

March 2017

## Legal Issues in Higher Education - Handout: Debbie Polk Charging Party v. Regents of the University of CA Respondent

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**Debbie Polk, Charging Party, v. Regents of the University of..., 40 PERC ¶ 177 (2016)**

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**40 PERC ¶ 177, 40 Pub. Employee Rep. for California ¶ 177, 2016 WL 3252493**

California Public Employment Relations Board

Debbie Polk, Charging Party, v. Regents of the **University** of California, Respondent; Debbie Polk, Charging Party, v. Teamsters Clerical, Local 2010, Respondent

No. LA-CE-1182-H

No. LA-CE-1201-H

No. LA-CE-1202-H

No. LA-CO-533-H

PERB No. Ad-437-H

WINSLOW, BANKS, GREGERSEN

May 9, 2016

**Related Index Numbers**

[71.71](#) Review by State Board of Hearing Officer's Report, Exceptions

[71.711](#) Review by State Board of Hearing Officer's Report, Exceptions, Timeliness

**Appearances:**

Debbie Polk, on her own behalf

Elizabeth Sanchez, Director, Employee & Labor Relations, for Regents of the **University** of California

Shondella M. Reed, Attorney, for Regents of the **University** of California

John E. Varga, Attorney, for Teamsters Clerical, Local 2010

Before Winslow, Banks and Gregersen, Members.

**Judge / Administrative Officer**

WINSLOW

BANKS

GREGERSEN

**Ruling**

PERB denied the individual charging party's appeal from the dismissal of her unfair practice charges through administrative determination by PERB's Appeals Office. PERB affirmed the administrative determination that charging party was not entitled to any further extensions of time to appeal the dismissal of her unfair practice charges.

PERB nixes individual charging party's appeal, request for extensions of time

**Meaning**

PERB reasoned that delays in the processing of unfair practice charges leave parties in an ambiguous situation as to their rights and responsibilities, which is counter-productive to the maintenance of harmonious labor relations.

**Case Summary**

The individual charging party appealed from an administrative determination by PERB's Appeals Office. The administrative determination denied charging party's request for a 90-day extension of time in which to appeal the dismissal of four unfair practice charges. PERB denied charging party's administrative appeal. It affirmed the administrative determination that charging party was not entitled to any further extensions of time to appeal the dismissal of her unfair practice charges. PERB reasoned that charging party's appeal must also be denied because granting her multiple requests would alter PERB's procedures for processing unfair practice charges. Because the time to appeal these consolidated cases had passed, the Office of the General Counsel's dismissal of the cases was not subject to appeal, PERB concluded.

**Full Text**

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**Decision**

BANKS, Member: These cases, which were consolidated for administrative convenience, are before the Public Employment Relations Board (PERB or Board) on appeal by Debbie Polk (Polk) from an administrative determination by PERB's Appeals Office. The administrative determination denied Polk's June 27, 2014 request for a 90-day extension of time in which to appeal the dismissal of the four, above-captioned unfair practice charges.

For the reasons discussed below, we deny Polk's administrative appeal and affirm the administrative determination that Polk is not entitled to any further extensions of time to appeal the dismissal of her unfair practice charges. Because the time to appeal those cases has now passed, the Office of the General Counsel's dismissal of Case Nos. LA-CO-533-H and LA-CE 1202-H on February 27, 2014 and its dismissal of Case Nos. LA-CE-1182-H and LA-CE-1201-H on March 12, 2014 are not subject to appeal.

**Factual and Procedural History**

From approximately September 1, 2011 until January 2012, Polk was employed by the Regents of the **University** of California (**University**) as an Administrative Assistant II at the **University**'s Riverside campus. The Administrative Assistant series is part of the Clerical and Allied Services Bargaining Unit, which is exclusively represented by Teamsters Clerical, Local 2010 (Local 2010).

As of January 1, 2014, Polk was the charging party in three unfair practice charges against the **University** (Case Nos. LA-CE-1182-H, LA-CE-1201-H and LA-CE-1202-H) and in one unfair practice charge against Local 2010 (Case No. LA-CO-533-H). On February 27, 2014, the Office of the General Counsel dismissed the charges in Case Nos. LA-CO-533-H and LA-CE-1202-H and on March 12, 2014, the Office of the General Counsel dismissed the charges in Case Nos. LA-CE-1182-H and LA-CE-1201-H.

On March 21, 2014, Polk requested a 90-day extension of time in which to appeal the dismissal of Case Nos. LA-CO-533-H and LA-CE-1202-H. Polk's request stated that she had a medical condition that restricts her ability "to perform the activities required to facilitate an appeal." Polk's request also stated that the 90-day extension was needed for her to rehabilitate from this condition. The **University** opposed this request, arguing that Polk had provided no evidence to substantiate her need for an extension and Local 2010 took no position.

