

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION AND ITS WHEATLAND)
CHAPTER NO. 626,)
)
Charging Party,) Case No. S-CE-847
)
v.) PERB Order No. Ad-149
)
WHEATLAND SCHOOL DISTRICT,) November 26, 1985
)
Respondent.)
_____)

Appearances: Madalyn J. Frazzini, Attorney for California School Employees Association and its Wheatland Chapter No. 626; Kronick, Moskovitz, Tiedemann & Girard by Diana D. Halpenny for the Wheatland School District.

Before Hesse, Chairperson; Jaeger and Burt, Members.

DECISION

HESSE, Chairperson: This case is an appeal of an administrative decision by the executive director of the Public Employment Relations Board (PERB or Board) of an appeal of a regional attorney's dismissal of a charge. The executive director rejected the filing on the grounds that the appeal was not timely filed. Charging party claims that "extraordinary circumstances" prevented the timely filing, and asks that the Board excuse the late filing due to the nature of the events that led to the late filing. For the reasons set forth below, we decline to reverse the rejection by the executive director.

BACKGROUND

CSEA timely filed an unfair practice charge against the

Wheatland School District (District). The Board's agent issued a partial complaint and dismissed the remainder of the charge. CSEA wished to appeal the dismissal. It is undisputed that a timely appeal would have had to have been received in the Headquarters office of PERB by March 28, 1985 or sent by certified mail and postmarked no later than March 28, 1985.¹

On March 28, 1985,² CSEA Mail Clerk Annie Binder prepared the envelope (containing the appeal) for certified mail and affixed a postage meter stamp with a postmark of March 28. At about 4:15 p.m. she placed the envelope in a mail sack for pickup by the Diamond Mail Delivery Service, and then she left for the day.

The Diamond Mail Delivery Service, a bonded mail courier company, picks up CSEA's mail three times a day and delivers it to the San Jose post office. The last daily pickup occurs around 4:30 p.m., after the CSEA mail clerks have gone for the day. On March 28, the mail courier service truck broke down and the owner/driver of Diamond, Gus Triandes, was not able to make the late afternoon pickup of CSEA's mail that had been prepared for mailing by Binder.

¹There were actually two pieces of certified mail: the appeal to PERB and a copy of the appeal to Mari Merchat, counsel for the District. As both documents received identical treatment they are referred to as "the appeal" for purposes of clarity. PERB Regulation 32135 permits filing by certified mail.

²Unless otherwise stated, all dates are 1985.

On the morning of March 29, Binder came to work and noted that the mail from the previous day had not been picked up. At the instruction of her supervisor, and to comply with postal regulations, Binder placed a second metered postmark on the appeal to PERB, this one dated March 29. The courier service picked up the mail at 8:30 a.m. on March 29.

After pickup by Triandes, the appeal was inadvertently mislaid in his truck. Triandes discovered the appeal on Monday, April 1, and thereupon delivered the appeal to the San Jose post office. The appeal bears a postal service postmark of April 1, and a PERB stamp on the document indicates receipt on April 4. On April 17 the appeal was rejected as untimely.

DISCUSSION

Charging party bases its request that the late filing be excused on that portion of PERB Regulation 32136 which reads, "A late filing may be excused in the discretion of the Board only under extraordinary circumstances."³ CSEA argues that the circumstances in this case were entirely unexpected. The courier had always been reliable in the past, and there was no way to predict that the truck might break down or that Triandes would misplace the package.

The District's response to CSEA's arguments is twofold:
(1) the circumstances that led to the late filing were all

³PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

under the control of CSEA, and thus under Regents of the University of California (1983) PERB Decision No. 365-H, the circumstances are not extraordinary, and (2) even if the Board were to excuse the late filing due to extraordinary circumstances, the proof of service attached to the original mailing was defective and thus the entire mailing is invalid.⁴

As noted by the parties, this Board has consistently applied a standard of showing "extraordinary circumstances" to excuse a late filing, while other agencies use a lesser standard of showing "good cause." We find, however, that the events of this case do not meet our standard.

We can sympathize with CSEA that it had no knowledge that the courier service's truck would break down on March 28. Certainly, if that were the sole reason for the document being late-filed, CSEA could reasonably argue and we could find that the circumstance was "out of the ordinary."⁵

⁴The District refers to the proof of service by which CSEA employee Evelyn Gallagher, under oath, swore that she deposited the package in the U.S. mail on March 28. CSEA's appeal in this case shows conclusively, however, that Gus Triandes deposited the package in the mail, and he did so on April 1. Although we note the irregularity of the proof of service, we need not address the issue because we dispose of the appeal on grounds of timeliness.

⁵We note, however, that the truck breakdown would not have resulted in a late filing if any CSEA employee was assigned to ascertain the mail had been picked up. As it was, CSEA's work schedule guaranteed that an unforeseen interruption of the courier service would mean automatically that documents would not be mailed until the next time a CSEA mailroom employee noticed the packet, i.e., the next day. It could be argued that, as a prerequisite to pleading "extraordinary

Having been prevented by "extraordinary circumstances" from filing on March 28, however, CSEA did not thereupon receive an unlimited amount of time to file. CSEA became obligated to take steps promptly to file the tardy appeal as soon as possible after discovery of its error.

On March 29, at the very beginning of the workday, CSEA learned that the courier had not picked up the mail from the day before. Yet, CSEA took no special steps to insure that the documents were mailed on March 29. It would have been a simple enough matter to have a mailroom employee take the appeal to the post office. But instead, CSEA relied upon its agent, who failed to deliver the appeal to the post office in a timely manner. CSEA must now assume the consequence of its agent's forgetting to mail the appeal and instead leaving it in the truck over the weekend. An excuse by a CSEA employee that he "merely forgot" to mail the appeal would not constitute extraordinary circumstances. We find the same situation no less excusable because an agent was involved. CSEA's recourse is against the bonded courier; it is not to make the District defend a late-filed appeal due to the error of CSEA's agent.

Thus, as the appeal was ready for mailing on the 29th, and CSEA was aware early in the day that it had missed the filing on the 28th, we do not think it unreasonable that CSEA was

circumstances," CSEA be required to have done everything reasonable to see that the courier service made the late pick-up.

under an obligation to mail the appeal on the 29th. It did not do so, and the circumstances surrounding that failure on the 29th are not extraordinary.

ORDER

The request to file the appeal in S-CE-847 is DENIED, and the regional attorney's partial dismissal is thereby AFFIRMED.

Members Jaeger and Burt joined in this Decision.