STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

REGENTS OF THE UNIVERSITY OF CALIFORNIA, Employer, and TEAMSTERS LOCAL 2010, Petitioner, and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, Intervenor.	Case No. SF-RR-969-H Administrative Appeal PERB Order No. Ad-435-H April 21, 2016

Appearances: Beeson, Tayer & Bodine by Susan K. Garea, Attorney, for Teamsters Local 2010; The Myers Law Group by Adam N. Stern, Attorney, for International Union of Operating Engineers, Local 501.

Before Martinez, Chair; Banks and Gregersen, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Teamsters Local 2010 (Teamsters) from an administrative determination (attached) issued by the Office of the General Counsel. This matter arises out of a request for recognition filed by Teamsters seeking to become the exclusive representative of the skilled trades bargaining unit (STU) at the University of California's Los Angeles (UCLA) campus. After the timely filing of an intervention by the International Union of Operating Engineers, Local 501 (IUOE) for some, but not all, of the classifications in the STU, and a petition for Board investigation by the Teamsters, the Office of the General Counsel dismissed the matter on timeliness grounds.

The request for recognition and the intervention were filed within 12 months of certification of a valid election result affecting the proposed bargaining units. Accordingly, the Office of the General Counsel determined that the "election bar" codified in section 3577, subdivision (b)(2) of the Higher Education Employer-Employee Relations Act (HEERA),[1] as implemented by PERB Regulation 51140, subdivision (b)(4),[2] required that the matter be dismissed. The Teamsters timely filed an appeal and the IUOE timely filed a response.

The Board itself has reviewed the case file in its entirety in light of the issues raised on appeal. We conclude that the administrative determination correctly recites the procedural and factual history of this case, is well-reasoned and is consistent with applicable law. We thus deny the Teamsters' appeal and affirm the administrative determination as the decision of the Board itself, as supplemented by the discussion below.

BACKGROUND

After a valid election, the State Employees Trade Council-United (SETC) was certified as the exclusive representative for the STU, effective February 23, 2015. On October 23, 2015, SETC disclaimed its interest in representing the bargaining unit. On October 30, 2015, the Teamsters filed its request for recognition seeking to become the exclusive representative of the STU. On November 24, 2015, IUOE filed an intervention for some, but not all, of the proposed bargaining unit.[3] As determined by the Office of the General Counsel on

[1] HEERA is codified at Government Code section 3560 et seq. All undesignated section references are to the Government Code.

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

[3] See PERB Regulation 51040

December 15, 2015, both were accompanied by adequate proof of support.[4] On January 8, 2016, UCLA filed its response. UCLA did not dispute the appropriateness of the bargaining unit that the Teamsters sought to represent, but denied the Teamsters' request for recognition on the grounds of uncertainty over SETC's disclaimer of interest.[5] Regarding the intervention, UCLA questioned the appropriateness of the bargaining unit that IUOE sought to represent, but declined to take a position on the issue in deference to PERB's authority.

On January 19, 2016, the Teamsters filed a petition for Board investigation,[6] asserting that the SETC validly disclaimed interest in the STU and that IUOE's intervention should be dismissed because it sought an inappropriate unit.[7] The Office of the General Counsel issued an order to show cause (OSC) on January 28, 2016, pursuant to which IUOE filed a response on February 10, 2016, asserting that both its intervention and the Teamsters' request for recognition should be dismissed as untimely because they were filed within the 12-month period following SETC's certification. UCLA filed a response to the OSC on February 11, 2016, accepting PERB's determination that SETC's disclaimer was valid. On February 16, 2016, the Teamsters filed a letter opposing dismissal of its request for recognition, arguing for an "unusual or special circumstances" exception to the 12-month election bar in cases where there has been a disclaimer of interest. On February 23, 2016, the administrative determination issued.

[4] See PERB Regulation 51050.

[5] See PERB Regulation 51080.

[6] See PERB Regulation 51095.

[7] See PERB Regulation 51090.

