

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LE ROY F. GILLEAD,

Charging Party,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. SF-CE-2499-E

Administrative Appeal

PERB Order No. Ad-360

April 10, 2007

Appearances: Le Roy F. Gillead, on his own behalf; Lozano Smith by Namita S. Brown, Attorney, for San Francisco Unified School District.

Before Shek, McKeag and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Le Roy F. Gillead (Gillead) from the Appeals Assistant's June 21, 2005, administrative determination of the filing deadlines for his appeal in Case No. SF-CE-2499-E.¹

The Board has reviewed the entire record in this matter, including, but not limited to, correspondence by Gillead and the Appeals Assistant regarding the appeal in the above-mentioned case, the administrative appeal filed by Gillead and the San Francisco Unified School District's response to Gillead's administrative appeal. In light of our review, subject to the discussion below, the Board denies Gillead's appeal in Case No. SF-CE-2499-E, because it was untimely filed.

¹Case Nos. SF-CE-2499-E and SF-CO-657-E were consolidated for administrative appeal purposes only. Case No. SF-CO-657-E is issued under a separate decision.

BACKGROUND

On June 16, 2005, Gillead requested information from the Board's Appeals Assistant regarding deadlines for the filing of an appeal of dismissal of his unfair practice charge in the above-mentioned case as well as in Case No. SF-CO-657-E. The Appeals Assistant replied to Gillead on June 21, 2005, with the following information:

(1) The Board agent dismissed the unfair practice charge in Case No. SF-CE-2499-E on June 2, 2005. Pursuant to PERB Regulation 32635², you have 20 days from service of the dismissal to file an appeal of the dismissal, with an additional five days for mailing. Your appeal in Case No. SF-CE-2499-E is due to be filed in this office no later than June 27, 2005. Service of the appeal is required.

(2) The Board agent dismissed the unfair practice charge in Case No. SF-CO-657-E on June 13, 2005. Pursuant to PERB Regulation 32635, you have 20 days from service of the dismissal to file an appeal of the dismissal, with an additional five days for mailing. Your appeal in Case No. SF-CO-657-E is due to be filed in this office on July 8, 2005. Service of the appeal is required.

Our records show that both of these cases were complete dismissals of the unfair practice charges. Any appeal to these dismissals need to be filed by the due dates referenced above. If you need additional time to file an appeal of the dismissals, PERB Regulation 32132³ states what is required for an extension of time.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

³PERB Regulation states:

(a) 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.

On July 5, 2005, the Board received a letter from Gilead disagreeing with the due dates for the appeals of the dismissals and requested that PERB make July 10, 2005, the "reasonable, equitable and statutory date" for filing his appeals of dismissal. The Board treats the July 5, 2005 letter as an administrative appeal of the Appeals Assistant's administrative determination.

DISCUSSION

On June 21, 2005, the Appeals Assistant clearly informed Gilead of PERB's process/regulations regarding the filing deadlines for appeals and requests for extension of time to file documents. Specifically, he had 20 days from the service of dismissal, i.e., until June 27, 2005, to file an appeal of the dismissal of the unfair practice charge in Case No. SF-CE-2499-E. Gilead did not comply with the June 27, 2005, deadline nor did he request an extension as set forth in PERB Regulation 32132. Instead, Gilead filed a document on July 5, 2005, after the due date, alleging that PERB should make July 10, 2005, the "reasonable, equitable and statutory date" for filing this appeal. In addition, Gilead failed to provide any information to demonstrate good cause for his late filing.⁴ As such, the Board denies Gilead's appeal of dismissal as untimely filed.

ORDER

Le Roy F. Gilead's appeal of the Appeals Assistant's June 21, 2005, administrative determination in Case No. SF-CE-2499-E is hereby DENIED.

Members Shek and McKeag joined in this Decision.

⁴Under PERB Regulation 32136, "[a] late filing may be excused in the discretion of the Board for good cause only."