

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LORI ANN BODY,

Charging Party,

v.

COMPTON UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5126-E

PERB Administrative Appeal

PERB Order No. Ad-374

May 16, 2008

Appearances: Law Offices of Zelter & Karpel by Donald E. Karpel, Attorney, for Lori Ann Body; Littler Mendelson by Michelle M. Holmes, Attorney, for Compton Unified School District.

Before Neuwald, Chair; McKeag and Rystrom, Members.

DECISION

RYSTROM, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Lori Ann Body (Body) of a Board agent's dismissal of her unfair practice charge under the Educational Employment Relations Act (EERA)¹ against the Compton Unified School District (District). Accompanying Body's appeal is a request for a late filing of an amended charge which we treat as an administrative appeal pursuant to PERB Regulation 32136² for the reasons stated below.

We have reviewed the entire record including the appeal letter, the request to accept late filing, the supporting declaration of Donald E. Karpel (Karpel) along with all exhibits

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

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

attached thereto, the District's response to this appeal, and the warning and dismissal letters of the Board agent.

We find that the instant appeal is untimely and that Body has not shown good cause for a late filing pursuant to PERB Regulation 32136.

DISCUSSION

In her appeal filed April 1, 2008, Body seeks to file a late amended charge on the basis that her attorney never received the Board agent's December 11, 2007, warning letter stating that Body had failed to state a prima facie case and that the Board agent's December 28, 2007, dismissal letter was not timely received by Body's attorney. Body does not indicate when her attorney did receive the December 28, 2007, dismissal letter or why her appeal was not filed until April 1, 2008.

The District opposes Body's appeal challenging that her counsel did receive notice of the warning letter and dismissal letters and that the claimed deficiencies in the addresses on these letters do not constitute a failure to provide notice to Body's counsel. The District also argues that Body's delay in prosecuting her charge does not amount to "good cause" for PERB to accept her late filing.

Body's request to file a late amended charge is treated as an appeal of the dismissal of the charge. (Regents of the University of California (2008) PERB Order No. Ad-370-H; Los Angeles Unified School District (2007) PERB Order No. Ad-368.) PERB Regulation 32635 provides that an appeal of a dismissal must be filed within 20 days of service of the dismissal. The Board agent's dismissal was served on December 28, 2007, and Body's

appeal was filed on April 1, 2008, 70 days after the regulatory deadline.³ Therefore Body's appeal is untimely and cannot be considered unless the Board exercises its discretion to excuse the late filing pursuant to PERB Regulation 32136 by finding the existence of good cause.⁴

In determining whether there is good cause to excuse Body's late filing of her appeal, our review of the record indicates the following pertinent facts.

The Board agent's December 28, 2007, dismissal letter was sent to "Lori Ann Bodi, c/o Donal E. Karpel, 9777 Wilshire Blvd., Suite 1000, Beverly Hills, CA 90212." The address provided on Body's October 16, 2007, unfair practice charge is: "Lori Ann Body, 9777 Wilshire Blvd., Suite 1000, Beverly Hills, CA 90212."⁵ The address on the PERB Notice of Appearance Form, filed by Body on October 31, 2007, which lists Karpel as her attorney, gives "9777 Wilshire Blvd., Beverly Hills, CA" as his address.⁶ No suite number or zip code was provided on this form. According to the proof of service, this form was also filed by the office of Body's attorney.

The Board agent's dismissal letter was sent to the addresses given both in Body's unfair practice charge and in her Notice of Appearance Form: "9777 Wilshire Blvd., Suite 1000, Beverly Hills, CA 90212", with the charge address providing the missing suite number and zip

³This deadline is calculated by counting the 20-day period pursuant to PERB Regulation 32635(a) and the five-day extension pursuant to PERB Regulation 32130(c), which results in a filing deadline of January 22, 2008.

⁴PERB Regulation 32136 provides in pertinent part: "A late filing may be excused in the discretion of the Board for good cause only."

⁵Karpel's declaration indicates that this charge was filed by his office.

⁶On October 18, 2007, the Board agent served Body and the District with a letter requesting, inter alia, that both parties provide the Board agent with the name, address and telephone number of their designated representative, if any.

code from Karpel's representation form. The names of the addressees on the dismissal letter were both Body and Karpel.⁷ We do not find this address to be in error. It is the address indicated by Body and her attorney.

Body does not claim the December 28, 2007, dismissal letter was not received. Her attorney's declaration states: "I did not timely receive the December 28, 2007 letter." Body presents no information to inform PERB when the dismissal letter was received by Karpel. The Board has no reasonable or credible facts on which to find good cause for the late filing of 70 days after the January 22, 2008, deadline.

The excuse for an untimely filing must be reasonable and credible. (Barstow Unified School District (1996) PERB Order No. Ad-277.) Where a party provides no justification for their late filing, the Board is precluded from finding that good cause exists. (Coachella Valley Unified School District (1998) PERB Order No. Ad-292; State of California (Department of Insurance) (1997) PERB Order No. Ad-282-S.)

Body has failed to provide justification for her late filing thus PERB is precluded from finding good cause to excuse it.

ORDER

A late filing by Lori Ann Body of her appeal of the dismissal of her unfair practice charge in Case No. LA-CE-5126-E is DENIED.

Chair Neuwald and Member McKeag joined in this Decision.

⁷In Body's appeal letter, her attorney states that mail is returned to the post office which does not have the name of one of the attorneys who maintains an office in Karpel's office suite. Given the December 28, 2007, dismissal letter had Karpel's name as one of the addressees, i.e., "c/o Donal E. Karpel," there is nothing to suggest that he did not receive it.