

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HESPERIA EDUCATION ASSOCIATION,
CTA/NEA,

Charging Party,

v.

HESPERIA UNIFIED SCHOOL DISTRICT,

Respondent.

Case Nos. LA-CE-4666-E
LA-CE-4704-E
LA-CE-4780-E

PERB Decision No. 1875

December 29, 2006

Appearances: Reich, Adell, Crost & Cvitan by Carlos R. Perez, Attorney, for Hesperia Education Association, CTA/NEA; Atkinson, Andelson, Loya, Ruud & Romo by Sherry G. Gordon, Attorney, for Hesperia Unified School District.

Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Hesperia Unified School District (District) to an administrative law judge's (ALJ) proposed decision. The charge alleged that the District violated the Educational Employment Relations Act (EERA)¹ by retaliating against certificated teachers Scott Johnson and Lee Samuels because of their activities on behalf of the Hesperia Education Association, CTA/NEA (Association). The Association alleged that this conduct constituted a violation of EERA section 3543(a) and (b).

By letter dated December 13, 2006, the District withdrew its appeal of the proposed ALJ decision and requested that PERB consider the case closed.

¹EERA is codified at Government Code section 3540, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

After reviewing this request and the entire record in this matter, the Board finds that granting this request is in the best interest of the parties and is consistent with the purposes of EERA.

DISCUSSION

Sometimes after a case has reached the Board itself, there is a request from the parties to withdraw the case at the Board level. The Board reviews each request of this nature to determine whether granting it would be consistent with the governing statute and in the best interests of the parties. (Orange Unified School District (2001) PERB Decision No. 1437.)

In cases where exceptions have been filed, the Board is guided by PERB Regulation 32320², which provides, in pertinent part:

(a) The Board itself may:

(1) Issue a decision based upon the record of hearing, or

(2) Affirm, modify or reverse the proposed decision, order the record re-opened for the taking of further evidence, or take such other action as it considers proper.

It is clear that the Board has the discretion to grant or deny the request and to allow the withdrawal of a charge and complaint, and to vacate a proposed decision. (ABC Unified School District (1991) PERB Decision No. 831b.)

In this case, the District has requested to withdraw its appeal of the ALJ's proposed decision. Therefore the substance of the ALJ's decision and the decision itself stands. The Board concludes that it effectuates the purposes of EERA to permit withdrawal of the exceptions related to the appeal of the ALJ's proposed decision in this case.

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

ORDER

It is hereby ORDERED that the request by the Hesperia Unified School District to withdraw the exceptions to the administrative law judge's proposed decision in Case Nos. LA-CE-4666-E, LA-CE-4704-E and LA-CE-4780-E is hereby GRANTED.

Chairman Duncan and Member McKeag joined in this Decision.