STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LISA MARRIOTT, ET AL., Charging Party, v. SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1292, Respondent.	Case No. SA-CO-45-M PERB Decision No. 1956-M May 9, 2008

Appearance: Lisa Marriott, on her own behalf.

Before Neuwald, Chair; McKeag and Rystrom, Members.

DECISION

RYSTROM, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by Lisa Marriott (Marriott) of a Board agent's dismissal of her unfair practice charge against Service Employees International Union (SEIU).

Marriott alleged that on October 6, 2006, SEIU consolidated Marriott's employee organization, SEIU Local 1292 (Local 1292), and several other SEIU locals into SEIU Local 1021 (Local 1021) in violation of Marriott's right to choose her own representative. Marriott claims that this conduct by SEIU violated section 3502 of the Meyers-Milias-Brown Act (MMBA),[1] PERB Regulation 32604(a), (b) and (e),[2] and

[1]The MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

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

Tehama County Employer-Employee Relations Resolution (EERR) Article I, Section 5 and Article II. [3]

We have reviewed the record, including the unfair practice charge, the amended charge, the warning and dismissal letters, and Marriott's appeal. The Board affirms the Board agent's dismissal based upon the following.[4]

PROCEDURAL HISTORY

On November 27, 2006, Marriott filed an unfair practice charge against SEIU. A warning letter was sent to Marriott on March 6, 2007, indicating that her charge did not state a prima facie case and the reasons why.

Marriott filed an amended charge on March 21, 2007. Although her amended charge was not filed within the time prescribed by the Board agent, it was filed prior to the issuance of the dismissal. Accordingly, it was still timely pursuant to PERB Regulation 32621.[5] (Public Employees Union Local 1 (Pina) (2006) PERB Decision No. 1872; Regents of the University of California (2006) PERB Decision No. 1870-H; Sacramento Municipal Utility District (2006) PERB Decision No. 1838-M.)

Marriott's amended charge was dismissed by the Board agent on June 4, 2007, for failure to state a prima face case. Marriott requested and was granted an extension by PERB to file an appeal of the dismissal on or before July 13, 2007. Marriott's appeal of the dismissal was timely filed.

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[3]Tehama County EERR Article I, Section 5 and Article II are local rules adopted pursuant to MMBA section 3507(a).

[4]The Board does not adopt the warning or dismissal letters as its decision.

[5]PERB Regulation 32621 states in pertinent part that "Before the Board agent issues or refuses to issue a complaint, the charging party may file an amended charge."

SEIU has not filed a position statement pursuant to PERB Regulation 32620(c), or a statement in opposition to Marriott's appeal pursuant to PERB Regulation 32635(c).

MARRIOTT'S UNFAIR PRACTICE CHARGE

A. Original Charge Allegations

Marriott is an employee in the miscellaneous bargaining unit of the County of Tehama (Tehama County) whose employees work in the social services or child support services departments.

From August, 2004 through October 5, 2006, as a result of voting in a decertification election, the employees in Marriott's unit chose to be represented by Local 1292 and Stationary Engineers Local 39 (Local 39), which acted as joint exclusive representatives (Joint Council). It was Marriott's understanding that she would be represented by Local 1292 for contract enforcement grievances and disciplinary actions.

At a Local 1292 meeting sometime prior to October 6, 2006, a representative of Local 1021 told some of the unit members including Marriott that when Local 1021 takes over, the unit members will have to represent each other in disputes with management because a representative from Local 1021 would not be able to respond to their worksite in a timely enough manner to deal with contract enforcement or disciplinary defense.

On October 6, 2007, SEIU merged Local 1292 and several other locals into the North Regional Public Sector Local (North) pursuant to a vote of thousands of SEIU members, most of whom did not work for Tehama County. Notwithstanding the vote of thousands of SEIU members on the consolidation, with the exception of one member, no one in Marriott's unit was allowed to vote on this merger.

