

to an Order for Production of Documents and Legal Argument issued by the Board agent.

FACTUAL SUMMARY

The Order for Production of Documents and Legal Argument was served by mail on July 3, 1992 and a response was due not later than fifteen days from that date. Allowing for the appropriate five-day extension,¹ the response was due to be filed in the San Francisco PERB office by July 23, 1992.

PERB Regulation 32132(b)² requires that a party requesting an extension of time, file the request in writing at least three days before the expiration of the time required for filing.

¹PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Section 32130(c) states:

(c) The extension of time provided by California Code of Civil Procedure section 1013, subdivision (a), shall apply to any filing made in response to documents served by mail.

²PERB Regulation section 32132(b) states:

(b) A request for an extension of time within which to file any document with a Board agent shall be in writing and shall be filed with the Board agent at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of service pursuant to section 32140 are required. Extensions of time may be granted by the Board agent for good cause only.

Therefore, the Board agent determined that a request for an extension must have been filed by July 20, 1992.³

No response to the Order was received by July 23, 1992, although a request for an extension was filed by Express United States Mail on July 24, 1992. As a result, the Board agent issued an Administrative Determination on July 24, 1992 dismissing the objections to the election.

TEAMSTERS' APPEAL

On appeal, the Teamsters assert that a response to the Board agent's Order was filed on July 23, 1992 by express mail, but misdirected to PERB's Los Angeles office. The Teamsters argue that the error of sending the response to the wrong PERB office was an honest mistake since the Los Angeles office had conducted the election in question.

The Teamsters further argue that the business agent who was responsible for obtaining evidence of objectionable election conduct in compliance with the Board agent's Order, experienced a family emergency as the filing deadline approached, and as a result, "was unable to either obtain declarations in support of the Objections by July 23, or give notice that she needed additional time three days prior to the deadline."

³In denying the extension of time, the Board agent incorrectly noted the deadline for filing an extension request. PERB policy provides that an extension deadline is established prior to including the five-day extension granted for filing by mail. (PERB Regulation section 32130.) No prejudice results from this error, however, as the extension of time request was filed after the deadline for filing a response to the Order.

As a result, the Teamsters seek a reversal of the Board agent's dismissal, and request that the Board excuse the late filing of the request for an extension of time to allow the Teamsters "to file declarations in support of its Objections."

DISCUSSION

Pursuant to PERB Regulation section 32136,⁴ the Board may excuse a late filing for good cause only. The Board has previously excused late filings which have been misdirected. In North Orange County Regional Occupational Program (1990) PERB Decision No. 807, exceptions were filed well before the deadline, but were inadvertently filed in the Los Angeles regional office, rather than the Sacramento headquarters office. The North Orange County Regional Occupational Program (NOCROP) explained that the secretary generally submitted a large volume of filings with PERB, usually with the Los Angeles office. In this case, through force of habit, she filed the exceptions in Los Angeles. The Board found that NOCROP attempted to file in a timely fashion, but due to an honest mistake, the documents were filed in the wrong office.

The Board has also excused filings which were mailed to the proper office, but were not timely received. In The Regents of the University of California, (Davis, Los Angeles, Santa Barbara

⁴PERB Regulation section 32136 states:

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

and San Diego) (1989) PERB Order No. Ad-202-H, the Board found good cause to excuse the respondent's untimely filed opposition brief. In an unrefuted declaration, the attorney stated that it was the policy of his office to file documents with PERB by certified mail, but his secretary inadvertently sent them by regular first-class mail on the last day set for filing.

Similarly, in Trustees of the California State University (1989) PERB Order No. Ad-192-H, the Board found the secretary's explanation that the postage meter was incorrectly set causing the exceptions to be untimely filed, constituted good cause.

This case is distinguishable from these cases in that the response the Teamsters claim to have misdirected to the Los Angeles office was never received. Furthermore, the request for an extension was neither misdirected nor received late due to mail processing problems - it was simply filed late.

The Teamsters assert that a response to the Board agent's Order was filed by express mail to the Los Angeles PERB office on July 23, 1992. The Los Angeles office, however, received no such filing, and the Teamsters submitted no proof of service relating to this filing or any further evidence that it ever occurred. As a result, the Board concludes that no response was filed, contrary to the assertion.

The Teamsters further claim that the illness of the mother and husband of the business agent who was responsible for obtaining evidence in support of the election objections

prevented her from obtaining that evidence prior to the July 23, 1992 filing date. The Teamsters also assert that the business agent could not anticipate the need for an extension by July 20, 1992, the due date for any extension request.

The Board may excuse a late filing for good cause only. The requirement that a request for an extension of time be filed at least three days prior to the filing deadline is based on the premise that the need for an extension should be anticipated by the requesting party. Therefore, for good cause to be found, a party's late filing of a request for an extension of time should be based on circumstances that are unanticipated and beyond the party's control.

The business agent indicates in her declaration that she had spent a great deal of time and energy caring for her mother from approximately July 12, 1992 through the filing deadline. Although her mother's illness may have been beyond her control, the fact that so much time was necessary to care for her made it possible to anticipate on or before July 20, 1992 that a request for an extension of time would be needed.

Given the unsubstantiated assertion that a response was filed but misdirected, and the fact that the need to request an extension should have been anticipated prior to the July 20 deadline, the Board concludes that good cause does not exist to excuse the late filing of that request.

ORDER

The Teamsters' appeal of the Board agent's dismissal of its election objections is hereby DENIED. The Board hereby directs the regional director to certify the results of the decertification election.

Members Camilli and Carlyle joined in this Decision.