STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TONY PETRICH, Charging Party, v. RIVERSIDE UNIFIED SCHOOL DISTRICT, Respondent.	)	Case Nos. LA-CE-2112 LA-CE-2130 LA-CE-2134 Administrative Appeal PERB Order No. Ad-152 December 13, 1985
TONY PETRICH, Charging Party, v. RIVERSIDE UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-2143

Appearance: Tony Petrich, on his own behalf.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

BURT, Member: Charging Party, Tony Petrich, appeals the executive director's determinations denying his requests in the above-captioned cases that the Public Employment Relations Board (PERB or Board) direct the administrative law judge (ALJ) to transfer the records of hearings to the Board for decision by the Board itself. Because both administrative appeals present the same question regarding application of section

32215 of the Board's Regulations,[1] we have consolidated the appeals for purposes of this decision.[2] As further set forth below, we have determined that the executive director properly denied Charging Party's requests in both cases.

PROCEDURAL HISTORY AND CHARGING PARTY'S REQUESTS

In consolidated Case Nos. LA-CE-2112, LA-CE-2130 and LA-CE-2134, formal hearing was completed before a PERB ALJ on July 17, 1985.[3] On August 20, Charging Party filed with the Board a request that the Board direct the ALJ to transfer the record of the case together with her findings of fact to the Board for decision by the Board itself. In support of his request, he included extensive legal arguments that the Board should revise a number of its precedential decisions. Charging Party argued that the substantial nature of his proposed

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[1]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

Section 32215 reads in pertinent part as follows:

> A Board agent shall issue a written proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself. . . .

[2]Separate formal hearings have been conducted in these cases, both of which are now pending before the same PERB ALJ. In addition, Charging Party has filed other appeals in each case, which are now pending before the Board. We therefore emphasize that this consolidation is for the purposes of these administrative appeals alone.

[3]All dates are in 1985, unless otherwise specified.

revisions warrants initial review of this case by the Board itself.

By letter dated August 29, the Board's executive director denied Charging Party's request, and this appeal followed on September 8. In his appeal, Charging Party asserts as additional grounds for initial Board review that the ALJ was "confused" as to the nature of his charges.

In Case No. LA-CE-2143, formal hearing has been proceeding before the same PERB ALJ. The hearing has been in recess since September 18, pending the ALJ's decision on the Riverside Unified School District's (Respondent) motion to dismiss. On October 21, Charging Party filed with the Board his request for decision by the Board itself in Case No. LA-CE-2143, and further requested that the Board consolidate Case No. LA-CE-2143 with Case Nos. LA-CE-2112 et al., for purposes of its decision. In support of this request, he included additional legal arguments that the Board should revise its precedents. He further alleged that the ALJ had breached her neutrality during the course of the formal hearings in both consolidated Case Nos. LA-CE-2112 et al. and Case No. LA-CE-2143.

By letter dated November 8, the executive director denied Charging Party's request in Case No. LA-CE-2143, and this appeal followed on November 18. In his appeal, Charging Party reiterates as grounds for his request the substantial nature of

his proposed changes in Board precedent, and the ALJ's alleged breach of neutrality.

Respondent has not filed a response to either of Charging Party's requests.

DISCUSSION

The Board's powers to investigate and decide unfair practice charges are established in the Educational Employment Relations Act (EERA) section 3541.3(h) and (i).[4] As required by EERA section 3541.5,[5] the Board has established

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[4]The EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

Section 3541.3 states in pertinent part:

> The board shall have all of the following powers and duties:
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> . . . . . .
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> (h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction.
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> (i) To investigate unfair practice charges or alleged violations of this chapter, and take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

[5]Section 3541.5 reads in pertinent part as follows:

> The initial determination as to whether the charges of unfair practices are justified,

procedures for investigating, hearing and deciding unfair practice charges. It has delegated its powers to conduct unfair practice hearings to ALJs as permitted by EERA section 3541.3(k).[6] However, the Board, and not the ALJ, has final authority to determine unfair practice charges. By filing appropriate exceptions pursuant to section 32300 of the Board's Regulations,[7] a party to an unfair practice case may obtain

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> and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board . . .

[6]Section 3541.3 provides in pertinent part as follows:

> The Board shall have all of the following powers and duties:
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> . . . . . .
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> (k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it and except that a decision to refuse to issue a complaint shall require the approval of two board members.

[7]Regulation 32300:

> (a) A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to section 32215, and supporting brief, within 20 days following the date of service of the decision or as provided in section 32310.

review of an ALJ's proposed decision, including review of findings of fact (see Anaheim City School District (1984) PERB Decision No. 364a) and of conclusions of law. When exceptions are filed, the Board reviews the entire case record established at the formal hearing. The Board's decision, and not the ALJ's proposed decision, will establish precedent for future cases.[8]

> The statement of exceptions and briefs shall be filed with the Board itself in the headquarters office. Service and proof of service of the statement and brief pursuant to section 32140 are required. The statement of exceptions shall:
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> > (1) State the specific issues of procedure, fact, law or rationale to which each exception is taken;
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> > (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 relied upon for each exception;
> >
> > (4) State the grounds for each exception.
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> (b) Reference shall be made in the statement of exceptions only to matters contained in the record of the case.
>
> (c) An exception not specifically urged shall be waived.

[8]We note that the Board amended section 32215 effective November 9, 1985, by adding the following sentence to the existing text quoted above:

> Unless expressly adopted by the Board itself, a proposed or final Board agent

Charging Party asks the Board to depart from its usual procedures in these cases, and to decide these cases without benefit of an ALJ's decision. While the Board has authority to do so, as stated in section 32215 of its Regulations, it has exercised this authority on rare occasions, and primarily for reasons of administrative efficiency.[9]

The only reasons advanced by Charging Party for transferring these cases directly to the Board are the significance he attaches to his proposed revisions in Board precedents and his unsupported suspicions as to the ALJ's neutrality. These are not adequate reasons for dispensing with a full proposed decision by the ALJ. All of Charging Party's concerns can be fully addressed by the Board, based on its review of the entire case records, should he find it necessary to except to the ALJ's proposed decisions in these cases.

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decision, including supporting rationale, shall be without precedent for future cases.

This amendment codifies existing Board policy concerning the absence of precedential effect of ALJs' proposed decisions.

[9]In San Francisco Community College District (1979) PERB Decision No. 105, numerous unfair practice cases then pending before the Board raised defenses to refusal-to-bargain charges based upon the passage of Proposition 13. By deciding one lead case, the Board was able to substantially expedite the processing of many cases.

Similarly, although the hearings to determine units under the Higher Education Employer-Employee Relations Act and the State Employer-Employee Relations Act were conducted by its agents, the Board directly reviewed the voluminous records to expedite implementation of the respective Acts.

Furthermore, no administrative purpose would be served by departing from the Board's normal procedures in these cases.

ORDER

For the reasons set forth above, Tony Petrich's requests to transfer Case Nos. LA-CE-2112, LA-CE-2130 and LA-CE-2134 and Case No. LA-CE-2143 to the Public Employment Relations Board for initial decision by the Board itself are hereby DENIED.

Members Jaeger and Morgenstern joined in this Decision.