DISCUSSION

Under HEERA, an employee organization may become the exclusive representative for the employees of an appropriate bargaining unit by filing a request for recognition with the employer, alleging that a majority of the employees in the proposed unit wish to be represented and requesting that the employer recognize it as the exclusive representative. (HEERA, § 3573.) The employer shall grant a request for recognition unless a statutory exception applies. (HEERA, § 3574, subds. (a) [doubt as to majority support or reasonable doubt as to appropriateness of unit], (b) [another employee organization files a challenge to appropriateness of unit or submits a competing claim of representation], (c) [contract bar], (d) [election bar].) The exception in HEERA section 3574, subdivision (d) provides:

> Within the previous 12 months, either another employee organization has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, or a majority of the votes cast in a representation election held pursuant to Section 3577 were cast for "no representation."

A petition for Board investigation may be filed requesting that PERB decide whether the employees have selected or wish to select an exclusive representative or determine the appropriateness of a proposed unit. (HEERA, § 3575.) Under HEERA section 3575, such petition may be filed by an employee organization where the employer has denied a request for recognition (subd. (a)), a competing claim of representation has been filed (subd. (b)), or an employee organization wishes to be certified as the exclusive representative (subd. (c)).

HEERA section 3577, subdivision (b)(2) provides that no election shall be held and the petition shall be dismissed[8] whenever:

[8] The same mandatory language, "shall," is used in PERB's implementing regulation. (PERB Reg. 51140, subd. (b)(4).)

> Within the previous 12 months, either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the petition, or a majority of the votes cast in a representation election held pursuant to subdivision (a) were cast for "no representation."

As the administrative determination concluded, the statutory and regulatory scheme makes clear that the Teamsters' request for recognition and IUOE's intervention are untimely. SETC was certified as the exclusive representative of the STU on February 23, 2015, following a valid election. During the 12 months following certification, no election may be held and no requests for recognition or interventions may be filed. The Teamsters' request for recognition and IUOE's intervention were filed within that 12-month period. They are therefore untimely.

The administrative determination addressed the Teamsters' argument that an "unusual or special circumstances" exception to the 12-month bar applies where there has been a disclaimer of interest, and also addressed the private sector authorities relied on by the Teamsters for that argument, namely *WTOP, Inc.* (1955) 114 NLRB 1236 (*WTOP*). As the Office of the General Counsel explained, *WTOP* involved discussion of the certification bar, a rule adopted by the National Labor Relations Board (NLRB) through the development of case law; and not a discussion of the election bar in section 9(c)(3).[9] As the Office of the General Counsel noted, United States Supreme Court authority cited by the Teamsters undermines its own argument. In *Brooks v. NLRB* (1954) 348 U.S. 96, 102-103, the Supreme Court stated that, after the enactment of the election bar in section 9(c)(3), the NLRB "continued to apply its 'one-year certification' rule … except that even 'unusual circumstances' no longer left the [NLRB] free to order an election where one had taken place within the preceding

[9] Section 9(c)(3) provides: "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held." (29 U.S.C. § 159(c)(3).)

12 months."[10] Given the failure of the Teamsters' private sector-based argument and the plain and mandatory language of HEERA and its implementing regulations requiring dismissal, the Office of the General Counsel came to a logically reasoned conclusion in its administrative determination.

On appeal,[11] the Teamsters argues that the Office of the General Counsel erred in "rejecting *WTOP* and its reasoning," while conceding that "[*WTOP*] did not address the election bar." The Teamsters argues that there is no reason to differentiate between the certification bar and the election bar for purposes of applying an exception in cases involving a disclaimer of interest because both bars serve the same purpose, which is to provide a measure of protection and finality to employees and parties following an election. We are unpersuaded by this argument. The plain and mandatory language of HEERA and its implementing regulations leave no interstices for the Board to fill through its appellate decision-making function.

