

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES,  
LOCAL 3299,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA (BERKELEY),

Respondent.

Case No. SF-CE-1093-H

PERB Decision No. 2696-H

February 18, 2020

Appearances: Leonard Carder, by Katherine R. Hallward and Andrew Ziaja, Attorneys for American Federation of State, County and Municipal Employees, Local 3299; Sloan Sakai Yeung & Wong, by Timothy G. Yeung and Susan J. Yoon, Attorneys for Regents of the University of California.

Before Banks and Paulson, Members.

DECISION<sup>1</sup>

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the American Federation of State, County and Municipal Employees, Local 3299 (AFSCME) to the proposed decision of a PERB administrative law judge (ALJ), which dismissed the complaint and AFSCME's underlying unfair practice charge against the Regents of the University of

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<sup>1</sup> Pursuant to Government Code sections 3509, subdivision (a), and 3541.3, subdivision (k), the Board has delegated this case for decision to a two-member panel. Unless otherwise specified, all further statutory references herein are to the Government Code.

California (University). The PERB complaint, as amended, alleged that the University had violated the Higher Education Employer-Employee Relations Act (HEERA)<sup>2</sup> by unilaterally repudiating provisions of the parties' collective bargaining agreement concerning contracting out, and unilaterally changing policy by contracting with American Building Maintenance, Jensen Landscape Services, Inc., Zero Chaos, MGA Healthcare Staffing, Inc., A&E Building Maintenance, and Performance First Building Services for labor services at the Berkeley and San Francisco campuses.

PERB's Office of the General Counsel issued the complaint on February 12, 2016. On March 8, 2016, the University answered the complaint denying the material allegations and asserting a number of affirmative defenses. On April 15, 2016, an informal settlement conference was held, but the matter was not resolved. A formal hearing was held before the ALJ on September 13, 19, 20, and November 14, 16, and 17, 2016, and June 12, 13, 14, 22, and 23, 2017.<sup>3</sup> The ALJ issued a proposed decision on December 28, 2018, dismissing the complaint and underlying unfair practice charge. AFSCME filed timely exceptions, and the University filed a timely response.

On February 7, 2020, while the matter was pending before the Board on exceptions, AFSCME notified PERB that the parties had reached a successor memorandum of understanding which included settlement of this matter, and stated it

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<sup>2</sup> HEERA is codified at Government Code section 3565 et. seq. All statutory references are to the Government Code unless otherwise indicated.

<sup>3</sup> The complaint was amended twice during the course of the formal hearing.

hereby withdrew the related unfair practice charge, with prejudice.<sup>4</sup> AFSCME further requested that the Board vacate the related proposed decision. On February 10, 2020, the University notified PERB that it joined AFSCME in requesting that the Board allow the withdrawal of the unfair practice charge and exceptions in this case, as well as joining the request to vacate the proposed decision.

### DISCUSSION

Under its broad powers to “investigate unfair practice charges or alleged violations of [HEERA], and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of [HEERA],” and to “take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of [HEERA],” the Board has discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (HEERA, § 3563, subds. (h), (m); *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2152-S, p. 5.) When an appeal pending before the Board involves a matter of continuing public interest and a precedential ruling on the matter will be instructive to similarly-situated parties, the Board has exercised its discretion by denying a request for withdrawal, in the interest of justice. (*Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380, p. 2; *Oakland Unified School District* (1988) PERB Order No. Ad-171a, p. 2; *ABC Unified School District* (1991) PERB Decision No. 831b, p. 2.)

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<sup>4</sup> The Board treats this as a request to withdraw the underlying unfair practice charge and withdraw the related exceptions.

After carefully reviewing the parties' requests and the entire record in this matter, the Board finds that withdrawing AFSCME's unfair practice charge with prejudice, withdrawing the exceptions, and vacating the proposed decision are consistent with the purposes of HEERA to promote harmonious and cooperative labor relations between the State's public institutions of higher education and their employees. Accordingly, the Board grants the withdrawals and vacates the proposed decision.

### ORDER

We GRANT the request by American Federation of State County and Municipal Employees, Local 3299, to withdraw its unfair practice charge in Case No. SF-CE-1093-H, with prejudice, and to withdraw its exceptions. We GRANT the joint request by American Federation of State County and Municipal Employees, Local 3299 and the Regents of the University of California to VACATE the ALJ's proposed decision dated December 28, 2018.

Member Banks joined in this Decision.