

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



NORTH ORANGE COUNTY REGIONAL )  
OCCUPATIONAL PROGRAM, )  
 )  
Employer, ) Case No. LA-R-943  
 )  
and ) PERB Decision No. 807  
 )  
REGIONAL OCCUPATIONAL PROGRAM OF ) May- 15, 1990  
NORTH ORANGE COUNTY CTA/NEA, )  
 )  
Employee Organization. )  
\_\_\_\_\_ )

Appearance: Parker and Covert by Val R. Fadely, Attorney, for North Orange County Regional Occupational Program.

Before Craib, Shank and Cunningham, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request from the North Orange County Regional Occupational Program (NOCROP) to excuse the late filing of its exceptions to a Board agent's proposed decision. NOCROP's exceptions were not timely filed in the headquarters office as required by PERB Regulation 32300.<sup>1</sup>

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<sup>1</sup>PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 32300, subdivision (a) states, in pertinent part:

A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to section 32215, and supporting brief, within 20 days following the date of service of the decision or as provided in section 32310. The statement of exceptions and briefs shall be filed with the Board itself in the headquarters office. . . .

However, they were filed within the appropriate time period in PERB's Los Angeles Regional Office.

On January 30, 1990, the parties were served with the Board agent's proposed decision which held that: (1) NOCROP is a public school employer within the meaning of EERA section 3540.1, subdivision (k); and (2) a unit consisting of all full-time and part-time certificated employees is appropriate. In accordance with Regulation 32300, exceptions were due in the headquarters office 20 days thereafter, which, with the appropriate extensions due to service by mail and a weekend filing deadline, was Monday, February 26, 1990.

On February 16, 1990, NOCROP sent by certified mail its statement of exceptions and request for oral argument to the PERB Los Angeles Regional Office. The proof of service reflects service on the opposing party, the Regional Occupational Program Educational Association of North Orange County CTA/NEA (CTA). The regional office forwarded the exceptions to the Board's headquarters office in Sacramento some time after March 5, 1990, the date on which the Board's appeals assistant was informed by telephone that the exceptions had been filed in Los Angeles. After receiving notice that the proposed decision had become final, NOCROP sent a copy of its exceptions to the headquarters office with a letter asking that the Board accept the late filing.

NOCROP asserts that its technically late filing should be excused, as it was due to an inadvertent clerical error which did

not prejudice CTA. NOCROP provided the declaration of a secretary from its attorney's law firm, in which she explains the filing error. She states that she submits a large volume of filings with PERB, usually with the Los Angeles office, and, although she has previously filed documents with the headquarters office, this time, through force of habit, she inadvertently filed the exceptions with the Los Angeles office. Also provided was a declaration of the attorney assigned to the case, describing the circumstances surrounding the late filing.

#### DISCUSSION

In support of its request that the Board accept the late filing, NOCROP cites the general rule in California in favor of preserving the right to appeal (see discussion, infra) and an early Board decision, Chula Vista City School District (1978) PERB Order No. Ad-29. In Chula Vista, the Board excused a late filing where a temporary secretary apparently misunderstood instructions to deliver exceptions to the Los Angeles Regional Office.<sup>2</sup>

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<sup>2</sup>The attorney's normal practice was to mail exceptions to the Sacramento office and deliver them to the Los Angeles office on or before the last day for filing. At that time, the Board had an administrative practice of accepting exceptions timely filed in the regional offices (due to the extremely short time period for filing exceptions that then existed (seven calendar days)). Also at that time, the Board's regulations did not specify a standard for excusing late filings. Shortly thereafter, the Board adopted a regulation providing for an "extraordinary circumstances" standard, which was recently amended to provide for a "good cause" standard. (See Reg. 32136, discussed infra, at p. 4.)

Regulation 32136 provides that:

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.

(Amended, effective January 28, 1989.) Although most of the Board's prior decisions were decided under the previous "extraordinary circumstances" standard, the Board has recently decided two cases under the new "good cause" standard which are instructive.

In Trustees of the California State University (1989) PERB Order No. Ad-192-H, the Board excused a late filing where exceptions were actually sent by certified mail on the last day for filing, but, due to an error in the mailroom, the postage meter was incorrectly set for the following day; therefore, the postmark reflected that the filing was untimely. The Board found the supporting declarations to be believable and found no indication of prejudice to the opposing party. In determining whether to excuse the late filing, the Board first relied on the case of Gibson v. Unemployment Insurance Appeals Board (1973) 9 Cal.3d 494, 108 Cal.Rptr. 1, in which the California Supreme Court held that it was improper for an agency to automatically and mechanically reject late-filed appeals without regard to the excusability of the late filing. The Board then noted that the court's holding was consistent with the general policy in California of favoring the preservation of appeal rights and the hearing of appeals on their merits. (See City of Santa Barbara v. California Coastal Zone Conservation Commission (1977))

75 Cal.App.3d 572; Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal.2d 310.)

In The Regents of the University of California (1989) PERB Order No. Ad-202-H, the Board excused a late filing where the document was inadvertently sent by regular mail on the last day for filing, rather than by certified mail, which was the normal practice of the party. The Board emphasized that the unrefuted explanation for the late filing was plausible and that there was no prejudice to the opposing party.

Consistent with the results in Trustees of the California State University, supra. PERB Order No. Ad-192-H and The Regents of the University of California, supra, PERB Order No. Ad-202-H, we find that the late filing should be excused in this case as well. In each of the three cases, a party attempted to file in a timely fashion but, due to an inadvertent error, the mechanics of the filing went awry. In the instant case, there is no reason to believe that the filing error was due to anything other than an honest mistake. While it is the responsibility of the parties to see that documents are filed in the proper office in accordance with the Board's regulations, we are nonetheless mindful that, in this case, the exceptions were received well before the filing deadline, albeit in the wrong office. Finally, since CTA was served with the exceptions before the filing deadline, there is no indication of any prejudice due to the filing error. Therefore, we find good cause for excusing the late filing.

ORDER

Good cause having been shown, the late filing is EXCUSED and the exceptions are ACCEPTED as timely filed pursuant to Regulation 32136. Consistent with Regulation 32310,<sup>3</sup> CTA shall have 20 days from service of this decision in which to file a response to NOCROP's exceptions to the proposed decision.<sup>4</sup>

Members Shank and Cunningham joined in this Decision.

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<sup>3</sup>Regulation 32 310 provides, in pertinent part:

Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself an original and five copies of a response to the statement of exceptions and a supporting brief. The response shall be filed with the Board itself in the headquarters office. . . .

<sup>4</sup>North Orange County Regional Occupational Program (1990) PERB Decision No. HO-R-123 is hereby vacated.