

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ASAD ABRAHAMIAN,

Charging Party,

v.

COACHELLA VALLEY TEACHERS
ASSOCIATION,

Respondent.

Case No. LA-CO-1559-E

PERB Decision No. 2446

July 31, 2015

Appearance: Rothner, Segall & Greenstone by Glenn Rothner, Attorney, for Coachella Valley Teachers Association.

Before Martinez, Chair; Banks and Gregersen, Members.

DECISION

GREGERSEN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed on May 7, 2015 by Asad Abrahamian (Abrahamian) to a proposed decision (attached) by an administrative law judge (ALJ), dismissing the complaint and Abrahamian's unfair practice charge against the Coachella Valley Teachers Association (Association).¹ The charge, as amended, alleged that the Association retaliated against Abrahamian by denying him Group Legal Services benefits because he filed an unfair practice charge.

¹ We acknowledge receipt of Abrahamian's second filing dated May 27, 2015 titled "Amended Complaint Pertaining to Respondent's Response to Charging Party's Appeal/Exceptions." As written, this second filing appears to be written solely in response to the Association's response to Abrahamian's initial exceptions. Because Board rules do not provide for the filing of reply briefs, this reply is not considered. (See, e.g., *County of Santa Clara* (2012) PERB Decision No. 2267-M, p. 2, fn. 3.)

PERB Regulation 32300² requires the party filing exceptions to a proposed decision to include: (1) a statement of the specific issues of procedure, fact, law or rationale to which each exception is taken; (2) identify the page or part of the decision to which each exception is taken; (3) designate the portions of the record relied upon; and (4) state the grounds for each exception. (PERB Reg. 32300, subd. (a)(1)-(4).) Additionally, an exception not specifically urged shall be waived, pursuant to subdivision (c) of the same regulation.

Although the Board's review of exceptions to a proposed decision is de novo, it need not address arguments that have already been adequately addressed in the same case or that would not affect the result (*Trustees of the California State University (Culwell)* (2014) PERB Decision No. 2400-H, pp. 2-3 (*CSU (Culwell)*); *Los Angeles Superior Court* (2010) PERB Decision No. 2112-I, pp. 4-5; *Morgan Hill Unified School District* (1995) PERB Decision No. 1120, p. 3), particularly where the party seeking relief has simply reasserted its claims without identifying a specific error of fact, law or procedure to justify reversal. (*Los Rios College Federation of Teachers (Sander, et al.)* (1995) PERB Decision No. 1111, pp. 6-7; *State of California (Department of Youth Authority)* (1995) PERB Decision No. 1080-S, pp. 2-3; *San Bernardino City Unified School District* (2012) PERB Decision No. 2278, pp. 2-3; *County of San Diego* (2012) PERB Decision No. 2258-M, pp. 2-3.)

Compliance with the regulation is required to afford the respondent and the Board an adequate opportunity to address the issues raised. (*Temecula Valley Unified School District* (1990) PERB Decision No. 836, pp. 2-3; see also *San Diego Community College District* (1983) PERB Decision No. 368.) Failure to comply with Regulation 32300 may result in denial of the appeal without review of the merits of excepting party's claims. (See *California*

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

State Employees Association (O'Connell) (1989) PERB Decision No. 726-H at p. 3; *Los Angeles Unified School District* (1989) PERB Decision No. 785.) We do so here.

Within the time period for filing a statement of exceptions to an ALJ's proposed decision, Abrahamian filed a two-page document with the Board. Although not identified as such, we construe the document as the statement of exceptions required by PERB Regulation 32300 for seeking Board review. The document, however, contains only a vigorous recitation of both the procedural and factual history of the charge. The document contains no reference to the ALJ's proposed decision, nor does it make reference to any factual, legal or procedural error by the ALJ. Because the document fails to comply with PERB Regulation 32300, we decline to review Abrahamian's assertions contained therein.

Moreover, we find that the ALJ's findings of fact are adequately supported by the record and her conclusions of law are well-reasoned and in accordance with applicable law. Accordingly, we hereby adopt the proposed decision as the decision of the Board itself.

ORDER

The complaint and underlying unfair practice charge in Case No. LA-CO-1559-E are hereby DISMISSED.

Chair Martinez and Member Banks joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



ASAD ABRAHAMIAN,

Charging Party,

v.

COACHELLA VALLEY TEACHERS
ASSOCIATION,

Respondent.

UNFAIR PRACTICE
CASE NO. LA-CO-1559-E

PROPOSED DECISION
(April 22, 2015)

Appearances: Rothner, Segall & Greenstone by Glenn Rothner, Attorney, for Coachella Valley Teachers Association.

Before Alicia Clement, Administrative Law Judge.

PROCEDURAL HISTORY

Charging Party alleges that the Coachella Valley Teachers Association (Association), discriminated against him by refusing to provide him Group Legal Services (GLS) benefits in retaliation for his protected activity. Respondent denies any statutory violation.

