

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,)
 Employer,)
 and)
 CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)
 Employee Organization,)
 and)
 SERVICE EMPLOYEES INTERNATIONAL UNION,)
 LOCAL 535,)
 Employee Organization,)
APPELLANT.)

Case No. S-R-92
 PERB Order No. Ad-55
 Administrative Appeal
 January 29, 1979

Appearances: William E. Brown, Attorney (Brown & Conradi) for Sacramento City Unified School District; Charles L. Morrone, Attorney for California School Employers Association; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg & Roger) for Service Employees International Union, Local 535.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members.

DECISION

This case comes before the Public Employment Relations Board (hereafter PERB or Board) on appeal from the executive assistant's determination that the Service Employees International Union, Local 525 (hereafter SEIU) untimely filed its opposition to

exceptions taken by the California School Employees Association (hereafter CSEA) to a hearing officer's proposed decision.¹

DISCUSSION

CSEA served its exceptions on November 8, 1978, thereby giving SEIU until the close of business on November 28, 1978, to file timely opposition.² It is not disputed that SEIU's

¹SEIU's document on appeal is entitled "Motion to Relieve Late Filing of Brief." It refers to both the statement in opposition to the exceptions and the accompanying brief, and is apparently filed pursuant to California Administrative Code, title 8, section 32360, which provides:

(a) An appeal may be filed from any administrative decision, except as noted in sections 32380 of these rules.

(b) The appeal shall be "filed" with the Executive Assistant to the Board at the headquarters office within 10 calendar days following the date of service of the decision or letter of determination.

(c) The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal.

²The applicable sections of California Administration Code, title 8, provide:

32130. In computing any period of time under these rules and regulations, the period of time begins to run the day after the act or occurrence referred to.

32135. All documents shall be considered "filed" by a party when actually received by the proper recipient before the close of business on the last date set for filing.

32310. Within 20 calendar days following the date of service of the statement of exceptions, any party may file an original and four copies of a response to the statement of exceptions and a supporting brief with the Board itself. Copies of these documents shall be served concurrently on each party and proof of service shall be filed with the Board itself.

opposition and supporting brief were not filed until November 29, 1978.

SEIU maintains, however, that the late filing was due to "inadvertence and excusable neglect." Specifically, although both the preparation and due dates for SEIU's opposition had been calendared, SEIU's attorney's secretary was ill on November 20, 21 and 22, 1978, the time when the opposition to CSEA's exceptions normally would have been prepared for filing. November 23 and 24, 1978 were office holidays. Thereafter, the secretary mistook the November 28, 1978, due date on her calendar for the preparation date.

SEIU's attorney, who is based in San Francisco, learned of this error at 4:15 p.m. on November 28, 1978, when he was given the Statement in Opposition to sign. At that time, he was unable to arrange for the brief to be delivered to PERB headquarters in Sacramento before the close of the business day.³

Board rule 32133 states:

A late filing may be excused in the discretion of the Board only under extraordinary circumstances.

In Anaheim Union High School District,⁴ the Board defined "extraordinary circumstances" as "out of the ordinary, remarkable,

³The brief SEIU intended to file with its Statement in Opposition to CSEA's exceptions is the same brief that it filed with the hearing officer. Hence it is already a part of the appellate record in this case.

⁴(7/17/78) PERB Order No. Ad-42 at p. 2. See also California State Communications Association (1/2/79) PERB Order No. Ad-52.

unpredictable situations or occurrences far exceeding the usual which prevent a timely filing." While both may be unfortunate, neither the illness of SEIU's attorney's secretary nor her mistake regarding the significance of November 28, 1978, constitute extraordinary circumstances.

ORDER

The Public Employment Relations Board ORDERS that the executive assistant's decision to reject Service Employees International Union, Local 535's Statement in Opposition and supporting brief as untimely filed is affirmed.

~~By: Jerilou Cossack Twohey, Member~~

~~Harry Gluck, Chairperson~~

~~Raymond J. Gonzales, Member~~

PUBLIC EMPLOYMENT RELATIONS BOARD

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November 30, 1978

Mr. Robert J. Bezemek
VAN BOURG, ALLEN, WEINBERG & ROGER
45 Polk Street
San Francisco, CA 94102

Re: Sacramento City USD, S-R-92

Dear Mr. Bezemek:

This will acknowledge receipt of the Statement in Opposition to Exceptions and Brief on Behalf of SEIU 535. Unfortunately, your response was not timely filed in accordance with Section 32310 of the Board's rules and regulations.

The proof of service on the employer's exceptions reveals that they were served on November 8, 1978. Your response, however, was not filed until November 29, 1978. As a result of this failure to timely file, the response cannot be submitted to the Board itself for consideration.

You may appeal this rejection of your filing to the Board itself in accordance with Section 32360. If you choose to do so, your appeal is due on or before ten (10) days after service of this letter, December 11, 1978. (December 10, 1978 is Sunday).

Sincerely,

STEPHEN BARBER
Executive Assistant to the Board

SB:dd