

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SANTA MONICA COLLEGE FACULTY
ASSOCIATION,

Charging Party,

v.

SANTA MONICA COMMUNITY COLLEGE
DISTRICT,

Respondent.

Case No. LA-CE-5581-E

Administrative Appeal

PERB Order No. Ad-393

February 29, 2012

Appearance: Fagen, Friedman & Fulfrust by Anna J. Miller, Attorney, for Santa Monica Community College District.

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

DECISION

MARTINEZ: This case is before the Public Employment Relations Board (PERB or Board) on appeal of an administrative determination arising out of the Santa Monica Community College District's (District) response to the appeal from the Board agent's dismissal of the unfair practice charge. The administrative determination denied the District's response as untimely filed.

The Board has reviewed the entire record in this matter. Based on the Board's review and application of the relevant law, the Board finds good cause to excuse the District's late-filed response to the appeal.

BACKGROUND

According to a declaration signed under penalty of perjury by the District's attorney, the following occurred. On December 19, 2011, the District's attorney instructed a secretary at her firm to file the District's response with PERB in both the Los Angeles regional office and

in the headquarters office. On December 19, 2011, the secretary filed the response in the Los Angeles regional office, and served opposing counsel, but did not file the response in the headquarters office. On December 28, 2011, the Board agent who had processed the charge and issued the dismissal on behalf of the Office of General Counsel notified the District's attorney of the filing defect. On December 28, 2011, the office of the District's attorney sent a copy of the District's December 19, 2011, response to the headquarters office by facsimile, along with a cover sheet containing the following note:

Response to Appeal of the Dismissal attached for filing. NOTE:
ORIGINAL WAS FILED WITH THE LOS ANGELES
REGIONAL OFFICE ON 12/19/11. THE RESPONSE WAS
MISTAKENLY NOT FILED WITH THE SACRAMENTO
OFFICE WHEN FILED WITH THE LOS ANGELES OFFICE.
SEE FAX CONFIRMATION SHEETS OF ORIGNIAL FILING.

DISCUSSION

Pursuant to PERB Regulation 32635, subdivision (a),¹ the Santa Monica College Faculty Association (Association) timely filed an appeal from a Board agent's dismissal of its unfair practice charge. Under subdivision (c) of PERB Regulation 32635, any other party may file a statement in opposition to an appeal within 20 days following the date of service of the appeal with the Board itself in the headquarters office. The District's response was due by December 19, 2011. The District filed its response with PERB on December 19, 2011, but only in the Los Angeles regional office and not in the headquarters office. By the time the headquarters office received the District's response, it was nine days late.

PERB Regulation 32136 provides:

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.

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

Thus, pursuant to PERB Regulation 32136, the Board may, in its discretion, excuse a late filing for good cause. The Board has found good cause to exist where the explanation for the delay was “reasonable and credible.” (*Barstow Unified School District* (1996) PERB Order No. Ad-277 (*Barstow*).) The Board has also found good cause to exist for “honest mistakes” such as mailing or clerical errors. (*Ibid.*) Good cause has been found to exist where a short delay resulted from circumstances beyond the control of the filing party or from excusable misinformation. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.) Good cause has also been found to exist where the filing party’s explanation was either credible on its face or corroborated by other facts or testimony. (*Ibid.*) Good cause exists only where the filing party has made “a conscientious effort to timely file.” (*Ibid.*) If the reason for the untimely filing is “reasonable and credible,” the Board then evaluates whether permitting a late filing would be prejudicial to the opposing party. (*Barstow*.)

Here, the District made a conscientious effort to timely file its response to the appeal. The District’s response was prepared in a timely fashion, but filed in the wrong PERB office on account of a secretarial error. When the error was brought to the attention of the District, the District’s attorney immediately undertook to correct the problem by notifying the headquarters office of the mistake and providing that office with a copy of the District’s original response filed in the Los Angeles regional office on December 19, 2011. The District served its original response on the Association when the response was filed in the Los Angeles regional office on December 19, 2011. The Association did not file a response to the District’s administrative appeal, as permitted under PERB Regulation 32375. We find that the District’s reasons for the untimely filing are reasonable and credible. We also find that permitting a late filing will not result in prejudice to the Association.

Accordingly, we conclude that the District has demonstrated good cause under PERB Regulation 32136. (See, e.g., *Barstow* [Board found good cause to excuse a late filing where an inadvertent error caused an otherwise timely response to be filed in the wrong PERB office].) Based on our finding of good cause, the Board hereby exercises its discretion to excuse the District's late-filed response to the appeal. The District's response is deemed timely filed.

ORDER

The Santa Monica Community College District's request that the Public Employment Relations Board excuse its late-filed response to the appeal from the dismissal in Case No. LA-CE-5581-E is hereby GRANTED.

Members McKeag and Dowdin Calvillo joined in this Decision.