Reliance by the Teamsters on an NLRB advice memorandum in support of its argument moves us no closer to its position. The Teamsters asserts that an NLRB advice memorandum, *Brunswick Nurses Association* (1981) WL 26024 (N.L.R.B.G.C.), interpreted *WTOP* as

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[10] "The Court [in *Brooks*] was convinced that such a [certification bar] rule was necessary in order to … insulate the union against pressures for 'hothouse' results and undue bargaining militancy generated by some other union watching from the wings, prepared to precipitate a new election at an early and advantageous date." (Gorman and Finkin, Labor Law Analysis and Advocacy (2013) § 4.8, Election, Certification and Recognition Bars, pp. 82-83.)

[11] The timing of the issuance of the administrative determination and the filing of the appeal makes an interesting point relative to the Teamsters' desired outcome. The administrative determination was issued on February 23, 2016, exactly one year after the effective date of SETC's certification. The following day, the 12-month election bar was no longer an impediment to the filing of a request for recognition by the Teamsters. Everything the Teamsters seek in its appeal of the administrative determination was immediately made available to it the day after issuance of the administrative determination.

providing an exception to both the certification and election bars. There are several problems with this assertion.

First, we do not read the advice memorandum in the same way as the Teamsters. In that case, the incumbent was certified and collective bargaining negotiations commenced, the incumbent conducted an economic strike demanding a contract, after which 78 of the striking employees were fired. The incumbent subsequently disclaimed interest in representing the bargaining unit. The employees formed an association and filed unfair labor practice charges against the employer. Approximately eight months after the incumbent was certified, the employee association filed an election petition.

One issue presented by these facts was the applicability of section 8(b)(7)(B) and (C) prohibitions on recognitional and organizational picketing by a union not certified as the bargaining representative within 12 months after a valid election. The advice memorandum concluded that the proscription did not apply because its primary purpose was to protect an employer from "blackmail" picketing for recognition by a union that had just lost a valid representation election. Further, such a conclusion was particularly justified where the employer's post-certification unfair labor practices contributed to undermining the incumbent's status as bargaining representative, leading to its disclaimer of interest and formation of the employee association. In such circumstances, the advice memorandum concluded that "it would be inequitable to allow the Employer to claim and benefit from the protection afforded by the insulation period of Section 8(b)(7)(B)."

Regardless of the similarity in language between the election bar in section 9(c)(3) and the picketing proscription in section 8(b)(7)(B) and (C), these two sections concern two different matters and serve two different purposes. The matter before PERB does not concern

recognitional or organizational picketing, and we therefore do not find the advice memorandum to be of any persuasive value.

Another issue presented in the advice memorandum was whether the incumbent's certification constituted a bar to the raising of a question concerning representation (qcr) by the employee association's election petition. The advice memorandum relied on *WTOP* for the proposition that a disclaimer of interest asserted by the certified union along with the union's refusal to bargain constitute special circumstances "which remove election/certification as a barrier to the raising of a qcr within the 12 month period following the election." As the Teamsters admit on appeal, *WTOP* did not address the election bar, just the certification bar. We therefore find this statement in the advice memorandum inaccurate, and therefore equally as unpersuasive as its discussion of recognitional and organizational picketing.

Second, in addition to the United States Supreme Court authority, *Brooks v. NLRB, supra,* 348 U.S. 96, discussed *ante*, there is NLRB authority to the contrary of Teamsters' position and interpretation of *WTOP*. In *E Center, Yuba Sutter Head Start and Service Employees International Union, AFL-CIO, CLC Local 790* (2002) 337 NLRB 983, the NLRB held that a party may not avoid the section 9(c)(3) one year election bar by requesting withdrawal of an election petition after a valid election is conducted. The NLRB stated: "The Act, … does not permit circumvention of the election bar rule contained in Section 9(c)(3)." (*Ibid.*)

Third, while we are free to take guidance, as appropriate, from federal authorities interpreting similar or analogous provisions of the National Labor Relations Act (NRLA)[12] when interpreting the provisions of California's public-sector labor relations statutes (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 615; *McPherson v. Public Employment*

[12] The NLRA is codified at 29 U.S.C. section 151 et seq.

