

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



COALITION OF UNIVERSITY EMPLOYEES,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA (IRVINE),

Respondent.

Case No. SF-CE-924-H

Request for Reconsideration
PERB Decision No. 2255-H

PERB Decision No. 2255a-H

June 28, 2012

Appearances: Renne, Sloan, Holzman & Sakai by Timothy G. Yeung and Erich W. Shiners, Attorneys, for Regents of the University of California (Irvine); Beeson, Tayer & Bodine by Jason Rabinowitz, Attorney, for Coalition of University Employees.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.¹

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on requests filed by the Coalition of University Employees (CUE) and the Regents of the University of California (Irvine) (UCI) to amend or reconsider *Regents of the University of California (Irvine)* (2012) PERB Decision No. 2255-H (*UC Irvine*). The underlying case involved an unfair practice charge filed by CUE under the Higher Education Employer-Employee Relations Act (HEERA)² alleging that UCI violated HEERA by unilaterally implementing a policy requiring bargaining unit employees at UCI Medical Center to either wear a surgical mask while at work or demonstrate that they had received an inoculation for the H1N1 flu virus, and to wear insignia indicating whether they had been immunized, without having afforded CUE an opportunity to meet and confer over the decision

¹ Chair Martinez did not participate in this decision.

² HEERA is codified at Government Code section 3560 et seq.

to implement the change in policy and/or the effects of the change in policy. Following issuance of a complaint on the charge by PERB's Office of the General Counsel, the matter was heard before a PERB administrative law judge (ALJ) who issued a proposed decision finding that UCI did not violate HEERA and dismissing the complaint and underlying unfair practice charge. Both CUE and UCI filed exceptions to the ALJ's proposed decision. While the matter was pending before PERB on the parties' exceptions, by letter dated April 3, 2012, CUE notified the Board that it wished to withdraw the charge in this matter with prejudice, pursuant to a global settlement agreement between the parties. On April 25, 2012, PERB issued *UC Irvine* granting CUE's request to withdraw the unfair practice charge with prejudice.

On May 18, 2012, CUE submitted a letter to PERB stating that, pursuant to an agreement of the parties, it wished to amend its request to withdraw the charge and request instead to withdraw the exceptions to the ALJ's decision. The letter further requested that the Order be amended to reflect the change. On May 21, 2012, UCI filed a "REQUEST TO AMEND ORDER OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION OF PERB DECISION NO. 2255-H." In its motion, UCI stated that it "joins in CUE's request that the order in PERB Decision No. 2255-H be amended to reflect a withdrawal of exceptions as opposed to a withdrawal of the unfair practice charge." UCI's submission includes a copy of a Global Settlement Agreement that states that the parties have agreed to settle the charges listed on an attachment according to the terms set forth in the attachment, and that these terms represent a full and complete resolution of the claims and disputes involved in those charges. With respect to the instant charge, the attachment states: "In exchange for withdrawal of CUE's exceptions, UCIMC agrees to meet and discuss effects; however, such discussions will

not prevent UCSFMC from continuing to move forward with this year's implementation of the flu vaccination and mask wearing requirements."³

DISCUSSION

The Board has processed the parties' requests as a joint request for reconsideration pursuant to PERB Regulation 32410.⁴ Under PERB Regulation 32410(a), PERB has the authority to grant reconsideration of a Board decision where, because of extraordinary circumstances: "(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." The Board applies the regulation's criteria strictly to avoid the use of the reconsideration process to reargue or relitigate issues that have already been decided. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H, citing *Redwoods Community College District* (1994) PERB Decision No. 1047a, *State of California Department of Corrections*) (1995) PERB Decision No. 1100a-S, and *Fall River Joint Unified School District* (1998) PERB Decision No. 1259a.) The Board has, however, used its authority under Regulation 32410(a) to correct an erroneous order to reflect the terms of a settlement agreement where necessary to effectuate the purposes of the applicable statute. (*Office of the Santa Clara County Superintendent of Schools* (1982) PERB Decision No. 233a (*Santa Clara Superintendent*) [request for reconsideration granted and prior decision vacated based upon showing that party inadvertently neglected to withdraw exceptions to proposed decision, where settlement provided for withdrawal of case from PERB]; *Trustees of the California State University (San Marcos)*

³ It appears that "UCSFMC" refers to the University of California San Francisco Medical Center. It is unclear whether this statement was intended to refer to UCI.

⁴ PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

(2011) PERB Decision No. 2195-H (*San Marcos*) [proposed decision vacated based upon settlement agreement to withdraw charge that neglected to include withdrawal of appeal pending before Board].)

In this case, both parties have requested that the Board's decision be amended to reflect the parties' agreement to withdraw the exceptions to the ALJ's proposed decision, rather than withdrawal of the charge itself.⁵ The Board has a longstanding policy of favoring voluntary settlement of disputes. (*Dry Creek Joint Elementary School District* (1980) PERB Order No. Ad-81a; *Santa Clara Superintendent*; *San Marcos*.) Accordingly, the Board concludes it effectuates the purposes of HEERA to permit withdrawal of the exceptions to the ALJ's proposed decision. Thus, the ALJ's proposed decision will become final. (PERB Reg. 32305.)

ORDER

The requests by the Regents of the University of California (Irvine) and the Coalition of University Employees for reconsideration in Case No. SF-CE-924-H is hereby GRANTED. All exceptions to the proposed decision are hereby deemed withdrawn, and the proposed decision will become final pursuant to PERB Regulation 32305.

Member Huguenin joined in this Decision.

⁵ We note that UCI also filed a cross-exception to the ALJ's proposed decision concerning the issue of whether its policy was within the scope of representation. Neither the settlement agreement nor the parties' submissions expressly requests that UCI's exception also be withdrawn. Given that the settlement agreement refers to UCI's agreement to meet and discuss the effects of its policy, we construe the parties' request to include the withdrawal of UCI's exception as well.