

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BARSTOW EDUCATION ASSOCIATION,)
)
Charging Party,) Case No. LA-CE-3481
)
v.) Administrative Appeal
)
BARSTOW UNIFIED SCHOOL DISTRICT,) PERB Order No. Ad-277
)
Respondent.) June 12, 1996
_____)

Appearances: Lawrence B. Trygstad, Attorney, for Barstow Education Association; Atkinson, Andelson, Loya, Ruud & Romo by Ronald C. Ruud, Attorney, for Barstow Unified School District.

Before Caffrey, Chairman; Garcia and Dyer, Members.

DECISION

GARCIA, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by the Barstow Unified School District (District) that the Board accept its late filed response to Barstow Education Association's (Association) exceptions to a proposed decision.

BACKGROUND

The Association filed a statement of exceptions to the PERB administrative law judge's proposed decision on March 7, 1996. According to PERB Regulation 32310,¹ including the five-day

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32310 states:

Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself an original and five copies of a response to the statement of exceptions and a supporting brief. The response shall be filed with the Board itself

extension provided by PERB Regulation 32130(c), the District's response was due to be filed no later than April 1, 1996.² Although the District's response was received by PERB's Los Angeles regional office on March 28, 1996, according to Regulation 32310, the response should have been sent to PERB's Sacramento headquarters office. The Los Angeles regional office forwarded the District's response to the Sacramento headquarters office, which received it on April 3, 1996 (two days late). By letter dated April 4, 1996, the PERB appeals assistant informed the District that she was rejecting the response as untimely filed.

DISTRICT'S APPEAL

The District appeals this rejection, stating that an inadvertent error caused the response to be filed in the wrong PERB office. According to the District, the error occurred because the attorney who prepared the response was using a computerized document that contained a version of the proof of

in the headquarters office. The response may contain a statement of any exceptions the responding party wishes to take to the recommended decision. Any such statement of exceptions shall comply in form with the requirements of Section 32300. A response to such exceptions may be filed within 20 days. Such response shall comply in form with the provisions of this Section. Service and proof of service of these documents pursuant to Section 32140 are required.

²PERB Regulation 32135 provides in pertinent part that documents are "considered 'filed' when actually received by the appropriate PERB office before the close of business on the last date set for filing." (Emphasis added.)

service with PERB's Los Angeles address on it. Neither the attorney nor his secretary noticed the error and the response was mailed to the address indicated on the proof of service. The District claims that the Association was not prejudiced by the delay, since the Association was served with its copy of the document before the filing deadline; it was only PERB's copy that failed to reach the proper destination before the deadline. The District requests the Board excuse its error, citing North Orange County Regional Occupational Program (1990) PERB Decision No. 807 (North Orange), in which the Board excused a late filing that was timely received in the wrong PERB office.

The Association filed a brief reply to the District's appeal, but it does not expressly request that the Board reject the late filing, nor does it claim prejudice.

DISCUSSION

PERB Regulation 32136 provides that:

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.

The sole issue is whether the District has shown good cause for the Board to excuse its late filing. The Board has excused various types of "honest mistakes" involving clerical or mailing errors.³ As the District correctly points out, in North Orange

³See e.g., University of California, Los Angeles (1992) PERB Decision No. 961-H (late filing excused due to inadvertent clerical error, when matter still pending and there was no prejudice to opposing counsel); California School Employees Association (Simeral) (1992) PERB Order No. Ad-233 (late filing excused due to incorrect address and postal delay). See also,

PERB excused a late filing under circumstances that were very similar to those in the instant case.

The Board has, and should continue to have, broad discretion to weigh numerous factors on a case by case basis when considering a request to excuse a late filing for good cause. If the excuse offered for the delay is reasonable and credible, the Board then asks whether permitting a late filing would be prejudicial to the opposing party.⁴

The District's excuse for filing late is reasonable and credible. Modern law offices commonly use computerized documents to create other documents, and it is apparent that this was an honest mistake that resulted in a missed deadline. There is no indication that the delay could have been anticipated beforehand, so the District had no duty to request an extension of time.

The Association makes no claim to have been prejudiced by the late filing, and we see no other indication of prejudice. Although the filing with PERB was two days late, it appears that the Association had timely knowledge of the contents of the response since the Association actually received its copy of the response before the deadline. Additionally, the District's

San Diego Adult Educators v. Public Employment Relations Board (1990) 223 Cal.App.3d 1124, 1131-1132 [273 Cal.Rptr. 53], in which the Court of Appeal upheld PERB's decision to allow late service of an unfair practice charge since there was no showing of prejudice to the respondent.

⁴See, e.g., State of California (Department of Youth Authority) (1996) PERB Order No. Ad-275-S (good cause to excuse one-year delay not shown; excusing delay would place undue burden on other party); see also, California State Employees Association (Janowicz) (1996) PERB Order No. Ad-276-S.

document was filed in response to exceptions initiated by the Association, so the Association clearly knew about the pending status of the case. We find that good cause to excuse this late filing has been shown.

ORDER

The Barstow Unified School District's request to accept its late filed brief in opposition to the Barstow Education Association's exceptions in Case No. LA-CE-3481 is hereby GRANTED.

Chairman Caffrey and Member Dyer joined in this Decision.