



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

LAUREEN THOMPSON,

Charging Party,

v.

STOCKTON UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. SA-CE-3144-E

PERB Decision No. 2962

May 15, 2025

Appearances: Laureen Thompson, on her own behalf; Dannis Woliver Kelley by Chelsea A. Tibbs, Attorney, for Stockton Unified School District.

Before Banks, Chair; Krantz and Krausse, Members.

DECISION

KRAUSSE, Member: This case is before the Public Employment Relations Board (PERB or Board) on Charging Party Laureen Thompson's appeal from a dismissal by PERB's Office of the General Counsel (OGC). In her unfair practice charge, as amended, Thompson alleges that Respondent Stockton Unified School District violated the Educational Employment Relations Act (EERA) by miscalculating her leave benefits, placing her on the 39-month reemployment list, and refusing to return Thompson to her former position.¹ The charge centers around a grievance challenging the District's actions, which exclusive representative California School

¹ EERA is codified at Government Code section 3540 et seq. All undesignated statutory references are to the Government Code. PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.

Employees Association (CSEA) pursued to arbitration. An arbitrator denied the grievance, and Thompson's charge further alleges that the arbitration decision is repugnant to EERA.

OGC dismissed the charge primarily because: (1) Thompson lacked standing to request repugnancy review or allege unilateral change violations; (2) the charge did not meet the repugnancy standard; and (3) Thompson's allegations of retaliation were not timely. On appeal, Thompson again urges us to conduct repugnancy review of the arbitration decision, among other arguments.

While we agree with OGC's ultimate decision to dismiss the unfair practice charge, we take this opportunity to clarify the procedural requirements for repugnancy. It was unnecessary for OGC to consider the merits of Thompson's repugnancy allegation because repugnancy is not an independent basis for an unfair practice charge and may only be alleged as a defense against deferral to arbitration. Here, the District never moved for deferral. We also affirm OGC's conclusion that Thompson's remaining claims are untimely. Accordingly, we deny Thompson's appeal and affirm OGC's dismissal of the charge.

FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

During the relevant period, Thompson was employed by the District as a Student Data Technician, most recently transferred in July 2018 to Stagg High School. In August 2021, Thompson developed a hand injury and received a diagnosis of carpal tunnel syndrome by the District's workers' compensation doctor. When the District refused to accommodate Thompson's prescribed work limitations, Thompson went on leave. After the District's insurance company denied Thompson's workers'

compensation claim, the District informed Thompson that she was authorized to take leave through March 1, 2022. Thompson appealed the workers' compensation denial to the Workers' Compensation Appeals Board (WCAB).

Section 15.5.2.1 of the operative collective bargaining agreement (CBA) between the District and CSEA provides that an employee who has exhausted all leave and is still unable to perform their job duties shall be placed on a reemployment list for 39 months. Once the employee can perform job duties, they are eligible for the first vacancy in their previous classification. CBA section 14.5.4 provides that after a bargaining unit member on a reemployment list declines three offers of reemployment, no other offers will be made.

On March 10, 2022, the District asked Thompson to forward a copy of her latest medical note. The following day, Thompson provided a note from her medical provider stating she could return to work on March 28, 2022. That same day, the District notified Thompson that she had exhausted her leave as of March 1 and had been placed on the 39-month reemployment list. The District subsequently posted a job announcement for Thompson's position and hired an employee to fill the position. Thompson maintained that the District miscalculated her leave and she was eligible to return to her position on March 28. Thompson filed a grievance to that effect on May 20, 2022.

On May 12, July 18, and September 12, 2022, the District offered Thompson positions within the same classification, and with the same pay and hours, as her former position, but at different school sites. Thompson rejected all three offers on the

basis that she was entitled to her position at Stagg High School. After the third rejection, the District deemed her unavailable and made no further offers.

On October 21, 2022, based on a stipulation between Thompson and the District's workers' compensation insurance carrier, the WCAB ordered that Thompson receive compensation benefits from August 30, 2021, to May 23, 2022.

