STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 221, Charging Party, v. COUNTY OF SAN DIEGO, Respondent.	Case No. LA-CE-1296-M PERB Order No. Ad-463-M May 1, 2018

Appearances: Weinberg, Roger & Rosenfeld by Kerianne R. Steele, Attorney, for Service Employees International Union Local 221; Liebert Cassidy Whitmore by Frances E. Rogers, Attorney, for County of San Diego.

DECISION

This case is before the Public Employment Relations Board (PERB or Board) on a motion filed by Charging Party, Service Employees International Union Local 221 (SEIU), pursuant to PERB Regulation 32147.[1] SEIU requests that this unfair practice case, filed on April 4, 2018, be expedited at all divisions of PERB. On April 13, 2018, the parties were notified by the Appeals Assistant that the Board had granted the motion. We explain our reasons for doing so.

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

BACKGROUND

Allegations of the Unfair Practice Charge[2]

SEIU is the recognized employee organization that represents 10 County of San Diego (County) bargaining units.

On August 15, 2017, the Association of San Diego County Employees (ASDCE) filed with the County two petitions titled "Unit Modification Petition By Severance." Each petition sought to remove one classification from one of SEIU's bargaining units and place it in a new unit to be represented by ASDCE. Proof of employee support for these petitions was not attached to the petitions themselves, but was in a separate document under a statement that described the positions to be severed, without stating that the employees desired to be represented by ASDCE rather than SEIU.

Pursuant to the County's Labor Relations Ordinance, a hearing was held regarding these petitions. The hearing officer found that both proposed units were appropriate, and ordered elections to determine whether the units would be represented by SEIU, ASDCE, or no representative. SEIU filed exceptions to the hearing officer's decision; those exceptions were dismissed on March 8, 2018. On March 21, 2018, the County asked the State Mediation and Conciliation Service (SMCS) to conduct the two elections, and SMCS is presently attempting to convene a meeting with the parties concerning the logistics of the elections.

SEIU alleges that the County has applied its rules in an unreasonable manner and adopted an unreasonable rule in violation of the Meyers-Milias-Brown Act (MMBA)[3] by:

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[2] During the investigation of an unfair practice charge, PERB accepts the charging party's factual allegations as true. (*Golden Plains Unified School District* (2002) PERB Decision No. 1489, p. 6.)

[3] The MMBA is codified at Government Code section 3500 et seq. All further undesignated code sections refer to the Government Code.

(1) allowing ASDCE to file petitions to modify bargaining units of which it is not the exclusive representative; and (2) determining there was a "question concerning representation" even though the proof of support did not clearly demonstrate that the signatory employees wanted to change their exclusive representative.

DISCUSSION

PERB Regulation 32147 provides in pertinent part:

> The Board itself . . . may expedite any matter pending before the Board, as follows:
>
> [¶. . . ¶]
>
> (b) In any case that presents an important question of law or policy under any statute administered by the Board, the early resolution of which is likely to improve labor relations between or among affected parties;
>
> [¶. . . ¶]
>
> (d) In any case, as ordered or directed by the Board itself.

SEIU asserts that this case is appropriate for expediting because it raises important and novel questions of law regarding the processing of purported unit modification petitions, viz., whether local rules may permit non-exclusive representatives to file unit modification petitions where PERB Regulations permit only an employer or exclusive representative to file such petitions, and whether the County applied its rules unreasonably when it determined there is a question concerning representation in the absence of employee petitions seeking a change in their exclusive representative.[4] SEIU contends that if this case is not expedited, it will be forced to file a request for injunctive relief, because *City of Fremont* (2015) PERB Order

[4] The unfair practice charge also alleges that the hearing officer appointed by the County erred by relying on information not contained in the record to conclude that the two proposed units were more appropriate than the existing larger units.

No. Ad-424-M (*Fremont*) forecloses it from requesting a stay of the elections under PERB Regulation 33002.

The County opposes SEIU's motion for several reasons, including that: (1) ASDCE was not served with the motion, the unfair practice charge or any supporting documents; (2) this case does not present important questions of law or policy within the meaning of PERB Regulation 32147, subdivision (b); and (3) expediting the unfair practice charge is not the proper procedure; instead, SEIU should seek to stay the election pursuant to PERB Regulation 33002.

Preliminarily, we reject SEIU's argument that expediting this case is the only alternative to a request for injunctive relief. As the County argues, SEIU may request to stay the election. Article 2 of subchapter 9 of PERB Regulations (PERB Regs. 32999-33012) governs SMCS's conduct of "representation and agency shop elections pursuant to the local rules of an MMBA, Trial Court Act[5] or Court Interpreter Act[6] employer." (PERB Reg. 32999, subd. (a).) SMCS "conduct[s] such elections only pursuant to a Consent Election Agreement entered into by all parties and SMCS." (PERB Reg. 32999, subd. (b).) Included in this article is Regulation 33002, which provides in relevant part:

> (a) Any party to an SMCS-conducted election may request that the Board stay the election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice.

[5] The Trial Court Employment Protection and Governance Act (Trial Court Act) is codified at section 71600 et seq.

[6] The Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) is codified at section 71800 et seq.

