STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

POMONA UNIFIED SCHOOL DISTRICT, Charging Party, v. ASSOCIATED POMONA TEACHERS, CTA/NEA, Respondent.	Case No. LA-CO-1876-E PERB Decision No. 2966 May 27, 2025

Appearances: Mundell, Odlum & Haws by G. Brent Sims, Attorney, for Pomona Unified School District; Bryan Lopez, Staff Attorney, for Associated Pomona Teachers, CTA/NEA.

Before Krantz, Paulson, and Krausse, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Charging Party Pomona Unified School District from a dismissal issued by PERB's Office of the General Counsel (OGC). OGC found the District's unfair practice charge alleged a prima facie case that Respondent Associated Pomona Teachers (APT) violated the Educational Employment Relations Act (EERA) by unilaterally deviating from the status quo, but OGC nonetheless dismissed the charge after concluding that the District failed to file its charge within the statute of limitations.[1]

[1] EERA is codified at Government Code section 3540 et seq. Undesignated statutory references are to the Government Code.

The District does not challenge OGC's conclusion that the charge was untimely, and we therefore express no opinion on that issue. The District instead takes a novel position, asking us to reverse OGC's determination that the District's charge stated a prima facie case. The District believes that if we add this as a second basis for dismissal, such a ruling would afford the District an advantage in a breach of contract lawsuit it is pursuing against APT.

As explained below, we exercise our discretion to consider the District's argument even though it would not impact the outcome of this case. However, having reviewed the record de novo, we find the District's position is contrary to law and we affirm OGC's dismissal.

FACTUAL ALLEGATIONS[2]

The District and APT have been parties to a series of collective bargaining agreements (CBAs). Pursuant to these CBAs, the District has at all relevant times released one bargaining unit member from teaching duties, with full compensation, to serve as APT President. The CBAs have included provisions that specify the extent to which APT must reimburse the District for the cost of hiring another teacher to replace APT's President in the classroom. Beginning in 2010, the parties' CBA stated:

> "The Association shall reimburse the District for the full cost of salary and benefits for the temporary contracted employee to replace the Association President."

[2] In the present procedural posture, we assume the District's factual allegations are true, and we view them in the light most favorable to the charging party. (*City and County of San Francisco* (2020) PERB Decision No. 2712-M, p. 2.) We rely on APT's responses only to the extent that they neither explicitly nor implicitly create a factual conflict with the District's allegations. (*Ibid*.)

Then, beginning in 2016, the parties reduced APT's reimbursement obligation to 50 percent of replacement costs.

From approximately 2010 through 2019, although APT periodically reimbursed the District pursuant to the above-described provisions, APT's payments fell short of the full amount owed by approximately $226,031. During this timeframe, APT did not explicitly dispute any amounts owed. Rather, APT on occasion informed the District that it was in financial distress and unable to pay. The parties' CBAs contained no deadline for APT to reimburse the District. Following discussions, the parties agreed that APT did not yet need to provide full reimbursement, but the amount owed would continue to accrue.

In a letter dated October 22, 2019, APT's President at the time, Dorothy Kim-Perez, notified the District that APT's Executive Board had voted to sell a building and use the proceeds to "satisfy in full the balance owed to the District."

On or about January 21, 2020, Kim-Perez sent another letter to the District. The letter stated that APT's attorneys had determined that the statute of limitations precluded the District from collecting debts incurred prior to August 2015. The letter went on to state: "Given this new information, [APT] would like to convene a meeting with the District to discuss the amount owed, and how to satisfy any concerns or disputes about this debt." APT calculated the debt not precluded by the statute of limitations to be $52,797.15.

In October 2020, APT tendered a payment in the amount it maintained was outstanding. The District communicated that it disagreed with APT's legal assessment and understood the payment to be a partial payment for the outstanding debt.

Despite the dispute, the parties continued their contractual release time arrangement, and APT has reimbursed the District for all debts incurred since 2020.

On October 23, 2023, the District filed a complaint against APT in Los Angeles County Superior Court, alleging a breach of contract and seeking to enforce the CBA's reimbursement provisions. APT responded to the complaint by demurrer, alleging that the allegations constituted an arguable unfair practice and that PERB had initial exclusive jurisdiction. The superior court, citing *Fresno Unified School Dist. v. National Education Assn.* (1981) 125 Cal.App.3d 259 (*Fresno*), found that the court and PERB had concurrent jurisdiction and that in such circumstances it is normally appropriate for a court to stay proceedings so that PERB's adjudication proceeds first. The court therefore stayed the District's lawsuit pending litigation before PERB.

