

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TERRY McCONNELL,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION,

Respondent.

Case No. LA-CO-258

PERB Decision No. 395

August 15, 1984

TERRY McCONNELL,

Charging Party,

v.

LOS ANGELES COMMUNITY COLLEGE
DISTRICT,

Respondent.

Case No. LA-CE-1758

Appearances: Terry McConnell, in propria persona.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.

DECISION

HESSE, Chairperson: In both of these cases, which have been consolidated on appeal, Charging Party Terry McConnell appeals the administrative decision of the Executive Director of the Public Employment Relations Board (PERB or Board) rejecting his appeals of dismissals in the underlying unfair practice charges for failure to satisfy the PERB

regulation¹ requirements. For the reasons discussed herein, we deny McConnell's appeals.

PROCEDURAL HISTORY AND FACTS

McConnell filed unfair practice charges against the California School Employees Association (CSEA)² and the Los Angeles Community College District (LACCD).³ In each of these cases, a Board agent dismissed the charge because it failed to demonstrate a violation of the Educational Employment Relations Act (EERA).⁴ McConnell was informed by letter that he had the right to appeal the dismissals of the charges. The dismissal letters included both instructions on how to file an appeal and the requirements concerning service to the other party.⁵

¹PERB regulations are codified at California Administrative Code, title 8, section 31001 et seq.

2LA-CO-258, filed February 15, 1983.

3LA-CE-1758, filed March 18, 1983.

⁴The correctness of the dismissals of the underlying unfair practice charges is not an issue before the Board itself.

⁵Immediately following the "right to appeal" section was the following:

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly

On May 23, 1983, McConnell appealed the Board agent's dismissal of LA-CE-1758. On June 16, 1983, the PERB Executive Director rejected the appeal because the LACCD was not served with a copy of the appeal and McConnell failed to furnish proof of service as required by PERB regulation 32635.⁶ On June 24, 1983, McConnell appealed the Executive Director's rejection to the Board itself.⁷ Once again, the Charging Party failed to serve the LACCD.

"served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

⁶Regulation 32635 states in relevant part:

(a) Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself [S]ervice and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

⁷The requirements for filing an appeal to the Board itself are set out in PERB regulation 32360, which states:

(a) An appeal may be filed with the Board itself from any administrative decision, except as noted in Section 32380.

(b) An original and 5 copies of the appeal shall be filed with the Board itself in the headquarters office within 10 days following the date of service of the decision or letter of determination.

(c) The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal.

(d) Service and proof of service of the appeal pursuant to Section 32140 are required.

McConnell appealed the dismissal of LA-CO-258 on July 20, 1983. Although a "proof of service" was attached to his appeal, there was no evidence that the Respondent, CSEA, had been served.⁸ The proof of service showed that envelopes were addressed solely to the PERB appeals section. On July 26, 1983, the PERB Executive Director rejected the appeal as being improperly filed because the Respondent was not served, as required by PERB regulation 32635.

On August 1, 1983, Charging Party filed an appeal to the Board itself of the Executive Director's rejection of his July 20 appeal. Again, McConnell failed to serve the Respondent, CSEA.

In his June 24, 1983 appeal in LA-CE-1758, McConnell states that he was not made aware of the service requirement by the instructions in the Board agent's May 3, 1983 letter. He claims that

[t]he instructions on the "Right to Appeal" [section of the May 3, 1983 letter] were followed to the letter. There was no mention of any 'proof of service' by any other party as the appeal was in fact certified by the United States Post Office. (Emphasis in original.)

He also requests that the Board itself ". . . make all instructions to complaintant [sic] clear so that future misunderstandings or mis-leadings [sic] may be avoided."

⁸Indeed, CSEA was not served.

In his second appeal, dated August 1, 1983, McConnell complains that although he was required to serve the other party, he was not served with an Answer by the Respondent. He contends that such requirements should be reciprocal. Also, McConnell fears that by dismissing his charges, PERB has shown partiality towards CSEA.

DISCUSSION

Both cases (LA-CO-258 and LA-CE-1758) were dismissed by Board agents because McConnell failed to state a prima facie violation of EERA. McConnell appealed both dismissals; however, in both, he failed to serve the other parties or to file proofs of service. His appeals were rejected because of the lack of service to the other parties. In the rejection letters, the requirements of "service" and "proof of service" were specified. McConnell appeals these rejections by the Executive Director. Although he had been previously informed of the service requirements, he again failed to serve Respondents. He did attach "proofs of service" to his appeals; however, they did not show that he served either Respondent.

PERB regulation 32635 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." These requirements are not merely ritualistic. They are basic to providing due process to the involved parties.

PERB regulation 32140 sets out the service requirements. Regulation subsection (c) states that "service shall be on all parties to the proceedings and shall be concurrent with the filing in question." Although McConnell claims, inter alia, that he did not know of the requirement to serve the appeal on the other parties, the requirements were clearly laid out in the PERB regulations and both Board agents explained the requirement that the documents "be 'served' upon all parties to the proceeding[s]."

Thus, McConnell was given sufficient information to properly appeal the dismissal of the unfair practice charges. Failure to follow the service and proof of service requirements is sufficient ground for denying an appeal, and the Executive Director properly rejected McConnell's appeals.

McConnell's August 1, 1983 appeal does not allege error by the Executive Director. However, to assist McConnell in his understanding of due process requirements, we will respond to his concerns.

CSEA did not file an answer with PERB, thus no issue is presented regarding service of an answer on the Charging Party. We do not know why CSEA did not file an answer, but it is likely it did not because it was not served with the appeal and thus did not know of the further litigation. Obviously, reciprocal service requirements can only be enforced if the

Respondent files an answer. If none is filed with PERB, there is nothing which the Board can demand be served on the Charging Party.

Finally, there is no basis to support McConnell's claim that PERB has shown partiality to CSEA. The service requirements are quite clear, and the Charging Party was specifically informed of them by the Board agents' letters. Rather than demonstrating partiality to CSEA, the facts reveal that the Executive Director even waived a time limit requirement when McConnell filed an untimely appeal.⁹ If anything, PERB went out of its way to assure McConnell a forum, if he had taken the proper steps in filing his appeals.

In sum, we find that McConnell's appeals were properly dismissed because he failed to follow the established and clear procedural requirements for filing those appeals.

⁹Regulation 32135 states:

All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last date set for filing or when sent by telegraph or certified United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office.

Charging party mailed this appeal by regular mail on June 24, 1983, the last day he could file a timely appeal. It was not received until June 30, 1983, six days late. The Executive Director, however, accepted this appeal, but notified McConnell that he should heed the regulation in the future.

ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this case, Charging Party Terry McConnell's appeals in Case Nos. LA-CO-258 and LA-CE-1758 are hereby DENIED.

Members Jaeger and Morgenstern joined in this decision.