

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LINDA IRIZARRY GOLD,

Charging Party,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5072-E

Administrative Appeal

PERB Order No. Ad-368

November 15, 2007

Appearance: Linda Irizarry Gold, on her own behalf.

Before Neuwald, Chair; Shek and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Linda Irizarry Gold (Gold) of a Board agent's dismissal¹ of her unfair practice charge. The charge alleged that the Los Angeles Unified School District (District) retaliated against Gold when it issued her a pre-disciplinary conference memorandum.

BACKGROUND

On April 26, 2007,² Gold filed an unfair practice charge with PERB. Gold filed the charge on her own behalf providing no indication that she was represented. However, on June 1 she submitted PERB's Notice of Appearance form listing Anne Wolfstein (Wolfstein) as her representative.

¹Although Gold characterizes her motion as a request to re-open the record, we believe the request is most appropriately considered an appeal of the dismissal of her charge. (California Teachers Association (Underhill) (2001) PERB Decision No. 1466.)

²All dates refer to the year 2007.

The Board agent issued a warning letter on July 17, advising that the charge failed to allege sufficient facts to demonstrate a prima facie case of discrimination. The warning letter was sent to Wolfstein and requested that the charge be amended or withdrawn by July 24. Neither Wolfstein nor Gold responded to the warning letter and a dismissal letter was issued on August 1.

On August 17, Wolfstein wrote to the Board agent stating that she had just received the Board's correspondence because she had been out of the country. Her letter provides, in pertinent part, as follows:

I am NOT the legal counsel of Linda Irizarry Gold and therefore she should be the one who your correspondence should be sent to. I am a witness for her case. In fact, I was quite surprised that requests for facts and clarification³ were asked of me and not of her. She doesn't even appear on the Proof of Service list you mailed and is completely unaware of your correspondence with me.

Wolfstein's letter also requested an extension to "answer your requests."

On September 28, Gold filed a request to re-open the case. Her request explains, in part, "At some point after filing my PERB complaint, I received a Notice of Appearance form letter, which I did not really understand, thus causing all my paperwork to be sent to someone else." She further states that she did not receive the Board agent's correspondence as Wolfstein was out of the country.

On October 2, the Board's appeals assistant sent a letter to the parties informing them of Gold's request and giving the District ten days to file a response to Gold's request. The District did not submit a response.

³The "requests for facts and clarification" referenced here likely refers to the warning letter issued July 17.

DISCUSSION

The Board agent dismissed the charge because the charge did not state a prima facie case and because Gold failed to file an amended charge correcting the deficiencies identified in the warning letter. Gold's appeal requests that the Board re-open the record, presumably to allow her to attempt to correct the deficiencies described by the Board agent.

Absent an extension, Gold's appeal of the dismissal should have been received by August 27.⁴ Gold's appeal was filed after the deadline and is therefore a late filing.⁵

PERB Regulation⁶ 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 Board has found good cause in situations where the justification was "reasonable and credible." The Board has deemed "honest mistakes," such as mailing or clerical errors, to show good cause. (Lodi Unified School District (2005) PERB Order No. Ad-346 (Lodi USD).)

In this case, the Board agent did not send the warning and dismissal letters to Gold because she submitted the Notice of Appearance form erroneously listing Wolfstein as her representative. Rather, Wolfstein was to be a witness for Gold if the case progressed. Gold's

⁴The deadline was August 21 plus five days for mailing. As August 26 fell on a Sunday, Gold was allowed until the next business day or Monday, August 27.

⁵Although Wolfstein requested an extension on Gold's behalf before the time lapsed for Gold's appeal to be filed, she did not properly file the request with the Board itself in the headquarters office. As we find good cause for the late filing, we need not determine whether Wolfstein appropriately requested an extension on Gold's behalf.

⁶PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

explanation, supported by the correspondence of Wolfstein, that she did not understand the Notice of Appearance form is an honest mistake.

By inadvertently identifying Wolfstein as her representative, Gold did not receive the warning and dismissal letters. Gold's error in naming Wolfstein as her representative was compounded by Wolfstein's absence when the warning and dismissal letters were issued. Although Wolfstein attempted to secure an extension of time to allow Gold to appeal, she directed the request to the wrong office. Therefore, we find that good cause exists to excuse the late filing.

Lodi USD also held that if the justification for a late filing is found to be reasonable and credible, then the Board should evaluate whether there is prejudice to the opposing party in excusing the late filing. In this case, the District did not respond to or oppose Gold's request. Furthermore, allowing Gold to amend her charge would not prejudice the District because if a complaint is subsequently issued the District would have the opportunity to respond. Therefore, we do not find that the District would be prejudiced by allowing the late-filed appeal.

Educational Employment Relations Act (EERA)⁷ section 3541.3(i) empowers the Board to take such action it deems necessary to effectuate the policies of EERA. In a similar case, California Teachers Association (Underhill) (2001) PERB Decision No. 1466, the warning and dismissal letters were directed to the wrong person. The Board remanded the charge to the General Counsel for further investigation and to permit the charging party an opportunity to review the warning letter and file an amended charge.

In her appeal, Gold indicates that she did not receive the warning and dismissal letters. Thus, Gold did not have an opportunity to respond to the warning letter and file an amended charge. We find that the policies of EERA are best served by giving her an opportunity to do so.

⁷EERA is codified at Government Code section 3540, et seq.

Therefore, the Board reverses the Board agent's dismissal and remands the case to the PERB General Counsel for further investigation and to grant Gold the opportunity to file an amended unfair practice charge.

ORDER

The Board REVERSES the Board agent's dismissal of the unfair practice charge in Case No. LA-CE-5072-E and REMANDS the case to the PERB General Counsel for further processing consistent with this decision.

Chair Neuwald and Member Shek joined in this Decision.