

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



JOHN KALKO AND DAVID RUGER, )  
 )  
 Charging Parties, ) Case No. SA-CE-667-S  
 )  
 v. ) Request for Reconsideration  
 ) PERB Decision No. 1125-S  
 STATE OF CALIFORNIA (DEPARTMENT )  
 OF PARKS AND RECREATION), ) PERB Decision No. 1125a-S  
 )  
 Respondent. ) September 24, 1997  
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Appearances: John Kalko and David Ruger, on their own behalf; State of California (Department of Personnel Administration) by Linda A. Mayhew, Labor Relations Counsel, for State of California (Department of Parks and Recreation).

Before Caffrey, Chairman; Johnson and Jackson, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by John Kalko (Kalko) and David Ruger (Ruger) that the Board accept their late filed request for reconsideration of State of California (Department of Parks and Recreation) (1995) PERB Decision No. 1125-S (Parks and Recreation). In Parks and Recreation, the Board dismissed the unfair practice charge, which alleged that the State of California (Department of Parks and Recreation) (State) retaliated against Kalko and Ruger in violation of section 3519(a) of the Ralph C. Dills Act (Dills Act).<sup>1</sup>

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<sup>1</sup>The Dills Act is codified at Government Code section 3512 et seq. Section 3519 states, in pertinent part:

It shall be unlawful for the state to do any of the following:

After reviewing the entire record, including Kalko and Ruger's request and the response filed by the State, the Board hereby declines to accept the late filing.

#### BACKGROUND

On June 18, 1997, Kalko and Ruger filed a document with the Board entitled "Motion for a New Trial (CCP 657) and Motion for a Rehearing and Motion for Order to Omit Addresses and Motion for Arbitration Order" in which they request a "new trial," "reexamination of the facts," or a "new hearing" in Parks and Recreation, among other things. In support of their request, they argue that they have discovered new evidence. Specifically, Kalko and Ruger state that on or about June 20, 1996, they discovered:

. . . the returned hearing officer's judgment on a parking citation that is evidence of possible illegal actions by State Park Peace Officer supervisors who were involved in the original events that caused the parties to file for the unfair practice charges.

Additionally, Kalko and Ruger refer to "evidence" that "Kramer has been diving at night for lobsters in the park as recently as October, 1996."

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(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

## DISCUSSION

The Board recently considered a similar case in which a party made a request to reopen the hearing record more than three years after issuance of the Board's decision. (Regents of the University of California (Einheber) (1997) PERB Decision No. 949a-H (Einheber).) In that case, the Board noted that requests to reopen a completed record based on new evidence are measured by the same standard we use when considering requests for reconsideration. (Einheber, supra, p. 2, citing San Mateo Community College District (1985) PERB Decision No. 543.) The Board concludes that it is appropriate to follow this approach in considering the instant request from Kalko and Ruger.

Reconsideration requests are governed by PERB Regulation 32410(a),<sup>2</sup> which states, in part:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. . . . The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

Since Parks and Recreation was issued November 30, 1995, Kalko and Ruger's June 18, 1997 request was filed approximately 18 months late. PERB Regulation 32136 provides that:

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<sup>2</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.

There have been occasions when PERB has exercised its discretion pursuant to this regulation to excuse late filings. Typically, good cause to excuse the lateness has been found when the deadline was missed by only a short period of time and the party demonstrated a conscientious effort to timely file before the deadline, but the filing arrived late due to an "honest mistake." (Id., p. 4.)<sup>3</sup>

Kalko and Ruger missed their deadline by 18 months, but they do not assert that an "honest mistake" or inadvertence caused their lateness. In fact, Kalko and Ruger fail to address the lateness of their request. Instead, while they seem to allege that there is "newly discovered evidence" which was not previously available, they have not explained why it could not have been discovered earlier with the exercise of reasonable diligence. Nor have they explained the reason for the one-year delay between the time they apparently discovered the "new

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<sup>3</sup>Examples include: Trustees of the California State University (1989) PERB Order No. Ad-192-H) (filings sent by certified mail on the last day for filing but were erroneously postmarked the next day); California School Employees Association (Simeral) (1992) PERB Order No. Ad-233 (filings were late due to incorrect address and postal delay); The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H) (filings inadvertently sent by regular mail on the last day for filing rather than by certified mail); and North Orange County Regional Occupational Program (1990) PERB Decision No. 807 (filings were not timely filed at the correct office (PERB's headquarters office in Sacramento) but were timely filed at PERB's regional office in Los Angeles).

evidence" (June 20, 1996, according to their request) and the time they filed the instant request (June 18, 1997).

Where a party fails to provide any explanation to excuse a late filing, the Board is precluded from finding that good cause exists. (Sonoma County Office of Education (1992) PERB Order No. Ad-230; California Faculty Association (Gregg) (1995) PERB Order No. Ad-271-H.) Accordingly, we do not find that good cause exists to excuse this late filed request for reconsideration.<sup>4</sup>

#### ORDER

John Kalko and David Ruger's request to accept their late filed request for reconsideration of the Board's decision in State of California (Department of Parks and Recreation) (1995) PERB Decision No. 1125-S is hereby DENIED.

Chairman Caffrey and Member Jackson joined in this Decision.

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<sup>4</sup>In addition to requesting that the Board reconsider its decision in Parks and Recreation, Kalko and Ruger make two other requests in their late filed request for reconsideration. They request that the Board delete their home addresses from proofs of service on "all existing public documents in this case," and they request that their original grievance be sent to arbitration. Since we treat this entire document as a late filed request for reconsideration, and we conclude that Kalko and Ruger have not shown good cause to excuse the lateness of that request, we are precluded from considering all requests made therein.