STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PABLO FELIX PINTOR, Charging Party, v. CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Respondent.	Case No. LA-CO-1651-E Administrative Appeal PERB Order No. Ad-440 June 22, 2016

Appearances: Pablo Felix Pintor, on his own behalf; Sonja J. Woodward, Staff Attorney, for California School Employees Association.

Before Winslow, Banks, and Gregersen, Members.

DECISION

GREGERSEN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Pablo Felix Pintor (Pintor) from an administrative determination by the PERB Appeals Assistant that Pintor's appeal of the dismissal by the Office of the General Counsel (OGC) of his unfair practice charge was untimely.

We have reviewed the Appeals Assistant's administrative determination and the entire record as a whole and conclude that Pintor's appeal of the OGC's dismissal of his charge was properly dismissed because Pintor failed to provide an appropriate proof of service with his appeal of the OGC dismissal as required by PERB Regulations.[1]

[1] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. and may be found at www.perb.ca.gov.

PROCEDURAL HISTORY

On April 20, 2015, Pintor filed an unfair practice charge alleging that the California School Employees Association (CSEA) violated the Educational Employment Relations Act (EERA or Act)[2] by mishandling his salary, seniority, and longevity pay claims against his employer, the Pomona Unified School District (District).

On September 10, 2015, the OGC issued a warning letter, notifying Pintor that the charge failed to state a prima facie case. Pintor was invited to amend his charge to correct certain factual inaccuracies contained in the warning letter and/or to provide additional facts to correct the charge deficiencies outlined in the warning letter. On September 28, 2015, Pintor attempted to file additional documents in an attempt to amend his unfair practice charge, but the filing was not in accord with PERB Regulation 32615[3] because there was no signature under penalty of perjury, no copy of the charge, no name or contact information for Pintor, no name or address of CSEA, and no completed proof of service showing that CSEA had been served with a copy of the documents. A "Filing Deficiency Letter" was sent to Pintor on October 20, 2015, by the OGC. After receiving no response, the OGC then dismissed the charge on November 10, 2015. However, because of an inadvertent clerical error, PERB records contained an incorrect mailing address for Pintor. As a result, service of the November 10, 2015 Dismissal Letter was never effectuated on Pintor. At the request of the OGC, the November 10, 2015 Dismissal Letter was subsequently revoked to allow for proper service.

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[2] EERA is codified at Government Code section 3540 et seq.

[3] PERB Regulation 32615 sets forth the requirements for filing an unfair practice charge.

On December 23, 2015, the OGC corrected the service error by sending Pintor copies of the September 10, 2015 Warning Letter and the October 20, 2015 Filing Deficiency Letter. The OGC included a letter with the December 23, 2015 mailing informing Pintor that he was being afforded an opportunity to correct the deficiencies set forth in the October 20, 2015 Filing Deficiency Letter. Pintor was further advised that he must correct the filing deficiencies by January 15, 2016, otherwise the charge would be dismissed pursuant to the September 10, 2015 Warning Letter. Pintor did not respond. On February 1, 2016, the OGC issued a Dismissal Letter for failure to state a prima facie case. Pintor was informed that he had 20 days within which to appeal the dismissal.

On February 16, 2016, Pintor filed his appeal. On February 22, 2016, the PERB Appeals Assistant informed Pintor that his appeal was not filed in accord with PERB Regulation 32360 in that he did not provide a valid proof of service.[4] Pintor was then provided until February 27, 2016, to perfect his filing. On March 7, 2016, Pintor re-submitted his appeal. While the appeal attached a proof of service properly listing the CSEA designated representative, it was not signed. By administrative determination dated March 14, 2016, Pintor was informed that his appeal was untimely under PERB regulations.[5]

On March 21, 2016, Pintor filed a timely appeal of the administrative determination. The appeal states that Pintor was pursuing his appeal according to PERB Regulation 32360, which is the regulation regarding administrative appeals. The appeal then repeats the facts of

[4] Review of the proof of service attached to Pintor's appeal shows that Pintor served Labor Relations Representative Andy Ritchi from CSEA. However, CSEA had previously filed and properly served a Notice of Appearance Form on May 22, 2015, identifying attorney Sonja J. Woodward as the CSEA designated representative.

[5] The administrative determination did not reference Pintor's failure to sign his proof of service or that the filing was otherwise not in compliance with PERB regulations.

Pintor's unfair practice charge and provides copies of various documents. Nothing in the appeal provides an explanation for Pintor's failure to sign his proof of service.

DISCUSSION

PERB Regulation 32635 governs review of dismissals. It states that, along with filing the original appeal and five copies with the Board itself, "service and proof of service of the appeal on the respondent pursuant to Section 32140 are required."

PERB Regulation 32140 sets out the service requirements. Subdivision (a) states that "[a]ll documents required to be served shall include a 'proof of service' declaration *signed under penalty of perjury* . . ." (emphasis added). These requirements are not merely ritualistic, they are basic to providing due process to the involved parties. (*Los Angeles Community College District* (1984) PERB Decision No. 395.) Failure to follow the service and proof of service requirements is sufficient grounds for denying an appeal. (*Ibid*.)

On February 1, 2016, the OGC issued Pintor a Dismissal Letter finding that the charge did not state a prima facie case. On February 16, 2016, Pintor filed an appeal. The appeal was timely filed, but it failed to conform to PERB regulations by including valid proof of service showing that the CSEA designated representative had been served.[6]

On February 22, 2016, the Appeals Assistant provided Pintor until February 27, 2016, to perfect his filing. On March 7, 2016, Pintor again filed an appeal. However, because the proof of service accompanying Pintor's March 7, 2016 appeal was not signed, it failed to follow the clear procedural requirements for filing an appeal and was thus defective

[6] PERB Regulation 32142 governs the proper recipient for filing or service. Subdivision (d) identifies the proper recipient for an employee organization as "the individual designated to receive service or to the president or if there is no president, an officer of the organization."

The Board may, however, excuse defective service if the opposing parties received actual notice of the filing and if there was no showing of prejudice. (*Fontana Unified School District* (2003) PERB Order No. Ad-324.) Here, there is nothing to show that CSEA actually received Pintor's March 7, 2016 appeal. No answer was filed by CSEA in response to the filing. The only response received from CSEA is in response to Pintor's March 21, 2016 administrative appeal. Moreover, Pintor's March 21, 2016 appeal of the administrative determination provides only a recitation of the contents of the appeal of his unfair practice charge. Nothing in the March 21, 2016 appeal acknowledges the defective service or explains why the Board should excuse his defective service. Therefore, we find that Pintor's appeal of the OGC's dismissal was properly dismissed because he failed to follow the established and clear procedural requirements for filing an appeal.

ORDER

The Public Employment Relations Board's (Board) denial of Pablo Felix Pintor's (Pintor) appeal of the dismissal of his unfair practice charge in Case No. LA-CO-1651-E as untimely is AFFIRMED. Pintor's request that the Board excuse his defective service is hereby DENIED.

Members Winslow and Banks joined in this Decision.