

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

MARIO MERCADO,

Charging Party,

v.

HART DISTRICT TEACHERS ASSOCIATION,

Respondent.

CANDICE BLOCH,

Charging Party,

v.

HART DISTRICT TEACHERS ASSOCIATION,

Respondent.

Case No. LA-CO-801-E

PERB Order No. Ad-312

December 4, 2001

Case No. LA-CO-802-E

Appearances: Mario Mercado and Candice Bloch, on their own behalf; Charles R. Gustafson, Attorney, for Hart District Teachers Association.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Hart District Teachers Association (Association) to the PERB appeals assistant's rejection of its response to the request for reconsideration of Hart District Teachers Association (Mercado and Bloch) (2001) PERB Decision No. 1456 (HDTA) as untimely filed.

DISCUSSION

The Association's response to the request for reconsideration in HDTA was due to be filed no later than September 12, 2001. The response was sent on September 12 by regular U.S. mail and received at PERB on September 14, 2001.

PERB Regulation 32135¹ states, in pertinent part:

(a) 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 mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing and addressed to the proper PERB office.

Because the Association did not use certified or Express United States mail, its September 14 filing failed to comply with Regulation 32135 and was rejected as untimely filed.

The Association asks the Board to find good cause to excuse its late filing because it made a good faith effort to timely file, but erred by placing the response in regular mail delivery service not specified in PERB's regulations. The Association notes that the response was received by PERB on September 14, 2001, only two days late and that as a result of its inadvertence in not using certified mail as its custom, the late filing should be excused.

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.

In applying this regulation, the Board has found good cause to excuse late filings when a party

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

has made a conscientious effort to timely file. Consequently, the Board has excused various types of “honest mistakes” involving clerical or mailing errors. (North Orange County Regional Occupational Program (1990) PERB Decision No. 807; Trustees of the California State University (1989) PERB Order No. Ad-192-H; Barstow Unified School District (1996) PERB Order No. Ad-277.)

Here, the Board has considered the request for reconsideration at issue and denied it. (See Hart District Teachers Association (Mercado and Bloch) (2001) PERB Decision No. 1456a.) Therefore, the request for review of this late filed response is moot and there is no need to rule on the merits of this appeal.

ORDER

The request by the Hart District Teachers Association that the Board accept its late filed response to the request for reconsideration in Hart District Teachers Association (Mercado and Bloch) (2001) PERB Decision No. 1456 is hereby DENIED.

Members Amador and Baker joined in this Decision.