

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



KENNETH MEREDITH,

Charging Party,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 221,

Respondent.

Case No. LA-CO-1322-E

Request for Reconsideration
PERB Decision No. 1982

PERB Decision No. 1982a

January 27, 2009

Appearances: Paul Gomez, for Kenneth Meredith; Tosdal, Smith, Steiner & Wax by Fern M. Steiner, Attorney, for Service Employees International Union, Local 221.

Before Neuwald, Chair; Wesley 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 Service Employees International Union, Local 221 (SEIU), of the Board's decision in Service Employees International Union, Local 221 (Meredith) (2008) PERB Decision No. 1982 (SEIU 221 (Meredith)). In SEIU 221 (Meredith), the Board reversed a Board agent's dismissal of Kenneth Meredith's (Meredith) duty of fair representation allegation against SEIU and remanded the matter to the Office of the General Counsel for issuance of a complaint. The Board affirmed the dismissal of the remaining allegations in the charge.

The Board has reviewed the entire record in this case, including but not limited to, SEIU's request for reconsideration and Meredith's response thereto. Based on this review, the Board denies SEIU's request for reconsideration for the reasons discussed below.

DISCUSSION

Under PERB Regulation 32410(a),¹ the grounds for requesting reconsideration of a final Board decision 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.” Because reconsideration may only be granted under “extraordinary circumstances,” 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.)

SEIU claims that the Board’s decision in SEIU 221 (Meredith) contains prejudicial errors of fact.² Specifically, SEIU asserts the Board “erroneously and prejudicially” found that: (1) Meredith made a request to SEIU for representation on August 1, 2007, (2) the collective bargaining agreement between SEIU and Meredith’s employer established a right to grieve a rejection on probation, and (3) Meredith had a meritorious grievance over his rejection on probation. SEIU appears to assume that the Board made factual findings and determined that an unfair practice had been committed, but this is not so. SEIU 221 (Meredith) involved an appeal from a dismissal. In its decision, the Board merely determined that Meredith’s charge alleged sufficient facts to state a prima facie case of a breach of the duty of fair representation by SEIU and remanded the matter to the Office of the General Counsel for

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

²SEIU also asserts that the Board’s decision contains prejudicial errors of law. However, purported errors of law are not grounds for reconsideration. (Apple Valley Unified School District (1990) PERB Order No. Ad-209a; State of California (Department of Forestry and Fire Protection) (1989) PERB Decision No. 734a-S.)

issuance of a complaint.³ Thus, any findings made by the Board in its decision are not prejudicial to SEIU because it will have the opportunity to present and rebut evidence at the hearing on the complaint.

Additionally, SEIU did not file a response to Meredith's appeal of the dismissal. Instead, it waited until after Meredith had prevailed on his appeal and then sought reconsideration of the Board's decision. "[A] request for reconsideration is not simply an opportunity to ask the Board to 'try again.'" (Chula Vista Elementary School District (2004) PERB Decision No. 1557a.) Nor does a request for reconsideration allow a party "to reargue or relitigate issues which have already been decided." (Redwoods Community College District (1994) PERB Decision No. 1047a.) In other words, reconsideration does not provide a "do over" for parties or the Board. Therefore, a party cannot use a request for reconsideration to make its first opposition to an appeal, as SEIU has done here.

For the above reasons, SEIU has failed to meet the requirements for reconsideration set forth in PERB Regulation 32410(a). Accordingly, SEIU's request for reconsideration is denied.

ORDER

SEIU's request for reconsideration of the Board's decision in Service Employees International Union, Local 221 (Meredith) (2008) PERB Decision No. 1982 is hereby DENIED.

Chair Neuwald and Member Wesley joined in this Decision.

³Indeed, the arguments in SEIU's request confirm the existence of factual disputes that may only be resolved through PERB's hearing process. (See Golden Plains Unified School District (2002) PERB Decision No. 1489 ["Disputed facts or conflicting theories of law should be resolved in other proceedings after a complaint has been issued."].)