

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



COTTONWOOD TEACHERS ASSOCIATION,

Charging Party,

v.

COTTONWOOD UNION ELEMENTARY
SCHOOL DISTRICT,

Respondent.

Case No. SA-CE-2399-E

PERB Decision No. 2026

May 15, 2009

Appearances: California Teachers Association by Priscilla Winslow, Attorney, for Cottonwood Teachers Association; Lozano Smith by Thomas E. Gauthier, Attorney, for Cottonwood Union Elementary School District.

Before McKeag, Neuwald and Dowdin Calvillo, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Cottonwood Teachers Association (Association) to an administrative law judge's (ALJ) proposed decision. The charge alleged that the Cottonwood Union Elementary School District (District) violated the Educational Employment Relations Act (EERA)¹ by: (1) failing to bargain in good faith and making a unilateral change by reneging on implementation of a negotiated salary formula; (2) repudiating the negotiated grievance procedure in refusing to process a grievance; and (3) failing to bargain in good faith and bypassing the exclusive representative by sending a grievance response to all bargaining unit employees. The Association alleged that this conduct constituted a violation of EERA section 3543.5, subdivisions (a), (b) and (c).

¹ EERA is codified at Government Code section 3540 et seq.

Following the issuance of the proposed decision, the Association, pursuant to PERB Regulation 32300,² filed timely exceptions. Thereupon, the parties entered into settlement negotiations. A settlement agreement was reached and, subsequently, the Association requested a withdrawal of its exceptions on March 25, 2009. The District did not file exceptions or a response to the Association's exceptions. On April 9, 2009, the Appeals Assistant sent the parties a letter requesting clarification as to whether the parties also intended to vacate the proposed decision.

The Association responded on April 23, 2009, stating that the settlement agreement did not encompass vacating the proposed decision but rather, simply, withdrawing the exceptions.

That same day, the District filed a response requesting the Board to enter an order withdrawing the unfair labor practice charge in its entirety including vacating the decision and not merely just the exceptions. The District noted for the Board that the settlement agreement stated "withdraw any remaining ULPs." The District pointed out that in two other pending unfair practice charges, the Association withdrew its unfair labor practices. Yet, in the instant case, the Association refused to do so. The District argued, therefore, that the doctrine of judicial estoppel prevents the Association from trying to take inconsistent positions in this case from the other two cases. The District also stated, in a desire to cease litigation, that if the Board does not agree with the its position, "[a]t the very least the [ALJ]'s decision should stand and the Association's belated withdrawal of its 'exceptions' to the judge's decisions should be accepted. It's time to move on."

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

After reviewing this request and the entire record in this matter, the Board finds that granting the Association's request to withdraw its exceptions is in the best interests of the parties and consistent with the purposes of EERA.

DISCUSSION

Sometimes after a case has reached the Board itself, there is a request from the parties to withdraw the case at the Board level. The Board reviews each request of this nature to determine whether granting it would be consistent with the governing statute and in the best interests of the parties. (*Orange Unified School District* (2001) PERB Decision No. 1437.)

In cases where exceptions have been filed, the Board is guided by PERB Regulation 32320, which provides, in pertinent part:

- (a) The Board itself may:
 - (1) Issue a decision based upon the record of hearing, or
 - (2) Affirm, modify or reverse the proposed decision, order the record re-opened for the taking of further evidence, or take such other action as it considers proper.

It is clear that the Board has the discretion to grant or deny the request and to allow the withdrawal of a charge and complaint, and to vacate a proposed decision. (*ABC Unified School District* (1991) PERB Decision No. 831b.)

In this case, the Association has requested to withdraw its appeal of the ALJ's proposed decision. Therefore, the substance of the ALJ's proposed decision and the decision itself stands. The Board concludes that it effectuates the purposes of EERA to permit withdrawal of the exceptions related to the appeal of the ALJ's proposed decision in this case.

ORDER

It is hereby ORDERED that the request by the Cottonwood Teachers Association to withdraw the exceptions to the administrative law judge's proposed decision in Case No. SA-CE-2399-E is hereby GRANTED.

Members McKeag and Dowdin Calvillo joined in this Decision.