On March 27, 2014, PERB's Appeals Assistant denied Polk's request for a 90-day extension and instead granted Polk a 20-day extension of time, plus five days for service by mail, making April 14, 2014 the new deadline for appealing Case Nos. LA-CE-1202-H and LA-CO-533-H.

On April 1, 2014, Polk made a similar request for a 90-day extension in Case Nos. LA-CE-1182-H and LA-CE-1201-H. As with Polk's previous request for a 90-day extension in her other two cases, the **University** opposed this request, arguing that Polk had provided no evidence to substantiate her asserted need for an extension.

On April 2, 2014, the Appeals Assistant again denied Polk's request for a 90-day extension in Case Nos. LA-CE-1182-H and LA-CE-1201-H, and instead granted Polk a 20-day extension of time in which to appeal the dismissal of these cases.

On April 11, 2014, Polk requested an additional 20-day extension in each of her four cases for medical conditions. The **University** and Local 2010 opposed each of Polk's subsequent requests for an extension, arguing that she had provided insufficient evidence to support her asserted need for an extension.

On April 15, 2014, Polk submitted additional documentation to the Appeals Office, including a doctor's note dated April 14, 2014, which stated that Polk may not return to work or school until April 20, 2014. On April 18, 2014 Polk was granted a 20-day extension for each of her four cases.

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On April 25, 2014, Polk again requested an extension of time to appeal her four cases. On May 8, 2014, the Appeals Office granted Polk's request for an extension of time in all four cases. However, unlike previous correspondence, the Appeals Office's May 8, 2014 correspondence advised Polk that to receive any further extensions of time, she would need to provide additional information, including (1) the accommodation(s) requested, (2) the limitations or impairments that prevented Polk from timely filing the appeal within the timeline allotted by the previous extensions of time, and (3) how having additional time would enable her to complete the appeals process. The Appeals Office asked that Polk also provide supporting documentation for any request for additional time.

On May 23, 2014, Polk requested an additional extension of time until 20 days after being released by her doctor to return to work on June 3, 2014. Polk explained in her request that she had vision problems that interfered with her ability to file an appeal. On May 27, 2014, Polk was granted an additional 20 days as requested in all four cases. As a matter of administrative convenience, the due dates for filing appeals in all four of Polk's cases were consolidated and the new filing date was June 30, 2014. In the letter granting the extension of time, the Appeals Office reiterated that documentation would be required for any further extensions.

On June 4, 2014, Polk requested that the due dates for her appeals in Case Nos. LA-CE-1182-H and LA-CE-1201-H be staggered 20 days from the due dates in Case Nos. LA-CE-1202-H and LA-CO-533-H. On June 6, 2014, the Appeals Office granted an additional 20-day extension in all cases to July 21, 2014.

On June 27, 2014, Polk again requested an extension of time until October 20, 2014. The Appeals Office's denied that request on July 11, 2014 and the present administrative appeal ensued on July 28, 2014.<sup>1</sup>

On September 8, 2014, the **University** filed a position statement which opposed Polk's appeal and urged PERB to deny Polk any further extension of time in her three cases against the **University**. Local 2010 filed no position statement in response to Polk's appeal.

On September 9, 2014, Polk filed with PERB and served additional correspondence in which she reiterated her request for additional time in which to appeal the dismissals of each of her four unfair practice charges.

### Discussion

We presume for the purposes of this appeal, that Polk is a qualified individual with a disability and that, as a state agency, PERB is a public entity subject to California and federal anti-discrimination statutes. ([Civil Code, § 51 et seq.](#); [42 U.S.C. § 12101 et seq.](#); [28 C.F.R. § 35.104 \(1\), \(2\).](#)) By law, a public entity must make reasonable modifications in policies, practices, or procedures, unless the public entity can demonstrate that making such modifications would result in undue financial and administrative burdens or would fundamentally alter the nature of the service, program, or activity offered. ([28 C.F.R. § 35.130, subds. \(a\), \(b\)\(7\)](#); [28 C.F.R. § 35.164.](#)) Such accommodations may include reasonable changes to the public entity's calendaring or scheduling policies, practices or procedures to provide additional time for persons with disabilities to file papers, to prepare for hearing, or otherwise to ensure full and equal access to the public entity's services. (County of Santa Clara (2012) PERB Decision No. 2267-M, p. 4; [In re Marriage of James M.C. and Christine J.C. \(2008\) 158 Cal.App.4th 1261, 1273, 1274, fn. 4](#); [Vesco v. Superior Court \(2013\) 221 Cal.App.4th 275, 279](#); see also [Cal. Rules of Court, rule 1.100, subd. \(a\)\(3\).](#)) A reasonable accommodation may be for an indefinite duration or for a particular matter or appearance ([2 Witkin, Cal. Proc. 5th \(2008\) Courts, § 32, p. 55](#)), and other policies or statutes may not serve as an automatic limit on the duration of a particular accommodation. (See also [Sanchez v. Swissport, Inc. \(2013\) 213 Cal.App.4th 1331, 1338-1340.](#)) However, a "reasonable accommodation" does not require the public entity to wait indefinitely for an impairment or medical condition to improve or be corrected. ([Hanson v. Lucky Stores, Inc. \(1999\) 74 Cal.App.4th 215, 226-227.](#)) To determine whether a requested accommodation is reasonable, a public entity may request additional information about an applicant's impairment or medical condition, including its severity, and for some indication that the requested accommodation will in fact enable the applicant to participate in the service, program or activity offered by the public entity without resulting in undue financial and administrative burdens or fundamentally altering the nature of the service, program or activity.

