

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAMSON TEFASION,

Charging Party,

v.

CITY OF BEVERLY HILLS
(TRANSPORTATION DEPARTMENT),

Respondent.

Case No. LA-CE-282-M

Administrative Appeal

PERB Order No. Ad-363-M

May 24, 2007

Appearances: Samson Tesfasion, on his own behalf; Richards, Watson & Gershon by Roy A. Clarke, Attorney, for City of Beverly Hills (Transportation Department).

Before Shek, McKeag and Neuwald, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Samson Tesfasion (Tefasion) of the rejection by the PERB Appeals Assistant of Tesfasion's appeal of dismissal of his unfair practice charge as untimely filed.

BACKGROUND

The charging party filed his appeal on December 14, 2006. The PERB Appeals Assistant notified him on December 18, 2006, that his appeal was untimely, for the reason stated below:

The dismissal of the unfair practice charge was served on the parties by mail on October 5, 2006. On October 30, you were granted an extension of time to file an appeal to December 4, 2006. Pursuant to PERB Regulation 32130(c) December 11 was the actual due date for the appeal of the dismissal to be filed in the headquarters office here in Sacramento. Your appeal was mailed to the Board via regular U.S. mail and received and filed on December 14, three days late, therefore it is being denied as untimely filed.

In his appeal to the Board postmarked January 11, 2007, Tesfasion alleges that he mailed his appeal of the dismissal of the unfair practice charge in Case No. LA-CE-282-M on November 3, 2006. He submitted a proof of service to show that he had served a copy of the appeal on Sandra Olivencia, Human Resources Services of the City of Beverly Hills (City), the representative for the City in the matter of the appeal of dismissal of the unfair practice charge. The mail was not delivered to PERB or the City, but was held up for additional postage until December 9, 2006. The envelope that was used to mail his November 3, 2006, appeal shows that it was correctly addressed to the PERB Headquarters office in Sacramento, California, and originally postmarked November 3, 2006. "Postage Due" was stamped on the face of the envelope. Adhering to the surface of the envelope was a sticker bearing the following message, "This address and/or name is NOT listed as acceptable for charging to BRM/Postage Due account. PLEASE DELIVER C.O.D. \$1.20."

Tesfasion states that due to insufficient postage, the United States Postal Service (U. S. Postal Service) held his appeal for one month and six days before returning it to him on Saturday, December 9, 2006. He paid the balance of the postage and re-mailed the appeal in its original envelope to PERB on the next business day, December 11, 2006. The envelope that contained the appeal shows a postmark of December 11, 2006. PERB received and filed-stamped the appeal on December 14, 2006. As evidence, Tesfasion presents a copy of an inquiry he submitted to the U. S. Postal Service on December 11, 2006, regarding the delayed return or delivery of this item. Tesfasion stated in this inquiry that he had mailed an item to PERB on November 3, 2006, which was subsequently "held for postage due" before being returned to the sender on December 9, 2006.

Tesfasion submitted a proof of service showing that he had mailed a copy of his appeal of the PERB Appeals Assistant's rejection to the Board and to the City. No response to Tesfasion's appeal was filed by the City.

DISCUSSION

Pursuant to PERB Regulation section 32136, the Board may excuse a late filing for good cause only.¹ The Board has excused late filings that were caused by inadvertent mailing errors, but which resulted in a brief delay. If the reason for the untimely filing is "reasonable and credible," the Board evaluates whether the opposing party suffers any prejudice as a result of the excused late filing. (Barstow Unified School District (1996) PERB Order No. Ad-277.)

In Trustees of the California State University (1989) PERB Order No. Ad-192-H, the Board found good cause for excusing the late filing of exceptions caused by the unforeseen inadvertence and excusable error by mailroom employees in setting the mailroom meter. Additionally, the Board has found good cause for excusing the late filing of exceptions caused by the inadvertent secretarial error in sending the exceptions by regular mail, rather than the customary certified mail, on the last day for filing. (The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H.) In North Orange County Regional Occupational Program (1990) PERB Decision No. 807, the Board found good cause to excuse the late filing of exceptions which were filed before the deadline, but were mistakenly sent by certified mail to PERB's Los Angeles

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32136 states:

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.

Regional office rather than the Sacramento Headquarters office. In all three cases, the Board found that the brief delay did not cause any prejudice to the opposing parties.

The Board has also found good cause for excusing late filings when the delay was caused in part by an inadvertent error of the U. S. Postal Service. In California School Employees Association (Simeral) (1992) PERB Order No. Ad-233, the charging party was prevented from timely filing a request for reconsideration that was mailed well before the deadline, but was inadvertently misaddressed. Consequently, the U. S. Postal Service held it before returning it, thus causing delay to the charging party in correctly addressing and re-mailing it. In State of California (Department of Corrections) (1994) PERB Order No. Ad-259-S, an inadvertent error by the U. S. Postal Service contributed to the late filing, despite the fact that the State made a good faith effort to timely file. In both cases, the opposing parties did not oppose the finding of good cause to extend the filing time.

In the present case, Tesfasion demonstrated a good faith effort in filing his appeal of the dismissal of his unfair practice charge in a timely fashion. He first obtained a 40-day extension until December 4, 2006, from the PERB Appeals Assistant when he was unexpectedly removed from his apartment due to circumstances beyond his control. He mailed the appeal on November 3, 2006, well before the deadline. Due to insufficient postage, his appeal was held by the U. S. Postal Service until Saturday, December 9, 2006, before being returned. On December 11, 2006, the next business day, he paid the postage that was due and re-mailed the appeal. His appeal was filed on December 14, 2006, only three days past the due date. Since his justification for the delay is "reasonable and credible," we evaluate whether any prejudice was caused to the opposing party, and have found no evidence of such. Accordingly, the Board finds that good cause exists to excuse the late filing and accepts

Tesfasion's appeal to the dismissal of the unfair practice charge in Case No. LA-CE-282-M as timely filed.

ORDER

Samson Tesfasion's (Tesfasion) appeal of the dismissal of the unfair practice charge in Case No. LA-CE-282-M is hereby ACCEPTED as timely filed. The City of Beverly Hills is hereby afforded twenty (20) days from the date of service of this Decision to file a response to Tesfasion's appeal.

Members McKeag and Neuwald joined in the Decision.