

DISCUSSION

PERB Regulation 32410(a)¹ states, in pertinent part:

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, CSEA contends that the Board failed to examine section 3.C.1. of the CEA, which provides:

The following groups of employees are NOT eligible to vote:

1. All employees who are not employed in classifications or positions within Unit 1, such as employees in positions which have been determined to be managerial, supervisory, confidential or excluded from coverage under the Dills Act by the PERB or by written agreement of the State employer and CSEA.

In its appeal from the Regional Director's administrative decision, CSEA argued that section 3.C.1. applied throughout the duration of the election and operated to make ineligible any individual who terminated their employment in unit 1 during or prior to the ballot count. CSEA asserts the Board "completely ignored the provisions of section 3.C.1." Rather, the Board relied upon section 3.A. of the CEA, which states:

The eligible voters shall be those employees within Unit 1 who were employed as of January 31, 1991. "Employed" means on paid

¹PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

or unpaid status in any position included in Unit 1.

CSEA alleges that the Board failed to read section 3.C.1. in conjunction with section 3.A. of the CEA.

In response to CSEA's argument that the Board ignored the provisions of section 3.C.1. of the CEA, the Board considered all of CSEA's arguments in its appeal of the Regional Director's administrative decision. The Board first examined section 3.C.1., which determined the employees employed in classifications or positions excluded from bargaining unit 1. Once the parties determined the employees within bargaining unit 1 under section 3.C. of the CEA, then, pursuant to section 3.A. of the CEA, the parties determined voter eligibility based on those employees within bargaining unit 1 who were employed as of January 31, 1991. In its discussion, the Board considered the pertinent sections of the CEA to determine voter eligibility. In relying upon section 3.A. of the CEA, the Board necessarily found that section 3.C.1. did not apply to make ineligible any individual who terminated their employment in bargaining unit 1 after January 31, 1991.

In any event, these arguments merely restate the arguments made by CSEA in its previous appeal. As CSEA fails to identify any prejudicial errors of fact contained in the Board's decision, nor is its request based on newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence, CSEA's request for reconsideration of PERB Order No. Ad-221-S is denied.

ORDER

In accordance with PERB Regulation 32410, the request for reconsideration of PERB Order No. Ad-221-S is hereby DENIED.

Members Shank and Camilli joined in this Decision.