

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



MILDRED B. GOODMAN, )  
 )  
Charging Party, ) Case No. LA-CE-2771  
 )  
v. ) Administrative Appeal  
 )  
CORONADO UNIFIED SCHOOL DISTRICT, ) PERB Order No. Ad-188  
 )  
Respondent. ) June 27, 1989  

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Appearances: Mildred B. Goodman, on her own behalf; Brown and Conradi by Clifford D. Weiler, Attorney, for Coronado Unified School District.

Before Porter, Craib and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal from a denial of a request for an extension of time to file exceptions to a proposed decision of a PERB administrative law judge (ALJ). A Board agent denied the request for an extension of time, for failure to show good cause why the request should be granted. The charging party, Mildred Goodman, filed a timely appeal of that determination, but failed to serve it on the Coronado Unified School District's (District) counsel in a timely fashion. The original request for an extension of time was also not timely served on the District.

PROCEDURAL HISTORY

On March 16, 1989 (all dates referred to hereafter are in 1989), the ALJ issued a proposed decision dismissing Goodman's allegations that the District discriminated against her, due to

her union activities, by failing to reclassify her position to provide an increase in salary. The District and the exclusive representative for Goodman's bargaining unit negotiated the reclassification of several other classifications, but the District would not agree to reclassify Goodman's Account Clerk II classification. The ALJ, after briefing on the issue, granted the District's motion to dismiss at the end of Goodman's case-in-chief.

Goodman submitted a timely request for an extension of time to file her exceptions to the proposed decision. The request, dated March 30, stated: "My counsel is out of town until April 10, 1989 and I have no way of contacting said person." April 10 was the filing deadline for exceptions. The request was not served on the District. By letter of April 3, a Board agent denied the request for failure to show good cause why it should be granted. By letter of April 13, Goodman submitted a timely appeal of the denial of an extension of time. This was also not served on the District. By letter of April 19, the Board agent informed Goodman that her request for an extension of time and her appeal of the denial of that request must be served on opposing counsel before her appeal could be forwarded to the Board.

By letter of April 24, Goodman inquired why this matter had not yet been forwarded to the Board and demanded a prompt response. Included was a proof of service showing that she served her March 30 request for an extension of time and her

April 13 appeal on the opposing counsel. The proof of service was dated April 27. The District filed a response, dated May 1, which indicates that it received Goodman's filings on April 29. The District opposes the request for an extension of time based on Goodman's failure to abide by PERB regulations concerning service and on a failure to show good cause for the request.

On May 8, the Board received a statement of exceptions from Goodman, dated May 5. On May 22, the Board received a response from the District, dated May 19. On June 12, the Board received from Goodman a response, dated June 8, to the District's May 22 filing. As the only issue now before the Board is Goodman's appeal of the denial of her request for an extension of time to file exceptions, these documents have not been considered in arriving at the decision herein.

#### DISCUSSION

Before addressing the merits of Goodman's appeal of the denial of her request for extension of time, we must first decide if the appeal must be rejected due to defective service on the District. PERB Regulation 32132,<sup>1</sup> which governs extensions of time, and Regulation 32360(d), which specifies the requirements for administrative appeals, require service and proof of service. Regulation 32140(b) provides that: "Whenever 'service' is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in

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<sup>1</sup>PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

question." The service requirements were set out in both the ALJ's proposed decision and the denial of the request for extension of time. In fact, the Board agent attached a copy of Regulation 32140 to her letter denying the request. Therefore, it is clear that Goodman was expressly informed of the proper procedures on several occasions.

The appeal was served on the District on April 27, nine days after the April 18 filing deadline. On April 27, the District was also served for the first time with the original request for an extension of time, which was twenty days after the filing deadline for that document (Reg. 32132(a) required such a request to have been filed at least three days prior to the April 10 deadline for filing exceptions to the proposed decision).

On only a few occasions has the Board addressed a failure to comply with service regulations. In Manteca Unified School District (1977) EERB Decision No. 21,<sup>2</sup> the Board rejected an appeal of a dismissal of an unfair practice charge because the charging party failed to serve the appeal on the respondent. In Los Angeles Community College District (1984) PERB Decision No. 395, the Board held that the executive director properly rejected the charging party's appeal of the dismissal of his charge because it was not served on the respondent. Referring to the requirement that an appeal be served on the opposing party, the Board stated, at p. 5: "These requirements are not merely

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<sup>2</sup>Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

ritualistic. They are basic to providing due process to the involved parties."

Twice the Board has excused a failure to serve an opposing party concurrently with the filing in question. However, both cases involved exceptional circumstances not present in the instant case and are, therefore, not controlling.

In Santa Monica-Malibu Unified School District (1987) PERB Order No. Ad-163, the Board considered a decertification petition to be timely filed, even though it was not actually served on the employer and the incumbent union until two days after they signed a tentative agreement. In that case, the petition was filed with PERB and the other parties had actual notice of the filing before the tentative agreement was signed. The Board found that there was no prejudice from the delay in formal notice of the petition.

