

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LINA ROSA,

Charging Party,

v.

CALIFORNIA NURSES ASSOCIATION,

Respondent.

Case No. SF-CO-232-M

Request for Reconsideration
PERB Decision No. 2182-M

PERB Decision No. 2182a-M

August 29, 2011

Appearances: Lina Rosa, on her own behalf; Donald W. Nielsen, Attorney, for California Nurses Association.

Before Martinez, Chair; McKeag and Dowdin Calvillo, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Lina Rosa (Rosa) of the Board's decision in *California Nurses Association (Rosa)* (2011) PERB Decision No. 2182-M. In that decision, the Board affirmed the dismissal of a charge that alleged the California Nurses Association (CNA) breached its duty of fair representation toward Rosa under the Meyers-Milias-Brown Act (MMBA)¹ by failing to adequately represent Rosa in matters concerning her employment while she was employed by the Washington Hospital Healthcare System (Hospital). The Board adopted the Board agent's determination that the charge failed to state a prima facie violation of the duty of fair representation.

The Board has reviewed Rosa's request for reconsideration and supporting documentation, and CNA's response thereto, in light of the relevant law. Based on this review, the Board denies Rosa's request for reconsideration for the reasons discussed below.

¹ The MMBA is codified at Government Code section 3500 et seq.

DISCUSSION

Requests for reconsideration of a final Board decision are governed by PERB

Regulation 32410(a),² which states in full:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and five copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. 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.

Because reconsideration may only be granted under “extraordinary circumstances,” the Board applies the regulation’s criteria strictly. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H.)

Most of Rosa’s request for reconsideration restates arguments she made before the Board agent and before the Board on appeal. As the Board stated in *Chula Vista Elementary School District* (2004) PERB Decision No. 1557a, “a request for reconsideration is not simply an opportunity to ask the Board to ‘try again.’” Accordingly, PERB Regulation 32410(a) does not allow a party to reargue or relitigate issues which have already been decided. (*Redwoods*

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

Community College District (1994) PERB Decision No. 1047a.) Thus, we find no basis for granting reconsideration.

The request for reconsideration also seeks to have the Board consider additional evidence which, Rosa asserts, was difficult for her to provide previously due to her medical condition. The PERB regulation cited above requires that a request for reconsideration based upon the discovery of new evidence be supported by a declaration under penalty of perjury establishing that the proffered evidence meets five specific criteria. A review of the record indicates that Rosa did not file the required declaration in support of her request for reconsideration, as required by PERB Regulation 32410.

In addition, the five criteria specified in PERB Regulation 32410(a) cannot be met under the facts of this case. The evidence consists of email correspondence between CNA and Rosa and between the Hospital and Rosa, doctor's notes releasing Rosa from work, payroll data, and a newspaper article. In support of her request, Rosa provides a letter from a physician dated June 9, 2011 stating that her medical condition has been exacerbated in the last few months. She fails, however, to explain how her medical condition prevented her from providing the information previously to either the Board agent or the Board itself. Thus, the request fails to establish that the evidence constitutes newly discovered evidence that was not previously available and could not have been discovered with the exercise of reasonable diligence under PERB Regulation 32410(a). Moreover, even if we were to consider this evidence, it does not demonstrate that the Board's decision contains prejudicial errors of fact. (*Ibid.*)

For the above reasons, Rosa's request for reconsideration must be denied because it fails to establish either of the grounds for reconsideration set forth in PERB Regulation 32410(a).

ORDER

Lina Rosa's request for reconsideration of the Public Employment Relations Board's decision in *California Nurses Association (Rosa)* (2011) PERB Decision No. 2182-M is hereby DENIED.

Chair Martinez and Member McKeag joined in this Decision.