

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



|                                  |   |                         |
|----------------------------------|---|-------------------------|
| STATEWIDE UNIVERSITY POLICE      | ) |                         |
| ASSOCIATION,                     | ) |                         |
|                                  | ) |                         |
| Charging Party,                  | ) | Case Nos. S-CE-32-H     |
|                                  | ) | S-CE-33-H               |
| v.                               | ) |                         |
|                                  | ) | Administrative Appeal   |
| TRUSTEES OF THE CALIFORNIA STATE | ) |                         |
| UNIVERSITY,                      | ) | PERB Order No. Ad-192-H |
|                                  | ) |                         |
| Respondent.                      | ) | September 11, 1989      |
| _____)                           |   |                         |

Appearances: Mastagni, Holstedt & Chiurazzi by Mark R. Kruger, Attorney, for the Statewide University Police Association; William B. Haughton, Attorney, for the Trustees of the California State University.

Before Porter, Shank, and Camilli, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Trustees of the California State University (CSU) from the rejection by the Appeals Assistant to the Board of its exceptions and supporting brief to the administrative law judge's (ALJ) proposed decision. The Appeals Assistant rejected CSU's exceptions and supporting brief as untimely filed.

FACTS

On July 24, 1987, the Statewide University Police Association (SUPA) filed an unfair practice charge with the PERB Sacramento Regional Office against CSU alleging violations of Government Code sections 3571(a), (b) and (d) of the Higher

Education Employer-Employee Relations Act (HEERA).<sup>1</sup> The PERB General Counsel issued a complaint alleging violations of section 3571(a) and (b). (Case No. S-CE-32-H.)

On February 16, 1988, SUPA filed a Motion to Amend the Complaint which was denied by the ALJ and remanded to the PERB General Counsel for a determination as to whether the facts contained therein constituted a prima facie case of discrimination. The ALJ ordered that the proposed amendment constituted a new charge which became Case No. S-CE-33-H. The charge alleged violations of the same sections contained in the original charge.

The cases were consolidated and a hearing was held. A proposed decision was issued by the ALJ on June 2, 1989. Exceptions to the proposed decision were due June 22, 1989.<sup>2</sup> Subsequently, CSU requested an extension of time on June 16,

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<sup>1</sup>HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3571 states in pertinent part:

It shall be unlawful for the higher education employer to:

(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.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

<sup>2</sup>PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. PERB Regulation 32300 provides that a party may file exceptions to a proposed decision within 20 days following the date of service of the decision.

1989, in which to file exceptions to the decision. The request for the extension was granted until July 5, 1989.

The exceptions were received by the PERB Sacramento headquarters office on July 7, 1989, in a certified-mail envelope postmarked July 6, 1989. On July 10, 1989, the Appeals Assistant to the Board rejected the exceptions as untimely filed, since it was one day late by reason of the postmark.

CSU timely appealed the Appeals Assistant's rejection. The appeal is based, among other things, on unforeseeable inadvertence and excusable error by CSU's mailroom employees in date-setting CSU's postage meter.

In an unrefuted affidavit submitted in support of the appeal, CSU's legal secretary states that, on July 5, 1989, she typed, reproduced, and placed the original and five copies of CSU's Statement of Exceptions to the Proposed Decision of the ALJ and Brief in Support thereof, in PERB Case Nos. S-CE-32-H and S-CE-33-H in a sealed envelope addressed as follows:

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Members of the Board  
Public Employment Relations Board  
1031 18th Street, Suite 102  
Sacramento, California 95814-4174

ATTENTION: Dennis Batchelder,  
Executive Director

The affidavit further states that on that same day, CSU's legal secretary obtained metered postage from CSU's mailroom in a sufficient amount to mail the above-described documents by

certified mail, completed the receipt for certified mail, affixed the metered postage and deposited the envelope in the United States Mail, and mailed a copy of the documents to SUPA's counsel. The affidavit states that the postage meter was incorrectly set by one of the mailroom employees to read July 6, 1989, and that CSU's legal secretary assumed the date on the metered postage was July 5, 1989, and did not notice the error.

#### DISCUSSION

PERB Regulation 32136 states 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.

In Gibson v. Unemployment Insurance Appeals Board (1973) 9 Cal.3d 494, 108 Cal.Rptr. 1, 509, an attorney filed an appeal three days late on behalf of an applicant. Though both the statute and the board's own rule permitted extension of the time period for "good cause" the Board relied on a narrow and rigid rule that no error of an applicant or his counsel, no matter how reasonable or excusable, could constitute "good cause." The California Supreme Court held that it was reversible error for an agency to automatically and mechanically reject late-filed appeals without regard to, among other things, the excusability of the error. The Supreme Court in rejecting the narrow construction of the Board's rule stated in part:

We perceive no justification for an administrative construction of section 1328 to preclude relief in cases of brief, nonprejudicial delay arising from excusable error of counsel.

This statement is consistent with the general policy of law which favors the preservation of the rights of appeal and the hearing of appeals on their merits. (City of Santa Barbara v. California Coastal Zone Conservation Commission (1977) 75 Cal.App.3d 572; Pesce v. Department Alcoholic Beverage Control (1958) 51 C.2d 310.)

In the instant case, had the legal secretary noticed the error in the mailroom, CSU's exceptions would have been timely filed. Considering the appeal on its merits,<sup>3</sup> the declaration of the legal secretary is unrefuted and the explanation of what occurred is not so unreasonable as to seem unbelievable. SUPA has not indicated any actual prejudice resulting from a delay of one day in filing. Accordingly, we conclude that good cause exists for excusing the late filing and we accept CSU's exceptions as timely filed.

#### ORDER

California State University's "Statement of Exceptions to the ALJ's Proposed Decision" and "Respondent's Brief in Support of Exceptions to ALJ's Proposed Decision" are ACCEPTED as timely filed. Statewide University Police Association is hereby afforded the opportunity to respond to the exceptions within twenty days after service of this Decision.

Members Porter and Camilli joined in this Decision.

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<sup>3</sup>See generally, Chula Vista City School District (1978) PERB Order No. Ad-29.