

PUBLIC EMPLOYMENT RELATIONS BOARD



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February 2, 2009

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Randy Fisher, Labor Relations Officer
Department of Personnel Administration
1515 S Street, North Bldg., Suite 400
Sacramento, CA 95811-7258

Paul Q. Goyette, Attorney
Goyette & Associates
11344 Coloma Road, Suite 145
Gold River, Ca 95670

Re: Case No. SA-DP-229-S
State Of California

Dear Interested Parties:

Investigation of the decertification petition filed in the above-referenced case has established the following facts:

1. The current exclusive representative of the unit in question is SEIU Local 1000.
2. No memorandum of understanding (MOU) currently exists between the exclusive representative and the employer that acts as a bar to the filing of this petition.

This investigation has resulted in the administrative determination that the limitations expressed in PERB Regulation 32776(d)¹ do not exist in this case. The decertification petition is therefore determined to be timely filed.

Review of the proof of support submitted by the petitioner in this case has resulted in the administrative determination that it is sufficient to meet the requirements of Regulation 32770(b)(2).

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95811-4124, and the text is available at www.perb.ca.gov.

SEIU Local 1000 in its response to the petition raises the issue of fraud and misrepresentation in the gathering of the proof of support, and asks PERB to invalidate the proof of support pursuant to PERB Regulation 32700(g). That Regulation states:

Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documents are not genuine, shall file with the regional office evidence in the form of declarations under penalty of perjury supporting such contention within 20 days after the filing of the petition which the proof of support accompanied. The Board shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When prima facie evidence is submitted to the Board supporting a claim that proof of support was tainted by such misconduct, the Board shall conduct further investigations. If, as a result of such investigation, the Board determines that the showing of support is inadequate because of such misconduct, the petition shall be dismissed.

The sum of SEIU Local 1000's argument is that the Petitioner made false statements to entice eligible employees to sign the proof of support. The five misstatements cited by SEIU Local 1000 are:

- * Signing the petition would reduce dues;
- * Signing the petition would increase salaries;
- * Signing the petition would give employees salary parity;
- * Remaining with SEIU Local 1000 gives employees "no chance" for salary parity; and
- * Salary parity "will "never happen" with SEIU Local 1000.

SEIU Local 1000 argues that these misstatements constitute fraud pursuant to State Elections Code section 18600 and asks PERB to adopt the Elections Code definition of fraud for finding the proof of support in this case invalid. SEIU Local 1000 also alleges that the misstatements were repeated in person at worksite locations and on the website of the Petitioner and that, when employees "learned of the truth" and requested their signatures be removed from the petition, Petitioner denied the employees' requests.

The question of misrepresentation in election campaigning has been previously considered by PERB. In Pasadena Unified School District (1985) PERB Decision No. 530, the Board considered whether a campaign flyer, which included a photograph of a number of employees, misrepresented whether those employees supported the petitioner in that case. The Board held that:

Measured against the current National Labor Relations Board (NLRB) standard, where an election will be set aside not on the basis of the substance of the representation, but the deceptive

manner in which it was made,^[2] it is irrelevant whether the pictured employees in fact intended to vote for the Teamsters.

The Board dismissed the election objections as being inconsequential and certified the results of the election.

In Salinas Union High School District (2002) PERB Order No. Ad-315, the Board held that the District's assertion that employees signing authorization cards may not have understood their significance was without merit. More important to determining whether proof of support was valid was whether the information contained on the authorization card was plainly stated and met PERB's proof of support requirements. There is no argument from SEIU Local 1000 that the proof of support is not clear, but rather that employees' motives for signing may have been tainted by comments that either belittle the incumbent organization or engrandize the petitioning organization.

Absent case authority to support its argument that the proof of support is tainted by campaign promises and therefore not valid, SEIU Local 1000's arguments are not persuasive. The test of a petitioner's promises shall be reviewed by eligible voters who may decide to believe or reject such campaign propaganda.

An election shall be conducted by this office to determine the organization, if any, to be certified as the exclusive representative of this unit. I will be contacting you shortly to

² In a footnote found here, the decision states:

In Midland National Life Insurance Co. (1982) 263 NLRB 127 the NLRB overruled its decisions in Hollywood Ceramics Co. (1962) 140 NLRB 221 and General Knit of California, Inc. (1978) 239 NLRB 619 and returned to the rule advanced in Shopping Kart Food Markets, Inc. (1977) 228 NLRB 1311. In its discussion, the NLRB reviewed the vacillating Board decision and the difficulties in adopting the appropriate standard of administrative review. Under the Midland rule, the NLRB announced that it would:

... no longer probe into the truth or falsity of the parties' campaign statements, and that we will not set elections aside on the basis of misleading campaign statements. We will, however, intervene in cases where a party has used forged documents which render the voters unable to recognize propaganda for what it is. Thus, we will set an election aside not because of the substance of the representation, but because of the deceptive manner in which it was made, a manner which renders employees unable to evaluate the forgery for what it is.

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schedule a meeting to discuss the mechanics of the election. Once all the election details have been arranged, the Division Chief will approve a Consent Election Agreement or issue a Directed Election Order.

Please contact me if you have any questions concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads "Roger Smith".

Roger Smith
Labor Relations Specialist

RCS

cc: Arle Simon

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On February 2, 2009, I served the Letter regarding Case No. SA-DP-229-S on the parties listed below by

X placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

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Arle Simon, Program Management and Analysis Section
State Controller's Office
P.O. Box 942850
Sacramento, CA 94250

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 2, 2009, at Sacramento, California.

Arle Simon

(Type or print name)

Arle Simon

(Signature)