

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BRENDA PRATT,

Charging Party,

v.

UNITED TEACHERS OF LOS ANGELES,

Respondent.

Case No. LA-CO-1354-E

Administrative Appeal

PERB Order No. Ad-381

September 25, 2009

Appearance: Brenda Pratt, on her own behalf.

Before Dowdin Calvillo, Acting Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Acting Chair: This case is before the Public Employment Relations Board (PERB or Board) on an administrative appeal of the PERB Appeals Assistant's determination that Brenda Pratt's (Pratt) appeal of the dismissal of her unfair practice charge was untimely filed.

The Board has reviewed the Appeals Assistant's determination and the record in light of Pratt's administrative appeal and the relevant law. Based on this review, the Board finds no good cause to excuse the late filed appeal.

BACKGROUND

On August 13, 2008, Pratt filed an unfair practice charge alleging that United Teachers of Los Angeles (UTLA) violated the Educational Employment Relations Act (EERA)¹ by failing to fairly represent her. The Board agent dismissed the charge on March 4, 2009.

¹ EERA is codified at Government Code section 3540 et seq.

On March 25, 2009, Pratt filed a document with the PERB Appeals Assistant entitled, "Request for Extension to Appeal Unfair Charge (No. LA-CO-1354-E)." The document stated in full:

I am requesting an extension to appeal the above case. The request for extension is two-fold:

#1 Medical Reasons

#2 Personal-Emergency out of state.

I will be available after the second week of April.

THANKS! FOR YOUR COOPERATION!!

Attached to the document were five copies of the Statement of Charge originally filed as part of Pratt's unfair practice charge.

By letter of April 7, 2009, the Board granted Pratt an extension until April 27 to file her appeal. Pratt did not file an appeal by that date. On May 7, 2009, the Appeals Assistant informed the parties by letter that the case was closed because Pratt had not filed an appeal.

On May 18, 2009, Pratt filed with the Appeals Assistant a letter requesting that the Board proceed with reviewing her case. In the letter, Pratt claims there was a "misunderstanding" and that she intended the March 25 extension request to constitute her appeal of the dismissal. She further asserts that, based on the documents provided during the investigation of her charge, "PERB has what it needs to proceed to the Appeals committee."

On June 1, 2009, the Appeals Assistant informed UTLA by letter that the Board considered Pratt's May 18 letter to be a request to excuse a late filing. The letter provided UTLA ten days to respond to Pratt's letter. UTLA filed its response one day after the 10-day period expired. The Appeals Assistant denied the untimely response. UTLA did not appeal the denial.

DISCUSSION

PERB Regulation 32136 provides that the Board may excuse a late filing for good cause.² The Board has found good cause when the explanation for the late filing was “reasonable and credible” and the delay did not cause prejudice to any party. (*Barstow Unified School District* (1996) PERB Order No. Ad-277.) Good cause is typically found when the late filing was caused by circumstances beyond the party’s control. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.)

Pratt’s May 18, 2009 letter appears to claim that her appeal was filed late for the same reasons she requested an extension: medical reasons and a personal emergency out of state. Yet Pratt fails to explain how these circumstances prevented her from filing a timely appeal. Accordingly, she has not demonstrated good cause to excuse her late filed appeal. (*Newport-Mesa Unified School District* (2008) PERB Order No. Ad-373; *AFT College Staff Guild, Local 1521 (Mrvichin)* (2005) PERB Order No. Ad-349.)

Instead of explaining her delay in filing, Pratt asserts that she intended her March 25, 2009 letter, and the five copies of the Statement of Charge attached to it, to serve as her appeal. However, nothing in the letter indicates that Pratt had such an intention. Instead, the letter clearly states that it is a request for an extension of time to file an appeal. Had she intended the letter itself to constitute her appeal, she would not have needed to request an extension of time to file an appeal.

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32136 states in full:

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.

Moreover, even if Pratt intended for the March 25, 2009 letter to serve as her appeal, it could not have done so because it fails to comply with PERB Regulation 32635(a), which states, in pertinent part, that an appeal of a dismissal must:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

“[C]ompliance with regulations governing appeals is required to afford the respondent and the Board an adequate opportunity to address the issues raised, and noncompliance will warrant dismissal of the appeal.” (*California State Employees Association, Local 1000, AFL-CIO, Service Employees International Union (Myers)* (1992) PERB Decision No. 942-S.) An appeal that does not reference the substance of the Board agent’s dismissal fails to comply with PERB Regulation 32635(a). (*Lodi Education Association (Hudock)* (1995) PERB Decision No. 1124; *United Teachers – Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635(a). (*Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M; *County of Solano (Human Resources Department)* (2004) PERB Decision No. 1598-M.)

Pratt’s March 25, 2009 letter did not reference the substance of the Board agent’s warning or dismissal letters. Further, the attached Statement of Charge was identical to the document filed as part of Pratt’s original charge. The March 25, 2009 letter and attached documents failed to comply with PERB Regulation 32635(a) and thus could not constitute Pratt’s appeal of the dismissal.

ORDER

The request by Brenda Pratt that the Board excuse her late filed appeal of the dismissal of her unfair practice charge in Case No. LA-CO-1354-E is hereby DENIED.

Members McKeag and Wesley joined in this Decision.