The District filed its unfair practice charge in June 2024 and amended it in November 2024. On February 11, 2025, OGC dismissed the charge.

DISCUSSION

In resolving a dismissal appeal, we review OGC's decision de novo. (*City and County of San Francisco*, *supra*, PERB Decision No. 2712-M, p. 2.) As when we address exceptions to a proposed decision, we have discretion whether to resolve disputed issues that would not impact the outcome. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.) In the unique circumstances of this case, we exercise our discretion to resolve the District's appeal, even though the appeal does not seek to disturb OGC's dispositive timeliness determination.

The District's revealed preference has been to pursue relief solely in its breach of contract lawsuit in superior court. The District, in fact, did not file a charge with PERB

until after the superior court stayed its lawsuit. The District believes that its litigation strategy in superior court would benefit if we were to dismiss its charge not only as untimely but also for failing to state a prima facie case of any unfair practice. We express no opinion on the District's litigation strategy. Instead, we briefly summarize the interplay between superior court jurisdiction and PERB jurisdiction, and we then review de novo OGC's determination that the facts alleged in the charge, if proven, would constitute an unfair practice.[3]

I. Jurisdictional Principles

For a superior court to consider a plaintiff's claims, "it must have subject matter jurisdiction." (*Palomar Health v. National Nurses United* (2023) 97 Cal.App.5th 1189, 1200 (*Palomar*).) A superior court has no jurisdiction to hear a claim if the conduct at issue falls within PERB's exclusive initial jurisdiction. (*Id*. at pp. 1201-1204.) Normally, PERB has such exclusive initial jurisdiction whenever the conduct at issue is arguably prohibited or arguably protected under a PERB-enforced labor relations statute, even if a party chooses to challenge such conduct in court by alleging claims that do not sound in any labor relations statute. (*Ibid*.; see also *City & County of San Francisco v. International Union of Operating Engineers, Local 39* (2007) 151 Cal.App.4th 938, 945 [courts consider the underlying conduct on which the suit is based rather than the manner in which the plaintiff has chosen to plead its case]; accord *Fresno*, *supra*, 125 Cal.App.3d at p. 269.)

[3] We do not consider whether the District could have arbitrated its claim, as the record is silent. Such facts can support a motion asking PERB to defer to arbitration, as well as a dismissal motion in superior court pursuant to *Charles J. Rounds Co. v. Joint Council of Teamsters No. 42* (1971) 4 Cal.3d 888, 899 [dismissing employer's suit for breach of no-strike clause, where contract allowed employer to arbitrate].

For instance, when an employer sues a union for leafletting, picketing, or strike activity, or an employee sues a union for its handling of a grievance or bargaining conduct, the superior court must dismiss the matter in favor of PERB's exclusive jurisdiction, and a party that disagrees with PERB's conclusions has only one recourse: it must exhaust PERB's jurisdiction at every stage and then appeal PERB's final decision as allowed under the applicable labor relations statute. (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, at pp. 609 & 611 [exhaustion requires a "full presentation" at "all prescribed stages" of the administrative process]; *Palomar*, *supra*, 97 Cal.App.5th at pp. 1210-1212 [dismissing trespass action based on PERB's exclusive jurisdiction, because conduct at issue was arguably prohibited and arguably protected under labor relations statute]; *Curcio v. Fontana Teachers Assn., CTA/NEA* (2021) 68 Cal.App.5th 924, 932-933 (*Curcio*) [exhausting PERB's jurisdiction "does not mean the party may then file a lawsuit in the superior court," as PERB jurisdiction "divests the superior courts of jurisdiction"; courts retain only limited jurisdiction to entertain appeals of PERB decisions]; accord *San Mateo County Superior Court* (2019) PERB Order No. IR-60-C, pp. 2-3.) Thus, the sole import of the word "initial," as used in the phrase "exclusive initial jurisdiction," is to reinforce that final PERB decisions regarding unfair practice charges are subject to review. (*Curcio*, *supra*, 68 Cal.App.5th at p. 932.) In most cases, a party may obtain such review by filing an extraordinary writ in the court of appeal, but for a PERB decision not to issue a complaint, there is only a much more limited right to file a writ in superior court. (*Ibid*.)

