

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

COACHELLA VALLEY MOSQUITO &
VECTOR CONTROL DISTRICT,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 2001,

Petitioner.

Case No. LA-BR-4-M

Administrative Appeal

PERB Order No. Ad-336-M

May 12, 2004

Appearance: Timothy Taggert, Labor Relations Representative, for California School Employees Association & its Chapter 2001.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association & its Chapter 2001 (CSEA) of a Board agent's administrative determination. The Board agent determined that CSEA's petition for Board review, filed pursuant to PERB Regulation 60000¹, was untimely.

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 60000 states, in pertinent part:

- (a) Any party to a determination by a public agency concerning unit determination, representation, recognition or elections may file a petition requesting the Board review the determination. Such a petition may only be filed within 30 days following exhaustion of administrative remedies available under the applicable local rules. A challenge to the validity of a local rule may not be filed under this section and may only be filed as an unfair practice charge pursuant to Section 32602 of these regulations.

Based on that determination, the Board agent dismissed the petition. On appeal, CSEA argues that the thirty (30) day time limit specified in PERB Regulation 60000 is not jurisdictional. Since the time limit is not jurisdictional, CSEA argues that its late filing may be excused for good cause.

The Board has reviewed the entire record in this matter and affirms the administrative determination based on the following discussion.

BACKGROUND

CSEA currently represents a unit of employees of the Coachella Valley Mosquito & Vector Control District (District). On or about November 5, 2002, CSEA submitted a petition to the District seeking to add the classification of red imported fire ant technician (RIFA) to its

(b) The petition shall be filed with the regional office. Service and proof of service of the petition pursuant to Section 32140 are required.

(c) The petition shall contain the following information:

(1) The name, address, county and telephone number of the public agency and the name, address and telephone number of the public agency agent to be contacted;

(2) The name, address and telephone number of the petitioner and the name, address and telephone number of the petitioner's agent to be contacted;

(3) The name, address and telephone number of any other interested party and the name, address and telephone number of the party's agent to be contacted;

(4) A copy of any petition or request filed with the public agency, a copy of the final determination of the public agency, and any related materials;

(5) A statement of the issue(s) in dispute;

(6) A statement indicating the specific action(s) requested of the Board.

unit. The District's general manager denied the request on December 19, 2002. Pursuant to the District's local rules, CSEA was provided an opportunity to appeal the general manager's decision to the District's board. CSEA filed such an appeal on January 13, 2003. On February 12, 2003, the District's Board denied the appeal and dismissed the petition.

CSEA alleges that on March 3, 2003, it filed a "Notice of Appeal" with both the District and PERB. The Notice of Appeal states, in its entirety:

COMES NOW the Appellant and RIFA employees to appeal from the Respondent's Board of Trustee's sustaining of the General Manager's decision to grant recognition of RIFA's request for representation by CSEA, but only as a separate unit. Denying their request to become members of Appellant.

Although the proof of service indicates that a copy was served on PERB, no such document was located in PERB's files. However, a labor relations representative (LRR) for CSEA claims that he received a telephone call from a Board agent acknowledging receipt of the appeal and informing him that the proper procedure was to file a petition for Board review under PERB Regulation 60000.

On April 25, 2003, CSEA filed the present petition for Board review pursuant to PERB Regulation 60000, et seq. On May 5, 2003, PERB sent CSEA an order to show cause (OSC) why its petition should not be dismissed as untimely. Specifically, the OSC noted that the final decision of the District was issued on February 12, 2003, but CSEA's petition was not filed until April 25, 2003. As PERB Regulation 60000(a) requires that a petition be filed within thirty (30) days of the local agency's decision, CSEA's petition was untimely.

On May 21, 2003, the LRR responded to the OSC by submitting a declaration under oath. The LRR asserted that even though he consulted with CSEA's legal counsel, no one was familiar with or knew how to file a petition for Board review. However, the LRR also

acknowledges that the District informed him that he had thirty (30) days to appeal the District's decision. The notice of appeal sent on March 3, 2003, was an attempt to initiate the appeal, according to the LRR.

The LRR then declares that:

Before I left on vacation out of the country on March 16, 2003, I received a call from a PERB agent in Los Angeles who informed me that PERB had received the NOTICE OF APPEAL, but that the proper procedure was to file a Petition for Board Review under Regulation 60000.

Upon his return from vacation, the LRR declares that he was occupied in negotiations in a separate matter. At some point, the LRR obtained a copy of PERB Regulation 60000 and prepared the petition which was filed on April 25, 2003.

On May 28, 2003, the Board agent issued an administrative decision finding CSEA's petition untimely. The Board agent declined to consider whether the late filing could be excused for good cause as the Board had yet to rule on whether late-filed petitions for Board review could be so excused. Based on the administrative determination, the Board agent dismissed the petition for Board review.

On appeal, CSEA argues that a PERB regulation cannot constitute a jurisdictional statute of limitations. Instead, late-filed petitions for Board review should be excused where good cause exists. As no prejudice has been shown, CSEA urges the Board to excuse its late-filed petition.

DISCUSSION

The Board agrees with CSEA that the thirty (30) day time period in PERB Regulation 60000 does not constitute a jurisdictional statute of limitations. Instead, late-filings under PERB Regulation 60000 may be excused for good cause pursuant to PERB

Regulation 32136.² What constitutes good cause has been examined by the Board in a variety of different situations. (See, e.g., United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325 (Kestin); City of Sacramento (2003) PERB Decision No. 1541-M.) Generally, good cause is shown where the late-filing has been caused by circumstances beyond the party's control or from excusable misinformation. (Kestin.)

Here, the Board does not find good excuse to excuse CSEA's late-filed petition. Based on the facts recited above, CSEA's late-filing was caused by its failure to read PERB Regulation 60000. There were no circumstances beyond its control. Further, there was no misinformation. Accordingly, CSEA's appeal must be dismissed.

ORDER

The Board affirms the administrative determination in Case No. LA-BR-4-M that the petition for Board review filed by the California School Employees Association and its Chapter 2001 was untimely filed.

Chairman Duncan and Member Whitehead joined in this Decision.

²PERB Regulation 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.