STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA MARIA ELEMENTARY EDUCATION ASSOCIATION, Charging Party, v. SANTA MARIA-BONITA SCHOOL DISTRICT, Respondent.	Case No. LA-CE-5709-E Administrative Appeal PERB Order No. Ad-400 July 9, 2013

Appearances: William C. Smith, on his own behalf; Nancy S. Iarossi, President, for Santa Maria Elementary Education Association; Timothy M. Cary & Associates by Timothy M. Cary, General Counsel, for Santa Maria-Bonita School District.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by William C. Smith (Smith) from the administrative decision issued by the PERB Appeals Assistant (Appeals Assistant) in response to a document entitled "Call for Investigation" filed by Smith subsequent to the issuance of a proposed decision by a PERB administrative law judge (ALJ) in this case. Treating the document as a statement of exceptions, the Appeals Assistant denied the filing. The Appeals Assistant determined that because Smith was not a party to the case, he was not entitled to file a statement of exceptions to the ALJ's proposed decision. On appeal, Smith requests that he be given party status and that the proposed decision of the ALJ be set aside. For the reasons explained below, Smith's appeal is denied.

PROCEDURAL HISTORY

On June 11, 2012, the Santa Maria Elementary Education Association (Association) filed an unfair practice charge, alleging that the Santa Maria-Bonita School District (District), acting through its agent, Smith, interfered with protected rights. Smith was an elected official on the Board of Trustees, the governing body of the District. On October 5, 2012, the PERB Office of the General Counsel issued a complaint alleging that the District's conduct violated section 3543.5(a) and (b), of the Educational Employment Relations Act (EERA).[1] On October 25, 2012, the District filed an answer to the complaint, denying that Smith was acting as an agent of the District during the time period in question. An informal settlement conference was held on December 6, 2012, but the parties were unable to resolve their dispute.

At the formal hearing, scheduled for March 7-8, 2013, the complaint was amended twice to include additional allegations against the District. On April 18, 2013, the ALJ issued the proposed decision framing the salient issues as whether Smith's conduct should be imputed to the District and whether the conduct interfered with rights protected by EERA. The District asserted that Smith was acting outside of his given authority at the time he took the actions as alleged in the complaint. The ALJ found otherwise. After finding Smith to be an agent of the District, the ALJ concluded that Smith's conduct as an agent of the District interfered with protected rights. The ALJ proposed that the District be ordered to cease and desist from the offending conduct and to post a public notice that a violation occurred.

On May 9, 2013, the District and the Association filed a joint "Stipulation to Waive Right to File Appeal," requesting that the stipulation be accepted by the Board. The Board took no action on this request. On May 13, 2013, Smith filed a document with the Board entitled "Call for Investigation," which requested that PERB investigate what he referred to as

[1] The EERA is codified at Government Code section 3540 et seq.

"a travesty of justice." Smith alleged that the District and the Association conspired to use PERB "to give a verdict that was more intended to try and humiliate me than to try and have a fair hearing to come up with the truth." Smith asked that the Board listen to his testimony from the formal hearing and examine the exhibits. Smith did not serve either party with a copy of his "Call for Investigation" document.

By letter dated May 15, 2013, the Appeals Assistant informed Smith that neither party had filed a statement of exceptions within the requisite time period and therefore the proposed decision became final on May 14, 2013. Smith was also informed that the case had been transferred to the Office of the General Counsel for compliance purposes. The Appeals Assistant noted that Smith failed to serve the parties with his "Call for Investigation" document and enclosed a copy with the letter. Regarding Smith's "Call for Investigation" document, the Appeals Assistant stated:

> If your 'Call for Investigation' letter dated May 13 is an attempt at filing a statement of exceptions to the proposed decision, I hereby deny your filing because you are not an actual party to this case.

On May 23, 2013, Smith timely filed an appeal from the administrative decision of the Appeals Assistant in a document entitled "Request to Become a Party and Set Aside of Determination Pending a Review of Case." The appeal asserts that the District and its counsel are biased against him. It describes numerous legal actions that the District and Smith have against one another. Smith complains about the evidence adduced at the formal hearing and the ALJ's reliance on it in the proposed decision, and argues at length that his conduct did not interfere with protected rights. Smith sums up his position in the following way:

> This is a political fight that really has no merit, and I am asking the Board to remove the charge or have a hearing in which I can be a party and present my side and witnesses. To smear a

> person's name when he has been denied due process because of a hostile Board that has a grudge that needs to sign off on me filing a complaint and won't because of ties with the Union like supporting newly elected members is a sad situation.

On June 6, 2013, the Association filed a response to Smith's appeal, requesting that Smith's request for joinder be denied. On June 7, 2013, the District filed a response to Smith's appeal, agreeing with the Appeals Assistant that Smith was not a party to the case. The District makes the following three arguments in urging the Board to reject the appeal: (1) Under EERA, Smith, as an individual member of the District Board of Trustees, does not meet the definition of a public school employer; (2) Smith's "Call for Investigation" document does not comply with the requirements for filing a statement of exceptions nor was it served on the parties; and (3) Smith waived his right to intervene.

DISCUSSION

The issue in this case is whether Smith has standing to pursue an appeal of the proposed decision. If he lacks standing, the Appeals Assistant was correct to deny Smith's "Call for Investigation" document, treated as a statement of exceptions for purposes of the administrative decision.

