STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 54, Charging Party, v. ANAHEIM CITY SCHOOL DISTRICT, Respondent.	Case No. LA-CE-1443 Request for Reconsideration PERB Decision No. 364 PERB Decision No. 364a May 14, 1984

Appearances; Madalyn J. Frazzini, Attorney for California School Employees Association, Chapter 54; David G. Miller, Attorney (Law Firm of David G. Miller) for Anaheim City School District.

Before Hesse, Chairperson; Tovar and Jaeger, Members.

DECISION

JAEGER, Member: The Public Employment Relations Board (PERB or Board), having duly considered the Anaheim City School District's (District) request for reconsideration, hereby denies that request.

DISCUSSION

PERB rule 32410(a)[1] provides:

> Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision . . . . The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was

[1]PERB rules are codified at California Administrative Code, title 8, section 31001 et seq.

> not previously available and could not have been discovered with the exercise of reasonable diligence.

The District requests reconsideration of the underlying Decision on the ground that the Board erred in determining, inter alia, that a settlement agreement of a prior unfair practice charge did not constitute a waiver of the Association's right to have the grievance procedure extend beyond the expiration of the parties' 1980-81 collective bargaining agreement.

The Board has previously held that the mere reassertion of a legal argument that has been considered and rejected by the Board in an underlying Decision is not the sort of "extraordinary circumstance" that justifies granting reconsideration of a Board decision pursuant to rule 32410(a). See State of California (Dept, of Developmental Services, Napa State Hospital) (4/6/84) PERB Decision No. 378a-S; Pittsburg Unified School District (4/2/84) PERB Decision No. 318a; Rio Hondo Community College District (5/16/83) PERB Decision No. 279a.

Inasmuch as the District's contention is a mere restatement of an argument considered and rejected by the Board in its deliberation of the underlying decision, there is no basis upon which to grant reconsideration.

Next, the District argues that, as a matter of law, the Board must uphold an administrative law judge's factual finding of a waiver if it is supported by "substantial evidence",

citing National Farmworkers Center, Inc. v. Caratan (1983) 146 Cal .App.3d 796 [194 Cal.Rptr. 617]; Doers v. Golden Gate Bridge, etc. District (1979) 23 Cal. 3d 180 [151 Cal. Rptr. 837].

The District's argument reveals some confusion between the standard of review required of an appellate court reviewing the final decision of an administrative agency and that required of an administrative agency reviewing its own hearing officers' proposed decisions. The "substantial evidence" standard, relied on by the District, is applicable only to an appellate court's review of an administrative agency's decision. San Diego Teachers Association v. Superior Court (1979) 24 Cal.3d 1; Moreno Valley Unified School District v. PERB (1983) 142 Cal.App. 3d 191; see also Kopack v. NLRB (7th Cir. 1982) 668 F.2d 946 [109 LRRM 2483] cert. den. 110 LRRM 2440 and cases cited therein. Findings of fact of PERB administrative law judges, who are mere delegates of the Board itself,[2] are

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[2]Educational Employment Relations Act (EERA) subsection 3541.3(i) empowers the Board "[t]o investigate unfair practice charges . . . and take such action and make such determinations . . . as the Board deems necessary to effectuate the policies of this chapter." Thus, the Board has exclusive statutory authority to resolve unfair practice charges. However, the Board, under the authority of EERA subsection 3541.3(k), which permits it "[t]o delegate its powers . . . to any person appointed by the Board for performance of its functions . . .", has appointed administrative law judges to hold hearings and issue proposed decisions. (PERB rules 32170(1), 32300). The Board may "[a]ffirm, modify or reverse the proposed decision . . ."or "[i]ssue a decision based upon the record of the hearing . . ." (PERB rule 32320).

entitled to that amount of deference which the Board, in its discretion, wishes to afford them. In accordance with this rule, the Board has determined that it will normally afford deference to administrative law judges' findings of fact involving credibility determinations unless they are unsupported by the record as a whole. Santa Clara Unified School District (9/26/79) PERB Decision No. 104, citing Universal Camera Corp. v. NLRB (1951) 330 US 474 [27 LRRM 2373]. Where, as in this case, the Board's conclusion that no waiver existed was not based on factual findings involving the credibility or demeanor of witnesses, the Board is free to accept or reject the administrative law judge's determination based on its own interpretation of the evidence before it.

Finally, the District requests clarification of that portion of the Board's Order which requires the District to reinstate the expired 1980-81 grievance procedure "for the purpose of permitting the Association to file grievances with the District concerning any alleged breach of the parties' 1980-81 collective agreement which the District refused to process." The District contends that it need not process those grievances which were litigated before the Board as alleged unlawful unilateral changes.

The Order, in our view, is quite clear. The Board found that the District unlawfully repudiated the grievance procedure after expiration of the 1980-81 collective bargaining

agreement. Accordingly, the Board ordered the District to permit aggrieved employees the right to process grievances pursuant to the provisions of the expired agreement. Whether the conduct underlying those particular grievances also constituted independent unilateral changes in employees' working conditions is a separate question which the Board fully considered in the Decision. Our determination that such conduct either did or did not constitute an unlawful unilateral change does not in any way affect the right of employees to be made whole for the District's unlawful repudiation of the contractual grievance procedure.

ORDER

The request for reconsideration made by the Anaheim City School District in Case No. LA-CE-1443 is hereby DENIED.

Chairperson Hesse and Member Tovar joined in this Decision.