR-9. The Regents contend that extraordinary circumstances exist in this case because they were denied due process when the administrative law judge denied their request for a continuance, thus

¹PERB rules and regulations are codified at California Administrative Code, title 8, section 31000 et seq. Section 32410 provides, in pertinent part:

- (a) 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 10 days following the date of service of the decision. The request for reconsideration shall be filed with the Executive Assistant to the Board and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required.

allegedly foreclosing the introduction of relevant evidence regarding the access rulings at issue herein. The Regents requested a continuance on August 4, 1980, during the course of the hearing in the underlying case. The basis for the request was that the Regents believed that their access regulations vis-a-vis the Laboratory would be altered substantially by another case which was pending at that time involving California State Employees Association, Regents of the University of California (9/3/80) PERB Decision No. HO-U-82 (hereafter the CSEA order), and that it would be appropriate to delay taking evidence regarding the access rules at issue in the instant case until after the resolution of the CSEA case and the attendant change in access regulations. The administrative law judge denied that request without prejudice, resting his decision on the fact that the Regents refused, at the time of their motion for continuance, to disclose what changes in access were being contemplated. The Regents did not renew their request for continuance at any time prior to the close of hearing, though they were at all times privileged to do so. The Regents argue that, had the continuance been granted, they would have been able to introduce evidence regarding operation of their access policy as revised by the CSEA order, supra. They fail to indicate, generally or specifically, what evidence they would introduce regarding access to the "321" lunchroom or reimbursement for escort services.

The Regents request that we either remand the case to the administrative law judge for the taking of additional evidence respecting those issues or, in the alternative, reverse our findings with respect thereto without additional evidence.

The CSEA case was decided pursuant to a stipulated order by the parties. The administrative law judge treated the access regulations promulgated thereunder as a given in ruling on the reasonableness of the access restrictions involved in the instant case. Further, he solicited special briefs by the parties to enable them to express their views of the order in that case and its impact upon the instant case. The Board itself similarly considered the access policies established by the CSEA order as the status quo in assessing the reasonableness of the policies at issue in the instant case, and reviewed the arguments set forth in the supplemental briefs by the parties regarding the CSEA order.

In granting limited access rights to the lunchroom in the "321" area, the Board applied a basic reasonableness test. We considered the alternative meeting facilities available to charging parties under the CSEA order in assessing the need of charging parties for access to the lunchroom. (Regents, supra, p. 17.) We fail to see how evidence as to the operation of access policies under the CSEA order could have altered our determination as to the reasonableness of denial of access to that area on a limited basis. Further, we fail to see how the

Regents were prevented from introducing other relevant evidence regarding that issue by the administrative law judge's denial of their request for a continuance. The Regents were not prevented, by denial of that request or for any other reason, from presenting evidence regarding the cost of security downgrading of the lunchroom or any other relevant evidence.

Similarly, the Regents were in no manner prevented from introducing evidence regarding the cost of escort services, or from demonstrating in any other manner that it would be unduly burdensome for the Regents to bear the expense of that necessary security measure. The Regents were not prevented by any ruling of the Board or the administrative law judge from demonstrating that visitors other than employee organizations are required to reimburse the Regents for escort services. As with the lunchroom issue, we fail to see how evidence regarding experience under the CSEA order would cause us to modify or reverse our determination that the reimbursement requirement was an impermissible access limitation. We therefore disagree that the Regents were deprived of due process through the denial of their request for a continuance or in any other manner.

For the reasons set forth above, and the record as a whole, we find that the Regents have failed to demonstrate the existence of extraordinary circumstances which would warrant reconsideration. We thus deny their request for reconsideration.

ORDER

1. The request by the Regents of the University of California that the Public Employment Relations Board grant reconsideration of Regents of the University of California, Lawrence Livermore National Laboratory (4/30/82) PERB Decision No. 212-H is DENIED.

~~By: Virgil Jensen, Member~~

~~John Jaeger, Member~~

~~Irene Tovar, Member~~