

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION,)	
)	
Charging Party,)	Case No. S-CE-551-S
)	
v.)	Administrative Appeal
)	
STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS),)	PERB Order No. Ad-259-S
)	
Respondent.)	August 8, 1994
)	

Appearance: State of California (Department of Personnel Administration) by Paul M. Starkey, Labor Relations Counsel, for State of California (Department of Corrections).

Before Blair, Chair; Caffrey, Carlyle and Garcia, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the State of California (Department of Corrections) (State) of the rejection by the PERB appeals assistant of the State's exceptions to a proposed decision in Case No. S-CE-551-S as untimely filed.

BACKGROUND

The proposed decision in Case No. S-CE-551-S was served on the parties by mail on March 29, 1994. After approval of an extension of time, exceptions were due to be filed on May 5, 1994. PERB Regulation 32135 states:¹

All documents shall be considered "filed" when actually received by the appropriate

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

PERB office before the close of business on the last date set for filing or when sent by telegraph or certified or Express United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office.

The State's exceptions were received in the proper PERB office via certified mail postmarked May 6, 1994. Accordingly, the PERB appeals assistant rejected the exceptions as untimely filed.

On appeal, the State asserts that it made a good faith effort to timely file its exceptions in this case, and that no prejudice to the the California Correctional Peace Officers Association (CCPOA), results from the Board's acceptance of the exceptions.

The State argues that the Board should find good cause to excuse the late filing because it resulted from an inadvertent error by the U. S. Postal Service. The State indicates that it took the envelope containing its exceptions to the Royal Oaks Post Office branch in Sacramento at approximately 11:00 p.m. on May 5, 1994, and placed the envelope in a mailbox which carried a notice stating: "Mail deposited after 8:30 p.m. and before 12:00 midnight will be postmarked with the current date." The State asserts that it has followed this same procedure in the past, and the resulting postmark date was the date the mail was deposited in the mailbox consistent with the notice. Since the postmark date which resulted in this case was one day after the date of deposit in the mailbox, the State argues that the postal service erred by not acting in accordance with the notice, resulting in the exceptions being filed late. In support of this

contention, the State offers a letter from the manager of customer services for the Sacramento Post Office in which the postal service error is admitted. The letter indicates that the State's exceptions "should have been dated May 5, 1994."

CCPOA filed no response to the State's appeal.

DISCUSSION

PERB 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.

The Board has excused late filings which resulted from clerical error in which the delay was brief and no prejudice to any party resulted. In North Orange County Regional Occupational Program (1990) PERB Decision No. 807, the Board found good cause to excuse the late filing of exceptions which were filed well before the deadline, but were mistakenly filed in PERB's Los Angeles Regional Office rather than the Sacramento Headquarters Office.

The Board has also excused filings which were mailed to the proper office, but were not timely received. In The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H, the Board found good cause to excuse the respondent's untimely filed opposition brief. In an unrefuted declaration, the attorney stated that it was the policy of his office to file documents with PERB by certified mail, but his secretary mistakenly sent them by regular

first-class mail on the last day set for filing. Similarly, in Trustees of the California State University (1989) PERB Order No. Ad-192-H, the Board found the secretary's explanation that the postage meter was incorrectly set causing the exceptions to be untimely filed, constituted good cause.

In California School Employees Association (Simeral) (1992) PERB Order No. Ad-233 (CSEA (Simeral)), the Board found good cause to excuse a late filing caused in part by inadvertent action by the U. S. Postal Service. In that case, the postal service held an incorrectly addressed filing before returning it to the charging party, making it impossible for him to correctly address and timely file a request for reconsideration.

This case is similar to CSEA (Simeral) in that an inadvertent error by the U. S. Postal Service contributed to the late filing. It is clear that the State made a good faith effort to timely file. Furthermore, a postal service representative has admitted the error which contributed to the brief delay, and CCPOA offers no argument in opposition to the State's appeal. Accordingly, the Board finds that good cause exists to excuse the late filing and accepts the State's exceptions to the proposed decision in Case No. S-CE-551-S as timely filed.

ORDER

The State's exceptions to the proposed decision in Case No. S-CE-551-S are hereby ACCEPTED as timely filed. The California Correctional Peace Officers Association is hereby

afforded twenty (20) days from the date of service of this Decision to file a response to the State's exceptions.

Chair Blair and Members Carlyle and Garcia joined in this Decision.