

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA FACULTY ASSOCIATION,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY,

Respondent.

Case No. LA-CE-566-H

Administrative Appeal

PERB Order No. Ad-305-H

December 11, 2000

Appearance: Janette Redd Williams, Attorney, for Trustees of the California State University.

Before Dyer, Amador and Baker, Members.

DECISION

BAKER, 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 appeals assistant's denial of CSU's Opposition to Charging Party's Brief in Support of Appeal from Partial Dismissal as untimely filed. CSU's opposition was mailed to PERB by regular first-class mail on the filing due date of September 22, 2000¹ and was received on September 26. On September 28, the appeals assistant denied the brief as untimely filed. On October 6, CSU filed the instant appeal. The California Faculty Association did not file a response to this appeal.

¹ All dates refer to 2000.

DISCUSSION

In rejecting the document as untimely filed, the appeals assistant relied on PERB Regulation 32135 subdivision (a)² which provides:

All documents shall be considered filed when actually received by the appropriate PERB office before the close of business on the last date set for filing, or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing and addressed to the proper PERB office.

Thus, had CSU's opposition been mailed by certified or express mail and postmarked on or before September 22, it would have been accepted as timely filed.

PERB Regulation 32136 provides, in pertinent part, that "A late filing may be excused in the discretion of the Board for good cause only." In Trustees of the California State University (1989) PERB Order No. Ad-192-H, this Board excused a technically late filing based on secretarial error where unrefuted evidence indicated that the document was actually mailed on the filing date, where the explanation of what occurred was not so unreasonable as to be unbelievable, and where the opposing party had shown no actual prejudice resulting from the one-day delay.

In the instant case, in an unrefuted declaration submitted by the attorney for CSU, she states that the opposition in question was completed on September 21, and that her secretary was to mail the brief on September 22. The attorney expected the opposition would be sent via certified or express mail, in accordance with the office's policy to file documents with PERB in such a manner. According to the attorney's declaration, her secretary has routinely taken care

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

of PERB filings for her in the past and, with the exception of the opposition in question, has routinely mailed them by certified or express mail. The opposition was in fact mailed on September 21, but was not mailed by certified or express mail.

CSU's unrefuted explanation of what occurred is not so unreasonable as to be unbelievable. There is no evidence of prejudice resulting from the deficient filing. Accordingly, we conclude that good cause exists for excusing the late filing and accept CSU's opposition as timely filed.

ORDER

The Trustees of California State University's Opposition to Charging Party's Brief in Support of Appeal from Partial Dismissal is hereby ACCEPTED as timely filed.

Member Dyer and Amador joined in this Decision.