STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MERCY F. RUIZ,	)	
	)	
Charging Party,	)	Case No. SF-CO-442
	)	
v.	)	Administrative Appeal
	)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,	)	PERB Order No. Ad-253
	)	
	)	May 5, 1994
Respondent.	)	
	)	

Appearances: Mercy F. Ruiz, on her own behalf; William Corman, Attorney, for California School Employees Association.

Before Caffrey, Carlyle and Garcia, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Mercy F. Ruiz (Ruiz) of the denial of a request for an extension of time to file an appeal of the dismissal of her unfair practice charge.

BACKGROUND

Ruiz filed her unfair practice charge on May 12, 1993.[1] The charge alleged that the California School Employees Association (CSEA) had failed in its duty of fair representation in violation of the Educational Employment Relations Act (EERA).[2] On June 14, a PERB regional attorney wrote to Ruiz advising her of the deficiencies of her charge and seeking additional information.

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[1]All dates refer to 1993 unless specified otherwise.

[2]EERA is codified at Government Code section 3540 et seq.

On June 29, at Ruiz' request, the case was placed in abeyance due to her medical problems. On September 27, the regional attorney notified CSEA that Ruiz continued to request that the case be held in abeyance. CSEA objected to further delays and a warning letter was sent to Ruiz by the regional attorney on October 8, which gave her until October 18, to file an amended charge. After receiving an extension of time, Ruiz filed an amended charge on October 28. The regional attorney dismissed Ruiz's charge on November 5 for untimeliness and for failure to state a prima facie case of a violation of EERA.

In a November 28 letter to the PERB appeals assistant, Ruiz requested an extension of time to file an appeal of the dismissal, citing "medical problems." On December 2, the appeals assistant granted Ruiz an extension of time to file her appeal to January 3, 1994. On January 3, 1994, PERB received from Ruiz a copy of an unsigned letter dated November 23, apparently from Dr. Patricia Dailey, indicating that Ruiz was being treated and was "unable to concentrate sufficiently to manage full compliance with the legal time frame required in her appeal." The copy of the unsigned letter was not accompanied by any explanation or specific request for a further extension of time.

On January 5, 1994, the appeals assistant notified Ruiz that, since no appeal had been filed by January 3, 1994, "the dismissal is final and the case is closed."

RUIZ' APPEAL

On appeal, Ruiz indicates that she has experienced continuously deteriorating health problems since December 1992. She indicates that these health problems have prevented her from properly pursuing her charge against CSEA. Consequently, Ruiz indicates that she requested a letter from her doctor concerning her health and "immediately mailed" it to PERB "to reach the Jan. 3, '94 deadline." Ruiz indicates that she was "not able to enclose any explanation to the purpose of her letter because I was so ill at that time."

Ruiz requests an additional extension of time "for a few months" so that she can recover fully and "have all the strength to continue this case."

DISCUSSION

PERB Regulation 32132(a)[3] provides for parties to request extensions of time:

> A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of service pursuant to section 32140 are required. Extensions of time may be granted by the Board itself or an agent designated by the Board itself for good cause only.

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

Ruiz' request for an extension of time was deficient for several reasons. First, Ruiz' request was not filed at least three days before the filing deadline. Second, she sent a copy of an unsigned letter from her doctor and did not include a statement of the reason for her request, an indication of CSEA's position on the request, or a proof of service. Third, the doctor's letter Ruiz submitted is dated November 23, which is prior to the extension of time Ruiz requested on November 28, and was granted on December 2. Despite her assertion that she immediately mailed a copy of the letter to PERB, it seems clear that Ruiz had ample opportunity to forward the letter and an appropriate request for a further extension of time prior to January 3, 1994. As a result of the deficiencies, the appeals assistant properly denied Ruiz' request for a further extension of time.

On appeal, Ruiz repeats that her medical problems have prevented her from properly pursuing her case before PERB. In consideration of these problems, PERB has been very flexible with Ruiz with regard to deadlines, granting her request to place the case in abeyance for more than three months, and granting her prior extensions of time including one 30-day extension of time to file her appeal.

Given this prior flexibility on deadlines, the deficiencies of Ruiz' request, and her open-ended request to put the case "on hold for a few months," the Board concludes that good cause does not exist to grant the request for an extension of time in this case.

ORDER

The appeal of the denial of a request for an extension of time in Case No. SF-CO-442 is DENIED.

Member Garcia joined in this Decision.

Member Carlyle's concurrence begins at page 6.

CARLYLE, Member, concurring: I would also uphold the Public Employment Relations Board (PERB or Board) appeals assistant's denial of the request for an extension of time by Mercy F. Ruiz (Ruiz), but I would base it upon PERB case law.

In California State University (Watts) (1984) PERB Decision No. 468-H, the request for an extension of time was made pursuant to PERB Regulation 32132(a)[1] which states as follows:

> A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of service pursuant to section 32140 are required. Extensions of time may be granted by the Board itself or an agent designated by the Board itself for good cause only.

In that decision, PERB set forth the general standard concerning what constitutes good cause and whether or not a weighing of the appropriate factors would operate in favor of granting the request for an extension of time:

> We feel the proper approach is to weigh the nature of the reasons asserted to be "good cause" against the length of the delay and the possible prejudice to the opposing party. In general, for "good cause" to be found, a party's request for an extension should be based on circumstances that are unanticipated or beyond the party's control.

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

This same standard and balancing test was also applied in my concurring opinion in Los Angeles Unified School District (1993) PERB Order No. Ad-249.

The facts in the majority opinion concerning the procedural actions of Ruiz and the grounds for her requests for extensions of time and abeyance give rise to a clear inference of medical problems being at the root of such requests. Further, Ruiz alleges that her medical problems have caused her to even miss her extension deadlines, as well as adversely affecting her ability to properly pursue her appeal before the Board itself.

The standard enunciated in California State University (Watts) does not focus on how "flexible" or "lenient" the Board may have been on past requests, but on whether the request at issue is "based on circumstances that are unanticipated or beyond the party's control."

It appears that a strong argument could be made for Ruiz that her current request for an extension of time now before the Board is based upon her recurring medical problems which although not unanticipated may very well be beyond her control.

While I may be persuaded to side with Ruiz on this aspect of the standard as previously enunciated, I am compelled to ultimately decide against her due to the length of the delay and the possible prejudice to the opposing party. As previously noted, the original charge by Ruiz was filed in May of 1993.[2] The California School Employees Association (CSEA) responded on June 9. At the request of Ruiz, the case was placed in abeyance

[2]All dates refer to 1993 unless specified otherwise.

on June 29. Only at the subsequent urging of CSEA was the case reactivated and processed to its current status.

I find that the length of time which has transpired since the filing of the original charge, plus the true "open-ended" nature of the current request by Ruiz for another extension of time sufficiently weighs the factors to be considered in favor of CSEA. If any extension is granted, clearly more than a year will have passed before the original charge of an alleged failure of CSEA to uphold its duty of fair representation in violation of the Educational Employment Relations Act (EERA)[3] is resolved.

If, by chance, Ruiz became successful in her appeal of the dismissal of her charge, a complaint would be issued and the start of another, perhaps equally long journey, would commence. Such a prospect and the possible prejudice CSEA would experience as a result of the passage of such time militates against Ruiz.

Accordingly, the appeal of the PERB appeals assistant's denial of a request for an extension of time in Case No. SF-CO-442 should be denied.

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[3]EERA is codified at Government Code section 3540 et seq.