

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



SHARIKA GREGORY,

Charging Party,

v.

AFSCME COUNCIL 57,

Respondent.

Case No. SF-CO-713-E

PERB Decision No. 1952

April 11, 2008

Appearance: Sharika Gregory, on her own behalf.

Before Neuwald, Chair; Wesley and Rystrom, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Sharika Gregory (Gregory) of a Board agent's dismissal of her unfair practice charge. The charge alleged that the AFSCME Council 57 (AFSCME) breached its duty of fair representation in violation of the Educational Employment Relations Act (EERA).<sup>1</sup>

BACKGROUND

Gregory was employed by the Oakland Unified School District (District) as a paraprofessional until February 2007<sup>2</sup> and was a member of the bargaining unit represented by AFSCME. The parties dispute the reasons therefore, but agree that Gregory did not report to work at some point before the end of 2006. On or about January 16, the District sent Gregory a letter charging that she abandoned her position. Her benefits and employment were

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<sup>1</sup>EERA is codified at Government Code section 3540, et seq.

<sup>2</sup>All date references refer to the year 2007 unless otherwise noted.

terminated as of February 1, 2007. Gregory consulted with various AFSCME representatives in an attempt to have the District's termination reversed.

AFSCME's contract with the District provides for twenty days to file a grievance. No grievance was filed on Gregory's behalf relative to her termination. Gregory charged that AFSCME failed to provide adequate representation in violation of EERA.

#### BOARD AGENT'S DISMISSAL

The Board agent issued a warning letter on November 30, advising Gregory that her charge failed to state a prima facie case of a violation of the duty of fair representation. The letter states both that Gregory requested union assistance after the time lapsed for AFSCME to help her in appealing her dismissal for job abandonment and after the deadline for filing a grievance. The Board agent found that Gregory failed to cite facts to demonstrate that AFSCME's conduct was arbitrary, discriminatory or in bad faith.

Gregory was given until December 14 to file an amended charge. When one was not received, the charge was dismissed on December 17.

#### GREGORY'S APPEAL

On appeal Gregory seeks leave to file an amended charge. Gregory includes evidence that she did not receive the Board agent's warning letter until December 19. The mailing address provided on her charge is a post office box. According to her declaration signed under penalty of perjury, there was a dispute with the post office which resulted in the closure of the post office box. Initially, mail addressed to the post office box was held. Eventually, mail was forwarded to Gregory's home address. Gregory provided a copy of the envelope from PERB showing that the post office forwarded the PERB envelope on December 15.

## DISCUSSION

The Board agent dismissed Gregory's charge, finding that it did not state a prima facie case because it failed to demonstrate that the union's conduct was arbitrary, discriminatory or in bad faith. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) Gregory requests that the dismissal be reversed and that she be afforded the opportunity to file an amended charge, based on her receiving the warning letter after her charge was already dismissed.

PERB Regulation 32136<sup>3</sup> states that "a late filing may be excused in the discretion of the Board for good cause only." The Board has typically found good cause where the explanation given is reasonable and credible. (Los Angeles Unified School District (2007) PERB Order No. Ad-368.)

The Board has found good cause to excuse late filings resulting from inadvertent postal errors. In City of Sacramento (2003) PERB Decision No. 1541-M, the charging party mailed his amended charge in Sacramento on January 4, 2003. The amended charge was not received by the PERB Sacramento office until January 13, 2003, a week after the filing deadline. Although the charging party attempted to trace the mailing when it was not timely received, the post office could not explain the delay in delivery. In California School Employees Association (Simeral) (1992) PERB Order No. Ad-233, good cause was found when the postal service held an incorrectly addressed filing before returning it to the charging party, prohibiting him from correcting the address and timely filing. In State of California (Department of Corrections) (1994) PERB Order No. Ad-259-S, a postal service representative admitted an error in applying the wrong postmark date.

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<sup>3</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

These cases indicate that the Board has found good cause in rare cases where inadvertent postal errors, beyond the charging party's control, prevented timely filing with the Board. In this case Gregory provided reasonable and credible evidence that she received the warning letter after the Board agent dismissed her charge – in the form of a dated postal service forwarding sticker and a sworn declaration asserting that the postal delay was out of her control. Therefore, the Board finds good cause exists to allow Gregory to file an amended charge.

ORDER

The Board REVERSES the Board agent's dismissal in Case No. SF-CO-713-E and REMANDS the case to the Office of the General Counsel for further processing consistent with this decision.

Chair Neuwald and Member Rystrom joined in this Decision.