



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

MORGAN HILL UNIFIED SCHOOL DISTRICT,

Employer,

and

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521,

Exclusive Representative.

Case No. SF-UM-768-E

Request for Reconsideration
PERB Order No. Ad-443

PERB Order No. Ad-443a

May 30, 2017

Appearances: Weinberg, Roger & Rosenfeld by Kerianne R. Steele, Attorney, for Service Employees International Union Local 521; Liebert Cassidy Whitmore by Laura Schulkind and Kristin Lindgren, Attorneys, for Morgan Hill Unified School District.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on Service Employees International Union Local 521's (SEIU) request for reconsideration and motion to vacate *Morgan Hill Unified School District* (2016) PERB Order No. Ad-443 (*Morgan Hill*). In that decision, the Board denied SEIU's appeal of a letter by the Office of the General Counsel placing SEIU's unit modification petition in abeyance pending the outcome of a decertification petition filed by unit employees. The Board concluded that the abeyance letter was an interlocutory order and could therefore be appealed to the Board itself only if the Board agent joins in the request for an appeal. Because no Board agent joined in the appeal, the Board rejected SEIU's appeal as procedurally deficient.

The Board has reviewed SEIU's request for reconsideration and motion to vacate in light of the relevant law. Based on this review, and for the reasons discussed below, the Board declines to reconsider PERB Order Ad-443 and denies the request to vacate that decision.

DISCUSSION

Requests for reconsideration of a final Board decision are governed by PERB Regulation 32410, subdivision (a), which states in relevant 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: (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 the "extraordinary circumstances" specified above, the Board applies the regulation's criteria strictly in reviewing requests for reconsideration. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H; *King City Joint Union High School District* (2007) PERB Decision No. 1777a, pp. 3-4; *County of Tulare* (2016) PERB Decision No. 2461a-M.) Purported errors of law are not grounds for reconsideration. (*California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479a-S, p. 6; *Apple Valley Unified School District* (1990) PERB Order No. Ad-209a.)

Request for Reconsideration

SEIU asserts that its withdrawal of the unit modification petition, administrative appeal and request for stay was filed the same day the Board's decision issued. According to the

declaration filed with the request for reconsideration, the withdrawal of all three pending actions was filed electronically at 1:32 p.m. on December 13, 2016. SEIU presumes that the mail carrying the Board's decision did not leave the PERB office until the end of the business day.

Without explicitly saying so, SEIU seems to argue that its case is moot. Not only did it withdraw its appeal of the abeyance letter, it withdrew the underlying unit modification petition and request to stay the decertification election. PERB's files show that a decertification election concluded on December 2, 2016 and SEIU lost.¹ In its request for reconsideration, SEIU informs the Board that the time for filing objections to that election lapsed on December 12, 2016, and it did not file objections. Thus PERB certified the results of the election and "the matter is closed." (SEIU's Request for Recon., p. 2.)

We reject SEIU's request for reconsideration on several grounds. First and foremost, the Board has held that "the reconsideration procedure set forth in PERB Regulation 32410 applies only to Board decisions arising out of exceptions to a proposed decision by an administrative law judge (ALJ) after a formal hearing." (*Berkeley Federation of Teachers, Local 1078 (Crowell)* (2015) PERB Decision No. 2405a, p. 14.) This matter was not such a decision.

In addition, we deem the instant request for reconsideration moot. SEIU has abandoned all substantive objections to PERB's earlier rulings concerning the decertification petition, including SEIU's petition for unit modification, the subject of *Morgan Hill, supra*, PERB Order No. Ad-443.

¹ PERB may take administrative notice of matters within its own files and records. (*Antelope Valley Community College District* (1979) PERB Decision No. 97, p. 23; *Santa Clara County Superior Court* (2014) PERB Decision No. 2394-C, p. 16.)

Neither has SEIU identified a prejudicial error of fact in the decision of the Board itself. That a party's withdrawal of appeal crossed in the mail with the Board's decision is not a factual error.² Although such event could be considered, in an abstract epistemological sense, "newly discovered evidence which was not previously available," it nevertheless fails to qualify as grounds for reconsideration because it is not relevant to the issues sought to be reconsidered.

Request to Vacate

SEIU bases its request to vacate *Morgan Hill, supra*, PERB Order No. Ad-443 on its assertion that it is directly at odds with the Board's decision in *City of Fremont* (2013) PERB Order No. Ad-403-M. While these two decisions are distinguishable, we note that asserted conflicts with prior Board decisions are not grounds for reconsideration, and that PERB Regulations do not provide for motions to vacate Board decisions. Moreover, because reconsideration is not available for any Board decision other than one arising out of exceptions to a proposed decision by an ALJ after a formal hearing, we must leave for another case for the opportunity to consider any purported conflict between *City of Fremont* and *Morgan Hill*.

ORDER

The request for reconsideration and motion to vacate are hereby DENIED.

Chair Gregersen and Member Banks joined in this Decision.

² The Board has discretion whether to permit withdrawal of an appeal. (*Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380.) Therefore SEIU's request for withdrawal, at least of its appeal, was not effective immediately upon filing.