STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

WHEATLAND ELEMENTARY SCHOOL DISTRICT, Employer, and WHEATLAND ELEMENTARY TRANSPORTATION ORGANIZATION, Petitioner, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION & ITS CHAPTER 626, Exclusive Representative.	Case No. SA-SV-159-E Administrative Appeal PERB Order No. Ad-330 December 31, 2003

Appearances: Kristi Eckman for Wheatland Elementary Transportation Organization; California School Employees Association by Jack Metcalf, Senior Labor Relations Representative for California School Employees Association & its Chapter 626.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Wheatland Elementary Transportation Organization (Organization), formerly the Wheatland School Bus Drivers, of a Board agent's dismissal (attached) of a severance petition consisting of a proposed unit of five bus drivers currently included in the classified bargaining unit represented by the California School Employees Association and its Chapter 626 (CSEA). CSEA has also requested that the Board extend the time limits for its late-filed response to the Organization's appeal.

After reviewing the entire record in this matter, including the Organization's severance petition, CSEA's opposition, the District's response, the Board agent's order to show cause,

the parties' responses to the order to show cause, and the Board agent's dismissal, the Board adopts the Board agent's dismissal of the Organization's severance petition as a decision of the Board itself. The Board further finds good cause to excuse CSEA's late-filed response for the reasons discussed below.

CSEA'S REQUEST TO ACCEPT ITS LATE-FILED RESPONSE

According to CSEA, the appeal was initially served by mail on August 29, 2003 to the wrong address. A copy of the original envelope is attached to CSEA's request showing an incorrect address for CSEA and the return of the appeal to the sender by the United States Postal Service.[1] The Organization again mailed the appeal to CSEA. Attached to CSEA's request is a copy of the second envelope with an unreadable postmark of some date in September 2003. CSEA states that the postmark date on the original envelope appears to read September 10, 2003 and was marked received by CSEA on September 11, 2003. CSEA alleges that there was no proof of service attached to this second mailing. CSEA further states that on May 2, 2003, CSEA Representative Jack Metcalf (Metcalf) provided Organization Representative Kristi Eckman (Eckman) with his business card, which contained CSEA's correct address. Metcalf also contacted Eckman by phone approximately August 22, 2003, when she improperly addressed the Organization's response to the order to show cause and he again gave her CSEA's correct mailing address. CSEA states that it has responded to the Organization's appeal under separate cover only five calendar days after the postmark date of the envelope addressed to CSEA's correct business address, and requests that this response be

[1]CSEA does not indicate how it obtained the envelope from the first mailing that was sent to the wrong address.

considered filed within the 10-calendar day limit under PERB Regulation 32375[2] for filing a response to the Organization's appeal.

DISCUSSION

The Board grants CSEA's request to excuse its late filed response.[3] The dismissal was issued and served on August 25, 2003. Pursuant to PERB Regulation 32360,[4] the appeal was due September 4, 2003. The original appeal was served on the Board and to CSEA, albeit to an incorrect mailing address, on August 29, 2003. Under PERB Regulation 32375,[5] any response to the appeal must be filed with the Board within 10 calendar days of the date of service of the appeal; in this case, by September 8, 2003. CSEA's response was filed with the Board on September 17, 2003.

Under PERB Regulation 32136, the Board may excuse late-filed documents for good cause. The Board has found good cause in situations where the justification was "reasonable

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

[3]Although CSEA technically requested an extension of time to file its response, the Board is treating its request as a request to the Board to excuse a late filing under PERB Regulation 32136.

[4]PERB Regulation 32360 provides, in pertinent part:

> (b) An original and five copies of the appeal shall be filed with the Board itself in the headquarters office within 10 days following the date of service of the decision or letter of determination.
>
> (d) Service and proof of service of the appeal pursuant to Section 32140 are required.

