

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



OAKLAND SCHOOL EMPLOYEES )  
ASSOCIATION, )  
 )  
Charging Party, ) Case No. SF-CE-1275  
 )  
v. ) Request for Reconsideration  
 ) PERB Decision No. 818  
OAKLAND UNIFIED SCHOOL DISTRICT, )  
 ) PERB Decision No. 818a  
Respondent. )  
 )  
 ) September 17, 1990

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Appearances: Andrew Thomas Sinclair, Attorney, for Oakland School Employees Association; Peter N. Hagberg, Attorney, for Oakland Unified School District.

Before Hesse, Chairperson; Craib and Camilli, Members.

DECISION

CRAIB, Member: This matter is before the Public Employment Relations Board (PERB or Board) on a request by the Oakland School Employees Association (Association) that the Board reconsider its decision in Oakland Unified School District (1990) PERB Decision No. 818. In that decision, the Board held that the Oakland Unified School District (District) did not violate its duty to bargain in good faith when the District's governing board passed a resolution requiring that nonvested forfeitures accumulated in a supplemental annuity plan (Plan) be used to reduce future District contributions. The Board found that the resolution was consistent with the terms of the Plan, which was incorporated by reference into the parties' collective bargaining agreements.

In its request for reconsideration, the Association claims that the Board erred by finding that: (1) the Plan was a money-purchase plan, rather than a profit-sharing plan,<sup>1</sup> (2) section 6.01 of the Plan requires that administrative expenses be paid out of employer contributions, and (3) the Association failed to carry its burden of proof to show that the parties agreed that nonvested forfeitures were to remain in the Plan.<sup>2</sup> For the reasons that follow, we deny the request for reconsideration.

#### DISCUSSION

The Association claims that the Board mischaracterized the testimony of the parties' expert witnesses with regard to the tax status of the Plan. The Association claims that the witnesses both testified that the Plan could have changed from a money-purchase plan to a profit-sharing plan if the parties had agreed in 1977 that nonvested forfeitures were to remain in the Plan. We do not agree that the Association's characterization of the expert testimony is more accurate than that expressed in the underlying decision. In any event, the Association's argument

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<sup>1</sup>In accordance with the Internal Revenue Code and its implementing regulations, if the Plan is a money-purchase plan, nonvested forfeitures must be used to reduce future employer contributions.

<sup>2</sup>The Association also claims to rely "on all arguments set forth in its papers already on file." Assuming that the Association is asking the Board to re-examine the arguments made to the Board prior to the issuance of the underlying decision, we decline to do so. Arguments previously considered and rejected do not constitute proper grounds for reconsideration. (Morgan Hill Unified School District (1986) PERB Decision No. 554a, p. 9; Rio Hondo Community College District (1983) PERB Decision No. 279a, pp. 3-4.)

fails because it did not prove that the parties did agree to any change in the Plan that could have converted it to a profit-sharing plan. Thus, it is more appropriate to focus on the Association's claim that the Board failed to properly consider evidence that the parties did, in fact, agree in 1977 that nonvested forfeitures were to remain in the Plan.

The Association relies on the testimony of two of its witnesses who claimed that the District's position in negotiations was that the forfeitures would remain in the Plan. The Board considered that testimony, along with documentary evidence showing that, while the District at one time expressed such a position, a later District proposal called for the forfeitures to revert to the District. Neither proposal was made a part of the collective bargaining agreement. Therefore, the Board concluded that the evidence was insufficient to show that the parties had agreed to a change in the Plan.

The Association acknowledges that the agreement eventually reached contained no provision on the disposition of nonvested forfeitures, but argues that this indicates that the District's later proposal was rejected by the Association. This argument ignores the Board's finding, which the Association does not contest in its reconsideration request, that, prior to the 1977 negotiations, the Plan was unquestionably a money-purchase plan. Thus, it was the Association's burden to prove that the 1977 negotiations resulted in an agreement to change the character of the Plan. Evidence that the Association refused to accept a

District proposal is insufficient to demonstrate a change. Absent persuasive evidence that the District agreed to a change, it must be concluded that the status quo prevailed.

