

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KERN COMMUNITY COLLEGE DISTRICT,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTERS 246, 336 &
617,

Respondent.

Case No. LA-CO-1324-E

Administrative Appeal

PERB Order No. Ad-372

April 21, 2008

Appearances: Liebert Cassidy Whitmore by Mary L. Dowell and Eileen O'Hare Anderson, Attorneys, for Kern Community College District; California School Employees Association by Sonja J. Woodward, Staff Attorney, for California School Employees Association & its Chapters 246, 336 & 617.

Before Neuwald, Chair; Wesley and Rystrom, Members.

DECISION

NEUWALD, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Kern Community College District (District) that the Board excuse its late-filed appeal of a Board agent's dismissal of their unfair practice charge. Having reviewed the appeal of the administrative decision and the California School Employees Association & its Chapters 246, 336 & 617 (CSEA) opposition, the Board finds good cause to excuse the late filing.¹

BACKGROUND

The Board agent dismissed the unfair practice charge on February 22, 2008. An appeal to the dismissal was due to be filed with PERB on March 13, 2008. No appeal was filed by this date. The District, however, served a copy of the appeal on CSEA on March 13, 2008. On

¹Because this is an administrative appeal and we excuse the late filing, CSEA will have twenty days from the date of this decision to file a response pursuant to PERB Regulation 32635(c). (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et. seq.)

April 1, 2008, a staff attorney for CSEA contacted the Appeals Assistant to request an extension to respond to the appeal. The Appeals Assistant informed her that no appeal was filed. The staff attorney also contacted the Board agent in PERB's Los Angeles office to see if by chance the appeal was misdirected to that office. The staff attorney for CSEA then contacted the District's counsel to inquire whether an appeal was actually filed. After receiving the phone call, the District's attorney confirmed with both the Appeals Assistant and the Board agent that an appeal was not filed. The Appeals Assistant verbally dismissed the appeal as untimely. That same day, April 1, 2008, the District filed an appeal of the administrative dismissal as well as a copy of the appeal to the amended unfair practice charge dated March 13, 2008. The District's appeal is supported by the Declaration of Eileen O'Hare Anderson of Liebert Cassidy Whitmore, attorneys for the District. The declaration was signed under penalty of perjury and contained the documents referenced above. CSEA filed its opposition to the administrative appeal on April 9, 2008.

THE DISTRICT'S APPEAL

The District argues that good cause exists for the Board to excuse the late filing of its appeal. Specifically, the District states that the secretary attempted to file in a timely fashion, but due to an inadvertent error, the mechanics of the filing went awry. The District further argues that CSEA was not prejudiced by the late filing as they were timely served. Additionally, the District argues that the secretary believed she completed all the steps necessary to complete the filing when she served the appeal on CSEA.

CSEA'S OPPOSITION

CSEA filed its opposition on April 9, 2008, arguing that the District failed to demonstrate good cause to excuse a late failing of its appeal. Specifically, CSEA argues that the delay in filing was not: (1) of a short duration; (2) based on excusable misinformation or

circumstances beyond the control of the charging party; (3) a clerical error; and (4) the cases cited by charging party are distinguishable.

DISCUSSION

Under PERB Regulation 32136, 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.” (Lodi Unified School District (2005) PERB Order No. Ad-346 (Lodi); Barstow Unified School District (1996) PERB Order No. Ad-277.) 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 Lodi the Board excused a late filing based upon an attorney’s plausible explanation that a trustworthy employee failed to file a response with PERB either by fax or by personal service but properly and timely served its response on the opposing party.

The facts in this case are similar to those in Lodi. The District’s attorney completed the appeal on the due date, March 13, 2008. She returned the documents to her secretary, a trusted assistant with over 22 years experience, to be filed with PERB. The secretary served the appeal on CSEA, but failed to file the document with PERB either by fax or by personal service. As a result, the District’s appeal was not filed with the Board until 19 days after the due date. CSEA argues that this is a substantial delay and, therefore, good cause does not exist. We would agree with CSEA had the District not filed an administrative appeal as well as its appeal on the same day it received notification that no appeal was filed. In this situation, we find that the District’s explanation for the 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. (Lodi.) Here, the proof of service shows that the District’s appeal was properly and timely served on CSEA.

CSEA phoned the Appeals Assistant to request an extension to file its reply on April 1, 2008.

Therefore, CSEA is not prejudiced by the District's late filing.

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

ORDER

The request by the Kern Community College District (District) to accept its late-filed appeal in Case No. LA-CO-1324-E is hereby GRANTED.

The California School Employees Association & its Chapters 246, 336 & 617 will have twenty (20) days from service of this decision to file an opposition to the District's appeal of dismissal.

Members Wesley and Rystrom joined in this Decision.