[5]PERB Regulation 32375 provides:

> Within 10 days following the date of service of the appeal, any party may file a response to the appeal. An original and five copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

and credible." (Barstow Unified School District (1996) PERB Order No. Ad-277 (Barstow); State of California (Department of Transportation) (2003) PERB Order No. Ad-326.) For example, the Board has found good cause to excuse late filings lost in the mail. (See City of Sacramento (2003) PERB Decision No. 1541 (charging party provided proof that amended charge was timely mailed); North Orange County Regional Occupational Program (1990) PERB Decision No. 807 (exceptions were filed before the deadline but sent to the Los Angeles PERB regional office and not to the Sacramento headquarters office)). The Board has also excused filings that were not timely received. (See Los Angeles Unified School District (2003) PERB Order No. Ad-318 (late filing excused when, after inquiry, charging party misunderstood deadline, mailed appeal by first class mail one day before the due date, and the appeal was received only one business day late); The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H (the University mailed the document on the filing date but it was received three days late); Trustees of the California State University (1989) PERB Order No. Ad-192-H (exceptions sent by certified letter deemed late because the postage meter was incorrectly set). The Board further has excused late filings due to "honest mistakes" such as mailing or clerical errors. (Barstow.) Finally, the Board has excused late filings due to errors on the part of the United States Postal Service. (California School Employees Association (Simeral) (1992) PERB Order No. Ad-233; State of California (Department of Corrections) (1994) PERB Order No. Ad-259-S.) If the justification is "reasonable and credible," then the Board evaluates whether there is prejudice to the opposing party in excusing the late filing. (Barstow.)

After review of the record, the Board finds good cause to excuse the late-filed response from CSEA. CSEA received the Organization's appeal at a late date because of the Organization's error in first mailing the appeal to the wrong address. CSEA has provided a

copy of the original envelope showing that the original mailing was sent to the wrong address and returned to the sender by the postal service. As a result, CSEA states that it did not receive the appeal until September 11, after it was mailed a second time, and has provided a copy of the mailing envelope in support. Although difficult to discern the postmark date on the copy filed with the Board, CSEA says that the original second envelope appears to contain a postmark date of September 10, 2003. According to CSEA, it is unknown when the appeal was served by mail for the second time since no proof of service accompanied the second mailing. After receipt of the appeal, CSEA promptly filed its response with the Board six days after it alleges it received the appeal.

We also find no showing of prejudice to the Organization or to the Wheatland Elementary School District (District) from CSEA's late filing. Neither party has responded nor indicated any burden arising from the late-filed response. The record indicates that both the Organization and the District were served with CSEA's response and with this request to extend the deadline for response. Therefore, the Board finds good cause to excuse the late filing and to accept CSEA's response to the Organization's appeal of the Board agent's denial of its petition for severance.

ORDER

The request of California School Employees Association and its Chapter 626 that the Board accept its late-filed response to the Wheatland Elementary Transportation Organization's appeal in Case No. SA-SV-159-E is hereby GRANTED.

The Wheatland Elementary Transportation Organization's petition for severance in Case No. SA-SV-159-E is hereby DENIED.

Members Neima and Baker joined in this Decision.

August 25, 2003

Kristi Eckman
1490 Buttercup Lane
Marysville, CA 95901

Debra M. Pearson, Superintendent
Wheatland Elementary School District
P.O. Box 818
Wheatland, CA 95692

Jack Metcalf, Senior LR Representative
California School Employees Association
8217 Auburn Boulevard
Citrus Heights, CA 95610

Re: Wheatland Elementary School District
Case No. SA-SV-159-E Dismissal of Petition

Dear Interested Parties:

The above-referenced case was filed with the Public Employment Relations Board (PERB or Board) on . On April 28, 2003, PERB verified the proof of support submitted by Wheatland School Bus Drivers (Petitioner)[1] with its severance request was sufficient to meet the requirements of PERB Regulation 33050(b).[2]

On April 11, 2003, California School Employees Association and Its Chapter #626 (CSEA) submitted its response to the petition to sever bus drivers from the classified unit. CSEA objected to the severance on the grounds that the proposed unit was not a presumptively appropriate unit under Sweetwater Union High School District (1976) EERB Decision No. 4[3] (Sweetwater) and other precedential decisions. Further, CSEA contended that the bus drivers share a community of interest with other classified employees and that there is a history of involvement by bus drivers in the operation of the Chapter and representing the interests of bus drivers at the negotiating table. Finally, CSEA asserted that the unit as proposed failed to

[1] On July 23, 2003, through a letter served on all parties, the Petitioner changed its name from Wheatland Elementary School Bus Drivers to Wheatland Elementary Transportation Organization.