Although this straightforward language allows *any party*[7] to the election to request a stay, SEIU reads *Fremont*, *supra*, PERB Order No. Ad-424-M, to hold that it cannot sign an SMCS consent election agreement and then seek a stay of election under PERB Regulation 33002. We do not read *Fremont* so broadly.

Fremont involved an SMCS-conducted decertification election involving Service Employees International Union, Local 1021 (Local 1021) and another union, against the backdrop of an unfair practice charge (Case No. SF-CE-1028-M) alleging that the employer had unlawfully refused to recognize Local 1021 as the exclusive representative. At the time the decertification petition was filed, exceptions in Case No. SF-CE-1028-M were pending before the Board itself. Nevertheless, on January 30, 2014, all parties entered into a consent election agreement providing that the election notice would be posted either within 30 days following the issuance of a decision by the Board in Case No. SF-CE-1028-M, or 90 days after the execution of the election agreement (i.e., April 30, 2014), whichever event occurred earlier.

The Board did not issue its decision in Case No. SF-CE-1028-M before April 30, 2014, and on that date, Local 1021 filed a new unfair practice charge against the employer alleging misconduct that allegedly occurred on four separate dates in December 2013 and January 2014 before Local 1021 entered into the election agreement. The charge also incorporated alleged misconduct from November 2012 through June 2013, which was the subject of Case No. SF-CE-1028-M. Based on this new unfair practice charge, SEIU requested a stay of the election, which was granted by the Office of the General Counsel.

[7] Parties to an election under this article include the "employer, the employee organization which is the exclusive representative of employees in the voting unit, any employee organization eligible to appear on the ballot in a representation election, or any group of employees which has filed a valid petition pursuant to local rules of the employer." (PERB Reg. 33001.)

On appeal by the employer, the Board dissolved the stay. We explained that "*on these facts* . . . the determination by the [Office of the General Counsel] to stay the election called for in the parties' Election Agreement was improvident." (*Fremont*, *supra*, PERB Order No. Ad-424-M, p. 9, emphasis added.) We noted that although Local 1021 had "fresh evidence" of the employer's ongoing refusal to recognize it as the exclusive representative, it had entered into the consent election agreement, "thereby assuming the risk that the Election Agreement would be enforced according to its terms." (*Ibid*.) We further concluded—again "on these facts"—that Local 1021 was "estopped by its agreement to the election to seek a stay." (*Id.* at p. 10.)

Thus, the critical fact in *Fremont*, *supra*, PERB Order No. Ad-424-M, was that Local 1021 *expressly agreed* to proceed with the election even if there was no final resolution of the unfair practice charge. Under those particular circumstances, Local 1021 was estopped from subsequently seeking a stay that would further postpone the election until after resolution of the charge. Absent such an express agreement to participate in an election notwithstanding a pending unfair practice charge, *Fremont* does not bar a party from requesting a stay of election under PERB Regulation 33002.

Moreover, the purpose of our regulations governing SMCS elections is to provide efficient and clear-cut procedures for resolving disputes in representation elections. Those procedures not only govern "stay" requests, but also disputes regarding questions of voter eligibility (PERB Regs. 33005, 33006, 33008) and objections to the conduct of the election (PERB Regs. 33009-33012). An unduly broad reading of *Fremont* would encourage parties to avoid consent election agreements, thereby shunting election-related disputes to costlier and

more time-consuming processes, such as injunctive relief and unfair practice charges. That was not the intent of *Fremont*.

We therefore limit *Fremont* to its unique facts. We further note, as the County points out, that nothing in the applicable regulations requires a party to sign a consent election agreement before requesting a stay. A consent election agreement is not a condition precedent to being considered a party under PERB Regulation 33001, nor to requesting a stay under PERB Regulation 33002. Once an employer has requested that SMCS conduct an election, then a stay may be requested by any party.

Because a stay of election is not categorically unavailable to SEIU in this case, an injunctive relief request is not the only alternative to expediting this case. We therefore decline to expedite this case on that ground.

Nevertheless, we agree with SEIU that expediting this case at all divisions is appropriate. It presents novel and important questions of law, including whether an employer's local rules may permit unit modification petitions to be filed by non-exclusive representatives; and whether employee signatures without a statement seeking a change in exclusive representative may be treated as proof of support for a severance petition.

Our statutes and regulations manifest a policy preference for resolving representation matters as quickly as possible. (See, e.g., MMBA, § 3509.3; PERB Reg. 32147, subd. (a).) Expeditious resolution is particularly important when there is a question concerning representation, i.e., a controversy concerning which, if any, employee organization will represent a group of employees. (See *International Union of Operating Engineers, State of California Locals 3, 12, 39 and 501, AFL-CIO (California State Employees' Association,*

SEIU, AFL-CIO) (1984) PERB Decision No. 390-S, p. 2.) Coupled with the novel and important issues identified above, we believe this policy warrants expediting this case.

We reject the County's objections to expediting. ASDCE is not a party to SEIU's unfair practice charge and was not required to be served with the motion to expedite. If the County believes ASDCE should be a party, its remedy is an application for joinder. (PERB Reg. 32164.) And although we have concluded that SEIU *may* seek a stay of election, the availability of a stay request does not prevent us from expediting the case.

ORDER

Service Employees International Union, Local 221's request that the Public Employment Relations Board (PERB) expedite Case No. LA-CE-1296-M at all divisions of PERB is hereby GRANTED.

PER CURIAM