

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 721,

Charging Party,

v.

COUNTY OF RIVERSIDE,

Respondent.

Case No. LA-CE-787-M

Request for Reconsideration

PERB Decision No. 2591b

January 4, 2019

Appearances: Rothner, Segall & Greenstone by Glenn Rothner and Jonathan Cohen, Attorneys, for Service Employees International Union Local 721; Liebert Cassidy Whitmore by Frances E. Rogers and Stacey H. Sullivan, Attorneys, for County of Riverside.

Before Banks, Shiners, and Krantz, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by Respondent County of Riverside (County) to accept a late-filed opposition to a request for reconsideration filed by Charging Party Service Employees International Union Local 721 (SEIU).

On October 23, 2018, the Board issued the underlying decision in this matter. (*County of Riverside* (2018) PERB Decision No. 2591-M.) In that decision, we found that the County violated the Meyers-Milias-Brown Act¹ and PERB Regulations² by taking various adverse

¹ The MMBA is codified at Government Code section 3500 et seq.

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

actions against County employee Wendy Thomas (Thomas), including placing her on involuntary paid administrative leave and then terminating her employment, based upon her exercise of protected rights. We ordered make-whole relief beginning from the date the County terminated Thomas' employment.

On November 6, 2018, SEIU filed a request for reconsideration. In its reconsideration request, SEIU argued that make-whole relief should commence on the date that the County placed Thomas on administrative leave, rather than six months later when the County terminated her. SEIU asserted that it can demonstrate during compliance proceedings that Thomas lost overtime opportunities and other remuneration as a result of being placed on paid administrative leave.

We received no opposition from the County by the deadline for its response. (See PERB Reg. 32410, subd. (b) [providing twenty days to respond to the request for reconsideration].) Accordingly, on December 4, 2018, we notified all parties that filings were complete.

On December 18, 2018, upon review of the record and in light of applicable law, we granted SEIU's reconsideration request and issued a revised order providing that make-whole relief shall be calculated beginning from the date on which the County placed Thomas on administrative leave. (*County of Riverside* (2018) PERB Decision No. 2591a-M, p. 4.)

On December 19, 2018, the County submitted the instant request, asking that we accept a late-filed opposition to SEIU's request for reconsideration pursuant to PERB Regulation 32136, which allows a late filing to be excused "in the discretion of the Board for good cause only." The County asks us to find good cause for its late filing mainly on the basis

that it changed attorneys and its new attorneys did not learn about SEIU's request for reconsideration until on or around December 4, 2018.

Also on December 19, 2018, the County submitted its proposed late-filed opposition, in which it argued: (1) that PERB did not find that the County violated the MMBA by placing Thomas on administrative leave; and (2) that it is speculative for SEIU to assert that Thomas lost remuneration as a result of being placed on paid administrative leave.

We need not decide whether the County has demonstrated good cause for its requested late filing, as consideration of the County's late-filed arguments would not affect the outcome of our reconsideration decision. As we noted in resolving SEIU's reconsideration request, Thomas is entitled to make-whole relief from the earlier date because Thomas's involuntary administrative leave, like her termination, was unlawfully motivated in violation of the MMBA. (*County of Riverside, supra*, PERB Decision No. 2591a-M, p. 4 & fn. 4.) The County's second argument—that it is speculative for SEIU to claim that Thomas lost remuneration during her administrative leave—is best addressed during compliance proceedings. (See PERB Reg. 32980.)

ORDER

For the foregoing reasons, the County's request that we accept a late-filed opposition to SEIU's request for reconsideration is DENIED.

Members Banks and Shiners joined in this decision.