



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

PHILIP STEPHEN FAY,

Charging Party,

v.

TAHOE-TRUCKEE SANITATION AGENCY,

Respondent.

Case No. SA-CE-1090-M

PERB Decision No. 2826-M

July 7, 2022

Appearances: Law Offices of Dean Royer by Dean Royer, Attorney, for Philip Stephen Fay; Aleshire & Wynder by Monna Radulovich and Joseph E. Wiley, Attorneys, for Tahoe-Truckee Sanitation Agency.

Before Shiners, Krantz, and Paulson, Members.

**DECISION**

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the Tahoe-Truckee Sanitation Agency and cross-exceptions by Philip Stephen Fay to the proposed decision of an administrative law judge (ALJ). The ALJ concluded that the Agency violated the Meyers-Milias-Brown Act (MMBA) when it issued Fay a disciplinary memorandum and terminated his employment in retaliation for his protected activities.<sup>1</sup> The Agency excepted to the ALJ's conclusions on several bases, including that the ALJ improperly rejected its affirmative defenses that Fay failed to exhaust judicial remedies, his claims were

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<sup>1</sup> The MMBA is codified at Government Code section 3500 et seq. All statutory references herein are to the Government Code. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

barred by collateral estoppel, and the Agency terminated Fay for legitimate business reasons. Fay urged the Board to affirm the ALJ's legal conclusions. Fay also sought additional remedies not ordered by the ALJ, including daily compound interest on monetary damages consistent with the National Labor Relations Board (NLRB) practice adopted in *Kentucky River Medical Center* (2010) 356 NLRB 6 (*Kentucky River*).

On June 24, 2022, while the matter was pending before the Board on the Agency's exceptions and Fay's cross-exceptions, the parties notified PERB that they settled this matter. Based on the agreement, the parties jointly requested that PERB: "(1) grant their request to withdraw the parties' respective exceptions and cross-exceptions with prejudice, (2) grant Charging Party Fay's dismissal of the PERB charge (including amendments) and the complaint in PERB Case No. SA-CE-1090[-M] with prejudice; and (3) dismiss the entire case with prejudice."

The Board has discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (§§ 3509, subd. (a), 3541.3, subds. (i) and (n); PERB Reg. 32320, subd. (a)(2) ["The Board itself may . . . [¶] . . . take such other action as it considers proper."]; *County of Riverside* (2020) PERB Decision No. 2707-M, p. 2; *Sanitation Districts of Los Angeles County* (2019) PERB Decision No. 2656-M, p. 2 (*Sanitation Districts*); *City of Santa Rosa (Fire Department)* (2019) PERB Decision No. 2653-M, p. 2 (*Santa Rosa*); *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2152-S, p. 5 (*State of California*); *Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380, p. 2 (*Grossmont*); *Oakland Unified School District* (1988) PERB Order No. Ad-171a,

p. 1.) The Board has a longstanding policy favoring voluntary settlement of disputes. (*Dry Creek Joint Elementary School District* (1980) PERB Order No. Ad-81a.) The Board generally grants such requests where it finds the request to be in the best interest of the parties and consistent with the purposes of the applicable Act. (See, e.g., *County of Riverside*, *supra*, PERB Decision No. 2707-M, p. 3; *Sanitation Districts*, *supra*, PERB Decision No. 2656-M, p. 2; *Santa Rosa*, *supra*, PERB Decision No. 2653-M, p. 2.) However, the Board has on occasion denied a request to withdraw an unfair practice charge, e.g., in order to avoid infringing on statutory rights (*Lake Elsinore Unified School District* (2019) PERB Decision No. 2633, p. 1, fn. 1), or when an appeal involves a matter of continuing public interest and a precedential ruling on the matter will be instructive to all parties similarly situated (*Oakland Unified School District*, *supra*, PERB Order No. Ad-171a, p. 1). The Board, for example, has denied requests to withdraw in the interest of justice in representation matters involving large bargaining units (*id.* at p. 2; *Grossmont*, *supra*, PERB Order No. Ad-380, p. 2), and to address allegations that the State of California unlawfully implemented furloughs (*State of California*, *supra*, PERB Decision No. 2152-S, p. 5).

None of the issues raised by the parties' exceptions or cross-exceptions constitute a matter of continuing public interest sufficient to require a decision on the merits. We therefore express no opinion on the merits of any of the parties' exceptions. We note, however, that Fay's cross-exceptions raised the issue of whether PERB should adopt the practice of augmenting monetary damages by compound, rather than by simple, interest. PERB recently observed that in 2010 the NLRB began including daily compound interest in all monetary relief. (*Bellflower*

*Unified School District* (2022) PERB Decision No. 2544a, p. 41, fn. 23 [judicial appeal pending] (*Bellflower*), citing *Kentucky River, supra*, 356 NLRB 6, 6.) The Board declined to reach that issue in *Bellflower* due to an agreement between the parties to apply simple annual interest. (*Ibid.*) Although we similarly do not reach the issue here in light of the parties' request to withdraw, we do not foreclose the possibility of considering whether PERB should adopt that method of calculating interest in a future case.

Based on the Board's review of the parties' settlement agreement, and the entire record in this matter, the Board finds granting the parties' requests to be in the parties' best interest and consistent with the purposes of the MMBA to promote harmonious labor relations. (*County of Riverside, supra*, PERB Decision No. 2707-M, p. 3; *Sanitation Districts, supra*, PERB Decision No. 2656-M, p. 2.) For these reasons, we grant the parties' joint requests to withdraw their respective exceptions and cross-exceptions, and to dismiss the matter with prejudice.

#### ORDER

The request by Philip Stephen Fay and the Tahoe-Truckee Sanitation Agency to withdraw the amended unfair practice charge in Case No. SA-CE-1090-M is hereby GRANTED. The Agency's exceptions and Fay's cross-exceptions to the proposed decision are deemed withdrawn. The complaint and underlying unfair practice charge are DISMISSED WITH PREJUDICE. We further direct that this matter is closed and that no further action be taken in this case.

Members Shiners and Krantz joined in this Decision.