There is a partial exception to the above principles, which applies here. PERB's jurisdiction is concurrent rather than exclusive if the conduct at issue arguably breached a collective bargaining agreement while also constituting arguably prohibited or arguably protected conduct under a PERB-enforced labor relations statute. The seminal case illustrating this distinction is *Fresno*, *supra*, 125 Cal.App.3d 259, where a school district sued a teachers' union, alleging that its strike constituted both a tort and a breach of contract. (*Id*. at pp. 262-263.) Because EERA also arguably prohibited the conduct at issue, the court analogized PERB's preemptive jurisdiction to that of the National Labor Relations Board, whose jurisdiction preempts tort claims related to strikes, but not contract claims. (*Id*. at p. 268.) The court therefore dismissed the school district's tort claims but not its contract claim, finding that the superior court's jurisdiction over the contract claim was concurrent with PERB's jurisdiction over related issues, and that it is normally appropriate for the superior court to stay the contract claim to allow PERB's adjudication to proceed first. (*Id*. at pp. 273-274.)

Fresno, *supra*, 125 Cal.App.3d 259 specifically relied upon EERA's provision stating that PERB "shall not have the authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of any agreement that would not also constitute an unfair practice under this chapter." (*Id*. at p. 264, quoting § 3541.5(b).) Accordingly, the court held, PERB must make the initial unfair practice determination, "even though the practice might also violate the terms of a contract," but PERB "is not permitted to bootstrap its jurisdiction by deeming mere contractual violations to be unfair practices." (*Ibid*.)

Where PERB and a superior court have concurrent jurisdiction and a court stays litigation to allow PERB's adjudication to proceed first, there remains the possibility that the stayed superior court action may proceed after the PERB matter is complete. (*Fresno*, *supra*, 125 Cal.App.3d 259, 274.) The PERB resolution may or may not impact the outcome of any such later superior court litigation, depending on the circumstances. For instance, collateral estoppel normally applies to common issues (if any) already litigated before PERB. (See *Noble v. Draper* (2008) 160 Cal.App.4th 1, 10 [standard issue preclusion and claim preclusion principles apply when parties to a judicial matter have previously litigated before an administrative agency].) Moreover, even when certain elements of the collateral estoppel test are not satisfied, courts typically defer to PERB's conclusions on labor relations issues within its expertise. (See *Public Employment Relations Bd. v. Modesto City School Dist.* (1983) 136 Cal.App.3d 881, 894 [noting "the importance of deferring to the expertise of PERB in appropriate circumstances"].)

The briefing in this matter indicated considerable confusion on the above matters, leading us to clarify them for the present parties and the labor-management community. We express no opinion as to whether any aspect of this decision might impact the District's breach of contract action; the superior court has sole jurisdiction to make such determinations. We do note, however, that collateral estoppel cannot apply to any facts recounted in this decision. That is because OGC dismissed this matter on timeliness grounds, the case never proceeded to a formal hearing, and our factual recitation therefore assumes the District's factual allegations to be true. (See *ante* at fn. 2.)

II. OGC's Determination

The District's charge framed its allegations solely as stating a breach of contract claim—which is not an unfair practice theory—while declining to analyze the facts under established unilateral change principles. But OGC must determine whether the allegations state a prima facie case of any unfair practice, even if the charging party does not assert certain colorable theories. (*State of California (State Water Resources Control Board)* (2022) PERB Decision No. 2830-S, p. 13, fn. 12; *County of Santa Clara* (2022) PERB Decision No. 2820-M, p. 2, fn. 2; *County of San Joaquin* (2021) PERB Decision No. 2761-M, p. 19; *San Jose/Evergreen Federation of Teachers, AFT Local 6157, and American Federation of Teachers, AFL-CIO (Crawford et al.)* (2020) PERB Decision No. 2744, p. 23; *Hartnell Community College District* (2015) PERB Decision No. 2452, pp. 53-54.) Complying with this duty, OGC assessed whether the conduct alleged in the charge, if proven, would constitute a unilateral change in violation of EERA.

PERB's modern unilateral change test frames the elements of a prima facie case as having four elements: (1) the respondent changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of bargaining; (3) the change or deviation had a generalized effect or continuing impact on negotiable subjects; and (4) the respondent reached its decision without first providing adequate advance notice of the proposed change to the charging party and bargaining in good faith over the decision, at the charging party's request, until the parties reached an agreement or a lawful impasse. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9; cf. *Regents of the University of California (Los*

Angeles) (2025) PERB Decision No. 2942-H, p. 17 ["[F]or much of PERB's history, precedent consolidated the unilateral change test into just two elements"].)

