

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



JOHN BREWINGTON,

Charging Party,

v.

COUNTY OF RIVERSIDE,

Respondent.

Case No. LA-CE-261-M

Administrative Appeal

PERB Order No. Ad-376-M

August 29, 2008

Appearances: Tomlinson, Nydam & Prince by Alan J. Leahy, Attorney, for John Brewington; Jackson Lewis by Susan E. Groff, Attorney, for County of Riverside.

Before Neuwald, Chair; McKeag and Dowdin Calvillo, Members.

DECISION

NEUWALD, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the County of Riverside (County) of the Appeals Assistant's July 23, 2008, administrative dismissal of the filing deadlines for the County's request for oral argument.

We reviewed the entire record in this matter. In light of our review, subject to the discussion below, the Board denies the County's administrative appeal as untimely filed.

BACKGROUND

On April 25, 2008, the administrative law judge issued a proposed decision in the above-referenced case. The County was granted an extension of time from May 15 to June 4 to file its exceptions. The County timely filed its exceptions on June 9 which includes the extension for mailing. (PERB Reg. 32130(c).<sup>1</sup>) The request for oral argument was not filed

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

with the statement of exceptions. The County requested oral argument on July 17, 2008. The Appeals Assistant denied the County's request as untimely filed on July 23, 2008.

On appeal, the County acknowledges that its request is untimely but states that the County's current attorneys were not counsel of record during the PERB hearings and only recently were substituted in as counsel. The County further states that its request does not prejudice anyone.

John Brewington (Brewington) filed a response opposing the request. Brewington argues that PERB Regulation 32315 is clear and that a request for oral argument must be filed with the statement of exceptions or response thereto. Brewington argues that the County's current attorneys were counsel of record to the filing of the statement of exceptions. Further, the County's current attorneys were given a lengthy extension to prepare and file the statement of exceptions. The County had every opportunity to make a timely request for oral argument at the time of its submission.

#### DISCUSSION

PERB Regulation 32315 states:

A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument. [Emphasis added.]

The County, as it acknowledged, failed to comply with this regulation. We are not persuaded by the County's position that this was a result of substitution of counsel because the counsel that are now requesting oral argument is the same counsel that was granted an extension to prepare and file exceptions to the proposed decision. As such, the Board denies the County's request for oral argument as untimely filed.

ORDER

The County of Riverside's administrative appeal of the Appeal Assistant's July 23, 2008, administrative determination is hereby DENIED.

Members McKeag and Dowdin Calvillo joined in this Decision.