

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ACADEMIC PROFESSIONALS OF)
CALIFORNIA,)
)
Charging Party,) Case No. LA-CE-465-H
)
v.) PERB Decision No. 1231-H
)
TRUSTEES OF THE CALIFORNIA STATE) November 17, 1997
UNIVERSITY,)
)
Respondent.)
_____)

Appearance: Rothner, Segall, Bahan & Greenstone by Glenn Rothner, for Academic Professionals of California.

Before Caffrey, Chairman; Johnson and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Academic Professionals of California (APC) to a proposed decision (attached) by a PERB administrative law judge (ALJ). The ALJ dismissed APC's unfair practice charge which alleged that the Trustees of the California State University (CSU) violated section 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (HEERA)¹ by unilaterally implementing

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

It shall be unlawful for the higher education employer to do any of the following:

- (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

changes in the parties' grievance and arbitration procedure without providing APC with notice or the opportunity to negotiate.

The Board has reviewed the entire record in this case including the ALJ's proposed decision and the filings of the parties. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and hereby adopts them as the decision of the Board itself consistent with the following discussion.

DISCUSSION

As noted by the ALJ, APC has failed to establish that CSU's conduct in this case constitutes a change in the parties' established grievance and arbitration procedure which breached their written agreement or established past practice. Therefore, the Board's standard for analyzing alleged unilateral changes has not been met. (Grant Joint Union High School District (1982) PERB Decision No. 196; Pajaro Valley Unified School District (1978) PERB Decision No. 51.)

APC's argument that this case involves a distinctive variety of unilateral change, repudiation of a contractual provision, is

employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

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

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

without merit. This case involves a dispute over the processing and arbitrability of specific grievances under the parties' collective bargaining agreement (CBA). CSU took the consistent legal position, based on its interpretation of the relevant CBA provisions and applicable legal precedent under HEERA, that it had no obligation to arbitrate the grievances in question. Maintenance of that legal position does not constitute a unilateral change. (Hacienda La Puente Unified School District (1997) PERB Decision No. 1187.)

The Board notes that HEERA section 3563.2(b)² provides that PERB has no authority to enforce the parties' CBA. Further, HEERA section 3589(b)³ specifically provides that a dispute based on an alleged refusal to proceed to arbitration pursuant to a CBA provision may be pursued in court.

²Section 3563.2(b) states:

(b) The Board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

³Section 3589(b) states:

(b) Where a party to a memorandum of understanding is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided therefor in the memorandum, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided therefor in such memorandum of understanding.

ORDER

The unfair practice charge and complaint in Case
NO. LA-CE-465-H are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Amador joined in this Decision.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ACADEMIC PROFESSIONALS OF CALIFORNIA,)	
)	
Charging Party,)	Unfair Practice
)	Case No. LA-CE-465-H
v.)	
TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY,)	PROPOSED DECISION
)	(6/30/97)
Respondent.)	
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Appearances: Edward Purcell, Consultant, for Academic Professionals of California; William Knight, University Counsel, for Trustees of the California State University.

Proposed Decision by Fred D'Orazio, Administrative Law Judge.

PROCEDURAL HISTORY

A union contends here that the university unilaterally implemented changes in the grievance and arbitration procedure without providing notice or an opportunity to negotiate. Specifically, the union contends that the university unlawfully refused to process three grievances filed when no collective bargaining agreement was in effect, and imposed a number of other changes related to the selection of arbitrators and the union's standing to pursue certain grievances.

The university responds that it had no legal duty to process the grievances because they were filed when no agreement was in effect, and the case concerns a mere arbitrability dispute that is more appropriately resolved through the negotiated procedure or in court.

The Academic Professionals of California (APC) commenced this action on September 20, 1996, by filing an unfair practice charge against the Trustees of the California State University (CSU). On October 25, 1996, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that CSU unilaterally changed its grievance processing policy by refusing to arbitrate several grievances. This conduct, the complaint alleges, violated the Higher Education Employer-Employee Relations Act (HEERA) section 3571 (c), (a), and (b).¹

CSU answered the complaint on November 18, 1996, generally denying the allegations and asserting an affirmative defense that the complaint concerns a contract dispute, not a change in

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

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

policy. Denials and defenses will be addressed below, as necessary.

