

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BERNARD N. ARMAS, JR.,

Charging Party,

v.

SAN YSIDRO EDUCATION ASSOCIATION,

Respondent.

Case No. LA-CO-1150-E

Administrative Appeal

PERB Order No. Ad-341

September 8, 2004

Appearance: Bernard N. Armas, Jr., on his own behalf.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Bernard N. Armas, Jr. (Armas) from the Appeals Assistant's administrative determination that his appeal of the Board agent's dismissal was untimely filed.

Armas' unfair practice charge was dismissed by the Board agent on June 18, 2004.

Pursuant to PERB Regulation 32635¹, Armas' appeal was due to be filed in the PERB headquarters office no later than July 13, 2004.² However, Armas' appeal was not actually received and filed until July 15, 2004. As the appeal was two days late, it was denied as untimely filed.

Armas now appeals that administrative determination. According to Armas, he believed the 20-day period for filing an appeal was calculated using workdays as defined in

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

²This includes five (5) extra days pursuant to PERB Regulation 32130(c).

PERB Regulation 32085. It was not until his appeal was rejected that he was informed that the 20-day period is calculated using calendar days as defined in PERB Regulation 32080. Armas asserts that it "is fair to see why a reasonable person would use [PERB Regulation 32085] rather than [PERB Regulation] 32080."

Under PERB Regulation 32136³, late filings may be excused by the Board for "good cause." What constitutes good cause has been examined by the Board in a variety of different situations. (See, e.g., United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325 (Kestin); City of Sacramento (2003) PERB Decision No. 1541-M.) Generally, good cause is shown where the late-filing has been caused by circumstances beyond the party's control or from excusable misinformation. (Kestin.)

Here, the Board does not find good cause to excuse Armas' late-filed appeal. The dismissal letter sent to Armas plainly included the following notice:

Right to Appeal

Pursuant to PERB Regulations, [fn. omitted] you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered 'filed' when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered 'filed' when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the

³PERB 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.

requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

Thus, the dismissal clearly notified Armas that the 20-day appeal period is calculated using calendar days, not workdays. Further, the dismissal notified Armas that an appeal is considered filed when actually received, not when it is mailed. As Armas was on notice of these requirements, the Board does not find good cause to excuse his late filing. (See Teamsters Local 572 (Henderson) (2004) PERB Order No. Ad-335.) Accordingly, based upon a review of this matter the Board affirms the administrative determination.

ORDER

Bernard N. Armas, Jr.'s¹ request that the Board excuse his late-filed appeal of the Board agent's dismissal in Case No. LA-CO-1150-E is hereby DENIED.

Chairman Duncan and Member Whitehead joined in this Decision.