According to Marriott's charge, "The SEIU members who voted on October 6 were never part of the 2004 vote in Tehama County" and "the voting was structured so that SEIU members who do not work for Tehama County could vote to dissolve Local 1292."

Following the election, Marriott received a local union assignment chart from SEIU which contained a list of several "original" and "new" locals. According to this chart, Local 1292 is an "original" local and North is a "new" local.

In addition to not being allowed to vote, Marriott alleges that as a result of the merger her bargaining representative (Joint Council) no longer exists and that in contrast to Local 1292, Local 1021 is a "huge union with headquarters hundreds of miles away from us."

Marriott claims the October 6, 2006, consolidation violated the Tehama County miscellaneous bargaining unit's rights under MMBA sections 3500 and 3502 to join an employee organization of their own choosing as well as Tehama County's local rules.[6]

Marriott also alleged that Tehama County is aiding, abetting and assisting Local 1021 in violating the employees' rights by recognizing Local 1021 and dominating and interfering in internal union matters.[7]

As a remedy, Marriott requests that the employees in the Tehama County miscellaneous bargaining unit be allowed to vote on whether they want to be represented by Local 1021 separate and apart from all other employees represented by SEIU.

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[6]Attached to Marriott's charge is a partial copy (pages 6-13) of the Tehama County EERR local rules adopted pursuant to MMBA section 3507(a). The attachment contains the entire Article I, Section 5 regarding employee rights. It is not clear if Article II regarding representation proceedings is attached in its entirety.

[7]As Tehama County was not named in the charge we do not address these allegations.

B. Marriott's Amended Charge

In her amended charge, Marriott alleged the following additional facts:

1. Local 1292 field staff (Andrew McIntyre and Lynn Truax) were dismissed and not replaced, therefore, under Local 1021 the Tehama County miscellaneous bargaining unit employees have no representatives. Instead, they must represent each other in disputes with management because a Local 1021 representative would not be able to respond to their worksites in a timely enough manner to deal with contract enforcement or disciplinary defense.

2. Differences between the bylaws[8] of Local 1292 and Local 1021 include, but are not limited to the following:

Local 1292 represented approximately 850 workers primarily in four counties, whereas Local 1021 represents over 54,000 workers across the state.

Under Local 1292, all dues-paying members could vote on changes to its constitution and bylaws, whereas under Local 1021 only the SEIU international president can modify its provisional constitution and bylaws.

Each chapter had one representative on Local 1292's executive board for every 100 represented employees, whereas no member of the former Local 1292 sits on Local 1021's executive board.

Local 1292's bylaws possessed a mechanism for electing and appointing shop stewards, whereas Local 1021's bylaws contain no such provision.

[8]Marriott submitted a chart that compared and contrasted various differences between Local 1292 and Local 1021, chiefly related to Local 1292's bylaws and Local 1021's provisional bylaws.

In contrast to Local 1292's bylaws, Local 1021's bylaws have no provisions for nominations and elections.

3. Marriott's bargaining unit was not given the opportunity to vote on whether they wanted to be represented by Local 1021.

Attachments to the charge include: (1) a memorandum from Marriott to her employer's personnel director dated January 17, 2007, asking her employer not to recognize Local 1021 without a vote of the Tehama County miscellaneous bargaining unit; (2) a letter from Marriott to Local 39 dated January 17, 2007, asking it not to recognize Local 1021 without a vote of the bargaining unit; (3) a letter from Tehama County to Local 39 dated January 25, 2007, enquiring as to the current status of Local 1292, the identity of its authorized agents, and as to the existence of any organization succeeding to the powers and duties of Local 1292; (4) a letter from Local 39 to Tehama County dated February 2, 2007, which references information on SEIU's website regarding Local 1021 being a newly chartered SEIU public service local that united several former locals including Local 1292;[9] and (5) a declaration from Lonnie Morey (Morey) dated March 19, 2007, stating that on this date he brought a representative from Local 39 to a meeting with his employer that could have resulted in discipline being imposed against him. The declaration explains that when they arrived, three representatives from Local 1021 were in the room ready and willing to represent him. At that point, Morey insisted upon representation by Local 39 instead of Local 1021, and the employer postponed the meeting.