An informal conference was conducted by a PERB administrative law judge on November 12, 1996, but the dispute was not resolved. A formal hearing was conducted by Administrative Law Judge W. Jean Thomas in Los Angeles, California, on February 13, 1997. Final briefs were submitted on April 28, 1997.

Because of the sudden death of Administrative Law Judge Thomas, the case was reassigned to the undersigned administrative law judge, pursuant to PERB Regulation section 32168(b), on June 4, 1997.²

FINDINGS OF FACT

Jurisdiction

APC is the exclusive representative of an appropriate unit of employees (Unit 4, Academic Support) within the meaning of section 3562(c). CSU is a higher education employer within the meaning of section 3562(h).

Negotiations

APC and CSU were parties to a memorandum of understanding (MOU), effective May 1, 1994, to June 30, 1995. In the spring of 1995, the parties began negotiations for a successor MOU. Before the parties could agree to a new contract, the existing MOU expired with no agreement to continue its terms. Eventually, the

²PERB regulations are codified at California Code of Regulations, title 8, Part III.

parties reached agreement on a new MOU, effective May 14, 1996, to June 30, 1998. Thus, no MOU existed between June 30, 1995, and May 14, 1996.

This dispute is about grievances filed during this interim period. There was no discussion during the negotiations about the processing of grievances filed during this period.

Article 10 of the new MOU contains a grievance and arbitration procedure. Several relevant sections in that article were carried forward from the prior MOU without discussion. These are as follows.

Section 10.1 defines a grievance as

[A] written allegation by a grievant that there has been a violation, misapplication, or misinterpretation of a specific term of this Agreement.

Section 10.6.c contains a procedure for resolving arbitrability claims. In relevant part, it provides:

If an arbitrability question exists, a two-stage hearing will be required. The parties, pursuant to the procedures described herein, shall select an arbitrator to convene a formal hearing and render a written decision relative to the question of arbitrability.

The section goes on to state that grievances found to be not arbitrable "shall be deemed null and void." And grievances found to be arbitrable shall undergo further processing before the arbitrator on the merits.

Section 10.6 contains the procedure for selecting arbitrators.

The parties shall attempt to agree on a mutually acceptable arbitrator. If agreement

on an arbitrator has not been reached within sixty (60) days of the filing of the request for arbitration, the Union may request the American Arbitration Association supply a list of seven (7) names pursuant to its rules. If the Union fails to make such a request of the AAA within ninety (90) days of the filing of the request for arbitration, the request for arbitration shall be considered withdrawn and the grievances resolved.

Section 10.15 addresses grievances filed prior to the effective date of the MOU. It states:

The processing of grievances filed and unresolved prior to the effective date of this Agreement shall proceed under the provisions of the grievance procedure as amended by this agreement.

The only relevant provision in Article 10 added by the new MOU concerns APC's right to file grievances in its own name.

Section 10.I.e provides:

The term "grievant" as used in this Article may refer to the Union when alleging a grievance on behalf of itself, or on behalf of a unit member or group of unit members. The Union shall not grieve on behalf of unit members who do not wish to pursue individual grievances.

The Grievances

During the hiatus or "gap" between MOUs, three grievances were filed on behalf of unit employees. These are referred to in the record as the "gap grievances."

Grievance No. 4-95-006: Although the exact date this grievance was filed is not clear in the record, it is undisputed that it was filed at CSU Fullerton sometime during the time no MOU was in effect. The "grounds for grievance" statement

attached to the original grievance states that "John Beisner, the beneficiary of a long sequence of temporary appointments, since sometime this summer has been performing Unit 4 bargaining unit work while classified as an AOA and, most recently, as an Administrator."

The grievance also stated that this assignment violated the recognition clause and posting requirements for vacant positions found in the MOU. As a remedy, the grievance appears to request that CSU comply with posting requirements.

During the lower steps of the grievance procedure, CSU rejected the grievance as not arbitrable because it was filed when no MOU was in effect, as well as on other grounds. One of the other grounds was that APC lacked standing to grieve violations of Article 13 (Appointments). Later, CSU added the claim that APC had failed to invoke the American Arbitration Association (AAA) procedure in a timely manner as required by the MOU.

On July 19, 1996, after APC pressed the matter to arbitration, CSU reiterated its position that the matter was not arbitrable because the grievance was filed when there was no MOU in effect. CSU stated, moreover, that it had investigated the matter and concluded that the grievance was based on events that took place during the period between MOUs.

