

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



DEBRA A. ROELEVELD,

Charging Party,

v.

COUNTY OF SAN BERNARDINO (COUNTY  
LIBRARY),

Respondent.

Case No. LA-CE-450-M

PERB Decision No. 2023-M

May 12, 2009

Appearance: Debra A. Roeleveld, on her own behalf.

Before Neuwald, Wesley and Dowdin Calvillo, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Debra A. Roeleveld (Roeleveld) of a Board agent's dismissal of her unfair practice charge. The charge alleged that the County of San Bernardino (County Library) (County) violated the Meyers-Milias-Brown Act (MMBA)<sup>1</sup> by engaging in unfair hiring practices and violating the County's local rules.

After review of the entire record, including but not limited to the unfair practice charge, the Board agent's warning and dismissal letters, and Roeleveld's appeal, the Board reverses the dismissal for the reasons set forth below.

BACKGROUND

On December 12, 2008, a warning letter served on Roeleveld explained that her charge failed to demonstrate a violation of the MMBA. The letter informed Roeleveld that she could submit an amended charge to address the deficiencies in the charge. The warning letter stated,

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<sup>1</sup> MMBA is codified at Government Code section 3500 et seq.

"If an amended charge or withdrawal is not filed on or before December 22, 2008, PERB will dismiss your charge."

After receiving the warning letter, Roeleveld contacted the Board agent to discuss the warning letter and was granted an extension of time to December 29, 2008, to file an amended charge. Roeleveld mailed her amended charge on December 29, and it was received at PERB on January 2, 2009. As the amended charge was not filed by December 29, the Board agent dismissed the charge on December 30, 2008.<sup>2</sup>

### ROELEVELD'S APPEAL

On appeal, Roeleveld requests the Board find good cause to accept and consider her late filed amended charge.<sup>3</sup> Roeleveld stated that during the initial investigation of her charge, the Board agent originally assigned to the charge spoke with Roeleveld and explained the PERB investigation process. The Board agent also requested additional information to clarify her charge. The appeal states that Roeleveld submitted several written responses and that she was told that as long as the responses were postmarked by the date set for receipt by the Board agent, "it would be considered filed."

Subsequently, the charge was transferred to another Board agent to complete the investigation. The warning letter that advised Roeleveld to "file" an amended charge, did not reference PERB Regulation 32135. Roeleveld prepared an amended charge and mailed it with a postmark date of December 29. Roeleveld stated she assumed the amended charge would be

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<sup>2</sup> PERB Regulation 32135 provides that documents are considered "filed" when "actually received by the appropriate PERB office." (PERB regs. are codified at Cal. Code of Regs., tit. 8, § 31001 et seq.)

<sup>3</sup> On the merits, Roeleveld's appeal consists of "an addendum" to her charge comprised of new facts and documents. "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (PERB Reg. 32635 subd. (b).) As the Board remands the charge for consideration of the amended charge, it is unnecessary to address this aspect of the appeal.

timely filed if it was postmarked by the filing deadline as this method of filing was consistent with the instructions of the first Board agent when she submitted the additional information he requested.

### DISCUSSION

PERB regulations provide that the Board may excuse a late filing for good cause.<sup>4</sup> The Board has found good cause when the explanation for the late filing was "reasonable and credible." (*Barstow Unified School District* (1996) PERB Order No. Ad-277 (*Barstow USD*)). The Board has also found good cause to exist for "honest mistakes" such as mailing or clerical errors. (*Barstow USD*.) Additionally, the Board has ruled that good cause exists when a party made a conscientious effort to timely file and the delay did not cause prejudice to any party. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.)

In *Los Angeles Unified School District* (2003) PERB Order No. Ad-318, the Board excused a late filed appeal that was one-day late. The charging party had contacted the PERB Appeals Office to clarify the filing deadline and asserted she was not told to send the appeal by express or certified mail.<sup>5</sup> The Board found the untimely appeal was a result of honest error

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<sup>4</sup> PERB Regulation 32136 states:

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.

<sup>5</sup> PERB regulations previously also considered documents "filed" when mailed by certified or express mail. PERB Regulation 32135 now provides, in pertinent part:

(a) All documents shall be considered 'filed' when the originals, and the required number of copies, if any, are actually received by the appropriate PERB office during a regular PERB business day.

(b) All documents, except proof of support as described in sections 32700, 61020, 81020 and 91020, shall also be considered 'filed' when received during a regular PERB business day by

based on "misunderstood communications" and there was no evidence of prejudice due to the one-day delay.

In the present case, Roeleveld made a conscientious effort to timely file her amended charge. She mailed the amended charge on the filing deadline, as she had other documents, assuming this would satisfy the requirement to timely "file" the charge. This resulted in a brief delay. The short delay was an honest mistake based on Roeleveld's reliance on the manner of filing the requested information with PERB. As there is no evidence of prejudice due to the brief delay, the Board finds good cause to excuse the late filed amended charge and remands the case to the General Counsel's office to consider the amended charge.

ORDER

The Board REVERSES the dismissal of the unfair practice charge in Case No. LA-CE-450-M and REMANDS the case to the General Counsel's office for further processing.

Members Neuwald and Dowdin Calvillo joined in this Decision.

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facsimile transmission at the appropriate PERB office together with a Facsimile Transmission Cover Sheet, or when received by on-line filing as defined in Section 32613.