

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



ANTHONY G. VASEK,

Charging Party,

v.

MOUNT SAN JACINTO COMMUNITY
COLLEGE DISTRICT FACULTY
ASSOCIATION,

Respondent.

Case No. LA-CO-1567-E

PERB Decision No. 2604

December 12, 2018

Appearance: Anthony G. Vasek, on his own behalf.

Before Banks, Winslow, and Krantz, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Anthony G. Vasek (Vasek) to the proposed decision issued by a PERB administrative law judge (ALJ) in this matter. Vasek, who prevailed below, excepts only to two findings of fact made by the ALJ. Specifically, Vasek contends that the ALJ erroneously attributed two statements to certain witnesses. Vasek states that he has “no reason to challenge any of the conclusions [the ALJ] reached in her Proposed Decision” and that correction of these “two errata” would not alter the disposition of the case. Respondent Mt. San Jacinto Community College District Faculty Association (Association) did not respond to Vasek’s exceptions and did not file exceptions of its own.

We dismiss Vasek’s exceptions. Absent good cause, we decline to consider initial exceptions filed by a prevailing party. (*Fremont Unified School District* (2003) PERB Decision No. 1528 (*Fremont*), p. 3; cf. *Oak Valley Hospital District* (2018) PERB Decision

No. 2583-M, pp. 1-2 [Board resolved prevailing party’s initial exceptions to prevent the parties from being bound by an erroneous legal standard should similar facts arise in the future].) As discussed below, Vasek has not shown good cause for the Board to consider his exceptions. We therefore dismiss the exceptions and do not adopt the ALJ’s findings as a decision of the Board itself. Rather, the proposed decision will be nonprecedential and binding on the parties only with respect to the specific controversy involved in the case.

DISCUSSION

In *Fremont, supra*, PERB Decision No. 1528, the prevailing party filed exceptions to the ALJ’s ruling on evidentiary matters, seeking only to correct those errors but not to overturn the ALJ decision itself. We dismissed the prevailing party’s exceptions and declined to adopt the proposed decision as our own. (*Id.* at p. 3.) We explained that our holding was “required to prevent prevailing parties from unilaterally turning a favorable ALJ decision into a precedential decision of the Board.” (*Ibid.*) This holding makes sense, as ALJ decisions which are not appealed to the Board are nonprecedential and binding on the parties only with respect to the specific controversy involved in the case. (*Id.* at pp. 2-3, citing PERB Regulation 32215¹; *Regents of the University of California* (1990) PERB Decision No. 806-H, p. 2.) Furthermore, the Board need not correct an ALJ’s harmless error. (*Fremont, supra*, PERB Decision 1528, p. 2.) “This is especially true where the party asserting the errors seeks only to correct them, and does not seek to overturn the ALJ decision itself.” (*Id.* at pp. 2-3.)

Here, Vasek does not seek to overturn the ALJ’s decision. Indeed, Vasek prevailed and concluded that he had no reason to challenge any of the ALJ’s legal conclusions. Vasek’s exceptions seek only to correct two alleged misstatements of fact in the ALJ’s proposed

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

decision, which Vasek concedes did not affect the ultimate outcome. Vasek explains that he filed exceptions to alleviate “any concerns the aggrieved witnesses might have about what is now being erroneously attributed to them.” Yet, he makes no argument regarding specific harm that may befall the allegedly aggrieved witnesses. Accordingly, we find that Vasek has not shown the required good cause for us to consider his exceptions, and we dismiss them.

In dismissing Vasek’s exceptions, the Board itself declines to adopt the proposed decision of the ALJ, which will become final upon issuance of this decision. (See *Fremont, supra*, PERB Decision No. 1528, p. 3.)

ORDER

Vasek’s exceptions to the administrative law judge’s proposed decision in Case No. LA-CO-1567-E are hereby DISMISSED.

Members Banks and Winslow joined in this Decision.