

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES  
ASSOCIATION & ITS CHAPTER 77,

Charging Party,

v.

LODI UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. SA-CE-2081-E

Administrative Appeal

PERB Order No. Ad-346

February 11, 2005

Appearance: Pinnell & Kingsley by Kim Kingsley Bogard, Attorney, for Lodi Unified School District.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by the Lodi Unified School District (District) that the Board excuse its late-filed response to exceptions filed by the California School Employees Association and its Chapter 77 (CSEA) of an administrative law judge's (ALJ) proposed decision. The request is supported by the Declaration of Kim Kingsley Bogard (Bogard) of Pinnell & Kingsley, attorneys for the District. The declaration was signed under penalty of perjury and contained the documents referenced below.

BACKGROUND

Bogard states that she was ill on December 13, 2004, the date the filing was due. She left the office at 4:20 p.m., at which time the District's response was complete and ready for filing. On leaving, she left the clerical duties of service and filing to her assistant who had proven trustworthy in the past. Despite Bogard's clear directions, the assistant served the response but did not file it with PERB either by fax or by personal service. As a result of this

clerical error, the response was filed one day late, on December 14. The proof of service shows that the response was properly and timely served on CSEA. In addition, according to Bogard, as a result of its receipt of the response, CSEA learned of an error in its exceptions to the ALJ's proposed decision and by letter dated December 17, 2004, sought to correct the error. That letter, according to Bogard, actually comprises a rebuttal to the District's response. Thus, Bogard asserts that it would be unfair to exclude the District's response and permit CSEA's "letter of correction."

### DISCUSSION

Bogard asks the Board to excuse the District's late-filed response to CSEA's exceptions. Under PERB Regulation 32136,<sup>1</sup> the Board may excuse a late filing for good cause. The Board has found good cause in situations where the justification was "reasonable and credible." (Barstow Unified School District (1996) PERB Order No. Ad-277 (Barstow)).<sup>2</sup> The Board has deemed "honest mistakes," such as mailing or clerical errors, to show good cause. (State of California (Department of Transportation) (2003) PERB Order No. Ad-326-S.) For example, in The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H (Regents), the Board excused a late filing based upon an attorney's plausible explanation that an ordinarily reliable clerical employee inadvertently sent the document by regular instead of certified mail on the last day for filing.

The facts in this case are similar to those in Regents. Bogard completed the District's response to CSEA's exceptions on the due date, December 13. She had to leave work early

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

<sup>2</sup>The request cited PERB precedent using PERC citations. We ask that the District use formal PERB citations for referencing cases in the future filings.

that day because she was ill but left the document to be filed and served by a trusted assistant with specific instructions regarding what needed to be done. Instead, the assistant served the response but failed to file the document with PERB either by fax or by personal service. As a result, the District's response was filed with the Board the next day, December 14. In this situation, we find that Bogard's justification for the District's late filing is reasonable and credible.

If the justification is found to be reasonable and credible, then the Board evaluates whether there is prejudice to the opposing party in excusing the late filing. (Barstow.) Here, the proof of service shows that the District's response was properly and timely served on CSEA. In fact, the response noted an error in CSEA's exceptions prompting CSEA to file a "correction" dated December 17. Further, CSEA has not claimed prejudice from the District's late filing.

In light of the above discussion, the Board finds that the District has demonstrated good cause to excuse its late-filed opposition.

#### ORDER

The Lodi Unified School District's request that the Board accept its late-filed response to exceptions filed by the California School Employees Association & its Chapter 77 in Case No. SA-CE-2081-E is hereby GRANTED.

Chairman Duncan and Member Shek joined in this Decision.