After the District denied Thompson's grievance regarding her placement on the reemployment list, CSEA agreed to take the grievance to arbitration. The parties participated in an evidentiary hearing on May 24, 2023, and the arbitrator issued a decision on August 15, 2023, denying the grievance. The arbitrator found that because Thompson, according to the WCAB stipulation, was temporarily disabled from August 30, 2021 through May 23, 2022, Thompson would have exhausted her leave on April 29, 2022, and the District was correct to place her on the reemployment list.

Thompson filed the instant unfair practice charge on October 3, 2023. On October 2, 2024, OGC issued a warning letter informing Thompson that she lacked standing to seek repugnancy review because she did not have standing to allege violations of the CBA, which was the basis of the grievance arbitration. Further, OGC informed Thompson that her allegations that the District's conduct was retaliatory were not equitably tolled by the grievance procedure and were untimely. OGC provided Thompson an opportunity to amend her charge to cure these deficiencies. On November 8, 2024, Thompson filed an amended charge largely repeating allegations from the initial charge.

On December 12, 2024, OGC dismissed Thompson’s amended charge, finding that Thompson failed to cure the deficiencies outlined in the warning letter. Thompson appealed the dismissal on December 27, 2024, and the District filed an opposition on January 13, 2025. On appeal, Thompson reiterates her previous arguments that the arbitration decision was repugnant to the purposes of EERA and the District’s conduct underlying the arbitration was retaliatory.

DISCUSSION

In resolving an appeal from a dismissal, we review OGC’s determinations de novo, applying the same legal standard OGC applied to the allegations in the charge. (*City and County of San Francisco* (2020) PERB Decision No. 2712-M, p. 2.) At this stage of litigation, “the charging party’s burden is not to produce evidence, but merely to allege facts that, if proven true in a subsequent hearing, would state a prima facie violation.” (*County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13, fn. 8.) We thus assume the charging party’s factual allegations are true, and we view them in the light most favorable to the charging party. (*Cabrillo Community College District* (2019) PERB Decision No. 2622, p. 4.).

Having considered the parties’ arguments and the record, we find no reason to disturb OGC’s conclusion that Thompson failed to state a prima facie case of any EERA violation. However, we proceed to explain applicable deferral principles and procedures, including why repugnancy is not an independent basis for an unfair practice charge. We then address Thompson’s remaining arguments.

I. Deferral and Repugnancy Principles

Employees, employee organizations, and employers may file unfair practice charges alleging violations of the statutes under PERB's jurisdiction. (§ 3541.5; PERB Regs. 32602(a) & (b); but see PERB Regs. 32602(c) & (d) [outlining specific limited exceptions].) Each public sector labor relations statute administered by PERB either explicitly or implicitly states a preference for parties to resolve unfair practice issues through contractual arbitration. (*County of Santa Clara* (2021) PERB Order No. Ad-485-M, pp. 16-17 (*Santa Clara*); see, e.g., § 3541.5(a)(2).)

Where a charging party files an unfair practice charge, a respondent seeking to defer a charge to arbitration has the burden to plead and prove deferral as an affirmative defense. (*State of California (Department of Corrections and Rehabilitation)* (2024) PERB Decision No. 2926-S, pp. 7 & 9 (*CDCR*).) If the parties have already completed arbitration, the defense is known as "post-arbitration deferral." Otherwise, it is known as "pre-arbitration deferral." The Board cohesively interprets its pre-arbitration and post-arbitration deferral tests with reference to one another, so that the critical legal principles are consistent in each context. (*Id.* at p. 8.) Although PERB initially adapted its deferral standards from private sector labor law, the National Labor Relations Board and PERB have amended their deferral jurisprudence over time, meaning their standards do not necessarily align. (*Id.* at pp. 7-8.)

