

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



MARLENE A. YUREL,

Charging Party,

v.

OXNARD UNION HIGH SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-6036-E

PERB Decision No. 2617

December 27, 2018

Appearances: Marlene A. Yurel, on her own behalf; Law Offices of Jeff C. Marderosian by Jeff C. Marderosian and Meredith B. Reynolds, Attorneys, for Oxnard Union High School District.

Before Banks, Shiners, and Krantz, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Marlene A. Yurel (Yurel) to the proposed decision of an administrative law judge (ALJ). The complaint alleged that the Oxnard Union High School District (District) took several adverse actions against Yurel because she engaged in conduct protected by the Educational Employment Relations Act (EERA),¹ and on two occasions violated Yurel's right to be represented by her exclusive representative in meetings with District management. Following an evidentiary hearing, the ALJ dismissed the complaint, finding that Yurel failed to prove the District retaliated against her or violated her right to representation.

Yurel's exceptions consist of six pages recounting various instances where she believes District management treated her in an unlawful or inappropriate manner, and she labels two

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

arguments as her “first exception” and “second exception.” In response, the District urges the Board to summarily dismiss her exceptions because they fail to comply with PERB Regulation 32300.² PERB Regulation 32300 requires exceptions to a proposed decision to: “(1) State the specific issues of procedure, fact, law or rationale to which each exception is taken; (2) Identify the page or part of the decision to which each exception is taken; (3) Designate by page citation or exhibit number the portions of the record, if any, relied upon for each exception; and (4) State the grounds for each exception.” Compliance with these requirements is necessary to afford the respondent and the Board an adequate opportunity to address the issues raised. (*Los Angeles Unified School District* (2015) PERB Decision No. 2447, p. 3; *Temecula Valley Unified School District* (1990) PERB Decision No. 836, pp. 2-3.) When a party fails to comply with PERB Regulation 32300, the Board may dismiss the exceptions without reviewing their merits. (*Los Angeles Unified School District, supra*, PERB Decision No. 2447, p. 3; *California State Employees Association (O’Connell)* (1989) PERB Decision No. 726-H, p. 3.)

Yurel’s exceptions fail to meet two of the four requirements in Regulation 32300: they do not identify the page or part of the decision Yurel is challenging, nor do they cite to any portion of the evidentiary record. Although the Board has discretion in such circumstances to dismiss the exceptions without reviewing their merits, we do not find it to be in the interest of justice to do so here. However, even when the Board exercises its discretion to consider exceptions that do not comply with our regulations, we need not consider arguments that the ALJ adequately addressed. (*Hartnell Community College District* (2018) PERB Decision

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

No. 2567, p. 3; *Trustees of the California State University* (2014) PERB Decision No. 2400-H, pp. 2-3.) This is so here and, thus, we need not consider the majority of Yurel's exceptions.

However, Yurel's exceptions arguably raise two issues not addressed in the proposed decision. First, Yurel claims that the ALJ did not read or consider her closing statement. The proposed decision discusses many of the arguments Yurel made in her closing statement, showing that the ALJ did in fact read and consider it. The proposed decision also notes, at footnote 3, that Yurel's closing statement included documents not admitted into evidence at the hearing. Finding no good cause to consider these documents after the evidentiary record had closed, the ALJ did not do so. The ALJ's ruling is consistent with our regulations and decisional law prohibiting a party from belatedly proffering evidence it had the opportunity to present during an earlier stage of the proceedings. (E.g., PERB Reg. 32635, subd. (b) ["Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence."]; *Yolo County Superintendent of Schools* (1990) PERB Decision No. 838, pp. 4-6 [denying a party's request to reopen the record to present evidence that could have been introduced at the hearing].) We therefore find no error in the ALJ's decision not to consider the documents submitted with Yurel's closing statement.

Second, Yurel asserts that two District witnesses gave untruthful testimony at the hearing. Because Yurel never requested a transcript of the hearing, there is no formal record of their testimony we can review to determine whether the ALJ properly credited them. Accordingly, we have no basis to question the ALJ's findings of fact based on the two District witnesses' testimony. (*Los Angeles Unified School District, supra*, PERB Decision No. 2447, p. 4.)

Moreover, to the extent the documents attached to Yurel's closing statement were intended to show that the District's witnesses testified untruthfully, Yurel offers no explanation for why she could not have introduced the documents at the hearing. On their face, the documents show that they existed well before the hearing. Had she introduced them there, she could have cross-examined both witnesses about them and perhaps shed light on the witnesses' credibility. Her attempt to attack the witnesses' credibility only after they are no longer subject to examination by the District is improper.

In sum, Yurel's exceptions do not demonstrate cause to disturb the ALJ's proposed decision dismissing the unfair practice charge and complaint. In affirming the dismissal, the Board itself declines to adopt the proposed decision of the ALJ, which will become final upon issuance of this decision.

ORDER

The complaint and underlying unfair practice charge in Case No. LA-CE-6036-E are DISMISSED.

Members Banks and Krantz joined in this Decision.