

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LOS ANGELES CITY AND COUNTY)
SCHOOL EMPLOYEES UNION, LOCAL 99,)
SERVICE EMPLOYEES INTERNATIONAL)
UNION, AFL-CIO,) Case No. LA-CE-3121
)
Charging Party,) Administrative Appeal
)
v.) PERB Order No. Ad-247
)
LOS ANGELES UNIFIED SCHOOL DISTRICT,) September 3, 1993
)
Respondent.)
_____)

Appearances: Taylor, Roth, Bush & Geffner by Hope J. Singer, Attorney, for Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO; O'Melveny & Myers by Lonnie Kocontes, Attorney, for Los Angeles Unified School District.

Before Caffrey, Carlyle, and Garcia, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on a motion filed by the Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO (SEIU) to excuse the late filing of exceptions to a PERB administrative law judge's (ALJ) proposed decision in Case No. LA-CE-3121.

BACKGROUND

The ALJ's proposed decision was served on the parties, including SEIU, on May 26, 1993. The decision was covered by PERB's standard transmittal letter from the Chief ALJ, which describes the Board's processes and deadlines for filing exceptions and requests for extensions of time.

Including the 20-day period for the filing of exceptions and the five-day mailing provisions of Code of Civil Procedure section 1013, exceptions were due to be filed in this case no later than June 21, 1993.

On June 23, 1993, counsel for SEIU contacted PERB's appeals assistant to clarify the deadline for the filing of exceptions. After being informed that the deadline had already passed, SEIU's counsel indicated in a June 24, 1993, letter their intention to file a motion to receive exceptions with the Board.

SEIU's motion to receive exceptions was received in PERB's headquarters office on July 1, 1993. In it, SEIU argues that under PERB Regulation 32136,¹ good cause exists to excuse the late filing of exceptions to the ALJ's proposed decision.

SEIU asserts that the standard for establishing good cause has been met in this case because an excusable error has been made, which is nonprejudicial to the opposing party, and the resulting delay has been brief. SEIU explains that the error resulted from counsel's "mistaken belief" that 30 days is allowed for the filing of exceptions, rather than 20 days. Counsel further declares that the error resulted from "a mistaken review of the PERB Rules and Regulations."

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32136 states:

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.

DISCUSSION

When the Board has found good cause to excuse late filings, the cases typically have involved inadvertent clerical errors associated with an actual attempt to timely file. (See North Orange County Regional Occupational Program (1990) PERB Decision No. 807; The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H; Trustees of California State University (1989) PERB Order No. Ad-192-H.)

In this case, counsel for SEIU made no attempt to file or to clarify the filing deadline until June 23, 1993, after the deadline had passed. The Chief ALJ's transmittal letter accompanying the proposed decision explains the process for filing exceptions to the proposed decision. The deadlines for filing exceptions and requests for extensions of time are prominent and key elements of the information included in the letter. The failure of counsel to review PERB materials relative to filing deadlines, resulting in no attempt to file prior to the deadline, can not be considered good cause to excuse a late filing.

ORDER

SEIU's motion to permit the late filing of exceptions in Case No. LA-CE-3121 is hereby DENIED.

Members Carlyle and Garcia joined in this Decision.