

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



GROSSMONT UNION HIGH SCHOOL
DISTRICT,

Employer,

and

AMERICAN FEDERATION OF TEACHERS
GUILD, LOCAL 1931,

Petitioner.

Case No. LA-RR-1270-E

PERB Order No. Ad-466

June 20, 2018

Appearance: Ochoa Law by Ricardo Ochoa, Attorney, for American Federation of Teachers Guild, Local 1931.

Before Banks, Shiners, and Krantz, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by American Federation of Teachers Guild, Local 1931 (AFT) from the Appeals Office's denial of a request for an extension of time. The sole issue on appeal is whether the prohibition on granting extensions of time in certain representation matters set forth in PERB Regulation 32305, subdivision (c), applies to an appeal from an administrative decision.¹ Based on the regulation's language, history, and purpose, we hold that PERB Regulation 32305, subdivision (c), does not apply to an appeal from an administrative decision. We accordingly reverse the denial of AFT's extension request.

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

BACKGROUND

On May 26, 2017, AFT filed a request for recognition with PERB's Office of the General Counsel (General Counsel) pursuant to PERB Regulation 33050. AFT sought to represent a proposed bargaining unit of adult education teachers at the Grossmont Union High School District (District). The proposed unit included adult education teachers who teach academic subjects, but excluded adult education teachers who teach non-academic subjects. PERB determined that AFT's request was accompanied by sufficient proof of support among employees in the proposed unit.

On July 19, 2017, the District notified PERB that it was denying recognition of AFT because it doubted the appropriateness of the proposed unit. The District asked PERB to investigate whether the proposed unit was appropriate.

On October 17, 2017, the General Counsel issued an order to show cause (OSC) requiring AFT to demonstrate why PERB should not dismiss its request for recognition because the proposed unit appeared to be inappropriate. AFT filed a response to the OSC, and the District filed a reply to AFT's response.

On March 23, 2018, the General Counsel issued an administrative decision on the OSC. The General Counsel determined the proposed unit was not appropriate because it excluded adult education teachers who teach non-academic subjects.

Under the timelines in PERB's regulations, an appeal from the administrative decision was due no later than April 9, 2018.² On March 29, 2018, AFT filed with the Board's Appeals

² Under PERB Regulation 32360, subdivision (b), an appeal from an administrative decision must be filed no later than 10 days after the decision is served on the parties. April 2, 2018 was the tenth day following service of the decision in this case. Because the decision was served on AFT by U.S. mail, PERB Regulation 32130, subdivision (c), gave AFT an additional five days to file an appeal—until April 7, 2018. And because April 7, 2018 was a

Office a written request for a three-week extension to file an appeal. The Appeals Office denied the extension on March 30, stating: “Your request cannot be granted, pursuant to PERB Regulation 32305, subdivision (c).” AFT filed a timely appeal from the denial of its extension request.

DISCUSSION

AFT argues in its appeal that PERB Regulation 32305, subdivision (c), prohibits the Board itself from granting an extension of time in a representation case only when a party is filing exceptions to a proposed decision, not when, as here, a party is appealing an administrative decision. Based on our review of the regulation’s language, history, and purpose, we agree with AFT.

PERB Regulation 32305 states in full:

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

(b) In cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, 91450 or 95150, and where exceptions are filed pursuant to Section 32300, the Board agent’s decision shall become final unless the Board itself issues a decision not later than 180 days from the date the exceptions were filed with the Board.

(c) The Board shall not grant extensions of time in cases before the Board itself that are subject to subparagraph (b), above.

The first step in interpreting an administrative regulation is to “give the regulatory language its plain, commonsense meaning.” (*Price v. Starbucks Corp.* (2011))

Saturday, PERB Regulation 32130, subdivision (b), gave AFT until the next PERB business day—April 9—to file an appeal.

192 Cal.App.4th 1136, 1145.) If the language is ambiguous, we may look to other sources of interpretation, “including the purpose of the regulation, the legislative history, public policy, and the scheme of which the regulation is a part.” (*Manriquez v. Gourley* (2003)

105 Cal.App.4th 1227, 1235.)

1. Plain Language of Regulation 32305

According to the plain language of PERB Regulation 32305, subdivision (c), the Board itself may not grant an extension of time in a case that is subject to subdivision (b). For a case to fall under subdivision (b), it must satisfy two requirements, as indicated by the use of the conjunctive “and” to join the two phrases in the sentence’s introductory clause. (See *In re C.H.* (2011) 53 Cal.4th 94, 101, citations and internal quotations omitted [“The ordinary and usual usage of ‘and’ is as a conjunctive, meaning ‘an additional thing,’ ‘also’ or ‘plus.’”].) First, the case must arise under one of the enumerated PERB Regulations. Second, the case must be one where exceptions may be filed pursuant to Regulation 32300.