PERB Regulation 32300(a) provides, in pertinent part:

> A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision.

PERB Regulation 32305 provides:

> Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein.

The regulations are clear and unambiguous. Only a "party" to a proposed decision has the right to file exceptions to it. There are two parties to the proposed decision, the Association and the District. Neither party filed a statement of exceptions. Because Smith was

not a party to the case and therefore lacked standing to file a statement of exceptions, the Appeals Assistant was correct to deny his filing. By operation of PERB Regulation 32305, the proposed decision became final on May 14, 2013.

As the Board explained in *Regents of the University of California (Lawrence Berkeley National Laboratory)* (2013) PERB Order No. Ad-397-H:

> The regulatory scheme delineates distinctions between the rights of parties and the rights of non-parties. PERB Regulation 32180, for example, sets forth the rights of parties to a formal hearing as including the right to appear in person, by counsel or by other representative; the right to call, examine and cross-examine witnesses; and the right to introduce documentary and other evidence on the issues. By contrast, PERB Regulation 32210 allows 'any person' to file a petition to submit an informational brief or to argue orally in any case at a hearing or before the Board itself. Notably, like PERB Regulation 32180, the regulation governing the filing of exceptions grants appeal rights to the more limited category of . . . 'parties.'

(See also *John Swett Unified School District* (1981) PERB Decision No. 188 ["PERB rule 32300 only permits a 'party' to submit exceptions to a proposed hearing officer's decision. Because the Association, and not O'Dwyer, is the charging party, we will not consider the substance of the objections filed on O'Dwyer's behalf."]

Unfair practice charges may be brought against employee organizations or public employers. Under EERA, the definition of "public school employer" or "employer" includes the governing board of a school district, a school district, a county board of education, a county superintendent of schools, a charter school (with certain qualifications), an auxiliary organization (with certain exceptions) and a joint powers agency (with certain qualifications and exceptions). (EERA § 3540.1(k).)

The District falls within the definition of "public school employer" or "employer" under EERA. Smith, an elected official on the governing body of the District, the Board of Trustees, does not. In a case where the conduct of respondent that is the subject of the unfair

practice charge concerns the conduct of an individual rather than of the body as a whole, the issue, as identified by the ALJ, is whether the conduct of the individual may be imputed to the body.

Here, the ALJ, found Smith to be an agent of the District and found the District to therefore be liable for his conduct. That the conduct concerned the conduct of an individual trustee imputed to the District by operation of an agency relationship does not confer upon that individual the status of a "public school employer" or "employer" within the meaning of EERA. Accordingly, as Smith is not the "public school employer" or "employer," he not only lacks standing to file exceptions, he lacks standing to seek party status. Both parties have litigated their respective positions fully and agreed to abide by the ALJ's decision and order. To accord Smith the right to appellate review of the ALJ's decision would be to contravene both the statutory scheme's definition of "public school employer" and the regulatory scheme's rules governing the filing of exceptions. It would also undercut the District's right to control the administrative litigation of its case as the respondent party and both parties' expectations of finality.

Assuming – solely for argument's sake – that Smith had the status of a "public school employer" or "employer" for purposes of defending against a charge brought by an employee organization, PERB's joinder application procedure under PERB Regulation 32164 would be of no avail. Under subdivisions (c) and (d), joinder is allowed only at the discretion of the Board. Moreover, under subdivision (c), joinder is not permitted where it would unduly impede the proceeding. The proposed decision became final on May 14, 2013. Smith requested joinder for the first time on appeal from the administrative decision of the Appeals Assistant denying Smith the right to file exceptions given his lack of party status. Joinder of Smith would revive a proceeding that has already concluded, a result as problematic as

impeding an ongoing proceeding. More importantly, to allow joinder at this stage of the proceedings would be to subvert the clear and unambiguous meaning of PERB Regulation 32300 conferring only on "parties" the right to file exceptions. As the Board in *Regents of the University of California (Lawrence Berkeley National Laboratory), supra,* PERB Order No. Ad-397-H concluded, "[j]oinder under these circumstances is not contemplated by the regulatory scheme." Accordingly, the Board denies the appeal.[2]

ORDER

William C. Smith's administrative appeal of the Appeals Assistant's denial of his filing of May 13, 2013, treated as a statement of exceptions to the ALJ's proposed decision in Case No. LA-CE-5709-E, is hereby DENIED. As the ALJ's proposed decision became final on May 13, 2013, any further matters arising out of this case are referred to the Office of the General Counsel for compliance.

Members Huguenin and Banks joined in this Decision.

[2] The Appeals Assistant correctly noted that Smith failed to serve the parties with the "Call for Investigation" document, treated as a statement of exceptions for purposes of the administrative decision. Although the Board's conclusion that Smith has no standing to file exceptions or seek party status is dispositive, the importance of following the service requirements under PERB Regulation 32140, cannot be overstated. "These [service] requirements are not merely ritualistic. They are basic to providing due process to the involved parties." (*Los Angeles Community College District* (1984) PERB Decision No. 395.) Although the Board has the authority to excuse defective service if the opposing party received actual notice of the filing and there is no showing of prejudice (*Coronado Unified School District* (1989) PERB Order No. Ad-188), this case involves a failure to serve, not defective service.