STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT,	)	Case No. S-CE-125-S
Charging Party,	)	Request for Reconsideration PERB Decision No. 648-S
v.	)	
	)	PERB Decision No. 648a-S
STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION),	)	December 20, 1983
Respondent.	)	

Appearances: Ernest F. Schulzke, Attorney for Professional Engineers in California Government.

Before Craib, Porter and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal from a decision of PERB's executive director denying the request of the Professional Engineers in California Government (PECG) for late filing of its request for reconsideration of PERB Decision No. 648-S. The executive director found no "extraordinary circumstances," as required by PERB Regulation 32136.[1] The filing deadline for the

[1]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 32136 states:

> A late filing may be excused in the discretion of the Board only under extraordinary circumstances. A late filing which has been excused becomes a timely filing under these regulations.

The executive director also found that the request for late filing would fail to meet a "good cause" standard. The Board recently adopted an amendment to Regulation 32136 which would

reconsideration request was January 7, 1988, and PECG's request was filed on February 17, 1988.

DISCUSSION

PECG puts forth three reasons why the late filing should be excused: (1) the Board took several years to issue the decision and, in the interim, the leadership of PECG changed dramatically (as did the "facts surrounding the bargaining process"), making it difficult to decide how to respond to the decision; (2) since the decision was issued just before the Christmas season, it was very difficult to consult with unit members and reach some consensus on whether to request reconsideration or file a petition for review;[2] (3) the Board's decision was confusing and unclear and clarification is essential in order to avoid "substantial confusion and needlessly spawn[ed] litigation . . . ."

In Anaheim Union High School District (1978) PERB Order No. Ad-42, the Board defined "extraordinary circumstances":

> "Extraordinary circumstances" means exactly that - out of the ordinary, remarkable, unpredictable situations or occurrences far exceeding the usual which prevent a timely filing.

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substitute a "good cause" standard for the existing "extraordinary circumstances" standard. That amendment is being reviewed by the Office of Administrative Law and is not yet in effect.

[2]An untimely petition for review was filed and was dismissed by the Third Appellate District Court on February 18, 1988 (Case No. C003756).

In that case, the Board stated that mail delays are ordinary and common occurrences which do not constitute "extraordinary circumstances."

The late filing cases addressed by the Board have involved mail delays or other "eleventh hour" attempts at filing that have gone awry for one reason or another. None have involved claims such as those here, where the timing or content of the Board's decision purportedly prevented a timely filing. (U. C. Riverside (Jones) (1984) PERB Decision No. 386-H (mail delay does not constitute "extraordinary circumstances"); Ocean View School District (1980) PERB Decision No. 131 (late filing not excused where attorney for the charging party experienced chest pains the day before the filing deadline, no extension of time was requested, and the filing occurred a week later despite the attorney being back at work the day after the due date); Wheatland School District (1985) PERB Order No. Ad-149 (failure of courier service to deposit appeal in U. S. mail not "extraordinary circumstances"); Alum Rock School District (1985) PERB Order No. Ad-147 (late filing excused where deposited in certified mail before midnight on last day to file, but postmarked the next day).)

Though there is no Board precedent directly on point to guide us in our decision, we do not find this to be a difficult case. We find nothing in PECG's justifications for the late filing that can fairly be termed "out of the ordinary," "remarkable," "unpredictable," or "far exceeding the usual which

prevent a timely filing." PECG's last argument, that the late filing should be excused due to the lack of clarity in the Board's decision, misses the mark entirely. That argument addresses the merits of the underlying decision and fails to address at all the reasons for the late filing, which, of course, is the focus of our inquiry.

The remaining justifications for the late filing can be summarized as reflecting organizational problems which made deciding on a course of action difficult. While more to the point, these arguments are unpersuasive. We know of no practice, of any judicial or quasi-judicial body, to excuse a late filing simply because a party claims that its inability to decide on a course of action prevented timely preparation of the document to be filed. Undoubtedly, the need for responsive legal action often arises at inconvenient times. That may be unfortunate, but it is far from uncommon. Where it appears that a deadline cannot be met, the proper action is to request an extension of time to file.[3] To simply let the deadline pass and file over a month late, as happened here, cannot be excused. That is especially true where, as here, the purported inability to provide a timely filing was apparently known well ahead of the deadline.

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[3]**PERB** Regulation 32132(a) states, in pertinent part:

> A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing.

Furthermore, to excuse a late filing under these circumstances would make a mockery of our filing deadlines and of our standard for accepting late filings. To be consistent, we would have to routinely excuse late filings during the holiday season or whenever an organization could show substantial turnover in leadership. To excuse late filings on that basis would no doubt constitute the "exception that swallows the rule."[4]

Lastly, even if we were inclined to excuse the late filing, it is questionable whether we could properly entertain the request for reconsideration at this time. It would appear that the Board does not have jurisdiction to reconsider its decision once a petition for review has been filed and/or the time to seek judicial review has expired. Ralph C. Dills Act[5] section 3520(c), which governs petitions for judicial review of Board decisions, states, in pertinent part: "Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding." (Emphasis added.) (See also Olive Proration Program Committee v. Agricultural Prorate Commission (1941) 17 Cal.2d 204, 209-210;

[4]While the aforementioned amendment to Regulation 32136 is not yet in effect, we note that we also would not excuse this late filing under a "good cause" standard.

[5]The Ralph C. Dills Act is codified at Government Code section 3512 et seq.

Save Oxnard Shores v. California Coastal Commission (1986) 179 Cal.App.3d 140, 149-150, hg.den. (an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become final).)

ORDER

The Professional Engineers in California Government's request for late filing of its request for reconsideration of PERB Decision No. 648-S is hereby DENIED.

Members Porter and Camilli joined in this Decision.