

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



ALUM ROCK SCHOOL DISTRICT,	)	
	)	
and	)	Case No. SF-D-129
	)	(R-377B)
CALIFORNIA SCHOOL EMPLOYEES	)	
ASSOCIATION,	)	PERB Order No. Ad-147
	)	
and	)	Administrative Appeal
	)	
TEAMSTERS LOCAL No. 165.	)	August 6, 1985

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Appearances: Beeson, Tayer & Bodine by Neil Bodine for  
Teamsters Local No. 165.

Before Jaeger, Burt and Porter, Members.

DECISION

PORTER, Member: We review an administrative determination by the executive director dismissing, as untimely filed, an appeal from a decertification election decision of a regional director. We have concluded that the executive director's determination was proper but that there were extraordinary circumstances which justify the Board excusing the late filing.

The California School Employees Association filed a decertification petition with a regional office of this Board concerning a unit of classified employees which is represented by Teamsters Local 165 (Teamsters). The Teamsters contended that an extension of their contract with the school district employer barred the petition.

On April 8, 1985, the regional director issued and served an administrative decision which found that the petition was not barred by the contract extension.

On April 18, 1985, prior to midnight, the Teamsters' attorney's office placed a certified mail appeal in the U.S. Mail at the main post office in Sacramento. The Teamsters' attorney's office had found through prior experiences that certified mail deposited at the city's main post office prior to midnight would be postmarked with the pre-midnight deposit date.

On April 22, 1985, the Board received by certified mail postmarked April 19, 1985, the Teamsters' appeal from the administrative decision. The executive director then issued and served a letter of determination rejecting the mail appeal as untimely for not being postmarked within 10 days of the service of the administrative decision.

#### DISCUSSION

The Teamsters contend that they acted reasonably in depositing their certified mail appeal in the U.S. Mail prior to midnight of April 18, that the April 19 postmarking was unexpected, and that their appeal should be considered timely filed.

The regional director's administrative decision was issued and served on April 8. The Teamsters then had 10 days --to and including April 18-- to file an appeal with the Board.<sup>1</sup> Such a filing could be timely accomplished by either having the appeal actually received by the Board on or before April 18, or by sending the appeal by certified mail postmarked on or before April 18.<sup>2</sup> The certified mail appeal was received at the Board on April 22, bearing a postmark of April 19. Under Board Regulations 32135 and 32360, the postmarking was one day late and the executive director acted within the letter of Board Regulation 32135 by rejecting the appeal as untimely filed.

Notwithstanding that the filing was untimely, this Board may excuse a late filing if there were extraordinary circumstances.<sup>3</sup> While prior decisions<sup>4</sup> of this Board have found that mail delays are not unexpected occurrences and do not constitute extraordinary circumstances so as to excuse a late filing, in the instant case it was not a mail delay which caused the late filing but an unexpected postmarking of the deposited certified mail with the date of the day after deposit. We find the foregoing to constitute extraordinary circumstances and we thereby excuse this one-day late filing.

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<sup>1</sup>PERB Regulation 32360 (8 Cal. Admin. Code 32360)

<sup>2</sup>PERB Regulation 32135 (8 Cal. Admin. Code 32135)

<sup>3</sup>PERB Regulation 32136 (8 Cal. Admin. Code 32160)

<sup>4</sup>Anaheim Union High School District (1978) PERB Order No. Ad-42; UC Riverside (1984) PERB Decision No. 386-H.

The Teamsters have also moved this Board for an order staying the election proceedings. Since the Board's records indicate that no election order has been issued by the regional director pending the appeal, we need not address this issue here.

ORDER

Teamsters Local No. 165's appeal of the regional director's administrative decision regarding the decertification election shall be deemed timely filed.

The Motion for Stay of Proceedings is DENIED without prejudice.

Members Jaeger and Burt joined in this Decision.