In San Diego Community College District (1988) PERB Decision No. 662, the Board found an unfair practice charge to be timely where it was filed but not served within the six-month statute of limitations contained in EERA section 3541.5, subdivision (a)(1).<sup>3</sup> The respondent did receive notice of the charge shortly thereafter and no prejudice from the delayed notice was shown. The result in San Diego was based not only on the lack of prejudice shown, but also on the fact that the six-month statute of limitations contained in the statute states only that the "filing" must be within six months of the conduct complained of,

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<sup>3</sup>The San Diego case is now on appeal before Division One of the Court of Appeal, Fourth Appellate District, Civ. No. D009280, and the service issue is one of the matters in dispute.

and is silent on service requirements. The Board was wary of exceeding its authority by construing its regulations in a fashion that would effectively add a strict filing requirement not contained in the statute. Moreover, though the proof of service attached to the amended charge in the San Diego case was technically deficient because it did not reflect service on the district, a cover memo to PERB stated that the district was being sent a copy simultaneously with the filing.

We find that the Los Angeles and Manteca cases are the most instructive and, therefore, conclude that Goodman's failure to serve the District in a timely fashion is fatal to her appeal. Where, as here, there are no extraordinary circumstances which compel a different result, we will not excuse a failure to timely serve an appeal upon an opposing party. While this result may seem harsh, we cannot accept the appeal in these circumstances without making a mockery of the concurrent service requirement of Regulation 32140(b). We stress that Goodman was made aware of that requirement on several occasions but, nevertheless, failed to follow the proper procedures.

Assuming arguendo that we were to accept Goodman's appeal and address the merits of the denial of the request for extension of time, we would affirm that denial. Goodman's stated reason for her request for an extension of time was that counsel was out of town until the last day for filing exceptions to the ALJ's proposed decision. No further details about the counsel's unavailability were provided. The unavailability of counsel

would, in some circumstances, constitute "good cause" for the granting of an extension of time. However, in this case, Goodman has failed to provide enough information to allow us to make that determination. A general assertion of the unavailability of counsel is insufficient.

ORDER

The complaint in Case No. LA-CE-2771 is hereby DISMISSED.

Member Camilli joined in this Decision.

Member Porter's dissent begins on page 8.

Porter, Member, dissenting: I disagree with my colleagues' rejection of Mildred B. Goodman's appeal on the ground of defective service. Further, viewing the merits of the appeal, I would reverse the denial of the request for extension of time, contrary to the majority's dicta stating that denial was the appropriate resolution in this case.

As to the issue of defective service on Coronado Unified School District (District), it must be noted that the Public Employment Relations Board's (Board) regulations governing service and proof of service are directory, rather than jurisdictional, in nature. This Board has previously excused a party's failure to concurrently serve an opposing party at the time of filing where no prejudice to the opposing party was demonstrated. (See, Santa Monica-Malibu Unified School District (1987) PERB Order No. Ad-163, p. 2; San Diego Community College District (1988) PERB Decision No. 662, pp. 12-13.<sup>1</sup>) In the present case, the District has shown no prejudice resulting from the late service of the timely appeal by Goodman. Moreover, it is a well-established principle of California law that the preservation of the right to appeal and the hearing of appeals on their merits, are favored. (See, e.g., City of Santa Barbara v. California Coastal Zone Conservation Commission (1977) 75 Cal.App.3d 572, 581; Gibson v. Unemployment Insurance Appeals Board (1973) 9 Cal.3d 494, 499; Pesce v. Department of Alcohol Beverage Control (1958) 51 Cal.2d 310, 313.) Taken together,

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<sup>1</sup>See footnote 3 at page 5, majority opinion.

these factors dictate excusing the late service on the District herein.

As to the merits of Goodman's appeal, that is, the issue of whether the requested extension of time should have been granted, I would likewise find in Goodman's favor. In her timely-filed request, Goodman asserted that her counsel was unavailable until the last day for filing exceptions. The request was denied by the Board agent solely for a lack of a showing of "good cause," without any reference to the defective service at that stage of the matter. The Board's regulation regarding such requests<sup>2</sup> instructs the party to "indicate the reason," and does not require a statement made under oath by the requesting party, nor does it require elaborate detail in support of the request. On its face, Goodman's simple assertion that she wanted an extension of time in order to consult with her attorney who was out of town, which indeed "indicate(s) the reason for the request," constitutes "good cause" sufficient to allow this Board to grant the extension. Accordingly, I would grant the requested extension of time for filing exceptions in this case.

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<sup>2</sup>Regulation 32132(a) states:

A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of service pursuant to section 32140 are required. Extensions of time may be granted by the Board itself or an agent designated by the Board itself for good cause only.