

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARGARITA MAESTAS-FLORES,)
)
Charging Party,) Case No. SF-CO-513
)
v.) Administrative Appeal
)
SAN JOSE COMMUNITY COLLEGE) PERB Order No. Ad-284
FACULTY ASSOCIATION,)
)
Respondent.)
)
_____)

Appearance: Law Offices of Robert J. Bezemek by Adam H. Birnhak, Attorney, for San Jose Community College Faculty Association.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by the San Jose Community College Faculty Association (Association) that the Board accept its late filed response to Margarita Maestas-Flores' (Maestas-Flores) appeal of a Board agent's dismissal of an unfair practice charge.

BACKGROUND

Maestas-Flores's appeal was served on the Association by mail on February 14, 1997. According to PERB Regulation 32635(c),¹ the Association's response was due to be filed at the

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32635 states, in part, that:

(c) If the charging party files a timely appeal of the refusal, any other party may file with the Board itself an original and five copies of a statement in opposition

Sacramento headquarters office² no later than March 11, 1997. The Association's response was received by PERB's San Francisco regional office on March 10, 1997. The San Francisco regional office forwarded the Association's response to the Sacramento headquarters office, which received it on March 12, 1997, one day after the deadline. The PERB appeals assistant subsequently informed the Association that she was rejecting the response as untimely filed, and the Association now appeals that rejection.

DISCUSSION

The Association requests that the Board excuse its late filing, explaining that it sent its response to the wrong office by honest mistake, noting that it typically makes numerous filings each month to the various PERB offices. Furthermore, the Association asserts that an unforeseeable mail delay contributed to the lateness.

PERB Regulation 32136 provides that:

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.

within 20 days following the date of service of the appeal. . . .

²PERB Regulation 32142 provides, in pertinent part:

Whenever a document is required to be "filed" or "served" with any of the below listed entities, the proper recipient shall be:

(b) The Board itself: only at the headquarters office.

The sole issue is whether the Association has shown good cause for the Board to excuse its late filing. The Board has found good cause in identical circumstances in North Orange County Regional Occupational Program (1990) PERB Decision No. 807.) Since there was a conscientious effort to timely file, we find that good cause exists and we excuse this late filing.

ORDER

The San Jose Community College Faculty Association's request to accept its late filed response to the appeal of the dismissal in Case No. SF-CO-513 is hereby GRANTED.

Chairman Caffrey and Member Dyer joined in this Decision.