

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MT. DIABLO EDUCATION ASSOCIATION,
CTA/NEA,

Charging Party,

and

JOHN MILLS, PETER MOLINO,
CAROL YOUNG, CATHERINE AVINGTON,

LAURIE PETERSON AND LES GROOBIN,

Intervenors,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. SF-CE-452

Request for Reconsideration
and Stay of
PERB Decision No. 373b

PERB Decision No. 373c

October 17, 1984

MT. DIABLO FEDERATION OF TEACHERS,
LOCAL 1902, CFT/AFT, AFL-CIO,
JOHN MILLS, PETER MOLINO,
CAROL YOUNG, CATHERINE AVINGTON,
LAURIE PETERSON AND LES GROOBIN,

Charging Parties,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. SF-CE-455

Appearances; Margaret E. O'Donnell, Attorney (Breon, Galgani, Godino and O'Donnell) for Mt. Diablo Unified School District; Kirsten L. Zerger, Attorney for Mt. Diablo Education Association, CTA/NEA.

Before Hesse, Chairperson; Jaeger, Morgenstern, and Burt, Members.

DECISION

JAEGER, Member: The Public Employment Relations Board (PERB or Board), having duly considered the request for reconsideration¹ submitted by the Mt. Diablo Unified School District (District), hereby denies that request for the reasons set forth in the discussion below.

DISCUSSION

The District seeks reconsideration of that portion of Mt. Diablo Unified School District (8/15/84) PERB Decision No. 373b in which the Board found that the District made an unlawful unilateral change in the workload of librarians in the fall of 1980. It asserts that the question of librarian workload was not "fully and fairly" litigated at the hearing in this matter and that, therefore, the Board erred in reviewing the librarian issue as an "Unalleged violation." In addition, the District objects to our remedy, which it perceives as requiring it to rehire laid-off librarians.

¹PERB rules are codified at California Administrative Code, title 8, section 31001 et seq. PERB rule 32410(a), which governs reconsideration requests, provides:

- (a) 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.

Unalleged Violation

In PERB Decision No. 373b, at pp. 9-12, the Board determined that it would apply the test for reviewing Unalleged violations enunciated in Santa Clara Unified School District (9/26/79) PERB Decision No. 104 to conduct which occurred after the complaint was issued.² It thereby reversed its determination in Decision No. 373 that it would not extend the Santa Clara test to post-complaint"conduct.

Applying the Santa Clara test, the Board found that the librarian workload issue was fully and fairly litigated because the Association "introduced several librarian witnesses to testify . . ." and "[t]he District had the opportunity to cross-examine witnesses, and with respect to several witnesses, exercised that right." Decision No. 373b at p. 15. However, later in the Decision, at p. 17, the Board correctly noted that only one librarian witness, Virginia Jouris, testified concerning the workload change.

The District asserts that the issue of librarian workload was not "fully and fairly litigated" because, as a matter of law, the testimony of one witness is insufficient to carry

²Under the Santa Clara test, the Board may review Unalleged conduct where: (1) the Unalleged violation is related to the subject matter of the complaint; (2) the allegedly unlawful conduct is part of the same course of action; and (3) the Unalleged violation is fully and fairly litigated.

the burden of proof in an unfair practice case. As such, it asserts that the Board made a prejudicial error in relying on Jouris' testimony.

The District's contention is without merit. The uncontradicted and unimpeached testimony of one witness is certainly legally sufficient to carry the burden of proof in an unfair practice case. Martori Bros. v. ALRB (1981) 29 Cal.3d 721. The record does not reflect that the District called or attempted to call witnesses to contradict Jouris. Moreover, in this case, the testimony of Jouris was corroborated by documentary evidence indicating a change in librarian workload. Since the testimony of one witness is sufficient to carry the charging party's burden of proof, so long as the respondent has the opportunity to cross-examine that witness and produce contradictory evidence, the "fully and fairly litigated" standard of Santa Clara has been met.

In this case, it is clear, and the District does not deny, that it was given the opportunity to cross-examine Jouris and produce contradictory evidence. Accordingly, we find that the Board's review of the librarian workload issue was proper and no prejudicial error was committed. The District's request for reconsideration of that issue is, therefore, denied.

The Remedy

By way of remedy for the finding of an unlawful unilateral change in librarian workload, the Board ordered the District to

"restore the workload of librarians as it existed prior to the fall of 1980 and meet and negotiate with the Mt. Diablo Education Association, CTA/NEA concerning the workload of those librarians."

The District now fears that our Order requires it to rehire laid-off librarians. The District's fears are groundless. Our Order merely requires the District to restore the workload of librarians such that the hours of work and work schedules of employees are at the pre-1980 levels, pending the outcome of negotiations. It need not rehire laid-off librarians to comply with the Order.

ORDER

The Mt. Diablo Unified School District's request for reconsideration and a stay of PERB Decision No. 373b is DENIED.

Chairperson Hesse and Member Burt joined in this Decision. Member Morgenstern's Dissent begins on p. 6.

Morgenstern, Member, dissenting: Consistent with the views I expressed in Mt. Diablo Unified School District (12/30/83) PERB Decision No. 373 and (8/15/84) PERB Decision No. 373b, I find the evidence insufficient to demonstrate that the District's change resulted in an increase in librarians' work hours.