

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 392,

Charging Party,

v.

JURUPA UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5754-E

Administrative Appeal

PERB Order No.Ad-417-E

September 24, 2014

Appearances: Janet Cordova, on her own behalf; Fagen, Friedman & Fulfrost by Christopher D. Keeler, Attorney, for Jurupa Unified School District.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Janet Cordova (Cordova) from the administrative decision by the PERB Appeals Assistant denying (1) Cordova's request for an extension of time to file a statement of exceptions; and (2) Cordova's statement of exceptions to the proposed decision of a PERB administrative law judge (ALJ). The Appeals Assistant denied Cordova's request for an extension of time and statement of exceptions because Cordova is not a party to the case. For the reasons explained below, we affirm the administrative decision of the Appeals Assistant.

PROCEDURAL HISTORY

On October 16, 2012, the California School Employees Association and its Chapter 392 (CSEA) filed Unfair Practice Charge No. LA-CE-5754-E. On January 2, 2013, PERB's Office of the General Counsel issued an unfair practice complaint alleging that the Jurupa Unified School District (District) took adverse action against Cordova, an employee at the time of the

events underlying the charge, because of Cordova's exercise of protected rights in violation of the Educational Employment Relations Act (EERA).¹ On January 23, 2013, the District filed an answer to the complaint. An informal settlement conference was held on February 5, 2013, but the matter was not resolved.

On April 2 and June 5, 2013, CSEA filed motions to amend the complaint seeking to allege additional adverse acts in retaliation for Cordova's prior protected conduct. On June 11, 2013, the parties were notified that the additional factual allegations would be permitted to be tried with the exception of allegations arising out of PERB's confidential informal settlement conference process.

A formal hearing was held over the course of seven days, June 25 through 28, 2013, and July 17 through 19, 2013. On October 11, 2013, the matter was submitted for decision following the submission of CSEA's and the District's post-hearing briefs. On May 30, 2014, a 59-page proposed decision issued, concluding that the District had established by a preponderance of the evidence that it would have disciplined and terminated Cordova even in the absence of any protected conduct. The unfair practice complaint was dismissed. Neither party filed a statement of exceptions to the proposed decision.

On July 16, 2014, Cordova requested a 16-day extension of time to file a statement of exceptions (Request for Extension). By letter of July 17, 2014, the District objected to Cordova's request on the grounds that Cordova is not a party to the case and her request did not comply with PERB Regulation 32132² governing requests for extensions.

¹ EERA is codified at Government Code section 3540 et seq. Undesignated section references are to the Government Code.

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

On July 21, 2014,³ Cordova filed a document entitled “Notice of Appeal and Appeal of Proposed Dismissal [sic] of May 30, 2014” (Appeal). The Appeal states that CSEA’s former and current attorneys, David Dolloff and Charmaine Hunting, have “abandoned the ‘real party in [i]nterest’ (Cordova).” As recited in the proposed decision, CSEA withdrew its request for a hearing to appeal the *Skelly*⁴ officer’s ruling recommending that Cordova be immediately suspended and terminated, stating that CSEA intended to pursue the matter as an unfair practice charge. Cordova argues that because she cannot force CSEA to pursue an appeal of the proposed decision, she should therefore be allowed to file a statement of exceptions on her own behalf. The Appeal sets forth five exceptions to the proposed decision and a prayer for relief.

The administrative decision by the Appeals Assistant of July 22, 2014, addresses both of Cordova’s filings, the Request for Extension and the Appeal. Both were denied on the same ground. Because Cordova is not a party to the case, she had no right to request an extension or file a statement of exceptions.

On July 31, 2014, Cordova filed a timely appeal of the administrative decision, which is similar in substance to the Appeal. The Appeal states:

³ Under PERB Regulation 32300, subdivision (a), a party may file a statement of exceptions to a proposed decision within 20 days following service of the decision. With applicable automatic extensions under PERB Regulation 32130, the final date for filing a statement of exceptions to the May 30, 2014, proposed decision ordinarily would have been June 24, 2014. The District’s copy of the proposed decision, however, was returned to PERB through the U.S. mail system on June 24, 2014. As a result, the parties were given an additional 20 days to file a statement of exceptions. With applicable automatic extensions under PERB Regulation 32130, the final date for filing a statement of exceptions was July 21, 2014. The District argues that because the additional 20 days was provided for the District’s benefit, only the District was entitled to the additional time for filing a statement of exceptions. Given the decision by the Board herein, we need not reach this issue.

⁴ *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (*Skelly*).

