



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

CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS AND REHABILITATION),

Respondent.

Case No. SA-CE-2173-S

PERB Order No. Ad-516-S

June 24, 2024

Appearances: Janice R. Shaw, Chief Counsel, and Jennifer L. Ragan, Staff Counsel, for California Correctional Peace Officers Association; California Department of Human Resources by Frolan R. Aguiling, Chief Counsel, Sandra L. Lusich, Deputy Chief Counsel, Christopher E. Thomas, Assistant Chief Counsel, and Joanna Y. Thomas, Labor Relations Counsel, for State of California (Department of Corrections and Rehabilitation).

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on an interlocutory appeal filed by Respondent State of California (Department of Corrections and Rehabilitation) (CDCR) from an administrative law judge's (ALJ) order denying its two motions to defer an unfair practice charge to arbitration. The ALJ denied Respondent's motions on the ground that CDCR withdrew its agreement to be bound by an arbitration award when it filed a Petition to Vacate or Correct Arbitration Award (Petition) in superior court. Following the order, CDCR's appeal, and California Correctional Peace Officers Association's

(CCPOA) opposition thereto, the ALJ certified CDCR's appeal to the Board itself pursuant to PERB Regulation 32200.¹

Having reviewed the record and the parties' arguments, we affirm the ALJ's conclusion that deferral to an arbitration award is not appropriate when the moving party refuses to be bound by the award.

FACTUAL AND PROCEDURAL BACKGROUND

At all relevant times, correctional officer Tracylyn Lopez was employed at Salinas Valley State Prison (SVSP) where she served as a CCPOA job steward. In July 2019, CDCR issued Lopez a Notice of Adverse Action. In August 2019, CDCR issued Lopez a suspension for 60 working days. Lopez appealed the suspension to the State Personnel Board (SPB).

In October 2019, CCPOA filed a grievance alleging that CDCR had violated section 5.03 of the parties' memorandum of understanding (MOU) and the Ralph C. Dills Act (Dills Act) by retaliating against Lopez for engaging in protected activity.² CCPOA filed this unfair practice charge in January 2020. Both the grievance and charge include substantially the same allegations.

SPB issued a decision in October 2020 sustaining the discipline against Lopez, and Lopez subsequently filed a petition for writ of mandate in superior court challenging SPB's ruling.

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

² The Dills Act is codified at Government Code section 3512 et seq. MOU section 5.03 tracks the language in Dills Act section 3519, subdivisions (a) and (b).

PERB's Office of the General Counsel (OGC) issued a complaint in December 2020.

In July 2021, CDCR filed a Notice of Deferral to Arbitration in which it requested that PERB defer the matter to arbitration and dismiss the complaint. Later that month, CCPOA requested that the matter be placed into abeyance. At the end of July 2021, OGC granted the abeyance and took CDCR's motion to defer under submission.

The parties arbitrated the grievance in March 2022. In June 2022, the arbitrator issued her decision sustaining the grievance. The arbitrator concluded that CDCR had violated the MOU and ordered CDCR to vacate and rescind Lopez's suspension, make Lopez whole, and post a notice at SVSP regarding its violations.

In September 2022, CDCR filed its Petition in superior court, and CCPOA filed a Counter-Petition to Confirm Arbitration Award (Counter-Petition). In April 2023, CDCR filed a Request to Defer to Arbitration and Dismiss Charge (Request to Defer) with PERB. On the same date, CCPOA filed a request for continued abeyance with PERB. Soon after, the Board denied CCPOA's request to continue abeyance of the matter and referred CDCR's Request to Defer to OGC for further processing. The PERB case ultimately remained in abeyance through June 2023 without OGC ruling on CDCR's motion. In November 2023, OGC notified the parties that it had not been able to resolve the complaint through the informal conference process, and that CDCR's April 2023 Request to Defer had been taken under submission for a determination by a PERB ALJ.

The superior court held a hearing on the Petition and Counter-Petition in November 2023 and issued its final judgment in January 2024. The court struck the

portion of the arbitrator's award that ordered CDCR to rescind Lopez's Notice of Adverse Action and the accompanying make-whole order, leaving only the notice posting in place. CCPOA appealed the ruling, and that appeal remains pending in the California Court of Appeal.

In December 2023, the ALJ denied CDCR's pending requests for deferral to arbitration on the basis that CDCR's Petition demonstrated its unwillingness to be bound by the arbitration award. CDCR objected to the ALJ's interlocutory order and requested certification of the issues to the Board itself pursuant to PERB Regulation 32200. CCPOA opposed the appeal. The ALJ certified the interlocutory appeal to the Board in January 2024.

DISCUSSION

A Board agent's decision to defer a charge to arbitration and place it in abeyance pending completion of such proceedings is an administrative determination appealable under PERB Regulation 32360. (*County of Orange* (2022) PERB Order No. Ad-496-M, p. 4.) In contrast, a Board agent's denial of a request to defer a charge to arbitration may only be appealed if the Board agent certifies it to the Board, as occurred here. (*Ramona Unified School District* (1985) PERB Decision No. 517, p. 3.)

We next consider the substantive issue: whether CDCR's filing of the Petition precludes deferral to arbitration. In *Trustees of the California State University (East Bay)* (2014) PERB Decision No. 2391-H, the Board noted that PERB will dismiss and defer a complaint to an arbitrator's award if: (1) the unfair practice issues were presented to and considered by the arbitrator; (2) the arbitral proceeding was fair and regular; (3) the parties agreed to be bound; and (4) the decision of the arbitrator was

not clearly repugnant to the purposes and policies of the statute. (*Id.* at p. 22; *County of Orange, supra*, PERB Order No. Ad-496-M, p. 8.)

Here, CDCR's successful Petition is sufficient to show that it does not agree to be bound by the arbitrator's award, thereby failing the third prong of the post-arbitration deferral standard. The Petition, by its very terms, seeks to vacate the arbitration award, or in the alternative, correct the award to strike any findings and conclusions that allegedly "infringe on SPB's jurisdiction," i.e., the rescission of Lopez's suspension and the accompanying make-whole order. In either scenario, CDCR refused to comply with the arbitrator's order. Post-arbitration deferral is only appropriate where all four elements are satisfied. Because that is not the case here, we reject CDCR's motion to defer to arbitration.

ORDER

The interlocutory appeal in Case No. SA-CE-2173-S is DENIED. The matter is remanded to PERB's Division of Administrative Law for proceedings consistent with this Order.

Chair Banks and Member Krantz joined in this Decision.