

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ALBERT ANTHONY PEREZ,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 746,

Respondent.

Case No. LA-CO-1400-E

PERB Decision No. 2187

June 15, 2011

Appearances: Albert Anthony Perez, on his own behalf; David J. Dolloff, Attorney, for California School Employees Association & its Chapter 746.

Before Martinez, Chair; McKeag and Dowdin Calvillo, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Albert Anthony Perez (Perez) of a Board agent's dismissal of his unfair practice charge. The charge alleged that California School Employees Association & its Chapter 746 (CSEA) breached its duty of fair representation under the Educational Employment Relations Act (EERA)¹ by failing to adequately represent Perez in resolving a grievance filed on his behalf with the Downey Unified School District (District). The Board agent found that the charge failed to state a prima facie violation of the duty of fair representation.

The Board has reviewed the dismissal and the record in light of Perez's appeal, CSEA's response thereto, and the relevant law. Based on this review, we find that Perez failed to file a

¹ EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

timely appeal and that the appeal failed to comply with applicable regulations. Accordingly, we affirm the dismissal of the charge for the reasons set forth below.

FACTUAL BACKGROUND

On November 30, 2009, Perez filed an unfair practice charge with PERB alleging that CSEA breached its duty of fair representation under EERA section 3543.6 by failing to properly represent him in a grievance he filed with the District for alleged contract violations. The alleged violations concerned his request to demote from the position of Lead Custodian in the Maintenance Operations and Transportation (MOT) department to the position of Utility Worker, a position outside the MOT department. In essence, Perez alleged that CSEA breached its duty of fair representation by concluding, during the grievance process, that the grievance lacked merit and that Perez was not entitled to the demotion he sought.

CSEA filed a response on December 14, 2009 denying the charges. On January 16, 2011, a PERB Board agent sent Perez a letter advising him that the charge failed to state a prima facie case and warning him that the charge would be dismissed unless he filed an amended charge correcting the deficiencies by February 2, 2011. On February 2, 2011, the Board agent attempted to telephone Perez to determine whether he had received the warning letter and whether he intended to file an amended charge. The Board agent was unable to reach Perez because the only phone number provided by Perez in his unfair practice charge was no longer in service. Therefore, on February 8, 2011, the Board agent issued a letter dismissing the charge. The letter notified Perez of his right to appeal the dismissal of the charge by filing an appeal to the Board itself within twenty calendar days after service of the dismissal, pursuant to PERB Regulation 32635(a).²

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

The Board's records indicate that, on or about March 1, 2011, Perez sent a letter by facsimile to the Board stating, in relevant part:

To Public Employment Relations Board, I Albert A. Perez am requesting an extension of time regarding the dismissal letter 'Unfair Practice Charge No. LA-CO-1400-E' to be extended to March 14, 2011. Reasons being a recent change of address and new cell phone number. Because of those changes I did not receive the notices to file an amended charge before the deadline to file. I did however notify CSEA Chapter 746 of the change of address and new phone number in early November 2010. I am unaware of the position of the other party.^[3]

On March 4, 2011, the PERB Appeals Assistant issued a letter to the parties stating:

This is to inform you that the parties are in agreement regarding Mr. Perez's request for an extension of time to file **an appeal** of the Board agent's dismissal in the case referenced above, therefore the extension is hereby granted.

The new due date for filing **an appeal** of the Board agent's dismissal will be Monday, March 14, 2011.

(Underlining in original, bold text added for emphasis.)

On March 16, 2011, Perez filed an amended charge with PERB.⁴ The amended charge essentially restates the allegations of the original charge and contains additional documentary evidence.

By letter dated March 23, 2011, CSEA objected to the filing of a first amended charge and asserted that it did not object to PERB providing Perez with an extension of time to file an appeal in this case. This matter was placed on the Board's docket on March 30, 2011.

³ The letter appears to have been served by mail on counsel for CSEA on March 4, 2011.