[9]In this letter Local 39 takes the position that it is now the exclusive representative of all Tehama County miscellaneous unit employees.

BOARD AGENT'S DISMISSAL

The Board agent dismissed Marriott's charge for failing to state a prima facie case that SEIU's consolidation of its locals without the vote of her unit's union members violated their right under MMBA section 3502 to form, join, or participate in the employee organization of their choosing.

MARRIOTT'S APPEAL

On appeal, Marriott asserts that the Board agent erred in relying on Los Angeles Unified School Dist. v. Public Employment Relations Bd. (1986) 191 Cal.App.3d 551 [237 Cal.Rptr. 278] (Los Angeles USD) in determining that Local 1292 and Local 1021 are the same employee organization within the meaning of MMBA section 3502. Marriott argues Los Angeles USD involved a conflict of interest analysis under Educational Employment Relations Act (EERA)[10] section 3545 as to whether two local unions belonging to the same international union could simultaneously represent supervisory and rank-and-file employees. According to Marriott, a conflict of interest analysis is irrelevant to her case and the EERA contains no "free choice" language as is contained in the MMBA.

Marriott contends PERB should evaluate factors which would cause one to choose a particular local over another such as: (1) its geographic boundaries; (2) the ratio of members to union staff; (3) the quality of the union representatives; and (4) its bylaws.

According to Marriott, the Board agent erred in concluding that the consolidation is an internal union activity, because the Board agent relied on distinguishable cases where there was no dispute that the union was the members' recognized employee organization. Marriott

[10]EERA is codified at Government Code section 3540, et seq.

maintains these cases are irrelevant until PERB first determines whether the new union is the same union.

Marriott contends PERB Regulation 61300[11] requires that an employee organization file a petition in the event of a merger, amalgamation, affiliation or transfer of jurisdiction.

On appeal Marriott urges the Board to reject the Board agent's dismissal, issue a complaint and hold a hearing to determine whether the changes in the local were so significant that they cannot be said to be the same organization within the meaning of MMBA section 3502.

DISCUSSION

In deciding whether the charge states a prima facie case requiring a hearing on the merits, we deem the "essential facts alleged in the charge are true." (San Juan Unified School District (1977) EERB Decision No. 12, at p. 4.[12])

The MMBA confers on public employees the statutory right to be represented by employee organizations of their own choice. (MMBA secs. 3500 and 3502.) MMBA section 3502 provides in pertinent part that "public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing . . . ." (MMBA sec. 3502.) The California Supreme Court has declared that the intent and language of the MMBA "provides strong protection for the right of employees to be represented by unions of their own choosing." (International Brotherhood of Electrical Workers v. City of

[11]PERB Regulation 61300(a) states that "An employee organization may file with the regional office a petition to amend its certification or recognition in the event of a merger, amalgamation, affiliation or transfer of jurisdiction, or in the event of a change in the name or jurisdiction of the employer." [Emphasis added.]

[12]Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

Gridley (1983) 34 Cal.3d 191, 202, fn. 12 [193 Cal.Rptr. 518].) The right to be represented by employee organizations of their own choice in their employment relationships with other organizations pursuant to the MMBA "promote[s] the improvement of personnel management and employer-employee relations within the various public agencies in the State of California . . . ." (International Assn. of Fire Fighters Union v. City of Pleasanton (1976) 56 Cal.App.3d 959, 968 [129 Cal.Rptr. 68] (quoting from MMBA section 3500, which sets forth its purpose and intent).)

