

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ELIZABETH GEISMAR,

Charging Party,

v.

MARIN COUNTY LAW LIBRARY,

Respondent.

Case No. SF-CE-159-M

Request for Reconsideration
PERB Decision No. 1655-M

PERB Decision No. 1655a-M

August 30, 2004

Appearances: James Baker, Labor-Relations Specialist,¹ for Elizabeth Geismar; Murchison & Cumming by Michael B. Lawler and Pam J. Marantz, Attorneys, for Marin County Law Library.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Elizabeth Geismar (Geismar) of the Board's decision in Marin County Law Library (Geismar) (2004) PERB Decision No. 1655-M (Marin). The unfair practice charge had alleged that Geismar's employment was terminated in violation of the Meyers-Milias-Brown Act (MMBA).²

The Board found in Marin, that there was no prima facie case, adopted the warning and dismissal letters of the Board agent as the opinion of the Board itself, and the unfair practice charge was dismissed.

¹Baker is not admitted to practice law in the State of California. He is admitted to practice only in the State of Oregon. He is therefore not a certified labor relations specialist through the State Bar of California Legal Specialization Program.

²The MMBA is codified at Government Code section 3500, et seq.

The request for reconsideration filed on Geismar's behalf by James Baker (Baker) is frivolous at best and certainly contemptuous in the least. The entire presentation of the case is a temper tantrum on paper. Nowhere at all does he even attempt to find legitimacy for the papers he filed. He begins by addressing the individual Board members with unabashed contempt by making up the demeaning and offensive names of "Chairman 'Dumbkin' and members 'Whiteyhead' and 'Neima-Numbskull'", and goes downhill from there.

Requests for reconsideration must fall under specific grounds. The grounds are set forth in PERB Regulation 32410(a).³ Nowhere in the request for reconsideration is there even a fleeting reference to PERB Regulation 32410(a), let alone any facts to show that the grounds set out in that regulation would apply in this case.

The contempt shown by Geismar's representative cannot be ignored by this Board. The Board has the authority to award attorney's fees and costs incurred as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (EERA sec. 3541.3(h) and (n)⁴; Gov. Code sec. 11455.30; see Hacienda La Puente Unified School

³PERB Regulation 32410(a) states, in pertinent part (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.):

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.

⁴EERA is codified at Government Code section 3540, et seq.

District (1998) PERB Decision No. 1280 (Hacienda.) The Board may also sanction behavior towards a hearing officer or the Board members themselves. (Gov. Code sec. 11455.10(c)(1); see Hacienda.)

In the past, parties have been advised that inappropriate actions and/or filings would be sanctioned if continued. (See Los Rios College Federation of Teachers, Local 2279 (Deglow) (2003) PERB Decision No. 1515.) Those instances involve parties' repeated filings. Here, the inappropriate conduct by Geismar's representative goes far beyond a frivolous filing. However, it is appropriate to sanction Geismar's representative. He is not a party but is purportedly representing the interests of another person by actions that do not serve the client's interests at all.

We find that Geismar has failed to meet the limited grounds for reconsideration under PERB Regulation 32410. We further find that her representative, Baker, is in CONTEMPT and ORDER the following REMEDY.

ORDER

Elizabeth Geismar's (Geismar) request for reconsideration of the Board's decision in Marin County Law Library (Geismar) (2004) PERB Decision No. 1655-M is hereby DENIED.

James Baker (Baker) is ORDERED to pay all costs and fees incurred by the Marin County Law Library (Law Library) related to the preparation and filing of its response to the request for reconsideration. Counsel for the Law Library is to prepare and submit cost and fee amounts to Baker within 30 days of the date of issuance of this ORDER and Baker is to pay the amount to counsel for the Law Library within 30 days from receipt of the documentation from counsel for the Law Library.

Further, Baker is to refund to his client, Geismar, any fees collected from her related to the preparation and filing of the request for reconsideration within 30 days of the date of issuance of this ORDER.

Written notification of the actions taken to comply with this ORDER shall be made to the San Francisco Regional Director of the Public Employment Relations Board in accordance with the Director's instructions. All reports shall be concurrently served on the Law Library and Geismar.

Members Whitehead and Neima joined in this Decision.