

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STANISLAUS CONSOLIDATED
FIREFIGHTERS, LOCAL 3399,

Charging Party,

v.

STANISLAUS CONSOLIDATED FIRE
PROTECTION DISTRICT,

Respondent.

Case No. SA-CE-711-M

Administrative Appeal

PERB Order No. Ad-394-M

May 23, 2012

Appearances: Wylie, McBride, Platten & Renner by Carol L. Koenig, Attorney, for Stanislaus Consolidated Firefighters, Local 3399; Law Offices of William D. Ross by William D. Ross, Attorney, for Stanislaus Consolidated Fire Protection District.

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

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on administrative appeal of the PERB Appeals Assistant's denial of the Stanislaus Consolidated Fire Protection District's (District) request for extension of time to file a request for reconsideration in *Stanislaus Consolidated Fire Protection District* (2012) PERB Order No. Ad-392-M (*Stanislaus I*).

The Board has reviewed the entire record including the appeal and the response thereto. Based on our review, the Board affirms the Appeals Assistant's denial of the District's request for extension of time to file a request for reconsideration as untimely. By this action, the Board's Order in *Stanislaus I* is deemed final.

PROCEDURAL HISTORY

The appeal of the Office of General Counsel's partial dismissal of the unfair practice charge resulted in two Board decisions: (1) *Stanislaus I* issued on January 19, 2012, arising

out of the District's administrative appeal of the PERB Appeals Assistant's determination finding that the District's response to the appeal of the partial dismissal was untimely filed; and (2) *Stanislaus Consolidated Fire Protection District* (2012) PERB Decision No. 2231-M (*Stanislaus II*) issued on January 20, 2012, arising out of the Stanislaus Consolidated Firefighters, Local 3399's (Local 3399) appeal of the Office of General Counsel's partial dismissal of the unfair practice charge.

In regard to *Stanislaus I*, a request for reconsideration of the Board's Order was due in the PERB headquarters office no later than February 13, 2012. In regard to *Stanislaus II*, a request for reconsideration of the Board's decision was due on February 14, 2012. (See PERB Reg. 32410, subd. (a) [20 days to file a request for reconsideration]; PERB Reg. 32130, subd. (c) [5 additional days for service by mail].)¹

On February 13, 2012, the day the request for reconsideration of *Stanislaus I* was due, the District timely filed a request for extension of time to file a request for reconsideration of *Stanislaus II* (District's request for extension). (See PERB Reg. 32132, subd. (a) [request for extension due 3 days prior to expiration of deadline]; PERB Reg. 32130, subd. (b) [time extended to next regular business day when last date to file falls on a weekend].) The District's request for extension made no mention of *Stanislaus I*. The District's request for extension provided in pertinent part:

This communication confirms that opposing counsel has agreed to a [sic] extend the time in which [the District] may file a Request for Reconsideration of the Decision No. 2231-M filed on January 20, 2012 from Tuesday, February 14, 2012 to Thursday, February 16, 2012.

¹ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. and may be found on the Internet at www.perb.ca.gov.

On February 14, 2012, the District filed an “amended” request for extension of time to file a request for reconsideration (District’s amended request for extension), which provided in pertinent part:

This communication confirms that opposing counsel has agreed to a [sic] extend the time in which [the District] may file a Request for Reconsideration of the Decisions filed on January 19, and 20, 2012 to Thursday, February 16, 2012.

By letter of February 14, 2012, the Appeals Assistant informed the parties that the District’s request for extension of time to file a request for reconsideration of *Stanislaus II* was granted. On February 16, 2012, the District filed a single document that combined the District’s requests for reconsideration of both *Stanislaus I* and *Stanislaus II*.

By letter of April 27, 2012, the Appeals Assistant informed the parties that the District’s request for reconsideration of *Stanislaus II* was timely filed,² and that the District’s request for reconsideration of *Stanislaus I* was not. As the Appeals Assistant explained, the request for reconsideration of *Stanislaus I* was due on February 13, 2012. A request for an extension of time by which to file a request for reconsideration of *Stanislaus I* should have been filed on or before February 10, 2012. The District’s amended request for extension was not filed until February 14, 2012, four days later and one day after the request for reconsideration of *Stanislaus I* was due. Therefore, the District’s amended request for extension as it concerned *Stanislaus I* was denied as untimely filed.

On May 7, 2012, the District timely filed an administrative appeal of the Appeals Assistant’s denial of the District’s amended request for extension of time to file a request for reconsideration of *Stanislaus I*. On May 10, 2012, Local 3399 filed its response.

² The District’s request for reconsideration of *Stanislaus II* will be addressed in a separate decision to be issued by the Board.

DISCUSSION

The District argues that its request for reconsideration of *Stanislaus I* was filed only three days after it was due; and, in any event, Local 3399 had agreed to the extension.

