

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TIMOTHY GALE SIMERAL,)
)
 Charging Party,) Case No. S-CO-278
)
 v.) Administrative Appeal
)
 CALIFORNIA SCHOOL EMPLOYEES) PERB Order No. Ad-233
 ASSOCIATION,)
)
 Respondent.)
)
)

Appearances: Timothy Gale Simeral, on his own behalf; William C. Heath, Deputy Chief Counsel for California School Employees Association.

Before Camilli, Caffrey and Carlyle, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Timothy Gale Simeral (Simeral) of the rejection by the PERB appeals assistant as untimely filed, of his request for reconsideration of California School Employees Association (Simeral), (1992) PERB Decision No. 930. In that decision the Board affirmed the Board agent's dismissal of Simeral's charge that the California School Employees Association (CSEA) violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by mishandling a

¹EERA is codified at Government Code section 3540 et seq. Section 3543.6 provides, in pertinent part:

It shall be unlawful for an employee organization to:

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

grievance regarding the timing of a bus run.

PERB Decision No. 930 was served on the parties by mail on May 14, 1992. Any request for reconsideration was due to be filed with PERB no later than June 8, 1992 in accordance with PERB Regulation sections 32410² and 32135.³ Simeral's first attempt at filing the request was postmarked June 2, 1992 but was incorrectly addressed and returned to him by the postal service. The second attempt at filing was sent by regular first-class

discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

²PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation section 32410(a) states, in pertinent part:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and 5 copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to section 32140 are required.

³PERB Regulation section 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 or Express United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office.

mail, postmarked June 10, 1992, and received by PERB on June 11, 1992. As a result, Simeral's request for reconsideration was rejected by the PERB appeals assistant as untimely filed.

SIMERAL'S APPEAL

On appeal, Simeral states that the first, incorrectly addressed filing was held by the postal service for several days before being returned to him after June 9, 1992, making it impossible for him to correct the error and submit a timely filing by the June 8, 1992 due date. As evidence, Simeral presents a statement from his mail carrier indicating that Simeral's mail was "inadvertently held, causing a delay in delivery" from June 6, 1992 through June 9, 1992.

The case file also includes a letter from CSEA stating that CSEA had on June 5, 1992 received a copy of Simeral's June 2, 1992 request for reconsideration.

DISCUSSION

Pursuant to PERB Regulation section 32136,⁴ the Board may excuse a late filing for good cause only. The Board has previously excused late filings which have gone astray. In North Orange County Regional Occupational Program (1990) PERB Decision No. 807, exceptions were filed well before the deadline, but were inadvertently filed in the Los Angeles Regional office, rather

⁴PERB Regulation section 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.

than the Sacramento Headquarters office. The North Orange County Regional Occupational Program (NOCROP) explained that the secretary generally submitted a large volume of filings with PERB, usually with the Los Angeles office. In this case, through force of habit, she filed the exceptions in Los Angeles. The Board found that NOCROP attempted to file in a timely fashion, but due to an honest mistake, the documents were filed in the wrong office.

The Board has also excused filings which were mailed to the proper office, but were not timely received. In The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H, the Board found good cause to excuse the respondent's untimely filed opposition brief. In an unrefuted declaration, the attorney stated that it was the policy of his office to file documents with PERB by certified mail, but his secretary inadvertently sent them by regular first-class mail on the last day set for filing. Similarly, in Trustees of the California State University (1989) PERB Order No. Ad-192-H, the Board found the secretary's explanation that the postage meter was incorrectly set causing the exceptions to be untimely filed, constituted good cause.

This case is similar to North Orange County Regional Occupational Program, supra, PERB Decision No. 807 in that Simeral's request for reconsideration was mailed well before the deadline, but was inadvertently misaddressed. The statement from Simeral's mail carrier, as well as the fact that CSEA received

its copy of the filing in a timely fashion, confirm the fact that Simeral made a conscientious attempt to timely file but failed to do so due to an honest mistake. Accordingly, the Board finds that good cause exists to excuse the late filing and accept Simeral's request for reconsideration as timely filed.

ORDER

Simeral's request for reconsideration of California School Employees Association (Simeral) (1992) PERB Decision No. 930 is hereby ACCEPTED as timely filed. The California School Employees Association is hereby afforded 20 days from date of service of this Decision to respond to Simeral's request for reconsideration.

Members Camilli and Carlyle joined in this Decision.