Cordova cannot control the lawyers from the California School Employees Association, she cannot control Jurupa Unified School District lawyers, adverse actions against her, or any animus harbored by her employer or union. All Cordova can do is bring this case to the attention of the honorable PERB board to bring justice to this case and to hold JUSD to a standard of responsibility for their actions.

On August 8, 2014, the District filed a response to the appeal. The District argues that the Appeals Assistant was correct to deny Cordova's Request for Extension and Appeal on the stated grounds. The District agrees that Cordova has no standing to participate in the appeal process as a party. By letter of August 25, 2014, the Appeals Assistant notified Cordova and the parties, through their counsel, that the filings were complete and that the matter had been placed on the Board's docket on August 22, 2014.

DISCUSSION

The issue in this case is whether Cordova has standing to pursue an appeal of the proposed decision. If she lacks standing, the Appeals Assistant was correct to deny Cordova's Request for Extension and Appeal.

PERB Regulation 32300, subdivision (a), provides:

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

PERB Regulation 32305, subdivision (a), provides:

Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein.

As we stated most recently in *Santa Maria-Bonita School District* (2013) PERB Order No. Ad-400, the regulations are clear and unambiguous. Only a party to a proposed decision has the right to file exceptions to it. There are two parties to the proposed decision, CSEA, who filed the unfair practice charge and is referred to as the charging party, and the District, who is the entity against whom the charge is filed and is referred to as the respondent. Neither

party filed a statement of exceptions. Because Cordova is not a party to the case and therefore lacks standing to file a statement of exceptions, the Appeals Assistant was correct to deny her Request for Extension and Appeal. By operation of PERB Regulation 32305, the proposed decision became final on July 21, 2014.

As the Board explained in *Regents of the University of California (Lawrence Berkeley National Laboratory)* (2013) PERB Order No. Ad-397-H (*UC*):

The regulatory scheme delineates distinctions between the rights of parties and the rights of non-parties. PERB Regulation 32180, for example, sets forth the rights of parties to a formal hearing as including the right to appear in person, by counsel or by other representative; the right to call, examine and cross-examine witnesses; and the right to introduce documentary and other evidence on the issues. By contrast, PERB Regulation 32210 allows ‘any person’ to file a petition to submit an informational brief or to argue orally in any case at a hearing or before the Board itself. Notably, like PERB Regulation 32180, the regulation governing the filing of exceptions grants appeal rights to the more limited category of . . . “parties.”

(See also *John Swett Unified School District* (1981) PERB Decision No. 188 (*Swett*) [“PERB rule 32300 only permits a ‘party’ to submit exceptions to a proposed hearing officer’s decision. Because the Association, and not O’Dwyer, is the charging party, we will not consider the substance of the objections filed on O’Dwyer’s behalf.” (Fn. omitted.)].)

The facts here are similar to the facts in *UC*. In that case, the unfair practice charge was brought by the exclusive representative alleging an unlawful unilateral change and retaliation against two employees. Upon a full administrative hearing on the merits, the ALJ issued a proposed decision dismissing the unfair practice complaint. Although neither party filed a statement of exceptions, one of the two employees at the center of the retaliation allegations requested an extension of time to file a statement of exceptions on her own behalf. The Board held that the individual employee was not a party and therefore had no standing to

participate in the appeal process. The facts here are also similar to the facts in *Swett* in which the Board came to the same conclusion.

Cordova argues that she has no control over CSEA's lawyers. While CSEA, through its lawyers, has control over the administrative litigation of its own unfair practice charge as the charging party, CSEA has no control over Cordova's use of PERB processes. Cordova, as a "[p]ublic school employee" under EERA section 3540.1, subdivision (j), had the right to file an unfair practice charge in her own right and on her own behalf. She also had the option of filing with the ALJ an application for joinder as a party in the case under PERB Regulation 32164. She could have availed herself of these procedures to protect her individual interest in the outcome of this matter. An unfair practice charge brought by an exclusive representative is presumed to vindicate a collective interest, which is for the exclusive representative to determine how best to achieve.

Both parties, charging party CSEA and the respondent District, have litigated their respective cases fully and accepted the findings of fact and conclusions of law reached by the ALJ in the proposed decision. To accord Cordova the right to appellate review of the ALJ's decision would be to contravene the regulatory scheme's rules governing the filing of exceptions. It would also undercut CSEA's right to control the administrative litigation of its case as the charging party and upset both parties' expectation of finality.

ORDER

Janet Cordova's July 16, 2014 Request for Extension and July 21, 2014 Appeal are hereby DENIED. The proposed decision of May 30, 2014, is **FINAL**.

Members Huguenin and Winslow joined in this Decision.