

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CITY OF MONTEREY PARK,

Employer,

and

MONTEREY PARK CITY EMPLOYEES
ASSOCIATION,

Petitioner,

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 721,

Exclusive Representative.

Case No. LA-DP-404-M

Administrative Appeal

PERB Order No. Ad-422-M

June 5, 2015

Appearance: Weinberg, Roger & Rosenfeld by Sean D. Graham, Attorney, for Service Employees International Union, Local 721.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on an application to permit a late filing, appeal of an administrative determination and request for stay (Appeal) filed by Service Employees International Union, Local 721 (SEIU). This matter arises out of an administrative determination issued by PERB's Office of the General Counsel (OGC) following the investigation of a decertification petition filed pursuant to PERB Regulation 61350 et seq.¹ The administrative determination concluded

¹ PERB Regulation 61350, subdivision (a), provides: "A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization." Subdivision (b) requires that the petition be accompanied by proof that at least 30 percent of the employees in the established unit either no longer desire to be represented by the incumbent exclusive representative or wish to be represented by another employee organization. PERB Regulation 61360 requires the

that the decertification petition had been timely filed with the requisite proof of support and that a decertification election would be conducted to determine the employee organization, if any, to be certified as the exclusive representative of the bargaining unit in question.

Following receipt of the Appeal, the Board itself received a request from PERB's General Counsel that the entire matter, including the administrative determination, be recalled to the OGC for further processing. As explained below, the request is granted.

PROCEDURAL HISTORY

On March 18, 2015, the Monterey Park City Employees Association (CEA) filed with PERB a petition to decertify SEIU, along with proof of support, claiming that the City of Monterey Park's (City) Employee Employer Resolution did not contain a decertification procedure.

In response to the OGC's initial contact letter dated March 24, 2015, the City confirmed that it had not adopted local rules for the decertification of an exclusive representative in accordance with section 3507 of the Meyers-Milias-Brown Act (MMBA).² In response to the OGC's letter dated April 2, 2015, the City confirmed that it had posted the Notice of Decertification along with a copy of the decertification petition, and filed with PERB a list of the names of employees in the claimed General Employee Bargaining Unit for the requisite time period. SEIU filed no response to the decertification petition.

employer to post a notice of the decertification petition. PERB Regulation 61370 requires the employer to file a description of the established unit and a list of employees in the established unit and provides that the Board shall inform the parties in writing whether the proof of support is sufficient. PERB Regulation 61380 requires the Board to conduct an investigation upon receipt of a petition for decertification and sets forth the conditions under which a petition for decertification would be dismissed on timeliness grounds. (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.)

² The MMBA is codified at Government Code section 3500 et seq. All further undesignated section references are to the Government Code.

The OGC issued its administrative determination on April 22, 2015. The administrative determination stated that the OGC's investigation had established that SEIU is the exclusive representative and that a memorandum of understanding between SEIU and the City will expire on June 30, 2015. The administrative determination found the decertification petition timely, the proof of support sufficient, and an election to be in order.

On May 4, 2015, twelve days after issuance of the administrative determination, SEIU filed a notice of appearance with the OGC. On or about May 15, 2015, SEIU filed its Appeal with the Board itself.

The Board itself received a letter dated May 19, 2015, from PERB's General Counsel, indicating that it had reviewed SEIU's appeal of an administrative determination and request for stay Appeal. In light of the information contained therein, the General Counsel requested that the matter, including the administrative determination, be recalled to the OGC for further processing.

DISCUSSION

In the Appeal, SEIU claims that it was not properly served with the decertification petition and that it was not aware of the OGC investigation until after the administrative determination had issued. CEA purportedly served the decertification petition on SEIU by mailing a copy of the petition to Gilbert Ramirez (Ramirez), Labor Representative. Subsequent PERB correspondence and the administrative determination were also served on Ramirez, identified on the proof of service documents as "Labor Relations Representative/ Organizer." SEIU claims that Ramirez is not the agent identified for service, the president or an officer, as required under PERB Regulation 32142, subdivision (d).³ SEIU also claims that

³ PERB Regulation 32142, subdivision (d), provides: "Whenever a document is required to be 'filed' or 'served' with any of the below listed entities, the proper recipient shall be: . . . (d) An employee organization: the individual designated to receive service or to the president or if there is no president, an officer of the organization."

Ramirez left employment with SEIU during the OGC investigation, and that SEIU had no actual notice of the OGC investigation.

Expressing no opinion on the merits of SEIU's claims, the Board itself grants the General Counsel's request that this matter be recalled to the OGC for further processing. If SEIU, was not effectively placed on notice of the decertification petition, the stakes for the employees in the General Employee Bargaining Unit are too high to allow the matter to proceed any further without providing their exclusive representative with an opportunity to participate in the OGC investigation, if it so chooses. On the other hand, if SEIU was effectively placed on notice of the decertification petition and the OGC investigation, but failed to respond or participate, granting the General Counsel's request will result in only a short delay in the conduct of the decertification election. In either event, the OGC is in the best position to determine the most appropriate course of action and to correct, if necessary, any defect in the process.

In Board precedent going at least as far back as 1985, the Board itself has recognized the efficacy of permitting the OGC to recall a matter for further processing. These decisions arose in the context of a dismissal following the investigation of an unfair practice charge by the OGC. In *State of California, Employment Development Department* (1985) PERB Decision No. 483-S,⁴ the Board stated:

⁴ See also *California State Employees' Association (Morrow)* (1986) PERB Decision No. 568-S; *California School Employees Association and its Chapter #302 (Lauer)* (1990) PERB Decision No. 809; *Santa Ana Education Association (O'Neil, et al.)* (2005) PERB Decision No. 1776 (charging parties asserted that they had not received the warning letter); *City & County of San Francisco* (2005) PERB Decision No. 1779-M (charging party's timely filed amended charge was not forwarded to the assigned Board agent until after issuance of dismissal).

Clearly, underlying the Board's adoption of the remand procedure was the desire to minimize, and hopefully eliminate, appellate litigation prompted by inadequacies in the processing of unfair practice charges. Presumably a request by the General Counsel for such Board action is predicated on a conclusion that further investigation is likely to achieve that desirable result.

While the setting here entails a representation investigation rather than an unfair practice investigation, the rationale for returning a matter to the OGC upon request, as expressed in the decisions cited herein, applies with full force. Moreover, given the nature of representation proceedings and the direct and immediate impact such proceedings have on an entire bargaining unit of employees, the General Counsel's determination of the need for further processing warrants a high level of deference from the Board itself. Accordingly, the General Counsel's request is GRANTED.

ORDER

It is hereby ORDERED that the entire matter, including the April 22, 2015, administrative determination, in Case No. LA-DP-404-M be recalled to the Office of the General Counsel for further processing pursuant to the May 19, 2015, request of the General Counsel.

Members Huguenin and Banks joined in this Decision.