Next, the Association claims the Board erred in stating that the Association's claim, that the amounts assigned to employee accounts could vary, is inconsistent with its position in an earlier Board decision. In Oakland Unified School District (1982) PERB Decision No. 236, the Board found that the District was obligated to contribute a fixed amount of eight percent per year to the Plan and violated its duty to bargain by deferring part of that contribution to the succeeding fiscal year. The Association asserts that there was nothing inconsistent with its earlier position that the District could not reduce the eight percent contribution and its present position that the Plan was a profit-sharing plan. The Association reasons that the eight percent figure could be a minimum, to be supplemented by the nonvested forfeitures.

Assuming that such a profit-sharing plan would be legally permissible, the Association's claim of error on the part of the Board is nonetheless misplaced. There is no indication that, prior to the instant case, the Association ever claimed that the eight percent figure was a minimum, rather than a fixed amount. In addition, neither the language of the collective bargaining agreements<sup>3</sup> nor the evidence of bargaining history support the

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<sup>3</sup>The language of the relevant agreements which governs the contribution rate states, in pertinent part:

conclusion that the parties ever agreed the stated contribution rate was a minimum, to be supplemented by nonvested forfeitures.

Lastly, the Association questions the Board's authority to interpret the terms of the Plan, specifically, section 6.01, which the Board construed as mandating that administrative costs be paid out of the District's contributions. The Association asserts that the trustees of the Plan are the definitive interpreters of the Plan, and requests that the record be reopened to accept a declaration of an attorney for the trustees who claims the trustees do not interpret section 6.01 to require that administrative costs be paid exclusively from District contributions.

The Association's claim that the Board exceeded its authority by interpreting the terms of the Plan is simply incorrect. The Plan was incorporated by reference into the parties' collective bargaining agreements and was, therefore, part of the negotiated status quo which the District could not change unilaterally. The Association has charged that the District committed such an unlawful unilateral change by altering the terms of the Plan and has, therefore, placed the issue before the Board. The Board has the authority to interpret contracts in order to determine if an unfair practice has been committed.

(Grant Joint Union High School District (1982) PERB Decision No.

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The District agrees to continue its contributions to the Annuity Program for employees covered by this agreement at the rate of an amount equal to 8% of the employee's salary.

196, pp. 7-9; Inglewood Unified School District (1986) PERB Decision No. 593, pp. 3-4.) By interpreting relevant provisions of the Plan, the Board has merely carried out the duty placed on it by the Association's filing of the unfair practice charge.

The Association also argues that the Board should give deference to the interpretation of the trustees of the Plan, as evidenced by the declaration the Association seeks to have the Board consider. PERB Regulation 32410, subdivision (a)<sup>4</sup> provides, 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.  
(Emphasis added.)

We find that the declaration offered by the Association does not meet the newly-discovered evidence standard set out above. The terms of the Plan were placed in issue by the nature of the Association's charge. The propriety of using nonvested forfeitures to pay administrative expenses was also an issue intrinsic to this dispute, as reflected in the discussion of the issue in the proposed decision issued by a PERB administrative law judge. Furthermore, as the party bearing the burden of proof, it was the obligation of the Association to provide evidence that the District's actions were inconsistent with the terms of the Plan. The proper interpretation of section 6.01 of

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<sup>4</sup>PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

the Plan would obviously have been relevant to such a showing. As there is no indication that witnesses or documentary evidence to support the Association's interpretation were unavailable or could not have been discovered with the exercise of reasonable diligence at the time of the hearing, there is no basis for concluding that the evidence the Association now proffers is "newly discovered."

ORDER

For the reasons explained above, the Association's request for reconsideration of PERB Decision No. 818 is hereby DENIED.

Chairperson Hesse and Member Camilli joined in this Decision.