MMBA section 3502 implicitly recognizes that employees may choose to join or participate in different organizations. It also confers upon each employee the right not to join or otherwise participate in the activities of any employee organizations. (City of Hayward v. United Public Employees (1976) 54 Cal.App.3d 761 [126 Cal.Rptr. 710] (Hayward).)

Marriott has not alleged that in August 2004, when Marriott's bargaining unit chose the Joint Council as their representatives, they were not afforded their rights under the MMBA to join an employee organization of their own choosing. In her charge and amended charge Marriott is claiming that the new local resulting from SEIU's consolidation of locals is not of Marriott's choosing. [13]

The facts alleged in Marriott's charge raise the following issues: (1) Can Marriott challenge SEIU's consolidation of her local union with several other of SEIU's local unions under the MMBA? (2) Does the MMBA give Marriott the right to challenge SEIU's failure to afford union members in her bargaining unit the right to vote in its decision to consolidate several of its local unions?

[13]It is clear from Marriott's allegations and the local union assignment chart attached to Marriott's original charge that SEIU's consolidation of many locals into several different and new locals is the basis of Marriott's claims.

We hold that under the MMBA, a local union member may challenge the parent union's consolidation decision, but only when that decision has a substantial affect on the employer-employee relationship. We also hold that an employee may only challenge the parent union's failure to afford its members the opportunity to vote for or against a consolidation of local unions under the MMBA, if the employee can demonstrate that such consolidation had a substantial impact on the employer-employee relationship. We find that Marriott has not alleged facts showing that her relationship with Tehama County was substantially affected by either SEIU's merger of Marriott's local union with other locals or SEIU's alleged failure to allow Marriott's bargaining unit to vote on the merger.

A. To challenge SEIU's consolidation of its local unions Marriott must allege facts showing that she was substantially impacted in her employer-employee relationship by the consolidation.

The MMBA vests substantial discretion in unions in the management of their internal affairs. MMBA section 3503 provides in pertinent part that ". . . employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership." This provision parallels that of Section 8(b)(1)(A) of the National Labor Relations Act (NLRA),[14] which similarly provides that "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . ."[15]

[14]The NLRA is codified at 29 U.S.C. section 151, et seq.

[15] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting parallel provisions in the NLRA. (County of Sierra (2007) PERB Decision No. 1915-M; Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507.) Section 157 of the NLRA contains provisions similar to Section 3502 of the MMBA. (Hayward, at p. 768.)

In a similar case involving the merger of two locals into a larger employee organization, the National Labor Relations Board (NLRB) in Canton Sign Co. (1969) 174 NLRB 906, 909 [70 LRRM 1375] noted that a large measure of autonomy in the internal management of their organizations was granted to the unions by Congress in this NLRA provision. More specifically the NLRB held:

> Furthermore, by specifically authorizing labor organizations to prescribe their own rules on admission to and retention of union membership (Section 8(b)(1)(A) of the Act), Congress necessarily vested in unions (both in their own right and in their character as representative of employees) a large measure of discretion in the management of their internal affairs. Moreover, here the merged union (Local 639) represents exactly the same unit of employees which former Local 89 represented, irrespective of the enlarged scope of Local 639. All that is involved here is a merger of two sister locals under one International in order to obtain more effective representation in dealing with employers. Respondent has shown nothing prejudicial to its legitimate interests.

We find that the MMBA grants to employee organizations the same large measure of discretion as to the management of their internal affairs. Not every change to an organization's structure will affect a union member's employment relationship with his or her employer.

It is well established that PERB will not interfere in the internal affairs between an employee organization and its members unless it is shown that they significantly impact the member's relationship with his or her employer. (California School Employees Association & its Chapter 36 (Peterson) (2004) PERB Decision No. 1733 (Peterson); California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S; Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106 (Kimmett).)

