

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES LOCAL
3299; UNIVERSITY PROFESSIONAL &
TECHNICAL EMPLOYEES
COMMUNICATION WORKERS OF AMERICA,
LOCAL 9119; and TEAMSTERS LOCAL 2010

Charging Parties,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

Case Nos. SF-CE-1188-H,
SF-CE-1189-H, and
SF-CE-1192-H

PERB Order No. Ad-477-H

March 4, 2020

Appearances: Leonard Carder by Andrew Ziaja, Attorney, for American Federation of State, County & Municipal Employees Local 3299, and University Professional & Technical Employees Communication Workers of America Local 9119; Beeson, Tayer & Bodine by Susan Garea, Attorney, for Teamsters Local 2010; Sloan Sakai Yeung & Wong by Timothy G. Yeung, Attorney, for Regents of the University of California.

Before Banks and Paulson, Members.

DECISION¹

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on American Federation of State, County and Municipal

¹ Pursuant to Government Code sections 3509, subdivision (a), and 3541.3, subdivision (k), the Board has delegated this case for decision to a two-member panel. Unless otherwise specified, all further statutory references herein are to the Government Code.

Employees Local 3299's (AFSCME) and University Professional and Technical Employees Communications Workers of America Local 9119's (UPTE) appeal of an administrative determination by the Board's Appeals Assistant. The Appeals Assistant rejected as untimely AFSCME and UPTE's jointly filed exceptions to the proposed decision of an Administrative Law Judge.

Based on our review of AFSCME and UPTE's appeal, the Regents of the University of California's (University) response, and the entire record in this matter, we reverse the administrative determination and accept AFSCME and UPTE's jointly filed exceptions.

RELEVANT BACKGROUND

AFSCME filed PERB Case No. SF-CE-1188-H on July 3, 2018, alleging that the University committed an unfair labor practice when it circulated a communication to employees regarding the United States Supreme Court Decision *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, 585 U.S. ____ (2018). UPTE filed a substantively similar charge on July 9, 2018, as did Teamsters Local 2010 (Teamsters) on July 10, 2018.² PERB's Office of the General Counsel issued three nearly identical complaints on September 14, 2018. On September 20, 2018, Charging Parties filed a "Joint Consolidated Amended Charge." The complaints were consolidated for purposes of hearing, which was held November 5, 14, and 15, 2018. The ALJ issued a proposed decision July 19, 2019.

² The charges were docketed as PERB Case Nos. SF-CE-1189 and SF-CE-1192, respectively.

Teamsters filed a request to extend the time to file exceptions to September 3, 2019, which was granted on August 8, 2019. All Charging Parties filed exceptions on September 3, 2019.³

However, the Appeals Assistant rejected AFSCME and UPTE's filing as untimely, as the extension of time to file exceptions had been granted only to Teamsters. AFSCME and UPTE timely filed an appeal of this determination, including a joint stipulation with Teamsters and the University that counsel had understood and intended the extension of time to apply to all parties. In the alternative, on September 6, 2019, AFSCME and UPTE also filed cross-exceptions as a response to the Teamsters' exceptions. The University does not oppose AFSCME and UPTE's appeal of the untimely filing but asserts that AFSCME and UPTE have no right to file cross-exceptions (or a response to exceptions) because they are not parties to the dispute between Teamsters and the University.

DISCUSSION

PERB Regulations provide that a late filing may be excused at the discretion of the Board "for good cause only." (PERB Regulation 32136.⁴) If excused, a late filing becomes a timely filing. (*Ibid.*) Consistent with a general policy of law which favors preserving the right to file exceptions and hear appeals on their merits, the Board's application of Regulation 32136 to a variety of factual scenarios reveals that "good cause" is a flexible standard, defined and constrained by considerations of fairness

³ AFSCME and UPTE are represented by the same counsel, and filed a single, joint statement of exceptions.

⁴ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

and reasonableness. (*Bellflower Unified School District* (2017) PERB Order No. Ad-447, p. 3 (*Bellflower*), citing *Trustees of the California State University* (1989) PERB Order No. Ad-192-H, pp. 4-5.) For example, the Board has excused late filings caused by “honest mistakes,” such as mailing or clerical errors. (*Bellflower*, supra, PERB Order No. 447, p. 5.) Generally, the Board has excused a late filing where a short, non-prejudicial delay resulted either from circumstances beyond the control of the filing party or from excusable misinformation, where the filing party’s explanation was credible on its face or was corroborated by other facts or testimony. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325, pp. 3-4; *Barstow Unified School District* (1996) PERB Order No. Ad-277 (*Barstow*), p. 4; cf. *Oxnard Elementary School District* (2004) PERB Decision No. 1728, p. 1, fn. 2.) The moving party must provide a “reasonable and credible” explanation for its untimely filing. (*National School District* (2010) PERB Order No. Ad-389, pp. 2-3; *Newport-Mesa Unified School District* (2008) PERB Order No. Ad-373, p. 3.)

Given the parties’ stipulation that they intended and understood that Teamsters’ request was on behalf of all Charging Parties, we find AFSCME and UPTE’s explanation for the late filing to be reasonable and credible under the circumstances. The confusion caused in this instance by the multiple parties and consolidated proceedings distinguishes the instant circumstances from instances where the Board has found an attorney error is not good cause for late filing. (See *Bellflower*, supra, PERB Order No. Ad-447, pp. 5-6.) The University does not oppose the appeal and has suffered no prejudice. AFSCME and UPTE have therefore established good

cause for the untimely filing. The Board shall accept the exceptions as timely filed on September 3, 2019.⁵

ORDER

The Appeals Assistant's administrative determination in Case Nos. SF-CE-1188-H and SF-CE-1189-H, rejecting the American Federation of State, County and Municipal Employees Local 3299's and University Professional and Technical Employees Communications Workers of America Local 9119's exceptions as untimely is hereby REVERSED and the Board accepts the exceptions, filed September 3, 2019.

Member Banks joins in this Decision.

⁵ Because we find AFSCME and UPTE have established good cause for late filing, we do not reach the question of whether the parties had a separate right to file cross-exceptions in response to Teamsters.