Under PERB Regulation 32300, exceptions may be filed only “to a Board agent’s proposed decision issued pursuant to Section 32215.” Although Regulation 32215 does not say so explicitly, its placement near the end of Subchapter 3 of PERB’s Regulations, entitled “HEARINGS,” shows that the proposed decision is the culmination of the formal hearing process. This interpretation is confirmed by PERB Regulation 32350, subdivision (a)(3), which excludes from the definition of “administrative decision” “a decision which results from the conduct of a formal hearing or from an investigation which results in the submission of a stipulated record and a proposed decision written pursuant to Section 32215.”

Read as a whole, PERB’s Regulations create two possible tracks for a representation case. The first track leads to a formal hearing where an evidentiary record is created, followed

by a proposed decision that may be appealed to the Board itself by filing exceptions pursuant to PERB Regulation 32300. The second track leads to an administrative decision, without a formal hearing and thus without an evidentiary record, that may be appealed to the Board itself by filing an appeal pursuant to PERB Regulation 32360. Because PERB Regulation 32305, subdivision (b), applies only to cases “where exceptions are filed pursuant to Section 32300,” only the first type of case, i.e., one that produces a proposed decision, falls under subdivision (b). Consequently, subdivision (c)’s prohibition on granting extensions of time applies only to cases where a proposed decision has been issued, not to cases that resulted in an administrative decision.

2. Legislative History and Purpose of PERB Regulation 32305

Although we do not find the language of PERB Regulation 32305 ambiguous, we note that the legislative history and purpose of the regulation further support our interpretation. Effective January 1, 2012, Senate Bill 609 (Chapter 242, Statutes of 2011) amended the statutes under PERB’s jurisdiction to facilitate faster resolution of representation matters. Representative of these amendments is section 3541.35 of the Educational Employment Relations Act (EERA):³

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization as described in subdivision (l) of Section 3541.3 is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

According to the legislative history, this language is intended to prevent public employers from using appeals to the Board itself to delay recognition or certification of, and thus delay first contract negotiations with, employee organizations that have been freely chosen by their

³ EERA is codified at Government Code section 3540 et seq.

employees. (Assem. Com. on Public Employees, Retirement and Social Security, Rep. on Sen. Bill No. 609 (2011-2012 Reg. Sess.) as amended March 24, 2011, p. 2.) To implement Senate Bill 609, PERB added subdivisions (b) and (c) to Regulation 32305 effective July 1, 2013. (Cal. Reg. Notice Register 2012, No. 43-Z, p. 1555.)

To understand how PERB Regulation 32305 implements EERA section 3541.35 and its counterparts in other statutes, it is necessary to recognize how orders resulting from proposed decisions and administrative decisions are treated differently under PERB's Regulations. Under subdivision (a) of Regulation 32305, a proposed decision becomes final if no exceptions are filed. When exceptions are filed, the decision does not become final and the proposed order is effectively stayed pending a decision by the Board itself. (*Poway Unified School District* (2015) PERB Decision No. 2441, p. 8.)

In contrast to a proposed decision, an administrative decision "is considered final and effective upon issuance" and therefore an appeal from such a decision does not automatically stay the effect of the decision. (*Children of Promise Preparatory Academy* (2018) PERB Decision No. 2558, p. 20, fn. 18; PERB Reg. 32370.⁴) To stay operation of an administrative decision, the appealing party must file a request for stay pursuant to Regulation 32370, and the Board must grant the request. (*Poway Unified School District, supra*, PERB Decision No. 2441, p. 8.)

As its legislative history indicates, Senate Bill 609 sought to prevent public employers from using the automatic stay resulting from the filing of exceptions to delay recognition and

⁴ PERB Regulation 32370 provides: "An appeal will not automatically prevent the Board from proceeding in a case. Parties seeking a stay of any activity may file a request for a stay with the administrative appeal which shall include all pertinent facts and justification for the request. The Board may stay the matter, except as is otherwise provided in these regulations."

first contract negotiations. Because they do not result in an automatic stay, appeals from administrative decisions do not raise the same concerns about delay. Thus, EERA section 3541.35—and by extension Regulation 32305, subdivisions (b) and (c), implementing it—apply only to exceptions to proposed decisions, not to appeals of administrative decisions.

In conclusion, we hold that PERB Regulation 32305, subdivision (c), does not prohibit the Board itself from granting an extension of time in a representation case where a party is appealing an administrative decision. Accordingly, AFT's extension request was improperly denied.

ORDER

The Appeals Office's administrative decision in Case No. LA-RR-1270-E is hereby REVERSED and the matter is remanded to the Appeals Office for further processing.

Members Banks and Krantz joined in this Decision.