

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



JOSEPH B. CORRIGAN,

Charging Party,

v.

FEDERATION OF UNITED SCHOOL  
EMPLOYEES, LOCAL 1212,

Respondent.

Case No. SA-CO-565-E

Administrative Appeal

PERB Order No. Ad-395

June 29, 2012

Appearances: Joseph B. Corrigan, on his own behalf.

Before Martinez, Chair, Dowdin Calvillo and Huguenin, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by Joseph B. Corrigan (Corrigan) from an administrative determination by PERB's Appeals Assistant denying, as untimely, Corrigan's appeal from a Board agent's dismissal of his unfair practice charge, filed on July 21, 2011, against the Federation of United School Employees, Local 1212 (Federation).

We have reviewed the Appeals Assistant's determination and the record and conclude good cause does not exist to excuse Corrigan's late filing. Consequently, the Board declines to accept the untimely appeal of the dismissal of the charge. We explain.

BACKGROUND

Corrigan filed his unfair practice charge on July 21, 2011, alleging the Federation breached its duty of fair representation when it declined to move a grievance to the next level. On December 23, 2011, the Board agent issued a warning letter, and thereafter on

January 17, 2012 Corrigan filed an amended charge. On February 2, 2012, the Board agent dismissed the charge for failure to state a prima facie case. The dismissal letter, served on February 2, 2012, cautioned Corrigan that he had twenty (20) calendar days within which to file and serve an appeal, and explained the procedure for seeking an extension of the filing deadline. Corrigan asserts he received the dismissal letter on February 7, 2012.

### CORRIGAN'S APPEAL

Corrigan filed his appeal by fax filing on March 1, 2012. He did not request an extension of time to do so. The Appeals Assistant notified Corrigan by letter on March 6, 2012, that the appeal had been due in PERB's Headquarters Office no later than February 27, 2012, and thus the appeal was denied as untimely filed. In the March 6 letter, the Appeals Assistant notified Corrigan that he could appeal to the Board itself the administrative determination to deny his appeal, and that such administrative appeal must be filed within ten (10) days following service of the administrative determination. Corrigan filed his administrative appeal by fax filing on March 19, 2012. Thus, Corrigan's administrative appeal was timely.

### DISCUSSION

PERB Regulation 32136<sup>1</sup> provides that the Board may excuse a late filing for good cause. The Board has found good cause when the explanation for the late filing was "reasonable and credible" and the delay did not cause prejudice to any party. (*Barstow Unified School District* (1996) PERB Order No. Ad-227.) Good cause is typically found when the late filing was caused by circumstances beyond the party's control. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.)

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<sup>1</sup> PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Here, Corrigan claims as his good cause only that he changed his mailing address, and that the change caused a five (5) day delay in the delivery of the Board agent's dismissal letter. Corrigan states that he received the dismissal letter, served by the Board agent on February 2, 2012, at his new address in California on February 7, 2012.

We conclude that a mere five (5) day mailing delay for a letter within California does not qualify, without more, as good cause to excuse a late filing. As noted in Corrigan's appeal, PERB Regulation 32130(c) affords a party an extra five days to file where the filing is made "in response to documents served by mail if the place of address is within the State of California. . . ." The Board agent's dismissal letter was served on February 2, 2012, and the due date for the appeal was twenty (20) calendar days plus five (5) additional days for service by mail, or February 27, 2012. Corrigan received the dismissal on February 7, 2012, precisely five (5) days from the date of service by the Board agent. Corrigan then had twenty (20) days in which to prepare and file his appeal. He does not explain what if anything prevented him from filing within the 20 days after he received the dismissal letter.<sup>2</sup> Nor does he explain why he could not have sought an extension of the February 27, 2012 deadline pursuant to PERB Regulation 32132, as described in the dismissal letter.

We conclude that Corrigan was not prejudiced by the five day period taken by the Post Office to deliver the dismissal letter, which corresponds exactly to the five (5) days provided Corrigan by PERB Regulation 32130(c). Nor does he offer a "reasonable and credible" explanation for his failure either to seek an extension or to file his appeal by the deadline of

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<sup>2</sup> Implicit in Corrigan's administrative appeal is a suggestion that he was uncertain about the filing deadline for his appeal from dismissal of his charge. Were he uncertain about the filing deadline, he might have inquired of PERB's Appeals Assistant, whose phone and fax numbers were displayed prominently in the Board agent's dismissal letter under the heading, "Right to Appeal." He did not do so.

February 27, 2012. Thus, we conclude that good cause does not exist to excuse Corrigan's late filing of the appeal from the Board agent's dismissal of his unfair practice charge.

ORDER

Joseph B. Corrigan's request that the Public Employment Relations Board accept his late-filed appeal in Case No. SA-CO-565-E is hereby DENIED.

Chair Martinez and Member Dowdin Calvillo joined in this Decision.