

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



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|-------------------------------------|---|--------------------------|
| REDONDO BEACH CITY SCHOOL DISTRICT, |) | |
| |) | |
| Employer, |) | |
| APPELLANT, |) | Case No. LA-R-430B (825) |
| |) | |
| and |) | PERB Order No. Ad-83 |
| |) | |
| EARLY CHILDHOOD FEDERATION, |) | |
| LOCAL 1475, AFT, |) | Administrative Appeal |
| |) | |
| Employee Organization, |) | April 1, 1980 |
| |) | |
| and |) | |
| |) | |
| REDONDO BEACH CITY TEACHERS |) | |
| ASSOCIATION, CTA/NEA, |) | |
| |) | |
| Employee Organization. |) | |

Appearances: David G. Miller, Attorney (Paterson & Taggart) for Redondo Beach City School District; Anne E. Fragasso, Attorney, and Larry Bordan for Early Childhood Federation, Local 1475 AFT; Charles Gustafson, Attorney, and Lauren Sanders for Redondo Beach City Teachers Association.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

The Redondo Beach City School District (hereafter District) appeals the dismissal of its request for approval by the Public Employment Relations Board (hereafter PERB) to join it in seeking judicial review of a unit determination. The executive assistant

to the Board dismissed the request because it was filed either three or four days after the deadline established by Board rule 32500.¹

Rule 32133² reads:

Late Filing. A late filing may be excused in the discretion of the Board only under extraordinary circumstances.

The justification offered by the District in this case includes:

- a) The Board's order was amended and modified by a memorandum issued by the executive assistant to the Board dated January 22, 1980, and received by the District on February 1, 1980. This modification should extend the time for filing the request to seek judicial review.

¹California Administrative Code, title 8, section 32500, reads as follows:

Review of Unit Determinations. Any party to a unit determination decision by the Board itself may file a request to seek judicial review within 10 days following the date of service of the decision. The request shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. A copy of the request must have been actually served upon each party of record prior to filing the request and a statement of such service shall accompany the request. Any party shall have five calendar days from actual service to file a response with the Board itself. "Actual service" as used in this section means actual receipt by the party or their agent.

²California Administrative Code, title 8, section 32133.

- b) The time for filing requests under rule 32500 is too short to accommodate the process, including service on affected parties. The rule, therefore, is unreasonable.
- c) An inquiry of the PERB staff caused the District to serve its request on the Sacramento Regional Office rather than on the Board itself. This error, resulting from misinformation, should excuse a late filing.
- d) The effective date of the Board order itself was unclear.

The amendment/modification referred to by the District corrected a portion of the Board's order relating to the mechanics of the prospective representation election. It did not bear on any substantive issue under consideration in the unit determination case; specifically, the correction was totally unrelated to the finding of unit appropriateness and, therefore, could not have influenced the District's determination to seek judicial review. Furthermore, corrections of the kind made here are in the nature of notices of errata and, absent a showing of harm to an affected party, do not operate to delay the effective date of a Board decision or to extend the time for filing appeals or petitions. The facts here, do not justify a finding of detrimental reliance by the District.

Though petitioner disagrees with the time limits contained therein, rule 32500 was adopted in public session held by the PERB after proper notice and receipt of comment from the public, and has been in effect since October 1978. Petitioner's dissatisfaction with the rule does not constitute an "extraordinary circumstance" as contemplated by rule 32133.

The deadline for filing the District's request was January 28, 1980. Its request was actually filed with the regional office on January 31, 1980. Thus, even that filing was three days late. The misinformation claimed by the District, therefore, had no bearing on the District's failure to file in timely fashion.

Finally, the District's claimed confusion over the effective date of the Board order cannot serve to justify its late filing. Rule 32500 specifically states:

Any party to a unit determination decision by the Board itself may file a request to seek judicial review within 10 days following the date of service of the decision.

.....!
It is date of service of the order rather than any date appearing on the order itself which triggers the time requirements contained in the rule. Date of service is indicated by an attached statement of service.

No extraordinary circumstances having been demonstrated by the District, the decision of the executive assistant to the Board dismissing the District's request for approval to seek judicial review is affirmed.

PER CURIAM