A respondent seeking pre-arbitration deferral must establish that: (1) the dispute arises within a stable collective bargaining relationship; (2) the respondent is willing to waive procedural defenses and to arbitrate the merits of the dispute; (3) the contract and its meaning lie at the center of the dispute; and (4) no deferral exception

applies. (*County of Orange* (2022) PERB Order No. Ad-496-M, p. 5 (*Orange*).) For the contract and its meaning to lie at the center of the dispute, two conditions must be satisfied. First, the alleged unfair practice must be arguably prohibited by the parties' agreement. (*Santa Clara, supra*, PERB Order No. Ad-485-M, p. 8.) Thus, "it is not sufficient for the agreement to merely cover or discuss the matter. The conduct alleged to be an unfair practice must be prohibited." (*Ibid.*, citation omitted.) "Second, resolution of the contractual issue must necessarily resolve the merits of the unfair practice allegation." (*Id.* at p. 8, citation omitted.) Thus, "[i]f resolution of the alleged unfair practice requires application of statutory legal standards, and there is no guarantee that an arbitrator will look beyond the contract and consider statutory principles, deferral is not appropriate." (*Ibid.*, internal quotation marks and citations omitted.) This condition is satisfied "where the parties incorporate the statutory legal standard into their collective bargaining agreement" or both parties "ask the arbitrator to resolve the statutory unfair practice issue." (*Id.* at p. 8, fn. 6.)

If a respondent establishes all elements needed to prevail in a pre-arbitration deferral motion, then PERB follows one of two procedures, depending on which public sector labor relations statute governs. Under the statutes referenced in PERB Regulation 32620(b)(5), including EERA, a successful deferral motion leads PERB to dismiss the unfair practice charge. (*CDCR, supra*, PERB Decision No. 2926-S, pp. 10-11.) However, the charging party can later file a new charge that alleges the original violation(s) as well as any repugnancy allegations that may prevent PERB from continuing to defer. (*Id.* at p. 11; see also PERB Reg. 32661.)

In contrast, if pre-arbitration deferral is proper under the labor relations statutes referenced in PERB Regulation 32620(b)(6), PERB places the deferred charge in abeyance. (*CDCR, supra*, PERB Decision No. 2926-S, p. 11.) After arbitration is complete, PERB will dismiss the charge unless the charging party can disprove one or more elements of the post-arbitration deferral test. (*Ibid.*)

A respondent seeking post-arbitration deferral and dismissal of the related unfair practice claim(s) must establish that: (1) the unfair practice issues were presented to and considered by the arbitrator; (2) the arbitral proceeding was fair and regular; (3) the party asserting deferral agrees to be bound by the arbitrator's decision; and (4) the arbitration was not clearly repugnant to the purposes and policies of the statute. (*Orange, supra*, PERB Order No. Ad-496-M, p. 8.)

"Repugnancy" is a term of art that does not match the normal English definition of the word. (*CDCR, supra*, PERB Decision No. 2926-S, p. 12.) A traditional repugnancy assessment arises where the arbitrator has considered and resolved the unfair practice issues in a fair and regular proceeding, meaning that the sole question before the Board is whether the content of the arbitrator's decision or remedy is "palpably wrong" or "not susceptible to an interpretation" consistent with the governing statute. (*Ibid.*) PERB does not reach such a conclusion merely because it would have decided the facts differently or disagrees with the arbitrator's decision. (*Id.* at pp. 12-13.) But an arbitral decision is repugnant if it fails to apply governing statutory standards related to either liability or remedy. (*Id.* at pp. 10 & 13.) PERB sometimes uses the term "repugnancy" to refer to a circumstance in which the charging party contends that the first or second element of the post-arbitration deferral test is not

satisfied. (*Id.* at p. 13.) In such circumstances, the charging party need not show that the arbitrator's decision is palpably wrong or not susceptible to an interpretation consistent with the statute; instead, it must show either that the arbitration process was unfair or that the arbitrator failed to consider and decide the unfair practice issues. (*Ibid.*) While repugnancy can be raised post-arbitration when PERB has deferred the original charge at the pre-arbitration stage, it can also be raised when there is a motion for post-arbitration deferral without PERB having ever deferred at the pre-arbitration stage. (See, e.g., *Orange, supra*, PERB Order No. Ad-496-M, pp. 7-11 [charging party sought post-arbitration repugnancy review where the parties agreed that arbitrator could resolve both contractual and statutory claims].)