⁴ The proof of service attached to the amended charge indicates it was mailed on March 14, 2011.

DISCUSSION

Filing of Amended Charge After Dismissal

PERB has historically treated the filing of an amended charge after an unfair practice charge has been dismissed as an appeal from the dismissal of the charge. (*Compton Unified School District* (2008) PERB Order No. Ad-374; *Regents of the University of California* (2008) PERB Order No. Ad-370-H (*Regents*); *Los Angeles Unified School District* (2007) PERB Order No. Ad-368.) An appeal from dismissal must be filed within twenty days after service of the dismissal. (PERB Reg. 32635.) The filing deadline is extended by five days when the dismissal was served by mail. (PERB Reg. 32130(c); *Regents*.)

In this case, the parties agreed to an extension of the deadline to file an appeal until March 14, 2011. As Perez was informed in the dismissal letter, a document is considered “filed” with PERB when it is *actually received* during a regular PERB business day (PERB Reg. 32135(a); PERB Reg. 32130; Gov. Code § 11020(a)) or when received by facsimile transmission before the close of business together with a facsimile transmission cover sheet that meets the requirements of PERB Regulation 32135(d) and is also deposited in the mail with proof of service (PERB Reg. 32135(b), (c), (d); PERB Reg. 32090; PERB Reg. 32130.) Perez’s amended charge was not received by PERB until March 16, 2011. Therefore, even construing the amended charge as an appeal from dismissal, it was untimely unless PERB exercises its discretion to accept the late-filed appeal upon a showing of good cause. (PERB Reg. 32136.) No such showing has been made in this case. Therefore, the appeal is untimely and subject to dismissal on that basis.

Compliance with Requirements for Filing Appeal

Pursuant to PERB Regulation 32635(a), an appeal from dismissal must:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;

- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

To satisfy the requirements of PERB Regulation 32635(a), the appeal must sufficiently place the Board and the respondent “on notice of the issues raised on appeal.” (*State Employees Trades Council United* (2009) PERB Decision No. 2069-H (*State Employees Trade Council*); *City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent’s dismissal fails to comply with PERB Regulation 32635(a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381 (*Pratt*); *Lodi Education Association (Hudock)* (1995) PERB Decision No. 1124; *United Teachers - Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635(a). (*Pratt*; *State Employees Trade Council*; *Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M; *County of Solano (Human Resources Department)* (2004) PERB Decision No. 1598-M.)

The amended charge merely restates facts alleged in the original charge that CSEA erred in its interpretation of the contract provisions governing Perez’s right to voluntarily demote to the position of Utility Worker. It fails, however, to reference any portion of the Board agent’s determination or otherwise identify the specific issues of procedure, fact, law or rationale to which the appeal is taken, the page or part of the dismissal to which appeal is taken, or the grounds for each issue. Thus, it is subject to dismissal on that basis as well. (*City of Brea* (2009) PERB Decision No. 2083-M.)

New Evidence and Allegations on Appeal

Were we to consider Perez's appeal, we would also decline to consider new evidence and new factual allegations contained in the appeal that were not presented in the original charge.

"Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (PERB Reg. 32635(b); see also *CSU Employees Union, SEIU Local 2579 (Kyrias)* (2011) PERB Decision No. 2175-H.) The Board has found good cause when "the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge." (*Sacramento City Teachers Association (Ferreira)* (2002) PERB Decision No. 1503.)

The documents attached to the appeal consist of various job descriptions and schedules of work duties related to Perez's claims that CSEA breached its duty of fair representation by failing to resolve Perez's grievance to his satisfaction. The appeal provides no reason why they could not have been provided with the original charge or in a timely filed amended charge. Thus, we find no good cause to consider these new allegations and evidence on appeal.

ORDER

The unfair practice charge in Case No. LA-CO-1400-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Martinez and Member McKeag joined in this Decision.