

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JANICE M. ABNER,

Charging Party,

v.

COMPTON UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4250-E

Administrative Appeal

PERB Order No. Ad-313

January 31, 2002

Appearance: Janice M. Abner, on her own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Janice M. Abner (Abner) from an administrative determination that her appeal of the dismissal of her unfair practice charge against the Compton Unified School District (District) was untimely filed.

After reviewing the entire record in this matter including Abner's appeal from the administrative determination that her appeal was untimely, the Board denies Abner's request to accept her late filed appeal.

BACKGROUND

Abner filed an unfair practice charge against the District on December 12, 2000 alleging that the District retaliated against her in violation of the Educational Employment

Relations Act (EERA)¹ by giving her more extra-duty assignments. On January 31, 2001² a Board agent sent Abner a warning letter stating her charge would be dismissed as it appeared that Abner's protected activity occurred after the extra-duty assignments were issued. On February 18, Abner filed an amended charge. The charge was dismissed by the Board agent on February 28, based on a lack of nexus between the alleged adverse action and Abner's protected activity.

Abner appealed the dismissal by filing a letter dated September 7, which was received by the PERB San Francisco regional office on September 10. The San Francisco regional office routed the appeal to PERB's headquarters office where it was received and filed with the Board on September 12.

The Board's appeals assistant dismissed the appeal as untimely on September 17. Her determination noted that pursuant to PERB Regulation 32635(a)³, Abner's appeal of the February 28 dismissal was due to be filed with PERB no later than March 26, therefore her filing was nearly five and one-half months late.

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

²All dates refer to 2001 unless otherwise noted.

³PERB regulations are found at California Code of Regulations, title 8, section 31001 et seq. and available on PERB's Web site at www.perb.ca.gov. PERB Regulation 32635(a) states, in pertinent part:

Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. Except as provided in Section 32162, service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

DISCUSSION

Late filings are governed by PERB Regulation 32136 which provides that:

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

In applying this regulation, the Board has found good cause to excuse late filings when a party has demonstrated that a conscientious effort to timely file was made. (North Monterey County Unified School District (1996) PERB Order No. Ad-274.)

Abner argues that PERB's appeal timelines should be waived as she did not receive "responses in opposition to complaint from respondent upon request after notice of dismissal." Following the dismissal of the complaint, Abner apparently asked the District's counsel for a copy of "all affirmative defenses, and affidavits from site principal and administrator in opposition to complaint dismissed by [PERB]." Her appeal argues she made the request because she was never served with the District's response to her unfair practice charge. In support of her appeal she urges the appeal be treated as timely as:

[Abner] was unable to determine if [District] response in opposition to the Unfair Labor charge was confined solely to the issues in the complaint, and not in regard [sic] to earlier actions pursued by [Abner] against [District].

Abner's explanation for her late filing does not adequately explain why she could not file her appeal on time. There is simply no evidence that Abner made a conscientious effort to comply with the March 26 filing deadline. While there is likely no requirement under EERA that the District provide the information she requested, even if there were, it would not toll our appeal timelines as urged by Abner nor provide the good cause basis to excuse her five and one-half month late filing.

ORDER

Janice M. Abner's request that the Board accept her late filed appeal from dismissal in Case No. LA-CE-4250-E is hereby DENIED.

Members Amador and Baker joined in this Decision.