

11 PERC ¶ 18113

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

California Public Employment Relations Board

Santa Monica-Malibu Unified School District, Employer, and California School Employees Association and its Chapter #227, Exclusive Representative, and Local 660, SEIU, AFL-CIO, Petitioner.

Docket Nos. LA-D-200, (LA-R-861C)

Order No. Ad-163a

June 23, 1987

Before Hesse, Chairperson; Porter and Craib, Members

Decertification -- Filing Of Petition -- Failure Of Service -- 32.53, 32.141,

37.13 Although rival union failed to make service of its decertification petition concurrent with filing in accordance with PERB Regulation 32140(b), petition was deemed timely where school employer and incumbent union had actual notice of petition prior to their execution of collective agreement. In view of absence of prejudice or evidence of willful delay in service of otherwise timely petition, technical violation of PERB regulations was excused. Incumbent's petition for reconsideration of decision, 11 PERC 18080 (PERB 1987), denied.

APPEARANCE:

E. Luis Saenz, Attorney for California School Employees Association and its Chapter #227.

DECISION

CRAIB, Member:

Petitioner California School Employees Association And Its Chapter #227 (CSEA) requests reconsideration of PERB Order No. Ad-163 issued by the Public Employment Relations Board (PERB or Board) on April 15, 1987. In that decision, the Board affirmed an administrative decision by the PERB Los Angeles Regional Director finding a decertification petition filed by Local 660, SEIU, AFL-CIO (SEIU) to be timely despite a failure to concurrently serve the petition upon the other parties in the case, as required by PERB Regulation 32140(b).¹ Though the proof of service filed with the decertification petition stated that the other parties were served concurrently with the filing of the petition, in fact, they were not served until two days later, after a new tentative agreement had been signed by CSEA and the Santa Monica-Malibu Unified School District (District).² We emphasized the lack of prejudice to the other parties, as evidenced by the fact that they received actual notice before signing the new agreement, and the lack of evidence that the filing of the false proof of service was willful.

In determining whether to excuse the failure to strictly abide by the Board's Regulations, the Board cited (in addition to cases cited by the Regional Director in the administrative decision) the case of *Lum v. Mission Inn Foundation, Inc.* (1986) 180 Cal.App.3d 967. While none of these cases presented circumstances identical to the instant cases, we found them sufficiently analogous to be instructive in interpreting our Regulations.

DISCUSSION

CSEA posits as its basis for requesting reconsideration³ that the Board committed a substantial

error of law by excusing SEIU's failure to strictly abide by PERB Regulations. In particular, CSEA asserts that it was improper to take guidance from the court cases cited by the Board and by the Regional Director because those cases, unlike the instant case, did not involve the filing of a false proof of service. CSEA also asserts that the Board's decision "does little to discourage the, at minimum, inexcusably careless work by SEIU in this matter."

To the extent that CSEA's request contests reliance on the cases cited by the Regional Director, this constitutes the mere reiteration of argument previously considered and rejected by the Board in the underlying decision and is thus not a proper ground for reconsideration. *Morgan Hill Unified School District* (1986) PERB Decision No.1 554a; *Rio Hondo Community College District* (1983) PERB Decision No. 279a. The request is also deficient because it fails to articulate why the cases cited by the Board or by the Regional Director are not sufficiently analogous to be instructive nor why the Board's interpretation of its Regulations was otherwise in error. With regard to the assertion that the Board's decision is insufficient to discourage further failure to strictly abide by its Regulations, we simply reiterate that the record gave no indication that SEIU's behavior was willful, nor was there any plausible motive for it being so. Therefore, draconian measures are not warranted.

For the above reasons, we find no basis upon which to grant reconsideration.⁴

ORDER

The request for reconsideration of Case No. LA-D-200 (LA-R-861C) is hereby DENIED. Chairperson Hesse and Member Porter joined in this Decision.

1 PERB Regulations are codified at California Administrative Code, title 8, part III, section 31001 et seq.

2 In PERB Order No. Ad-163, the majority found that the petition was effectively filed prior to the execution of the tentative agreement; thus, it was unnecessary to consider whether the existence of the tentative agreement would have barred a decertification petition filed thereafter. See section 3544.7(b)(1) of the Educational Employment Relations Act (which is codified at Government Code section 3540, et seq.). In a concurring opinion, Member Porter contended that the filing was not complete until it was actually served on the other parties, which was after the tentative agreement was signed but before it was adopted by the governing board of the District. He nevertheless found the petition not barred on the ground that a tentative agreement must be adopted by the governing board before it can be in effect and act as a bar to a decertification petition.

3 Regulation 32410(a) states, in pertinent part:

The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

4 While adhering to the points raised in his concurrence in the underlying decision, Member Porter agrees that Petitioner has failed to present sufficient grounds for reconsideration.
