

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MIRIAM FLACKS, ET AL.,)
)
Charging Parties,) Case No. LA-CE-210-H
)
v.) Administrative Appeal
)
THE REGENTS OF THE UNIVERSITY OF) PERB Order No. Ad-202-H
CALIFORNIA (DAVIS, LOS ANGELES,)
SANTA BARBARA AND SAN DIEGO),) December 29, 1989
)
Respondents.)
_____)

Appearances: American Federation of State, County and Municipal Employees by Cliff Fried, Representative, for Miriam Flacks, et al.; Edward M. Opton, Jr., Attorney, for the Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego).

Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Regents of the University of California (UC) from the rejection by the Appeals Assistant to the Board of a document entitled Respondent's Brief in Opposition to Charging Parties' Exceptions. The document was mailed to PERB by UC by regular first-class mail on the filing due date of October 27, 1989, but was received by PERB on October 30, 1989. On October 30, 1989, the Appeals Assistant rejected the brief as untimely filed. On November 3, 1989, UC filed its appeal.

DISCUSSION

In rejecting the document as untimely filed, the Appeals Assistant relied on PERB Regulation 32135 which provides:

32135. Filing. All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last date set for filing or when sent by telegraph or certified or Express United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office. (Emphasis added.)

Thus, had the document been mailed by certified or express mail and postmarked on or before October 27, 1989, it would have been accepted as timely.

PERB Regulation 32136 provides, in pertinent part, that "A late filing may be excused in the discretion of the Board for good cause only. . . ." In Statewide University Police Association v. Trustees of the California State University (1989) PERB Order No. Ad-192-H, this Board excused a technically late filing based on secretarial error where unrefuted evidence indicated that the document was actually mailed on the filing date, where the explanation of what occurred was not so unreasonable as to be unbelievable, and where the opposing party had shown no actual prejudice resulting from the one-day delay.

In the instant case, in an unrefuted declaration submitted in support of the timely filed appeal, UC's attorney states that the document in question was completed on the evening of October 26, 1989, and that he instructed his secretary to mail the brief on October 27, 1989, while he was out of town on business. He further states that, since it was the policy of his office to file documents with PERB by certified mail and his secretary had filed many documents at PERB by certified mail, he

believed the mailing would be accomplished by certified mail. The brief was in fact mailed on October 27, but was not mailed certified.

UC's unrefuted explanation of what occurred was not implausible. Furthermore, the charging parties in this case have demonstrated no prejudice resulting from the deficiency in the filing. Accordingly, we conclude that good cause exists for excusing the late filing and accept UC's brief as timely filed.

ORDER

Respondent's Brief in Opposition to Charging Parties' Exceptions is ACCEPTED as timely filed.

Chairperson Hesse and Member Craib joined in this Decision.