

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DOMINGO GUERRA,)
)
Charging Party,) Case No. LA-CO-707
)
v.) Administrative Appeal
)
BAKERSFIELD ELEMENTARY TEACHERS) PERB Order No. Ad-281
ASSOCIATION, CTA/NEA,)
)
Respondent.)
)
)
)

Appearances: Domingo Guerra, on his own behalf; California Teachers Association by Rosalind D. Wolf, Attorney, for Bakersfield Elementary Teachers Association, CTA/NEA.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on Domingo Guerra's (Guerra) request that the Board accept his late-filed appeal of a Board agent's dismissal of Guerra's unfair practice charge.

BACKGROUND

The Board agent dismissed Guerra's unfair practice charge against the Bakersfield Elementary Teachers Association, CTA/NEA (Association) on November 21, 1996. Pursuant to PERB Regulation 32635(a),¹ an appeal of that dismissal was due to be filed on or

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32635(a) provides, in pertinent part:

- (a) Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be

before December 16, 1996. Guerra did not file his appeal until January 6, 1997.²

On January 13, 1997, the PERB appeals assistant sent Guerra a letter denying his appeal as untimely. The appeals assistant also notified Guerra of his right to appeal her administrative determination. (PERB Regulation 32360.)³ On January 23, 1997, Guerra requested that the Board excuse his late filing and set aside the appeals assistant's administrative determination.

DISCUSSION

PERB Regulation 32136 provides that the Board may excuse a

filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. Except as provided in Section 32162, service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

²The Association filed its opposition to this appeal on January 21, 1997.

³PERB Regulation 32360 provides:

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

(b) An original and five 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.

late filing only for good cause.⁴ Guerra requests that the Board excuse his late-filed exceptions because of his inexperience, the time pressures of other litigation, the imposition of the holidays, and the death of his great-grandmother. The Board has denied late filings blamed on similar circumstances. (California Union of Safety Employees (John) (1995) PERB Order No. Ad-264-S at p. 4 (noting that mere workload and holiday schedules do not constitute good cause to excuse a late filing); North Monterey County Unified School District (1996) PERB Order No. Ad-274 at p. 4 (absent additional explanation, no good cause found where appellant's mother suffered a heart attack prior to the filing deadline).)

Here, despite the foreseeability of workload and holiday schedules, Guerra did not request an extension of time to file his appeal and provides no reason for his failure to do so. Further, Guerra makes but passing mention of the death of his great-grandmother. He does not indicate when that death occurred, nor how her death interfered with his ability to file his appeal. In sum, Guerra provides no indication that he made a conscientious effort to file in a timely manner. Accordingly, Guerra has failed to demonstrate good cause to excuse the lateness of his appeal.

⁴PERB Regulation 32136 provides:

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.

ORDER

Domingo Guerra's request that the Board accept his late filed appeal in Case No. LA-CO-707 is hereby DENIED.

Chairman Caffrey and Member Johnson joined in this Decision.