

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANAHEIM UNION HIGH SCHOOL DISTRICT,
Employer,
and
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,
Chapter 74,
Employee Organization,
and
INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, Local 47,
Employee Organization, APPELLANT.

Case No. LA-R-222
PERB Order No. Ad-27
Administrative Appeal
March 16, 1978

Appearances: Kenton Wines, Superintendent, for Anaheim Union High School District; Wally Blice, Field Representative, for California School Employees Association, Chapter 74; Hirsch Adell, Attorney (Reich, Adell & Crost), for International Brotherhood of Electrical Workers, Local 47.

Before: Gluck, Chairman; Cossack Twohey and Gonzales, Members.

OPINION

This is an appeal by the International Brotherhood of Electrical Workers, Local 47 (IBEW), from the Executive Director's dismissal of an appeal to him from the Los Angeles Regional Director's administrative determination that the IBEW failed to meet the 30 percent requisite showing of interest in an appropriate negotiating unit and, therefore, pursuant to California Administrative Code, Title 8, Section 33480, is ineligible to appear on the ballot. The Executive Director's dismissal was on the ground that the appeal to him was not timely filed.

FACTS

Pursuant to a Board Order establishing an appropriate representation unit, the Los Angeles Regional Director served appellant with written notice, by certified mail dated December 27, 1977, that it was disqualified from appearing on the prospective representation ballot for reason of failure to provide an adequate showing of interest as

required by Board rule. The notice, which was received by appellant on December 28, 1977, further informed appellant that it would have 10 days to file an appeal with the Executive Director of the Board in Sacramento. Board rules define the term "filing" as personal delivery or actual delivery by certified mail. See California Administrative Code, Title 8, Section 33020. The notice contained the following statement:

"You may request a review of this decision within ten calendar days of receipt of this letter by filing a request addressed to the EERB Executive Director in Sacramento. This request shall state fully the facts on which the appeal is based. Copies of any appeal must be served upon the parties to this action with a copy to this office."

Appellant's request for review was actually received by the Executive Director on January 10, 1978. In notifying appellant of his rejection of the request for review, the Executive Director indicated that he would have considered the request timely had it been received on January 9, inasmuch as the 7th of January was a Saturday.

DISCUSSION

The IBEW originally raised no objection to the 10-day period provided by the Regional Director. Nor did the IBEW raise such an issue in its request for review submitted to the Executive Director. Its appeal to the Board itself urges that because of postal delays, the request for review should, nevertheless, have been accepted by the Executive Director.

In the view of the Board, the time provided by the Regional Director for filing the request for review was reasonable. Further, her notice, in writing and sent by certified mail, satisfied due process requirements to which appellant was entitled. See Litchfield v. County of Marin 130 Cal.App.2d 806, 813 (1955).

Appellant's appeal to the Board itself was postmarked January 6, 1978, nine days after the Regional Director's notice to appellant of its 10-day period to file a request for review of her decision. No sufficient cause has been furnished the Board itself for further

extending the filing date established by the Regional Director, which was itself extended until January 9, 1978.

ORDER

The decision of the Executive Director is sustained.

The election in question, in which appellant did not participate, was held on February 22, 1978. However, the ballots were impounded by the Board pending disposition of this appeal. No further reason to delay the count now existing, the Los Angeles Regional Director is hereby directed to proceed with the ballot count and, if appropriate, the certification of an exclusive representative in accordance with California Administrative Code, Title 8, Section 33610.


By: Harry Gluck, Chairman


Raymond J. Gonzales, Member

Jerilou Cossack Twohey, Member dissenting:

I disagree with the majority's conclusion in this case that IBEW's request for review was properly rejected by the Executive Director as untimely.

It is a well-established principle of law that an appellate body is generally reluctant to permit minor procedural defects to preclude an examination of an actual controversy.¹ This is true in the California courts and even more so in an administrative agency.²

¹See Pesce v. Department of Alcoholic Beverage Control, 51 Cal.2d 310, 313 (1958).

²See Gibson v. Unemployment Insurance Appeals Board, 9 Cal.3d 494, 108 Cal.Rptr 1, 509 (1973) where the Supreme Court concluded that the agency and the superior court had erred in denying consideration of an appeal filed three days late. See also Flores v. Unemployment Appeals Board, 30 Cal.App.3d 681, 106 Cal.Rptr 543 (1973).

In the instant case the basic issue is the right of an employee organization to appear on the election ballot. Section 3540 of the EERA states that the purpose of the Act is, among other things, to provide "...a uniform basis for... public school employees...to select one employee organization as the exclusive representative of the employees in an appropriate unit...." Since a basic purpose of the law is to provide for democratic, secret-ballot elections to determine which, if any, employee organization will represent employees as an exclusive representative, exclusion of any employee organization from the ballot--and the concurrent elimination of that employee organization as a possible choice of the employees--is a decision of momentous consequence to all concerned. Such decisions should not be based on rigid and inflexible application of mechanical rules. It may be that IBEW does not possess the requisite showing of support under the Board's rules and regulations. However, the regional director announced that conclusion but nowhere explained the basis for it. The denial of review of the merits of the controversy on a technicality cannot serve to enhance the Board's credibility among any of those affected by this decision--the employees, the district, IBEW or CSEA.

IBEW's request for review was filed one day late. Parties should not lightly be permitted to ignore the Board's time requirements. However, where the rights at issue are fundamental to the very essence of the statute, all parties would be better served by an examination of the merits of the dispute and clear articulation of the basis for the decision. Accordingly, I would reverse the Executive Director.



Jerilou Cossack Twohey, Member

PUBLIC EMPLOYMENT RELATIONS BOARD

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January 12, 1978

Hirsch Adell, Esq.
Reich, Adell & Crost
1722 North Broadway
Santa Ana CA 92706

Re: EERB Decision No. HO-R-41
(LA-R-222)

Dear Mr. Adell:

We received your appeal of the Los Angeles Regional Director's decision in this matter on January 10, 1978.

Pursuant to Board Resolution No. 7, adopted November 2, 1976, I must dismiss this appeal as untimely filed. Filed is defined in Section 33020 of the Board's regulations. As you can see, it means personal delivery or actual delivery by certified mail to the Board (defined in Section 32020 of the regulations).

Our records indicate that the Regional Director mailed the letter outlining her decision on December 27, 1977, and that your agent signed for the certified letter on December 28, 1977. This means that your appeal must have been filed on or before January 7, 1978. Since January 7th was a Saturday, we would have accepted the appeal had it been received on Monday, January 9th. Your letter was postmarked January 6; however, it was not received in Sacramento until January 10th (a copy was delivered to our L.A. Regional Office on January 11th).

An appeal from this dismissal must be filed with the Board within ten (10) calendar days of receipt of this letter. The appeal should be directed to Steve Barber, Executive Assistant to the Board, 923 12th Street, Sacramento CA 95814.

If you choose to file, the appeal shall state fully the facts on which it is based. Copies of any appeal must be served (Section 32140) upon the parties to this action with a copy to the Los Angeles Regional Office of the Public Employment Relations Board.

Sincerely,

Charles L. Cole
Executive Director

RK/tz

cc Kenton Wines W. E. Turner
Wally Blice Frances Kreiling