Here, Thompson filed her charge after issuance of an arbitration decision, seeking "repugnancy review." OGC initially evaluated the charge to determine (among other things) whether the arbitration was a fair and regular proceeding—the second element of the post-arbitration deferral test. But OGC should not have considered Thompson's repugnancy argument, as the District never sought deferral. EERA section 3541.5(a)(2) and PERB Regulation 32661 do not establish an independent unfair practice charge for repugnancy. (*Ventura County Community College District* (2009) PERB Decision No. 2082, pp. 4-5.) Instead, repugnancy is a ground to convince PERB not to dismiss one or more unfair practice claims based on deferral to an arbitration decision. (*Ibid.*) Thus, Thompson's request for repugnancy review is improper and must be dismissed.²

² After first implying that a party can perhaps seek repugnancy review even with no pending deferral question, OGC later reversed course too far, making another

To the extent parties to an arbitration wish to challenge the arbitration decision, their recourse is to file a petition under Code of Civil Procedure section 1285.³

II. Thompson's Remaining Allegations

We review Thompson's remaining allegations under PERB's traditional unfair practice framework. PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. (*Coachella Valley Mosquito & Vector Control Dist. v. Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1077.) Under EERA section 3541.5(a)(2), the six-month statute of limitations will be tolled during the time it takes to exhaust the contractual grievance machinery, provided it exists, where the grievance process ends in binding arbitration, and "covers the matter at issue" in the unfair practice charge. (*Los Angeles Unified School District* (2014) PERB Decision No. 2359, p. 10.) This means that the grievance or the grievance/arbitration process must "raise the same issue" as the unfair practice charge or at least "provide adequate notice" that the unfair practice issue is "among the issues" the grievant alleges. (*Id.* at. p. 11.) Thus, "PERB will not toll the statute of limitations in a discrimination case when the [employer] is unaware of the specific discrimination allegation." (*Peralta Community College District* (2001) PERB Decision No. 1462, adopting warning letter,

incorrect statement: that a charge including a repugnancy allegation may only be filed if PERB earlier granted deferral at the pre-arbitration stage. To the contrary, however, repugnancy can be raised to counter a motion for post-arbitration deferral without PERB having ever deferred at the pre-arbitration stage.

³ We express no opinion on the application of such provisions to the instant case.

p. 3, citing *North Orange County Community College District* (1998) PERB Decision No. 1268.)

Based on our review of the record, we agree with OGC's determination that Thompson's retaliation allegations do not satisfy tolling requirements. While the arbitration concerned whether Thompson's placement on the 39-month reemployment list violated the CBA, neither in the grievance, the grievance process, nor the ensuing arbitration did Thompson or CSEA explicitly or even implicitly allege that the District's actions discriminated or retaliated on the basis of EERA-protected activity. Thus, Thompson's retaliation allegations, occurring more than one year before Thompson filed the charge, must be dismissed.

Conversely, the allegation that the District violated the CBA when it failed to return Thompson to her position at Stagg High School satisfies the requirements for statutory tolling and is timely. The grievance ended in arbitration, and the arbitration decision considered the same issue.

The allegation nevertheless must be dismissed, as Thompson lacks standing to allege the unfair practice. A deviation from the CBA that is also a unilateral change within the scope of representation is a per se violation of the duty to bargain in good faith. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, pp. 9, 15.) However, because exclusive representatives and employers have the statutory duty to bargain in good faith only with one another and not with employees, individual employees lack standing to file a bad faith bargaining charge. (*Regents of the University of California* (2020) PERB Decision No. 2699-H, pp. 4-5.) Thompson, an

individual employee, does not have standing to allege a unilateral change violation.
Thus, Thompson's unilateral change allegation must be dismissed.

ORDER

The unfair practice charge in Case No. SA-CE-3144-E is DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Banks and Member Krantz joined in this Decision.