

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



DARRELL FISHER,

Charging Party,

v.

STATIONARY ENGINEERS LOCAL 39,

Respondent.

Case No. SF-CO-158-M

Request for Reconsideration  
PERB Decision No. 1940-M

PERB Decision No. 1940a-M

March 28, 2008

Appearance: Darrell Fisher, on his own behalf.

Before McKeag, Wesley and Rystrom, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Darrell Fisher (Fisher) of the Board's decision in Stationary Engineers Local 39 (Fisher) (2008) PERB Decision No. 1940 (Local 39 (Fisher)). In Local 39 (Fisher), the Board dismissed the unfair practice charge alleging the Stationary Engineers Local 39 breached its duty of fair representation in violation of the Meyers-Milias-Brown Act (MMBA).<sup>1</sup> Fisher seeks reconsideration because he believes the decision is based on prejudicial errors of fact.

For the reasons set forth below, the request for reconsideration is denied.

DISCUSSION

Requests for reconsideration are governed by PERB Regulation 32410.<sup>2</sup> PERB

<sup>1</sup>MMBA is codified at Government Code section 3500, et seq.

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

Regulation 32410 provides, in pertinent part:

(a) 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. . . . 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.

Simply arguing the same facts that were presented to the Board on appeal does not meet the requirements of this regulation. Fisher has presented no newly discovered evidence and has only put forth the arguments he raised on appeal. Fisher has not met either of the grounds for reconsideration and therefore the request is denied.

#### ORDER

Darrell Fisher 's request for reconsideration of the Board's decision in Stationary Engineers Local 39 (Fisher) (2008) PERB Decision No. 1940 is hereby DENIED.

Members McKeag and Rystrom joined in this Decision.