

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

In the Matter of the Administrative Appeal)

LOS ANGELES UNIFIED SCHOOL DISTRICT,)

Employer,)

and)

PROFESSIONAL EDUCATORS OF LOS ANGELES,)

Employee Organization,)
APPELLANT,)

and)

UNITED TEACHERS-LOS ANGELES,)

Employee Organization.)

Case Nos. LA-R-687
LA-CO-7
LA-CO-8

EERB Decision No. HO-U-9
HO-R-20
EERB #5
Ad-14

EERB Order No. Ad-19

November 8, 1977

ORDER

The decision of the Executive Assistant to the Board that appellant's exceptions to the proposed decision of the hearing officer, in the above-cited case, were not timely filed and cannot, therefore, be accepted is sustained by the Board itself.

The Board finds that the Executive Assistant correctly applied the Board's rules and regulations in this matter.

Educational Employment Relations Board
by

Charles L. Cole

CHARLES L. COLE
Executive Director

Reginald Alleyne, Chairman, dissenting:

I dissent from the Board's November 8, 1977¹ order as unnecessary and as having the possible effect of beginning anew on

¹All dates noted are for the year 1977.

November 8 a judicial appeal period which should have commenced on September 29. At that time, the Board decided the same issue it purports to decide with this order of November 8.

On July 25, an EERB hearing officer decided a representation election matter in favor of United Teachers-Los Angeles (UTLA) and against Professional Educators of Los Angeles (PELA). The hearing officer noted in the decision that pursuant to Board rules his decision would become final on August 9, 1977 "unless a party [by August 3] files a timely statement of exceptions." PELA's exceptions were not filed by August 3 and were accordingly not timely.

On August 1, 1977, PELA filed a request to extend the time to file exceptions to the hearing officer's decision. This request was not granted by the Board's Executive Assistant. On August 9, PELA appealed to the Board the Executive Assistant's denial of its extension request. Also on that date, the hearing officer's decision became final.

On August 15, PELA attempted to file with the Board exceptions to the hearing officer's decision. On August 17, the Executive Assistant informed PELA by letter that as a result of PELA's failure to timely file its exceptions, "the enclosed exceptions cannot be submitted to the Board itself for consideration." He returned the exceptions to PELA. On August 29, 1977, PELA again sent its exceptions to the Board. This time, PELA asked the Board to take custody of the exceptions so that they might be "on file in the event that the Board itself rules in PELA's favor regarding the extension of time."

On September 29, 1977, in response to PELA's August 9 appeal, the Board issued the following order:

The decision of the Executive Assistant
to the Board, in the above-cited case,

denying an extension of time requested by appellant to file exceptions to the hearing officer's proposed decision is sustained by the Board itself.

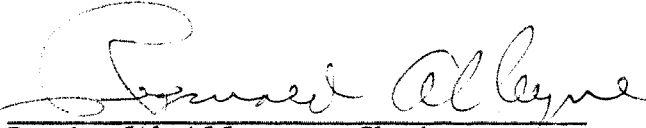
The Board finds that the Executive Assistant correctly applied the Board's rules and regulations in this matter.

With this order of September 29, sustaining the refusal to extend PELA's time to file exceptions, PELA's exceptions were not then validly before the Board and had never been validly before the Board. By September 29, the time within which to file exceptions (August 3) had passed. As a result of the September 29 Board decision, there remained nothing for the Board to act upon in this case. No other PELA appeal was or has been before the Board itself in respect to the election objections. It is apparent that even PELA considers its case as having been closed before the Board with the Board's decision of September 29. The present order of November 8, deciding that PELA's late exceptions cannot be accepted does not differ in effect from the order of September 29, sustaining the Executive Assistant's refusal to submit the exceptions to the Board.²

I believe that the time within which an appeal to the judiciary might be taken from the Board's refusal to extend the time to file PELA's exceptions began to run on September 29 and not on

²The August 17 letter of the Executive Assistant had not been written when PELA on August 9 appealed the decision not to extend its time to file exceptions. But the Board had official notice of that letter as well as PELA's provisional resubmission of its exceptions on August 29, when it decided PELA's August 9 appeal on September 29.

November 8, in that the action of November 8 attempts to decide a nonexistent case and does nothing that was not effectively done on September 29.


Reginald Alleyne, Chairman

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

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August 17, 1977

Leona M. Pfeifer
Attorney at Law
7801 Mission Center Court
Suite 212
San Diego, CA 92108

Re: Los Angeles Unified School District and Professional Educators of
Los Angeles (Case No. LA-R-687) and Professional Educators of Los
Angeles vs. United Teachers of Los Angeles (Case No. LA-CO-7, LA-CO-8)

Dear Ms. Pfeifer:

This will acknowledge receipt of your exceptions to the proposed decision on objections to election in the above-captioned case filed by Professional Educators of Los Angeles. Unfortunately, your documents were not timely filed pursuant to California Administrative Code Sections 35030 and 33380.

With regard to filing exceptions to recommended decisions in unfair practice cases, Section 35030 states that exceptions must be filed within seven calendar days after service. The recommended decision was served on July 25, 1977, making exceptions due on August 1, 1977.

The timeline for proposed decisions in representation cases is calculated by receipt rather than service. Section 33380 states that exceptions to proposed decisions in representation cases must be filed within seven calendar days after receipt of the proposed decision. The proposed decision was delivered to your office on July 27, 1977, making exceptions to the representation proposed decision due on August 3, 1977 for PELA.

Exceptions by PELA were filed on August 15, 1977.

As a result of this failure to timely file, the enclosed exceptions cannot be submitted to the Board itself for consideration. Please be advised that while there are no rules to this effect you are welcome to appeal this rejection of your filing to the Board itself. Should you choose to do so, your appeal should be filed in this office on or before seven calendar days from receipt of this communication.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Barber".

Stephen Barber
Executive Assistant
to the Board

