

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



BHANU BAWAL,	)	
	)	Case NO. LA-CE-476-H
Charging Party,	)	
v.	)	Request for
	)	Reconsideration of
REGENTS OF THE UNIVERSITY OF	)	
CALIFORNIA,	)	PERB Decision No. 1354-H
	)	
Respondent.	)	PERB Decision No. 1354a-H
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	)	May 24, 2000
HENRY HAO, SALLY JO MICHAEL,	)	
LOURDES INCHAUSPI, ALLEN FUKUCHI,	)	
et al.,	)	
	)	
Charging Parties,	)	Case NOS. LA-CE-478-H,
	)	LA-CE-479-H, LA-CE-480-H
v.	)	and LA-CE-481-H
	)	
REGENTS OF THE UNIVERSITY OF	)	
CALIFORNIA,	)	
	)	
Respondent.	)	
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Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by James Rutkowski, Attorney, for Bhanu Bawal, Henry Hao, Sally Jo Michael, Lourdes Inchauspi, Allen Fukuchi, et al.; Atkinson, Andelson, Loya, Ruud & Romo by James C. Romo, Attorney, for Regents of the University of California.

Before Dyer, Amador and Baker, Members.

DECISION

AMADOR, Member: These consolidated cases come before the Public Employment Relations Board (PERB or Board) on a request by the Regents of the University of California (University) that the Board grant reconsideration of Regents of the University of California (1999) PERB Decision No. 1354-H (Regents). In that case, the Board affirmed the administrative law judge's (ALJ) finding that the University violated section 3571(a) of the

Higher Education Employer-Employee Relations Act (HEERA)<sup>1</sup> when it failed to meet and discuss a layoff and rehire program in good faith with University Professional and Technical Employees (UPTe).

After reviewing the entire record, including the University's request and the response filed by Bhanu Bawal, Henry Hao, Sally Jo Michael, Lourdes Inchauspi, Allen Fukuchi, et al., the Board hereby denies the request for reconsideration.

#### DISCUSSION

Reconsideration requests are governed by PERB Regulation 32410,<sup>2</sup> which states, in part:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. . . . The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly

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<sup>1</sup>HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3571 provides, in pertinent part, that:

It shall be unlawful for the higher education employer to do any of the following:

(a) 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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

<sup>2</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case. [Emphasis added.]

On October 22, 1999, the University filed the instant request seeking reconsideration of Regents. The University challenges the Board's statement at page 3, which states that "The University offers no exceptions to the ALJ's finding of a violation concerning the alleged refusal to provide information" [emphasis added]. The University claims that this is a prejudicial error of fact which requires the Board to reconsider the decision.

The Board has never ruled definitively on what constitutes "extraordinary circumstances." This reconsideration request does not identify any circumstances that would fall under the common understanding of the term "extraordinary"; however, the Board will analyze the request further.

#### Grounds Offered for Reconsideration

##### 1. Prejudicial Error of Fact

The University correctly notes that the statement at page 3 of Regents that "The University offers no exceptions to the ALJ's

finding of a violation concerning the alleged refusal to provide information" is inaccurate. That language reflects a production error.

The University did in fact file exceptions relating to the information request allegation, among other exceptions. In Regents, after reviewing the entire record, the Board held:

The Board finds the ALJ's findings of fact to be free of prejudicial error and hereby adopts them as the findings of the Board itself. [At p. 2; emphasis added.]

In the next paragraph, the Board made reference to the ALJ's finding of a violation concerning the alleged refusal to provide information and held:

This Board finds this conclusion of law [regarding the alleged refusal to provide information] to be free of prejudicial error and hereby adopts it as the decision of the Board itself. [Id. at p. 3; emphasis added.]

In making those two rulings, the Board clearly indicated that it had read and considered the "entire record" in reaching its conclusion that the ALJ's decision was valid. This review, of necessity, included the exceptions and response.

Other statements in Regents confirm this conclusion. For example, on page 2 of Regents, the Board notes that its review included the "filings of the parties." Immediately afterwards, the Board acknowledged that "The University challenges the ALJ's factual and legal conclusions and the remedy. . ." Logically, such references could only pertain to all of the exceptions filed by the University to the findings of the ALJ.

When viewed in context, it is clear that the inclusion of the word "no" in the sentence challenged by the University was a production error. An errata deleting the erroneous language has issued with this Decision.

The University characterizes the error as a "prejudicial error of fact." We disagree. We instead find that Regulation 32410 does not encompass errors of the type which appeared in the original printing of Regents. The Board therefore denies those portions of the University's reconsideration request insofar as they assert prejudicial errors of fact.

## 2. Other Grounds

The remainder of the University's reconsideration request is largely comprised of arguments that have been previously considered and rejected. In reviewing requests for reconsideration, the Board has strictly applied the limited grounds included in that regulation, specifically to avoid the use of the reconsideration process to reargue or relitigate issues which have already been decided. (Redwoods Community College District (1994) PERB Decision No. 1047a; State of California (Department of Corrections) (1995) PERB Decision No. 1100a-S; Fall River Joint Unified School District (1998) PERB Decision No. 1259a.) The Board has ruled, frequently, that arguments which were previously asserted and rejected are not grounds for reconsideration. (See, e.g., California State University (1995) PERB Decision No. 1093a-H; California State Employees Association. Local 1000 (Janowicz) (1994) PERB Decision

No. 1043a-S; Tustin Unified School District (1987) PERB Decision No. 626a; Riverside Unified School District (1987) PERB Decision No. 622a.) Based on this precedent, the Board concludes that the University's request fails to comply with PERB Regulation 32410 and hereby denies the University's request for reconsideration of Regents.

ORDER

The Regents of the University of California's request for reconsideration of the Board's decision in Regents of the University of California (1999) PERB Decision No. 1354-H is hereby DENIED.

Members Dyer and Baker joined in this Decision.