STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CAROL REED, Charging Party, v. SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. SF-CE-2950-E PERB Decision No. 2395 October 22, 2014

Appearances: Law Office of Ellen Mendelson by Ellen Mendelson, Attorney, for Carol Reed; Eugene Whitlock, Deputy County Counsel, for San Mateo County Community College District.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Carol Reed (Reed) to the proposed decision of a PERB administrative law judge (ALJ). The complaint and underlying unfair practice charge allege that the San Mateo County Community College District (District) discriminated against Reed based on protected activity by (1) issuing a Notice of Intent to Discipline/Demote; and (2) denying an appeal of a written reprimand based on lack of timeliness. This conduct is alleged to violate the Educational Employment Relations Act (EERA),[1] section 3543.5, subdivision (a).

On November 12, 2012, the District filed its answer to the complaint, denying the material allegations. An informal settlement conference was held on January 16, 2013, but the matter was not resolved. On May 1 and 2, 2013, a formal hearing was held and, on July 11,

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

2013, the matter was submitted for decision with the filing of post-hearing briefs. The ALJ issued the proposed decision on August 6, 2013. The proposed decision concluded that Reed failed to establish that the District discriminated or retaliated against her based on protected activity, and dismissed the complaint and underlying unfair practice charge.

On August 13, 2013, Reed timely filed a statement of exceptions. On September 9, 2013, the District filed a response. On September 13, 2013, Reed filed a letter reporting that the parties had negotiated a settlement of all claims, including the unfair practice charge. Reed requested that the case be placed in abeyance until the parties fully performed their respective obligations under the terms of the agreement. By letter dated September 19, 2013, the Appeals Assistant informed the parties that the filings were complete and the case had been placed on the Board's docket. By letter dated October 8, 2013, the Appeals Assistant responded to Reed's letter of September 13, 2013. The parties were informed that if they wanted to request that the Board place the case in abeyance, the request needed to be jointly filed and signed by both parties. The parties did not comply and, therefore, the case was not placed in abeyance.

On September 30, 2014, Reed filed a letter asking the Board to reopen the case, mistakenly referring to the case as being held in abeyance. Reed stated that the District was refusing to comply with the terms of the settlement agreement. Reed requested the assistance of the Board in enforcing the agreement. By letter dated October 3, 2014, the Appeals Assistant responded to Reed's letter. The parties were informed that the case was not in abeyance and was currently pending before the Board itself on Reed's exceptions. The parties were informed that it is not the role of the Board at this stage of the proceedings to provide the parties with mediation services and that the Board does not have the authority to enforce agreements between the parties, citing EERA section 3541.5, subdivision (b). The parties were informed that they were welcome to seek the services of a mediator, but that the Board's

deliberative process was moving forward and that a decision on the merits would be issued forthwith.

On October 8, 2014, Reed filed a letter requesting that the Board "dismiss any further proceedings," the parties having resolved whatever outstanding disputes they may have had over compliance with the terms of the settlement agreement. We construe Reed's request to be a request to withdraw her exceptions to the proposed decision.

The Board has the discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (PERB Reg. 32320, subd. (a)(2) ["The Board itself may . . . take such other action as it considers proper."];[2] *State of California (Department of Personnel Administration* (2010) PERB Decision No. 2152-S; *Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380; *Oakland Unified School District* (1988) PERB Order No. Ad-171a; *ABC Unified School District* (1991) PERB Decision No. 831b.)

The Board has a longstanding policy favoring voluntary settlement of disputes. (*Dry Creek Elementary School District* (1980) PERB Order No. Ad-81.) Absent special circumstances, exceptions may be withdrawn unilaterally by request of the party who filed them. (*County of Fresno* (2014) PERB Decision No. 2352-M.) Although Reed did not explicitly request withdrawal of her exceptions, by asking that the Board dismiss any further proceedings, she has done so implicitly. The Board finds withdrawal of the exceptions to be in the best interests of the parties and consistent with the purposes of the EERA to promote harmonious labor relations.

By operation of PERB Regulation 32305, subdivision (a), with the withdrawal of the exceptions, the proposed decision becomes final.

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

ORDER

The request by Carol Reed to dismiss further proceedings in Case No. SF-CE-2950-E is hereby GRANTED. The exceptions to the proposed decision are deemed withdrawn. The proposed decision is final.

Members Huguenin and Winslow join in this Decision.