Relations Bd. (1987) 189 Cal.App.3d 293, 311), we cannot ignore the plain command of the statutes we are entrusted to enforce, nor can we make changes to our regulations through decision-making rather than rulemaking. (*State of California (Department of Corrections & Rehabilitation*) (2009) PERB Order No. Ad-382-S.)

HEERA requires that PERB dismiss a request for recognition and intervention filed within 12 months of a valid election. For all the reasons discussed herein and in the administrative determination, we deny the Teamsters' appeal and affirm the Office of the General Counsel's dismissal of this matter.

ORDER

Teamsters' appeal from the administrative determination in Case No. SF-RR-969-H is hereby DENIED.

Members Banks and Gregersen joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1139
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February 23, 2016

See attached service list

Re: University of California
Case No. SF-RR-969-H
ADMINISTRATIVE DETERMINATION

Dear Interested Parties:

On January 19, 2016, Teamsters Local 2010 (Local 2010) filed a petition for investigation by the Public Employment Relations Board (PERB or Board) in the above-referenced case, pursuant to PERB Regulation 51080.[1] Local 2010's petition seeks an investigation of its request for recognition as the exclusive representative of a unit of all skilled crafts employees at the University of California's Los Angeles campus (UCLA).

FACTUAL AND PROCEDURAL SUMMARY

According to PERB's records, State Employees Trades Council-United (SETC) was originally certified as the exclusive representative of the UCLA skilled crafts unit on January 5, 2006, after it prevailed over International Union of Operating Engineers, Local 501 (Local 501) in a decertification election. More recently, PERB issued a certification in favor of SETC dated February 23, 2015, following an unsuccessful decertification election initiated by Local 501.

On October 30, 2015, PERB received a copy of Local 2010's request for recognition. In its request, Local 2010 claimed that SETC had disclaimed interest in representing the unit on October 23, 2015.

On November 24, 2015, Local 501 filed an intervention petition for a unit that included some, but not all, of the UCLA skilled crafts employees.[2]

On December 15, 2016, the parties were notified that Local 2010 and Local 501 had submitted adequate proof of support for their respective petitions.

[1] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB's Regulations may be found at www.perb.ca.gov.

[2] The intervention petition described the unit as including "Service Engineers, Operating Engineers, Mechanics & Workers working with the Engineers."

On January 8, 2016, UCLA filed its response to the petitions. UCLA denied Local 2010's request for recognition, claiming uncertainty over whether the unit was still represented by SETC. UCLA also noted that Local 2010 had disputed the appropriateness of the unit proposed by Local 501.

On January 19, 2016, as noted, Local 2010 filed its petition for an investigation. Local 2010 asserted that SETC validly disclaimed interest in the unit and that Local 501's intervention petition should be dismissed because it seeks an inappropriate unit.

On January 28, 2016, the undersigned Board agent issued a letter ordering: (1) UCLA to show cause why SETC's disclaimer should not be accepted; and (2) Local 501 to show cause why its petition should not be dismissed.

On February 10, 2016, Local 501 filed a response that did not include any facts or argument regarding the appropriateness of its proposed unit. Rather, Local 501 asserted that both its petition and Local 2010's petition should be dismissed as untimely, because they were filed within the 12-month period following SETC's prior certification.

On February 11, 2016, UCLA filed a response, accepting PERB's determination that SETC s disclaimer was valid.

On February 16, 2016, Local 2010 filed a letter opposing Local 501's request that the petitions be dismissed.

DISCUSSION

PERB's authority to resolve questions of representation for employees of the University of California is conferred by the Higher Education Employer-Employee Relations Act (HEERA).[3] HEERA section 3575 allows an employee organization whose request for recognition has been denied to petition the Board "to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit." HEERA section 3577 provides that upon receiving such a petition, the Board "shall conduct inquiries and investigations, or hold hearings, as it deems necessary in order to decide the questions raised by the petition." (Gov. Code, § 3577, subd. (a)(1)(A).)

