

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

KATHLEEN M. TURNEY,

Charging Party,

v.

FREMONT UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. SF-CE-2150-E

PERB Decision No. 1528

May 28, 2003

Appearance: Liebert Cassidy Whitmore by Emi R. Uyehara and Stacy L. Saetta, Attorneys, for Fremont Unified School District.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Fremont Unified School District (District) to the proposed decision issued by a PERB administrative law judge (ALJ) in this matter. The District, which prevailed below, excepts only to evidentiary rulings made by the ALJ. Specifically, the District contends the ALJ's exclusion of five exhibits, based in part on the ALJ's conclusion that the parties' collective bargaining agreement prohibited the introduction of the exhibits, was erroneous.

Based on the following discussion, the Board dismisses the District's exceptions.

DISCUSSION

The Board is puzzled as to why the District filed exceptions to a decision in which it prevailed. The District argues that it was forced to file exceptions because the ALJ's ruling on the evidentiary matters "may affect subsequent PERB proceedings and potentially other

proceedings outside the District’s own evaluation system or disciplinary process.” However, PERB Regulation 32215¹ provides, in pertinent part, that:

Unless expressly adopted by the Board itself, a proposed or final Board agent decision, including supporting rationale, shall be without precedent for future cases.

Thus, had the District not filed exceptions, the ALJ’s decision would have been nonprecedential and binding on the parties only with respect to the specific controversy involved in this case. (Regents of the University of California (1990) PERB Decision No. 806-H.) The District also argues that it was forced to file exceptions in order to preserve its rights in the event Kathleen M. Turney (Turney) filed exceptions. However, PERB Regulation 32310 provides, in pertinent part, that:

Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself an original and five copies of a response to the statement of exceptions and a supporting brief. The response shall be filed with the Board itself in the headquarters office. The response may contain a statement of any exceptions the responding party wishes to take to the recommended decision.

Thus, the District was not required to file “preemptive” exceptions, but could have waited until Turney filed exceptions if she chose to do so. Since Turney never filed exceptions, the District could have avoided these proceedings entirely.

One of the duties of the Board is to decide disputes on matters within its jurisdiction. (Educational Employment Relations Act (EERA) sec. 3541.3.²) This duty does not require the Board to correct harmless errors in a nonprecedential ALJ decision. This is especially true

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

² EERA is codified at Government Code section 3540 et seq.

where the party asserting the errors seeks only to correct them, and does not seek to overturn the ALJ decision itself. Where a party has prevailed before the ALJ, it is difficult for one to imagine how an error could have been anything but harmless. Absent good cause, the Board will dismiss as without merit any initial exceptions filed by a prevailing party unless the Board's ruling on the exceptions would change the outcome of the ALJ decision.

This holding is required to prevent prevailing parties from unilaterally turning a favorable ALJ decision into a precedential decision of the Board. This decision also promotes the Board's efficiency and economy. The Board should not be forced to expend its limited resources correcting harmless errors in the record.

In the matter before the Board, the District does not seek to overturn the ALJ's decision. Indeed, the District prevailed. The District's exceptions seek only to correct an evidentiary ruling of the ALJ which even the District concedes did not affect the ultimate outcome. Based on the discussion above, the Board finds the District's exceptions to be without merit and dismisses them.

In dismissing the District's exceptions, the Board itself declines to adopt the proposed decision of the ALJ, which will become final upon issuance of this decision.

ORDER

The Fremont Unified School District's exceptions to the administrative law judge's proposed decision in Case No. SF-CE-2150-E are hereby DISMISSED.

Members Whitehead and Neima joined in this Decision.