

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNITED PUBLIC EMPLOYEES, LOCAL 790, SEIU, AFL-CIO,)	
)	
Charging Party,)	Case No. SF-CE-1114
)	
v.)	Request for Reconsideration
)	PERB Decision No. 688
SAN FRANCISCO COMMUNITY COLLEGE DISTRICT,)	
)	PERB Decision No. 638a
)	
Respondent.)	October 18, 1988

Appearances; Ronald A. Glick for the San Francisco Community College District; Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg for SEIU, Local 790.

Before Hesse, Chairperson; Porter and Shank, Members.

DECISION

SHANK, Member: United Public Employees, SEIU, Local 790, (Charging Party) exclusive representative for classified employees, requests reconsideration of PERB Decision No. 688, issued June 27, 1988. In that decision, the Public Employment Relations Board (PERB or Board) affirmed, for different reasons, a proposed decision of a PERB administrative law judge (ALJ) dismissing the unfair labor practice charge on the ground that the subject related to employees in their capacity as certificated employees and was therefore beyond the scope of representation. The Board dismissed on the ground that the

San Francisco Community College District (District) is not a public school employer of classified employees within the meaning of section 3540.1(k) of the Educational Employment Relations Act (EERA).¹

DISCUSSION

PERB Regulation 32410(a)² states, in pertinent part:

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

In its request for reconsideration, Charging Party asserts that the Board's decision contains prejudicial errors of fact and that the Board has violated principles of appellate adjudication. The Board rejects such contentions for the following reasons:

¹The EERA is codified at Government Code section 3540, et seq., and is administered by PERB. Unless otherwise indicated, all statutory references in this decision are to the Government Code. Section 3540.1(k) provides:

As used in this chapter:

• • • • •

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

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

Charging Party claims that the Board erred in finding that all of the classified employees' benefits are provided through the City and County of San Francisco. This is a mischaracterization. In connection with determining who is the employer of the classified personnel, the Board found simply that the City and County of San Francisco exercises control over the wages, hours, benefits and other terms and conditions of employment for the classified personnel.

The Charging Party also contends that the Board erred in finding that no Education Code benefits are available to classified employees of the District. Again, in determining the employer of the classified personnel, the Board found that under the provisions of Education Code section 88000, the classified personnel do not receive their benefits under the Education Code.

Finally, Charging Party asserts that the District was not entitled to file exceptions to the ALJ's proposed decision. We disagree. The District clearly had the right to raise exceptions to the proposed decision (PERB Reg. 32300). PERB had the duty to consider the threshold jurisdictional issue raised by the District, whether the District is a public school employer of classified employees within the meaning of EERA section 3540.1(k), which the ALJ declined to resolve before ruling on the merits. We note that the Charging Party failed to file any response in opposition to the District's

exceptions; thus, Charging Party has raised these arguments for the first time in connection with its request for reconsideration.

ORDER

Having found no merit in Charging Party's claims that the Board's decision contains prejudicial errors of fact or that the District could not file exceptions to the proposed decision, we conclude that the request for reconsideration should be denied.

Chairperson Hesse and Member Porter joined in this Decision.