The same principles apply when the respondent is a union. (*San Francisco County Superior Court & Region 2 Court Interpreter Employment Relations Committee* (2018) PERB Decision No. 2609-I, p. 7.) The District concedes that reimbursement for the cost of release time falls within the scope of representation. Nor could there be any serious dispute as to that element. (See, e.g., *Centinela Valley Union High School District* (2014) PERB Decision No. 2378, p. 8 [repudiation of release time provision in a CBA falls squarely within PERB's jurisdiction] (*Centinela*).) The District's appeal likewise does not challenge the fourth element, as the charge reflects an allegation that APT did not provide the District with advance notice and opportunity to bargain in good faith before reaching its new decision on the extent to which it would reimburse the District for accrued release time obligations.

We consider the District's arguments as to the remaining elements. Regarding the first element, there are three primary means of establishing a change in, or deviation from, the status quo: (1) a change or deviation from a written agreement or written policy; (2) a change or deviation from an established, unwritten past practice; or (3) a newly created policy or application or enforcement of existing policy in a new way. (*Oakland Unified School District* (2023) PERB Decision No. 2875, pp. 12-13.)[4]

[4] Past practice can be used to establish the unwritten status quo from which PERB assesses an alleged unilateral change, and it can also be used as an interpretive aid in assessing ambiguous written language. (*Pittsburg Unified School District* (2022) PERB Decision No. 2833, pp. 10-11 & fn. 6.) In the former instance, a past practice establishes the status quo only if it was "regular and consistent" or "historic and accepted." (*Ibid*; *County of Merced* (2020) PERB Decision No. 2740-M,

Applying these principles, there is no question that the District's charge alleges a change in, or deviation from, the status quo. Deviation from the terms of a contractual release time provision satisfies at least the first of the three means of showing a change or deviation from the status quo. (See, e.g., *Centinela*, *supra*, PERB Decision No. 2378, p. 8.) Here, the District cannot in good faith deny its allegation that APT deviated from a written agreement, as the CBA is the basis for the District's breach of contract lawsuit. Although the CBA did not include a deadline for payment, the alleged status quo was that APT must reimburse the District for all amounts owed. In October 2019, APT reinforced this understanding when its President wrote to the District that the APT Executive Board voted to use the proceeds from the sale of its building to "satisfy in full the balance owed to the District." But in January 2020, APT disavowed its written promise to reimburse the District for the full amount owed.

The same facts also satisfy the third means of showing a change in or deviation from the status quo. Specifically, APT created a new policy and/or applied or enforced its policy in a new way when, for the first time in January 2020, it interposed statute of limitations principles as a basis for refusing to pay much of its accrued debt.

Regarding the remaining unilateral change element, deviation from contractual terms has a "generalized effect or continuing impact" if either: (1) the deviation

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p. 13, fn. 9.) However, the inquiry is fundamentally different when analyzing the parties' past practice to help ascertain the meaning of ambiguous contract language. (*Antelope Valley Community College District* (2018) PERB Decision No. 2618, p. 21.) In the latter circumstance, the past practice is but one tool for interpreting the contract, and therefore need not be as definitive as when it is defining the status quo in the absence of a contract term. (*Id.* at p. 22.)

changes a policy or employment term applicable to future situations; or (2) the respondent acts unilaterally based upon an incorrect legal interpretation or insistence on a non-existent legal right that could be relevant to future disputes. (*Bellflower Unified School District*, *supra*, PERB Decision No. 2796, pp. 15-16.) In contrast, "there is no cognizable unilateral change" when a contract breach is "a one-time mistake that has no likelihood of prospectively impacting rights or obligations." (*Id*. at p. 19.)

Here, APT claimed in January 2020 that, contrary to both the CBA and the position APT took just months earlier, it no longer had a duty to repay much of its accrued debt to the District. Given that the parties have a continuing contractual relationship, and the CBA continues to require the District to release APT's President from teaching (with APT providing reimbursement), APT's unilateral assertion has strong relevance to potential future disputes.

For the foregoing reasons, we affirm OGC's conclusion that the District's charge alleged facts which, if proven, would constitute a unilateral change in violation of EERA. Nor is there cause to disturb OGC's determination that the District filed its charge in an untimely manner, as the District has not challenged that determination.

ORDER

The amended unfair practice charge in Case No. LA-CO-1876-E is DISMISSED WITHOUT LEAVE TO AMEND.

Members Paulson and Krausse joined in this Decision.