STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN FRANCISCO COMMUNITY COLLEGE FEDERATION OF TEACHERS, AFT 2121,	)	
Charging Party,	)	Case No. SF-CE-1146
v.	)	Request for Reconsideration PERB Decision No. 703
SAN FRANCISCO COMMUNITY COLLEGE DISTRICT,	)	PERB Decision No. 703a
Respondent.	)	February 16, 1989

Appearances: Robert J. Bezemek, Attorney, for the San Francisco Community College Federation of Teachers, AFT 2121.

Before Porter, Craib and Shank, Members.

DECISION

SHANK, Member: San Francisco Community College Federation of Teachers, AFT 2121, (Charging Party) exclusive representative of certificated employees, requests reconsideration of PERB Decision No. 703, issued October 28, 1988. In that decision, the Public Employment Relations Board (PERB or Board) dismissed charges that the San Francisco Community College District (District) made an unlawful unilateral policy decision eliminating the use of part-time certificated staff who also held classified positions within the District. The Board dismissed on the ground that it was not the District, but rather, the Chancellor, acting in his capacity as a department head of the City and County of San Francisco, who made the policy decision, and that city and county control over its civil service employees

is not a matter within the scope of representation or negotiable between the District and the District's certified employee unit.

DISCUSSION

PERB Regulation 32410(a)[1] 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 law and fact. The Board rejects such contentions for the following reasons:

Charging Party claims that the Board erroneously ruled that San Francisco Civil Service Commission Rule 29 made the decision nonnegotiable. Not so. The Board found that the San Francisco Community College District is composed of two separate and distinct entities. One entity is a public school employer under EERA section 3540.1(k)[2] with respect to the certificated

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

[2]EERA section 3540.l(k) states:

> "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.

employees, and it is the governing board with the Chancellor as its executive officer. The other entity is not a public school employer under EERA, with respect to the classified employees, but is a separate "department" of the City and County of San Francisco with the Chancellor operating in a separate capacity as a department head and appointing power for the city and county. Control and regulation over the hiring, discipline, wages, hours, and other terms and conditions of employment of the city and county civil service employees working in the classified positions in the District "department" are governed by the City and County of San Francisco's: Charter, Board of Supervisors, Civil Service Commission, Salary Ordinance, and Civil Service Rules including Commission Rule 29. Civil service employees of the City and County of San Francisco are "local employees" under the Meyers-Milias-Brown Act (MMBA), (Government Code section 3500 et seq.) and the City and County of San Francisco must negotiate with their respective exclusive representatives as to matters within the scope of representation under the MMBA. Such negotiated agreements with respect to additional employment, overtime, and other terms and conditions of employment, would have to be observed by the Chancellor in his capacity as department head and appointing officer for the city and county as to the civil service classified employees. The Board's consideration of Civil Service Commission Rule 29 was incidental to its finding that city and county control over its civil service employees is not a matter within the scope of

representation or negotiable between the District (governing board) and the certificated unit under EERA.

The Charging Party also makes the flat assertion that the Board has not cited any National Labor Relations Board (NLRB) precedent and therefore has failed to recognize the correct method of legal analysis. PERB is not bound to base its decisions on NLRB or federal court cases interpreting the National Labor Relations Act (NLRA), although, when appropriate, it may take cognizance of federal precedent interpreting NLRA provisions which are parallel to EERA provisions. Carlsbad Unified School District (1979) PERB Decision No. 89, p. 6.

Finally, Charging Party asserts that the Board made factual errors in footnote 7 of the Decision, where it found, incidentally, that there was no request by the certificated unit to bargain the "effects" of the decision, citing Newman-Crows Landing Unified School District (1982) PERB Decision No. 223. The basic thrust of footnote 7 is that a public school employer is not under a duty to negotiate the effects of a nonnegotiable decision made by another employer (here, the City and County of San Francisco). Secondarily, we observed that, even if the nonnegotiable decision had been made by the public school employer, the certificated employees must also demand to bargain "effects" before the public school employer's duty to negotiate arises. We did not find the demand to negotiate the policy decision an "effects" demand (See Newman-Crow's Landing Unified School District (1982) PERB Decision No. 223).

ORDER

Having found no merit in Charging Party's contentions, the request for reconsideration is denied.

Member Porter joined in this Decision.

Member Craib's dissent begins on page 6.

Member Craib, concurring and dissenting: To the extent that the request for reconsideration is based upon the Board's purported reliance on the effect of San Francisco Civil Service Commission Rule 29, I agree that the request should be denied. The majority's analysis in Decision No. 703 was not dependent on its view of the operation of Rule 29. Consequently, Charging Party's arguments concerning Rule 29 are misplaced.

However, Charging Party has also addressed the majority's failure to acknowledge the obvious implications of the Board's earlier holding that the District consists of two distinct entities, one a public school employer (with respect to its certificated employees) and the other a department of the City and County of San Francisco (with respect to its classified employees). Charging Party argues, quite accurately, that a decision by one employer to prohibit its employees from also working for another employer would not give the other employer the right to effectuate that decision by unilaterally taking action against its employees which would otherwise be negotiable.

As I explained in my dissent in Decision No. 703, given the District's unique dual status, I would find that only the effects of the District's decision are negotiable, analogizing to the situation where a decision with regard to one unit has bargainable effects upon another unit. (Lake Elsinore School District (1987) PERB Decision No. 646.) Frankly, my position is a rather charitable one with regard to the District, for a strict application of the Board's holding that the District consists of two separate and distinct employers would compel the conclusion

that the decision was negotiable as well. In any event, Charging Party has noted the majority's error of law in finding no bargaining obligation whatsoever; consequently, I would grant the request for reconsideration on that basis.

Charging Party also asserts that the majority committed errors of fact and law in its alternative holding that, even if there was a bargaining obligation, Charging Party waived its rights by failing to make a request to bargain effects. As I pointed out in my dissent in Decision No. 703, the majority's view is based upon a misapplication of the Board's decision in Newman-Crows Landing Unified School District (1982) PERB Decision No. 223 and upon a failure to recognize that, at the time Charging Party made its demand to bargain, existing precedent made the decision bargainable. In my earlier dissent, I characterized the majority's argument on this issue as specious. Upon further examination, I consider that characterization to have been an understatement. I would therefore grant the request for reconsideration on this issue as well.