

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



PABLO FELIX PINTOR,

Charging Party,

v.

POMONA UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-6023-E

Administrative Appeal

PERB Order No. Ad-438

June 9, 2016

Appearances: Pablo Felix Pintor, on his own behalf; Fagen Friedman & Fulfroost LLP by Howard F. Friedman and James K. Ayden, Attorneys, for Pomona Unified School District.

Before Winslow, Banks and Gregersen, Members.

DECISION

GREGERSEN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Pablo Felix Pintor (Pintor) from an administrative determination by the PERB Appeals Assistant that Pintor's appeal of the dismissal of his unfair practice charge was untimely. We have reviewed the entire record in this matter and find that the Appeals Assistant's administrative determination was not in accordance with PERB Regulations. Therefore, we reverse the Appeals Assistant's administrative determination and remand the matter for further processing.

PROCEDURAL HISTORY

On April 20, 2015, Pintor filed an unfair practice charge alleging that the Pomona Unified School District (District or Respondent) violated the Educational Employment Relations Act (EERA or Act)¹ by discriminating against him.

¹ EERA is codified at Government Code section 3540 et seq.

On September 10, 2015, the Office of the General Counsel issued a warning letter for failure to state a prima facie case. Pintor was invited to amend his charge to correct any factual inaccuracies contained in the warning letter and/or to provide additional facts to correct the charge deficiencies outlined in the warning letter. After requesting and receiving an extension of time to file an amended charge, Pintor filed a document titled unfair practice charge, first amended charge. The filing did not comply with PERB Regulation 32615² because there was no signature under penalty of perjury and no completed proof of service showing that the District had been served with a copy of the documents. A “Filing Deficiency Letter” was sent to Pintor on October 20, 2015, by the Office of the General Counsel. After receiving no response, the Office of the General Counsel then dismissed the charge on November 10, 2015. However, because of an inadvertent clerical error, PERB records contained an incorrect mailing address for Pintor. As a result, the November 10, 2015 Dismissal Letter was subsequently revoked to allow for proper service.

On December 23, 2015, the Office of the General Counsel corrected the service error by sending Pintor copies of the September 10, 2015 Warning Letter and the October 20, 2015 Filing Deficiency Letter to Pintor’s correct address. The Office of the General Counsel included a letter with the December 23, 2015 mailing informing Pintor that he was being afforded an opportunity to correct the deficiencies set forth in the October 20, 2015 Warning Letter. Pintor did not respond. On February 1, 2016, the Office of the General Counsel dismissed the charge for failure to state a prima facie case. Pintor was informed that he had 20 days within which to appeal the dismissal.

² PERB Regulation 32615 sets forth the requirements for filing an unfair practice charge.

On February 16, 2016, Pintor filed his appeal. On February 22, 2016, the PERB Appeals Assistant sent a letter to Pintor stating that his appeal did not comply with PERB Regulation 32360 in that he did not provide a valid proof of service.³ Pintor was then provided until February 27, 2016, to perfect his filing. On March 7, 2016, Pintor re-filed his appeal with the requisite proof of service properly identifying the District's designated representative. By administrative determination dated March 14, 2016, Pintor was informed that his appeal was untimely under PERB regulations. As explained in the administrative determination, the appeal of the dismissal was due by February 29, 2016.⁴ Pintor filed his appeal on March 7, 2016, seven days later. On March 23, 2016, Pintor filed a timely appeal of the administrative determination.

DISCUSSION

PERB Regulation 32635 governs review of dismissals. Subdivision (a) states in pertinent part:

Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. Service and proof of service of the appeal on the respondent pursuant to Section 32140 are required

On February 1, 2016, the Office of the General Counsel issued Pintor a dismissal letter after determining that the charge did not state a prima facie case. On February 16, 2016, Pintor

³ Review of the proof of service attached to Pintor's February 16, 2016 appeal shows that Pintor served Richard L. Martinez, Pomona Unified School Superintendent. However, the District had previously filed and properly served a Notice of Appearance Form on May 26, 2015, identifying attorneys James K. Ayden and Howard F. Friedman from the firm Fagen Friedman & Fulfroost, LLP as the District's designated representatives.

⁴ The due date provided in the administrative determination of February 29, 2016, differs from the date provided in the February 22, 2016, letter in that it appears to take into account the fact that the original due date of February 27, 2016, fell on a Saturday.

filed an appeal. The appeal was timely filed, however, it failed to conform to PERB Regulations by including a valid proof of service showing that the District's designated representative had been served. On February 22, 2016, the Appeals Assistant provided Pintor until February 27, 2016, to perfect his filing.

PERB Regulation 32130 governs the computation of time for filings. Subdivision (a) states that the period of time begins to run the day after the act or occurrence referenced.

Subdivision (b) states that:

Whenever the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code Sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.

Subdivision (c) provides a five-day extension to file a response to documents that are served by mail.

February 27, 2016, the due date provided by the Appeals Assistant in the letter dated February 22, 2016, fell on a Saturday. In addition, the letter was sent by US Postal Service. Therefore, pursuant to PERB Regulation 32130, subdivision (c), he should have been provided an additional five days in which to file his appeal. Including the additional five-day extension, Pintor had until March 5, 2016 to file his appeal. Since March 5, 2016 fell on a Saturday, Pintor actually had until Monday, March 7, 2016 to file his appeal. Pintor mailed his proof of service on March 4, 2016 and it was received by PERB on March 7, 2016. We therefore conclude that on March 7, 2016, Pintor timely submitted a perfected appeal.

ORDER

The Public Employment Relations Board's (Board) denial of Pablo Felix Pintor's (Pintor) appeal of the dismissal of his unfair practice charge in Case No. LA-CE-6023-E as untimely is REVERSED and the matter is remanded to the Public Employment Relations Board's Appeals Assistant for further processing.

Members Winslow and Banks joined in this Decision.