In response, Local 3399 contends that counsel for the District did not specifically refer to *Stanislaus I* when seeking agreement on an extension and therefore there was no meeting of the minds on that issue. Local 3399 states:

There was no understanding by the Union that the request incorporated both the Decision and the Order. The Union's legal counsel has no reason to doubt that the District's legal counsel intended to incorporate both and believed that this was the message that was conveyed. But, as noted above, the message sent was not the one delivered. Indeed, had the Union's legal counsel understood the Fire District was still attempting to add the late filed response to the record, she would not have agreed so readily to the extension.

Local 3399 contends that the continual delays in this case have resulted in the denial of a determination of fundamental union access rights, that Local 3399 is prejudiced thereby, and that the Board should affirm the denial of the District's amended request for extension.

PERB Regulation 32132, subdivision (a), provides in pertinent part:

A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of service pursuant to Section 32140 are required. Extensions of time may be granted by the Board itself or an agent designated by the Board itself for good cause only.

As explained above, a request for extension of time was due on or before February 10, 2012.

Even had the District's request for extension of February 13, 2012, included a request for extension of time to file a request for reconsideration of *Stanislaus I*, and not just *Stanislaus II*, it still would have been untimely.

Moreover, February 13, 2012, was the last day by which to file the request for reconsideration of *Stanislaus I*. The District's amended request for extension, which referenced *Stanislaus I* for the first time, was not filed until the next day. It is antithetical to the regulatory scheme to grant a request for extension of time to file a document where the time period for filing that document has already expired. The District asserts that there was no "indication from PERB that the amended communication sent by the District on February 14, 2012 was not acceptable." The letter of February 14, 2012, from the Appeals Assistant granting the District's request for extension, however, specifically only referenced *Stanislaus II*, and not *Stanislaus I*. We view the District's assertion as an effort to shift responsibility for its own late filing mistake to PERB.

The District's mistake is all the more confounding given the District's prior late filing issues addressed by the Board in *Stanislaus I*. The Board stated in pertinent part:

If the District was disadvantaged by this one day delay, it had the duty to request an extension of time under PERB Regulation 32132. Under this regulation, a request for an extension of time must be filed at least three days prior to the expiration of the time required for filing. Extensions of time may be granted by the Board for good cause. The District had ample time within which to request an extension but no request was made.

(*Stanislaus I*, p. 3, fn. 3.)

PERB Regulation 32136 provides that a "late filing may be excused in the discretion of the Board for good cause only." The District has not offered any explanation as to why it could not have filed a request for extension of time to file a request for reconsideration of *Stanislaus I* on or before February 10, 2012. While the District may well have intended to seek an extension of time to request reconsideration of *Stanislaus I* in a timely manner, it simply failed to do so and the circumstances presented by the District do not constitute "good cause." The delay did not result from circumstances beyond the control of the District or from

excusable misinformation. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.) The multiple errors were not of the mailing or clerical type found to constitute an “honest mistake.” (*Barstow Unified School District* (1996) PERB Order No. Ad-277.) We conclude that the District did not make a conscientious effort to timely file, and therefore good cause does not exist. Accordingly, the Board declines to exercise its discretion to excuse the late filing of the District’s amended request for an extension.

Moreover, even if we were to excuse the late filing of the District’s amended request for extension and deem it to be timely filed, we find no merit in the District’s arguments in support of its request for reconsideration of *Stanislaus I*. PERB Regulation 32410, subdivision (a), limits the grounds for requesting reconsideration to claims that: “(1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence.”

The District’s arguments are contained in two short paragraphs, which in main part reiterate arguments made by the District in its administrative appeal, i.e., that the standard under Code of Civil Procedure section 473 is “apropos with” PERB’s good cause standard and that the District’s response to the appeal is necessary to clarify prejudicial errors of fact regarding MOU section 20-2. A request for reconsideration, however, is not an opportunity to ask the Board to “try again.” (*Chula Vista Elementary School District* (2004) PERB Decision No. 1557a.) A party may not use this process to reargue or relitigate issues that have already been decided. (*Ibid.*; *San Bernardino Teachers Association CTA/NEA (Cooksey)* (200) PERB Decision No. 1387.)

In addition, the District explains for the first time in these proceedings why its original response to the appeal was untimely. The District claims that its untimely filing was “the

result of an error in the calendaring procedures, which in this instance failed and which have since been remedied.” Taking the District’s explanation at face value, it suffices to say that it meets neither ground for requesting reconsideration.

In conclusion, good cause does not exist to excuse the late filing of the District’s amended request for extension. Even if the filing were timely, the District’s request for reconsideration of *Stanislaus I* would have been denied on the merits.

ORDER

The Stanislaus Consolidated Fire Protection District’s (District) request in Case No. SA-CE-711-M that the Board accepts as timely filed the District’s amended request for extension of time by which to request reconsideration of the Board’s decision in *Stanislaus Consolidated Fire Protection District* (2012) PERB Order No. Ad-392-M is hereby DENIED.

Members Dowdin Calvillo and Huguenin joined in this Decision.