While Polk provided the Appeals Office with documentation of her medical impairments or conditions and restrictions, that documentation did not explain how granting a fifth extension of time (which extended beyond her return-to-work dates on

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previous medical releases) would enable her to complete the appeals process, given that the previous four extensions of time granted by PERB had not been sufficient. For this reason, PERB was unable to assess the reasonableness of granting Polk's request for another extension of time. ([King v. United Parcel Service, Inc. \(2007\) 152 Cal.App.4th 426, 443-444](#); [Nadaf-Rahrov v. Neiman Marcus Group, Inc. \(2008\) 166 Cal.App.4th 952, 984](#); [Soldinger v. Northwest Airlines, Inc. \(1966\) 51 Cal.App.4th 345, 370.](#))

Additionally, the indefinite and continuing nature of Polk's requests for extensions of time would fundamentally alter the nature of PERB's unfair practice proceedings. PERB affords parties to an unfair practice charge a relatively user-friendly administrative process for adjudication of labor relations disputes. The expectation is that unfair practice charges are handled as expeditiously as possible at both the case processing and administrative appellate stages. Especially in a case where the Office of the General Counsel has dismissed an unfair practice charge after conducting an investigation and concluding that a prima facie case has not been established by the allegations of the charge, it is imperative that any appeal from dismissal be handled as promptly as possible. If the dismissal is to be reversed on appeal, the charge processing starts anew and the lapse in time between the dismissal and the renewal of charge processing should be as minimal as possible. The more distant the events underlying the charge to the adjudication of the charge, the greater the challenges for the parties in preserving documents, securing witnesses and preserving the accurate recollection of witnesses. If an unfair practice has occurred, it should be remedied promptly. On the other hand, if the dismissal is to be affirmed on appeal, the respondents should be cleared with finality from any wrongdoing. Delays in this process leave parties in an ambiguous situation as to their rights and responsibilities, which is counter-productive to the maintenance of harmonious labor relations that is a fundamental mission of PERB. (HEERA, § 3560, subd. (a).)<sup>2</sup> Polk's appeal must also be denied because granting her multiple requests would cause an alteration to PERB's unfair practice charge processing procedures.

### Order

Debbie Polk's appeal from the administrative determination in Case Nos. LA-CE-1182-H, LA-CE-1201-H, LA-CE-1202-H, and LA-CO-533-H is hereby DENIED. Because Polk's appeals from dismissal for the above-referenced charges were due on July 21, 2014, no extension of time has been granted, and Polk has not shown good cause for excusing her late filings, the dismissal of Case Nos. LA-CE-1182-H, LA-CE-1201-H, LA-CE-1202-H and LA-CO-533-H are final and not subject to appeal.

Members Winslow and Gregersen joined in this Decision.

### Footnotes

<sup>1</sup> Although timely filed, Polk's appeal did not include proof of service, as required by PERB regulations. (PERB Regs. 32360, subd. (a), 32140, subds. (a), (c); PERB regulations are codified at [Cal. Code Regs., tit. 8, § 31001 et seq.](#)) After the Appeals Office advised Polk of this deficiency on August 8, 2014, Polk provided proof of service to the Appeals Office on August 22, 2014, and the [University](#) and Local 2010 were provided notice and opportunity to respond. Because Polk's defective service was cured and there is no suggestion that it substantially affected the rights of any parties, we excuse the deficiency. (*Fontana Unified School District* (2003) PERB Order No. Ad-324, pp. 6-7.)

<sup>2</sup> The Higher Education Employer-Employee Relations Act (HEERA) is codified at [Government Code section 3560 et seq.](#)