

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TUSTIN UNIFIED SCHOOL DISTRICT,)	
)	
Charging Party,)	Case No. LA-CO-377
)	
v.)	Request for Reconsideration
)	PERB Decision No. 626
TUSTIN EDUCATORS ASSOCIATION,)	
CTA/NEA,)	PERB Decision No. 626a
)	
Respondent.)	October 29, 1987

Appearances; Parker and Covert by Constance S. Nickell for Tustin Unified School District; Rosalind D. Wolf, Attorney, for Tustin Educators Association, CTA/NEA.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION

CRAIB, Member: Charging Party, the Tustin Unified School District (District), requests reconsideration of Decision No. 626 of the Public Employment Relations Board (Board or PERB) issued on June 23, 1987. In that decision, the Board affirmed the determination of a Board agent finding that the District's unfair practice charge failed to allege a prima facie violation of the Educational Employment Relations Act (EERA or Act).¹ Specifically, it is the District's contention that the Tustin Educators Association, CTA/NEA (TEA) violated section 3543.6(a)

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

and (b) of the Act² when it used the District's internal mail system to distribute material soliciting support for a campaign to recall three members of the District's Board of Education. In the District's opinion, Education Code section 7054 prohibits the distribution of TEA's mailings.³

DISCUSSION

PERB Regulation 32410(a)⁴ states, in pertinent part:

The grounds for requesting reconsideration are limited to claims that the decision of

²Government Code section 3543.6 provides, in pertinent part, as follows:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

³Education Code section 7054 reads as follows:

Use of District Property. Except as provided in Sections 7056, 35174, and 72632, no school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the passage or defeat of any school measure of the district, including, but not limited to, the candidacy of any person for election to the governing board of the district.

⁴PERB Regulations are codified at California Administrative Code, title 8, part III, section 31001 et seq.

the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

The Board has consistently held, based on this regulation, that reconsideration is not appropriate where a party merely restates an argument previously considered and rejected by the Board in its underlying decision. Rio Hondo Community College District (1983) PERB Decision No. 279a; Pittsburg Unified School District (1984) PERB Decision No. 318a; State of California (Department of Developmental Services) (1984) PERB Decision No. 378a-S; Regents of the University of California (1986) PERB Decision No. 534a-H; Morgan Hill Unified School District (1986) PERB Decision No. 554a; Riverside Unified School District (1986) PERB Decision No. 562a.

The arguments raised in this request for reconsideration merely reiterate arguments considered and rejected below. The District asserts that it lacks the ability to restrict the content of the leaflets or to refuse to circulate them. The District also argues that it does not have the option of renegotiating the current contract language. Each argument was previously considered and rejected by the Board on appeal. In sum, Charging Party raises no new issue of fact or law. Reconsideration is therefore inappropriate.⁵

⁵While raising no novel arguments in its reconsideration request, the District's request is not viewed as frivolous. Accordingly, TEA's request that the Board award it costs is denied.

We find the allegations in the charge insufficient to establish a prima facie case that TEA engaged in conduct prohibited by EERA. Unlike those occasions where the Board has interpreted an Education Code provision raised as a defense to an unfair practice charge (Jefferson School District (1980) PERB Decision No. 133; Mammoth Unified School District (1983) PERB Decision No. 371), the District here is asking the Board to interpret Education Code section 7054 for the sole purpose of determining whether TEA's distribution contravenes the Education Code. PERB lacks authority to issue such declaratory relief.

ORDER

There being no proper grounds for reconsideration stated, the request for reconsideration of PERB Decision No. 626 is hereby DENIED. TEA's request that the Board assess costs against the District is likewise DENIED.

Chairperson Hesse and Member Shank joined in this Decision.

Porter, Member, concurring: I concur in the denial of the request for reconsideration and the denial of costs.