On January 2, 2013, Charging Party filed an unfair practice charge alleging, among other things, that the Association breached its duty of fair representation by failing to represent him at a grievance hearing. On May 30, 2013, Charging Party filed a First Amended Charge (FAC). The FAC included the allegations of the January 2, 2013 charge and contained a new allegation that, since filing the above-referenced charge, the Association had denied Charging Party GLS benefits in retaliation for filing the above-referenced unfair practice charge. On October 14, 2014, the Office of the General Counsel dismissed all but one of the allegations contained in the original charge and FAC. Also on October 14, 2014, the Office of the General

Counsel issued a complaint alleging that the Association retaliated against Charging Party by denying him GLS benefits because he filed an unfair practice charge.

Respondent filed an Answer to the Complaint on November 3, 2014, denying any violation of EERA. On November 14, 2014, a Notice of Formal Hearing was sent to the parties informing them that a formal hearing would be held in this matter on February 4, 2015. On December 26, 2014, Respondent requested a continuance. Because the request was apparently made with Charging Party's assent and cooperation, the continuance was granted. On January 28, 2015, the parties were notified that the formal hearing in this matter would be rescheduled for April 22, 2015, commencing at 10:00 a.m. at PERB's Los Angeles Regional Office. On March 13, 2015, Respondent filed a Motion for Summary Judgment in the above-referenced matter. The Motion was denied on March 24, 2015. On March 27, 2015, Respondent requested an interlocutory appeal of the denial of motion for summary judgment. On March 27, 2015, Charging Party responded to the request for interlocutory appeal in an e-mail message, opposing the request. The request for interlocutory appeal was denied on March 30, 2015.

On April 21, 2015, at 7:31 p.m., Charging Party requested a continuance of the April 22, 2015 hearing. At 4:51 a.m., I denied the request. At 9:00 a.m., Charging Party sent a response to the denial, asserting his displeasure.

On April 22, 2015, Glenn Rothner appeared for Respondent, ready to proceed at the duly noticed Formal Hearing at the appointed time. The start of the hearing was delayed by 30 minutes, but Charging Party did not appear at the hearing. There were no e-mail communications from Charging Party during this period. Upon the Association's motion, the

Administrative Law Judge dismissed the complaint and underlying unfair practice charge because of Charging Party's failure to appear and proceed at the hearing.

FINDINGS OF FACT

As set forth above, Charging Party failed to appear at the April 22, 2015 hearing which was scheduled in order for Charging Party to present evidence in support of his allegation that the Association failed to provide GLS services in retaliation for Charging Party's protected acts.

Respondent introduced copies of e-mail communications from Charging Party in which he asserts his intention to subpoena "at least four people, including the two attorneys who were willingly involved in fabrication of documents against me and my Wife Doctor Mazdeh [*sic*]." In response to these assertions, Charging Party was directed to PERB Regulation 32150 governing the issuance of subpoenas as well as PERB Regulation 32176 regarding the rules of evidence at a hearing. No requests for subpoenas were received from either party prior to the hearing.

The ALJ introduced copies of e-mail communications from Charging Party in which Charging Party asserts his intention to attend the scheduled hearing and to present voluminous evidentiary documents in support of his claims. In an e-mail message dated April 21, 2015, Charging Party queries Respondent whether Richard Razo will be in attendance at the April 22 hearing. Three hours after receiving Respondent's reply that Razo would not be in attendance, Charging Party made an after-hours request for a continuance of the hearing scheduled for the following morning. Upon receiving a denial of the requested continuance, Charging Party sent an e-mail message containing, in part, the following response:

Once I see Mr. Razo is attending and my complaint is heard in full and not truncated I will be more than happy to attend. But

still the prejudicial treatment of Doctor Mazdeh's case remains in question!

ISSUE

Whether the case should be dismissed for failure to appear and proceed.

CONCLUSIONS OF LAW

PERB has held that a Board agent may exercise discretionary authority to dismiss a case *sua sponte* where the Charging Party fails to prosecute the matter, absent a showing of good cause. (*State of California (Department of Corrections)* (2006) PERB Decision No. 1806-S; *California School Employees Association (Petrich)* (1989) PERB Decision No. 758; *Los Angeles Unified School District* (1984) PERB Decision No. 464; *Service Employees International Union, Local 99, AFL-CIO (Kimmitt)* (1981) PERB Decision No. 163.) Respondent Coachella Valley Teachers Association has moved to dismiss the unfair practice charge and unfair practice complaint based upon Charging Party's failure to appear at the hearing.

Charging Party did not appear at the appointed date and time duly noticed in this matter. Prior to the hearing, Charging Party requested and was provided information regarding the proper procedure for ensuring that witnesses could be compelled to attend and testify at the hearing. No cause for Charging Party's failure to appear at the duly noticed hearing, much less good cause, has been demonstrated. Charging Party had the opportunity and means to subpoena witnesses and documents in this matter and did not avail himself of that opportunity. Charging Party's failure to appear at the Formal Hearing has resulted in no evidence in support of his claims. Dismissal is warranted on this basis. Accordingly, the charge and complaint are hereby dismissed for failure to prosecute.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No. LA-CO-1559-E, *Asad Abrahamian v. Coachella Valley Teachers Association*, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135, subdivision (d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)