

grounds that PERB does not have jurisdiction to enforce rights under the Education Code and that the charge failed to allege a prima facie violation of EERA. The District appeals from that determination.

FACTUAL AND PROCEDURAL SUMMARY

From July 1, 2001 through June 30, 2011, the District and the Association were parties to collective bargaining agreements that provided for the Association president to be released from 40 percent of his or her assignment to perform various functions related to his or her Association duties. For nearly ten years, the District granted the Association's president the 40 percent leave time (two school periods per day) while compensating the president his or her full salary and benefits.

On January 21, 2011, the District presented an invoice to the Association requesting reimbursement of \$323,470.49 for all compensation paid to Association presidents on account of the 40 percent leave from September 2001 through December 2010. After the Association failed to pay, the District discontinued its practice of providing the 40 percent leave time to the Association president. The District asserted that it took these actions in order to comply with Education Code section 44987 and to avoid violating EERA section 3543.5(d).³

Following the school district's payment of the employee for the leave of absence, the school district shall be reimbursed by the employee organization of which the employee is an elected officer for all compensation paid the employee on account of the leave. . . .

The leave of absence without loss of compensation provided for by this section is in addition to the release time without loss of compensation granted to representatives of an exclusive representative by subdivisions (c) of Section 3543.1 of the Government Code.

³ EERA section 3543.5(d) makes it unlawful for a public school employer to "Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another."

On May 2, 2011, the District filed an action against the Association in Los Angeles County Superior Court requesting enforcement of its right to reimbursement under Education Code section 44987, damages for unjust enrichment, and declaratory relief. The District asserted that the filing of this action was an additional affirmative act to prevent a violation of EERA section 3543.5(d).

On June 21, 2011, the Association filed a demurrer to the District's superior court complaint and asserted that PERB had initial exclusive jurisdiction over the dispute because the District alleged an arguable unfair practice under EERA section 3543.5(d). The District opposed the demurrer on the grounds that it alleged only a violation of Education Code section 44987, not EERA. The Association responded that the District also alleged a violation of EERA section 3543.6(a),⁴ on the grounds that the Association caused or attempted to cause the District to violate EERA section 3543.5(d).

On August 10, 2011, the superior court sustained the demurrer on the grounds that the District stated an arguable unfair practice under either EERA section 3543.5(d) or 3543.6(a). The court stayed the proceedings before it pending the exhaustion of administrative remedies before PERB.

In response to the court's ruling, the District filed the instant charge on October 24, 2011. In that charge, as amended, the District alleged that the Association violated Education Code section 44987(a) by failing to reimburse the District for leave taken by District employees to serve as elected union officials.

On March 5, 2012, the Office of the General Counsel dismissed the charge on the ground that PERB does not have jurisdiction to enforce rights under Education Code section 44987(a) and the charge failed to allege sufficient facts to demonstrate that the

⁴ EERA section 3543.6(a) makes it unlawful for an employee organization to "Cause or attempt to cause a public school employer to violate Section 3543.5."

Association's conduct violated EERA's prohibition against providing financial support to employee organizations under EERA section 3543.5(d).⁵

APPEAL AND RESPONSE

On March 30, 2012, the District filed a timely appeal from the dismissal of the charge. The appeal asserts that the District appeals "in order to exhaust its administrative remedies." Following a recitation of the facts surrounding the superior court action and the dismissal of the charge, the appeal states, verbatim:

Appeal

Charging Party does not dispute the Regional Attorney's findings but files this appeal in order to exhaust its administrative remedies. The District respectfully requests the Board's attention to this matter and swift determination.

In its response, the Association asserts that the appeal fails to meet the requirements of PERB Regulation 32635⁶ in that it fails to state the specific issues of procedure, fact, law or rationale to which the appeal is taken. As a result, the Association contends, the District "has essentially filed no appeal, and PERB should reject it, not as an 'exhaustion of administrative remedies' but as a failure to comply with Regulation 32635."

DISCUSSION

PERB Regulation 32635(a) provides:

(a) Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. Service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

⁵ We construe this finding as a finding that the charge failed to establish a prima facie violation of EERA section 3543.6(a).

⁶ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The Appeal shall:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

PERB repeatedly has held that, to satisfy the requirements of Regulation 32635(a), the appeal must sufficiently place the Board and the respondent on notice of the issues raised on appeal, and noncompliance will warrant dismissal of the appeal. (*California School Employees Association & its Chapter 724 (Walker)* (2011) PERB Decision No. 2220 (CSEA); *California State Employees Association, Local 1000, AFL-CIO, Service Employees International Union (Myers)* (1992) PERB Decision No. 942-S; *Oakland Education Association (Baker)* (1990) PERB Decision No. 827.) An appeal that does not reference the substance of the Board agent's dismissal fails to comply with PERB Regulation 32635(a). (*CSEA; United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381; *Lodi Education Association (Hudock)* (1995) PERB Decision No. 1124; *United Teachers – Los Angeles (Glickberg)* (1990) PERB Decision No. 846.)

The appeal before us does not state the specific issues of procedure, fact, law or rationale to which the appeal is taken, nor does it identify the page or part of the dismissal to which appeal is taken or state the grounds for appeal. Instead, the appeal specifically states that the District “does not dispute the Regional Attorney’s findings.” Thus, the appeal fails to comply with the requirements of PERB Regulation 32635(a). Therefore, we deny the appeal. Given that the District has not objected to any of the findings set forth in the dismissal, we have no basis upon which to review the merits of the dismissal. The Board has long held that

it does not render advisory opinions or provide declaratory relief. (*County of Orange* (2006)

PERB Decision No. 1868-M; *Jefferson School District* (1980) PERB Order No. Ad-82.)

ORDER

The unfair practice charge in Case No. LA-CO-1494-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Huguenin joined in this Decision.