HEERA section 3577 goes on to provide:

> (b) No election shall be held and the petition shall be dismissed whenever either of the following occurs:

[3] HEERA is codified at Government Code section 3560 et seq. The text of the HEERA may be found at www.perb.ca.gov.

> (2) Within the previous 12 months, either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the petition, or a majority of the votes cast in a representation election held pursuant to subdivision (a) were cast for "no representation."

PERB has adopted regulations to implement these statutory provisions. Although not cited by either party,[4] as relevant here, PERB Regulation 51140 provides:

> (a) Whenever a petition filed pursuant to Government Code Section 3575 regarding a representation matter is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.
>
> (b) A petition shall be dismissed in part or in whole whenever the Board determines that:
>
> (4) A valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

In this case, there is no dispute that Local 2010's request for recognition, Local 501's intervention petition, and Local 2010's petition for investigation were all filed within 12 months of the certification of the previous election result. Nevertheless, Local 2010 advances two arguments for why no "election bar" should apply, and why the petitions should not be dismissed as untimely.[5]

Judicial Estoppel

Local 2010 argues that the doctrine of judicial estoppel prevents Local 501 from raising the election bar, assuming it applies, at this point.

PERB has applied the following test for judicial estoppel:

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[4] In addition to HEERA section 3577, Local 501 cites PERB Regulation 32776, but that regulation concerns the processing of a decertification petition, not a petition for investigation. Local 2010 only addresses HEERA section 3577.

[5] Local 2010 asks that Local 501's intervention petition be dismissed due to Local 501's failure to show cause why its proposed unit was appropriate. Presumably, this would leave UCLA free to voluntarily recognize—or require PERB to certify— Local 2010as the exclusive representative of the unit. (See PERB Regulation 51096.)

> (1) the same party has taken two positions; (2) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (3) the two positions are totally inconsistent; (4) the positions were taken in judicial or quasi-judicial administrative proceedings; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.

(*Trustees of the California State University of the California* (2008) PERB Decision No. 1949-H.) At a minimum, it does not appear that the first two elements of this test are met.

Local 501 has not previously asserted that its intervention petition was timely under HEERA section 3577(b)(2) or PERB Regulation 51140(b)(4). The mere act of filing an intervention petition is not an assertion of timeliness.

Even assuming Local 501 made such an assertion, PERB has neither adopted it nor accepted it as true. The election bar issue has not been previously raised by any party to this case, and PERB has not made a determination on it. Local 2010's claim that "PERB accepted Local 501's assertion that its petition was timely when it accepted the filing" rests on a misunderstanding of the process. Under PERB Regulations 51040(a), an intervention petition is filed with the employer, and a copy is served on the appropriate PERB regional office. PERB's only duty with respect to such a petition is to make a determination regarding the intervenor's proof of support, unless the proof of support is submitted to a third party, in which case PERB has no role at all. (PERB Regulations 51050, 51055.) Not until it receives a petition for investigation under PERB Regulation 51140 may PERB resolve any disputed issues, including timeliness.

Therefore, the elements of judicial estoppel are not met in this case.[6]

Unusual Circumstances

Local 2010 also argues that PERB should find an exception from the election bar in the case of "unusual circumstances," specifically, a disclaimer of interest by the previous incumbent. Local 2010 cites the National Labor Relations Board's (NLRB) decision in *WTOP, Inc.* (1955) 114 NLRB 1236 (*WTOP*), invoking the principle that "[c]ases involving the federal labor laws are persuasive precedent in the interpretation of similarly worded California labor relations statutes." (*Alhambra City and High School Districts* (1986) PERB Decision No. 560.) However, Local 2010's claim that HEERA section 3577(b)(2) and NLRA section 9(c)(3) are "so similar PERB is compelled to look to NLRB precedent in this case" is unpersuasive.