In Kimmett, the charging party alleged that SEIU Local 99, of which he was a member, denied him his democratic right to participate fully in the organization under EERA by: (1)

scheduling monthly meetings on Friday nights when members who work "B" and "C" shifts cannot attend; (2) holding a meeting without posting any notices; (3) conducting an election among "B" and "C" shift members for a negotiating committee representative without counting the ballots in front of those members; (4) failing to send a representative to inform "B" shift employees of the progress of negotiations; (5) demonstrating callous indifference to members by ratifying three business representatives at a meeting in which no "B" shift and only one "C" shift employee participated; (6) appointing a new secretary/treasurer at a meeting in which one "C" shift and no "B" shift members participated; and (7) covering up SEIU's financial condition by deleting information from the financial report and conducting an internal audit for the previous six-month period instead of the previous three years.

In dismissing these claims in Kimmett, PERB noted that the exclusive representative has a duty to represent all unit employees fairly in negotiating and administering the contract. However, the Board held there is no such duty of fair representation as to strictly internal union activities which do not have a substantial impact on the relationships of unit members to their employers. Finding that the internal union activities about which Kimmett complained did not have substantial impact on the relationship of unit members to their employer so as to give rise to a duty of fair representation, the Board dismissed all of Kimmett's above-listed charges.

In Kimmett the Board also considered whether EERA sections 3540 and 3543 give employees the right to have an employee organization structured in any particular way. These sections, respectively, provide in pertinent part for ". . . the right of public school employees to join organizations of their own choice . . ." and that "Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own

choosing . . . ." These EERA sections mirror provisions cited by Marriott in the MMBA: Sections 3500 and 3502.[16] The Board determined that public school employees do not have any protected rights under EERA sections 3540 and 3543 in the organization of their exclusive representative based on the following reasoning:

> Read broadly, these sections could be construed as prohibiting any employee organization conduct which would prevent or limit employee's participation in any of its activities. The internal organization structure could be scrutinized as could the conduct of elections for union officers to ensure conformance with an idealized participatory standard. However laudable such a result might be, the Board finds such intervention in union affairs to be beyond the legislative intent in enacting the EERA. There is nothing in the EERA comparable to the Labor-Management Reporting and Disclosure Act of 1959,[17] which regulates certain internal conduct of unions operating in the private sector. The EERA does not describe the internal workings or structure of employee organizations nor does it define the internal rights of organization members. We cannot believe that by the use of the phrase 'participate in the activities of employee organizations . . . for the purpose of representation on all matters of employer-employee relations' in section 3543, the Legislature intended this Board to create a regulatory set of standards governing the solely internal relationship between a union and its members.

In California State Employees Association (Hutchinson, et al.) (1998) PERB Decision No. 1304-S (Hutchinson and Laosantos), the charging party alleged that the association violated the Ralph C. Dills Act (Dills Act)[18] by: (1) spending resources on an organizing campaign; (2) allowing officers to use internal processes fraudulently; and (3) allowing sympathizers of a faction to campaign to alter the association's internal structure so as to

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[16]It is appropriate to take guidance from cases interpreting California labor relations statutes with parallel provisions. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].)

[17]29 U.S.C. section 411, et seq.

[18]The Dills Act is codified at Government Code section 3512, et seq.

provide them with greater control. In Hutchinson and Laosantos the Board found that in Kimmett it had examined the identical right provided under EERA "to determine if employees have any protected right 'to have an employee organization structured or operated in any particular way.'"

Following its decision in Kimmett, the Board in Hutchinson and Laosantos held that the activities complained of did not involve conduct which impacted the employment relationship and thus was not subject to intervention or regulation by PERB. (See also, California State Employees Association (Garcia) (1993) PERB Decision No. 1014-S (Garcia) (Board dismissed the following charges because there was no showing of a substantial impact on the charging party's relationship with her employer: (1) a union election was not conducted according to its own rules; (2) charging party was improperly suspended as a job steward under the union's own discipline procedures; and (3) union funds were misappropriated for personal use).)

