

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

MAURA HOGAN LARKINS,

Charging Party,

v.

CHULA VISTA ELEMENTARY EDUCATORS
ASSOCIATION,

Respondent.

Case No. LA-CO-1091-E

Request for Reconsideration
PERB Decision No. 1575

PERB Decision No. 1575a

April 29, 2004

Appearances: Maura Hogan Larkins, on her own behalf; California Teachers Association by Michael D. Hersh, Attorney, for Chula Vista Elementary Educators Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration filed by Maura Hogan Larkins (Larkins) of the Board's decision in Chula Vista Elementary Educators Association (Larkins) (2003) PERB Decision No. 1575. That decision involved an unfair practice charge filed by Larkins alleging that the Chula Vista Elementary Educators Association (Association) violated its duty of fair representation under the Educational Employment Relations Act (EERA)¹. The Board ultimately dismissed Larkin's charge for failure to state a prima facie case. Larkins now urges the Board to reconsider its decision.

¹EERA is codified at Government Code section 3540, et seq.

After reviewing the entire record in this case, including Larkin's request for reconsideration and the Association's response, the Board hereby denies the request for reconsideration.

DISCUSSION

PERB Regulation 32410² states, in pertinent part:

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 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.

In her request for reconsideration, Larkins' submits new evidence which she claims was not in existence at the time her appeal was filed and/or could not have been discovered due to the actions of the Association. Larkins has attached to her request portions of the reporter's transcript of her hearing before the Commission of Professional Competence and various documents from her civil actions.

The Board has thoroughly reviewed the above-referenced documents. Larkins is correct that these documents were not in existence at the time she filed her appeal on June 28, 2002. However, Larkins has not established that these documents were submitted within a reasonable period of time from their discovery as required by PERB Regulation 32410. Most importantly, Larkins has not established how these documents are relevant to the issues raised

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

in her charge or how they would impact or alter the previous decision of the Board. Nothing Larkins has submitted or argued in her request meets the requirements set forth in PERB Regulation 32410. Accordingly, Larkins' request for reconsideration is denied.

ORDER

The request for reconsideration of the Board's decision in Chula Vista Elementary Educators Association (Larkins) (2003) PERB Decision No. 1575 is hereby DENIED.

Chairman Duncan and Member Whitehead joined in this Decision.