Local 2010 claims that *WTOP* was a case interpreting the election bar in section 9(c)(3) of the National Labor Relations Act (NLRA). This is not accurate. Section 9(c)(3) provides, as relevant here: "No election shall be directed in any bargaining unit or any subdivision within

It is also doubtful that Local 501 could have raised the election bar issue without filing an otherwise valid intervention in this case.

which, in the preceding twelve-month period, a valid election shall have been held." (29 U.S.C. § 129(c)(3).) But *WTOP* addressed a different rule, the:

> well-established Board rule that, in the absence of unusual or special circumstances, a Board certification will be treated as identifying the statutory bargaining representative with certainty and finality for a period of 1 year, and that, in order to protect the bargaining relationship from disturbance during that period, the Board will dismiss petitions filed before the 12th month of the year.

(*WTOP*, *supra*, at p. 1237, citing *Brooks v. NLRB* (1954) 348 U.S. 96 (*Brooks*).) This rule is the "certification bar," adopted by the NLRB through case law. (*Brooks*, *supra*, at pp. 98-102.) The certification bar pre-dates section 9(c)(3), which was added by the Labor-Management Relations Act of 1947. (*Ibid.*)[7]

Local 2010 does not cite, and the undersigned Board agent has been unable to locate, any NLRB case finding an "unusual or special circumstances" exception from the section 9(c)(3) election bar. In *Brooks*, the U.S. Supreme Court went so far as to assert that no such exception could apply, noting that after the amendment to add section 9(c)(3), the NLRB "continued to apply its 'one-year certification' rule . . . , except that even 'unusual circumstances' no longer left the [NLRB] free to order an election where one had taken place within the preceding 12 months." (*Brooks*, *supra*, 348 U.S. at pp. 102-103.)[8]

In light of the fact that the "unusual or special circumstances" exception appears to apply only to the NLRB's non-statutory certification bar, and not to the NLRA section 9(c)(3) election bar (*Brooks*, *supra*, 348 U.S. at pp. 102-103), it is not clear that such an exception may apply to HEERA section 3577(b)(2), which is a statutory election, certification, and recognition bar.

In any event, while the Board has not addressed this issue in a precedential decision, it has done so by regulation. PERB Regulation 51140(b)(4) is quite clear that a petition for investigation filed within the 12 months following a valid election result "shall be dismissed." The Board has previously held that it "cannot modify its regulations by decisional law." (*State of California (Department of Corrections & Rehabilitation)* (2009) PERB Order No. Ad-382-

[7] The same reasoning underlying the certification bar was extended to the circumstances of voluntary recognition, resulting in the adoption of a recognition bar. (*Keller Plastics Eastern, Inc.* (1966) 157 NLRB 583, 587.)

[8] There are other exceptions from the section 9(c)(3) election bar. For one, prematurely filed petitions will not be dismissed if the election itself will be held outside of the 12-month period. (*Vickers, Inc.* (1959) 124 NLRB 1051; *Weston Biscuit Co.* (1955) 117 NLRB 1206.) For another, the election bar does not "preclude the employer's employees from validly selecting the union as their representative by means of authorization cards during the year following the issuance of the certification of results of the prior election." (*Camvac International, Inc.* (1990) 297 NLRB 853.)

S.)[9] It is concluded, therefore, that there is no unusual circumstances exception from PERB Regulation 51140(b)(4), and the petition for investigation must be dismissed.

Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision. (Cal. Code Regs., tit. 8, § 32360.) To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (Cal. Code Regs., tit. 8, § 32360, subd. (c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justifications for the request (Cal. Code Regs., tit. 8, § 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (Cal. Code Regs., tit. 8, § 32375).

[9] Because the plain language of this regulation requires dismissal of an untimely petition, Local 2010's argument that its interpretation better "effectuates HEERA's purpose as a whole" need not be addressed. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2003) 109 Cal.App.4th 1687, 1695-1696 [if the words of a regulation, "given their usual and ordinary meaning, are clear and unambiguous, [the court] presume[s] the adopting authority meant what it said and the plain language of the regulation applies"].)

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see Cal. Code Regs., tit. 8, § 32140 for the required contents). The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Sincerely,

Joseph Eckhart
Regional Attorney

JE