PERB has intervened in the internal activities of employee organizations only when it has been demonstrated that such activity or activities have a substantial affect on the employer-employee relationship. (California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S (PERB intervened because union's conduct in filing a citizen's complaint against employee with employer and refusal to represent the employee in the employer's resulting investigation went beyond the internal relationship of the employee and the union and affected the employee's relationship with his employer); California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S (PERB intervened because union's retaliatory refusal to provide a member with representation for his appeal of the employer's adverse actions before the State Personnel Board affected the employee's relationship with his employer).)

Pursuant to the above, we hold that to state a prima facie case Marriott must allege facts showing that SEIU's consolidation of her local with others had a substantial impact on Marriott's relationship with her employer. We explain below our finding that she has not done so.

The only allegations by Marriott which relate to her employer-employee relationship are the claims that prior to the consolidation, she was advised that employees must represent each other in disputes with management because a Local 1021 member would not be able to respond to her worksites in a timely manner. This allegation is speculative and Marriott makes no follow-up allegations that this has actually occurred.

The only facts presented by Marriott in her amended charge regarding the affect of the merger on Marriott's representation by Local 1021 are contained in the declaration of Morey attached to Marriott's amended charge. In this attachment, Morey declares that when he arrived at his disciplinary meeting with a representative he had selected from Local 39, no less than three Local 1021 representatives were already there ready to represent his interests at that meeting.

Marriott has made no factual allegations showing that SEIU's consolidation of its local unions had a substantial impact on her relationship with Tehama County or on the relationship of members of her bargaining unit with Tehama County. Without alleged facts which show a substantial impact to the employer-employee relationship, PERB will not review internal union matters such as the consolidation of local union affiliates by their parent which occurred in this case.

B. If no substantial affect on employer-employee relations is alleged, Marriott cannot challenge SEIU's alleged failure to afford her an opportunity to vote on the merger of SEIU's local unions.

The MMBA contains no express provision which requires an employee organization to permit its union members to vote in the event of a consolidation or merger. PERB has refused to interfere in disputes between employees and their employee organizations regarding internal union elections where there is no substantial affect on the employer-employee relationship.

In Kimmett, the Board held that the rights afforded under EERA to freely choose one's employee organization (which are substantially similar to those under the MMBA) do not allow PERB to scrutinize either the union's structure or the conduct of elections for union officers unless a significant affect on the employee's relationship with its employer results. (See also, Hutchinson and Laosantos, (same holding by the Board under the Dills Act).)

In Peterson, the Board held that "Participation in union elections is an internal union affair." In that case, the Board dismissed, among others, a charge that the union improperly denied an employee the opportunity to run for union office under its own constitution's election rules because no facts were alleged to support a finding that this conduct impacted the charging party's relationship with his employer. (See also, Garcia, (PERB declined to intervene in a union member's charge against her union alleging the union's election for a district labor counsel position was not conducted according to the union's rules and regulations because there was no showing that such activity affected her relationship with her employer); United Teachers of Los Angeles (Seliga) (1998) PERB Decision No. 1289 (Board dismissed charge because union's chapter chair election was an internal union affair which is not a denial of a fair representation claim and is outside PERB's jurisdiction because there was no showing that the activity had a substantial impact on the employees' relationship with their employer).)

The charging party in Peterson argued that exclusion from participation in a union election is the same as dismissal from membership, a claim subject to review by PERB under EERA section 3543.1(a) which provides in pertinent part that "Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership." PERB rejected this argument. The same language is found in MMBA section 3503. Therefore, the Board's holding in Peterson is equally applicable to Marriott's charge under the MMBA.

For these reasons Marriott's allegation that Tehama County employees were not allowed to vote in the election to determine whether they would become Local 1021 fails to state a prima facie case that SEIU violated the MMBA.

ORDER

The unfair practice charge in Case No. SA-CO-45-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Neuwald and Member McKeag joined in this Decision.