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

[3] PERB prior to 1978 was known as EERB.

include other transportation classifications that sometimes perform bus driving duties, i.e., the mechanic and maintenance worker/bus driver classifications.

Wheatland Elementary School District (District) in its response filed on June 1, 2003, took no position as to the creation of a separate unit of bus drivers.

On July 8, 2003, an informal settlement conference was conducted at which the undersigned gathered information necessary for ascertaining how to further process the petition and to determine whether there were substantial factual disputes relevant to making a determination as to the appropriateness of a bus drivers only unit. Based upon the facts presented at the settlement conference, there were no disputes relating to lines of supervision, interaction with other classified employees, general community of interest factors, training or special licenses required or efficiency of operation of the District.

Through a letter dated July 14, 2003, Petitioner was afforded an opportunity to SHOW CAUSE as to why the petition should not be dismissed. (See attached.) Legal argument and supporting materials were originally to be filed by August 19, 2003. An extension of time was granted to Petitioner until September 2, 2003. However, the response was filed on August 18, 2003.

The District and CSEA were contacted to ascertain whether either wished to respond to Petitioner's arguments. Neither wished to exercise such opportunity.

The Petitioner does not dispute the facts as spelled out in the Order to Show Cause. Therefore, the facts as contained in the July 14 letter are incorporated herein. Petitioner does attempt to differentiate the bus drivers from other classified employees based on the different hours worked, training required and separate staff meetings that drivers attend. Other classified employees have different work schedules and specialized training may be needed for certain classifications, but that does not warrant a separate unit. See Lodi Unified School District (2001) PERB Decision No. 1429.

Further, an argument is raised that there would be benefit to the District, the employees involved, and the children who the District serves by having satisfied employees who were happy in their jobs and able to work towards solving problems instead of creating confrontations as the current situation has done with CSEA as exclusive representative. The accompanying declarations in the Petitioner's response point to extreme dissatisfaction with CSEA and the way they handled the elimination of work which was caused by the District switching from half-day kindergarten classes to full day classes.

PERB has long held that negotiating history is among the "other things" to be considered by PERB in establishing bargaining units. See Livermore Valley Joint Unified School District (1981) PERB Decision No. 165. In that case the Board in reviewing a request to sever an operations-support services unit from a unit of all classified employees indicated its continuing preference for Sweetwater units of office-technical employees; paraeducators; and operations-support services employees and held that community of interest, extent of organization and

efficiency of operations were the key factors in unit determinations. Employee dissatisfaction was one of the "other things" to be considered.

Further, there was no response concerning PERB decisions that denied a bus driver only unit in Los Angeles Unified School District (1985) PERB Decision No. HO-R-105; Los Angeles Unified School District (1993) PERB Decision No. Ad-250.

In a subsequent case, Los Angeles Unified School District (1998) PERB Decision No. 1267, the Board held because there were no material factual disputes as to the community of interest or extent of organization in the case, there was no requirement to proceed to a formal hearing in a case unless there are additional factors that Petitioner could present to establish that a bus driver unit would be an appropriate unit.

In this case, no other factors that would warrant granting the severance request have been presented. The existing unit is not a Sweetwater unit and the standard against which the requested unit must be judged is whether it is an appropriate unit. (Long Beach Community College District (1999) PERB Decision No. 1315.) The Petitioner acknowledges that the unit as petitioned for failed to include the mechanic position which does share a community of interest with the five bus drivers at issue in this severance request. The mechanic does maintain a bus driver's license and on occasion substitutes for an absent driver. Therefore the Petitioner has failed to establish the need for further PERB processing of this case. The Petition is Dismissed.

Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision. (Regulation 32360.) To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95814-4174
FAX: (916) 327-7960

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than 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 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. (Regulation 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (Regulation 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justifications for the request (Regulation 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (Regulation 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Sacramento Regional Office regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see Regulation 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time in which to file an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (Regulation 32132).

Sincerely,

Roger Smith
Labor Relations Specialist

RCS