

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 147,

Charging Party,

v.

BANNING UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4452-E

PERB Decision No. 1549

October 19, 2003

Appearance: California School Employees Association by Timothy Taggart, Labor Relations Representative, for California School Employees Association & its Chapter 147.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association & its Chapter 147 (CSEA) of a Board agent's dismissal of its unfair practice charge. The charge was dismissed after PERB failed to receive an amended charge by the deadline set by the Board agent.

After reviewing the record in this matter, including the warning and dismissal letters and the CSEA's appeal, the Board reverses the Board agent's dismissal for the reasons set forth below.

BACKGROUND

The relevant facts are as follows: CSEA filed its original charge on September 23, 2002. The Board agent sent a warning letter to CSEA on June 17, 2003. The warning letter

identified several deficiencies with the original charge and instructed CSEA to file an amended charge by July 24, 2003.

On June 26, 2003, the Board agent called CSEA Representative, Tim Taggart (Taggart) and left a voice-mail message informing Taggart that the July 24, 2003, due date for an amended charge was given in error. The correct date should have been June 24, 2003. Because of the error, the Board agent informed Taggart that CSEA had until June 30, 2003, to file an amended charge.

Since the Board agent did not receive an amended charge by June 30, 2003, the Board agent dismissed the charge on that date.

CSEA'S APPEAL

On appeal, Taggart has provided the Board with a declaration, given under penalty of perjury, dated July 3, 2003, attesting to the following facts: (1) Taggart received the warning letter on June 19, 2003. He took note of the July 24, 2003, date to file an amended charge; (2) Taggart left for a one-week vacation on June 20, 2003; (3) Taggart returned to work on Monday, June 30, 2003, but immediately had to leave to conduct two license suspension hearings. He returned to his office after 5:00 p.m. that day and listened to the Board agent's message of June 26, 2003, for the first time; (4) Taggart immediately called PERB and left a voice-mail message for the Board agent describing the situation. Taggart informed the Board agent that he was scheduled to be in a hearing all day the next day - July 1, 2003 - but that Taggart would make every effort to file an amended charge by July 3, 2003, and (5) Taggart received an email message from the Board agent on July 2, 2003, informing Taggart that the dismissal had been issued on June 30, 2003, and that the Board agent no longer had

jurisdiction to act in the matter. Attached to Taggart's declaration is a copy of CSEA's amended charge in this matter. Taggart then mailed this appeal on July 3, 2003, along with an amended unfair practice charge with the same date. The appeal was received by PERB on July 7, 2003.

DISCUSSION

PERB Regulation section 32136 provides that the Board may excuse a late filing for good cause.¹ The Board has previously excused late filings for good cause in a variety of situations. (See City of Sacramento (2003) PERB Decision No. 1541-M (summarizing cases finding good cause to excuse a late filing); United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325 (id.)) Given the facts in this case, the Board has little difficulty finding good cause to excuse CSEA's late-filed amended charge. Taggart departed for vacation having reasonably relied upon the due date provided him in the warning letter. Once Taggart discovered that the due date had changed, the dismissal had already been issued. Under these circumstances the Board finds good cause to accept CSEA's late-filed amended charge. Accordingly, this case should be remanded to the office of the general counsel for further processing with instructions to accept CSEA's amended charge as timely filed.

¹ PERB 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.

ORDER

The Board REVERSES the Board agent's dismissal in Case No. LA-CE-4452-E and REMANDS the case to the Office of the General Counsel for further processing.

Members Whitehead and Neima joined in this Decision.