Grievance No. 4-95-007: This grievance was filed at CSU Fullerton on December 12, 1995. I am unable to determine the substance of this grievance from the grievance form itself, and

no attached "grounds for grievance" exists. However, a Level III response from CSU states that the grievance alleged CSU

has mis-classified the four graduate students who provide academic advisement to students in the Academic Advisement Office. The positions should be re-classified from Graduate Assistant to Student Services Professional, represented by APC (Article I). These students are doing Unit 4 bargaining unit work. Increasing the number of student assistants to do bargaining unit work subsequent to a determination of a need for implementing a layoff is a violation of Article 17. These student assistants should have been terminated instead of laying off Unit 4 employees (Article 33). Substantial layoffs occurred in Unit 4 in 1991.

According to the Level III response, the remedy sought was a posting of "SSP position(s)," reclassification of "GAs to SSP in Academic Advisement," and recall of laid off Unit 4 employees.

The Level III response rejected the grievance on the merits and denied APC's standing to grieve violations of Article 17 (Assignment/Reassignment). Later, CSU took the position that APC had failed to invoke the AAA procedures in a timely manner.

APC again pressed the matter to arbitration. On July 19, 1996, CSU reiterated its position that the grievance was not arbitrable because it was filed during a time no MOU was in effect, and it was based on events that took place when no MOU was in effect.

Grievance No. 4-96-003: This grievance was filed at CSU Pomona on January 4, 1996. It alleged that the Pomona campus, at the chancellor's direction, had not allowed certain Unit 4 employees "to use extra days worked in advance to replace

scheduled days of campus closure during the 1995 Christmas closure when there were an insufficient number of holidays scheduled to be observed during the closure." This action, the grievance alleged, was contrary to an established practice at Pomona.

The grievance, too, was rejected during the lower stages of the grievance procedure on grounds similar to those raised in the earlier grievances and APC sought arbitration. On August 14, 1996, CSU again claimed the grievance was not arbitrable because it was filed when no MOU was in effect and it was based on events that took place when no MOU was in effect.

After the successor MOU took effect on May 14, 1996, APC filed a fourth grievance, on September 9, 1996. This grievance, known as the "statewide grievance," alleged that CSU's refusal to arbitrate the gap grievances violated the MOU. The grievance was ambiguous (it addressed only the Pomona grievance specifically and referred to "other APC cases") and CSU responded accordingly, but its position did not change.

APC filed the instant charge on September 20, 1996. After the parties participated in an informal conference with a PERB administrative law judge, CSU modified its position. In a December 20, 1996, letter to APC, Employee Relations Specialist Bruce Gibson stated that CSU was willing to arbitrate Grievance Nos. 4-95-006, 4-95-007, and 4-96-003. In the letter, Mr. Gibson agreed to select arbitrators for these cases "to decide the arbitrability questions that have been raised (including but not

limited to) the issue of whether events that occurred when no MOU was in effect are arbitrable." As of the date of hearing, the parties were in the process of selecting arbitrators through the AAA.

Mr. Gibson conceded in his testimony that the statewide grievance was not processed. In his view, the remedy requested by APC had already been granted with CSU's decision to arbitrate the gap grievances.

Mr. Gibson testified about the rationale for CSU's initial stance in refusing to process the gap grievances. He said CSU refused to submit the gap grievances to arbitration because the case law under HEERA does not require an employer to arbitrate grievances when there is no collective bargaining agreement in effect at the time the grievances are filed. CSU believed that nothing in section 10.15 of the new MOU altered that general rule, Mr. Gibson testified. Moreover, Mr. Gibson said, a valid "grievance," as that term is defined in section 10.1 of the MOU, could not exist when there was no agreement in effect.

ISSUE

Whether CSU unilaterally changed the practice under which it processed grievances to arbitration without giving APC notice and an opportunity to negotiate?

CONCLUSIONS OF LAW

The theory of APC's case is one of unilateral change in processing grievances to arbitration. APC argues that CSU's refusal to process the gap grievances to arbitration constituted

a unilateral change in the grievance and arbitration procedure and had the effect of repudiating certain provisions in the MOU.

APC also contends that CSU changed its grievance processing procedures by creating a host of other procedural issues. Among these are CSU's denial of the grievances on grounds that APC had no standing to grieve designated articles in the MOU, CSU's failure to respond to APC's list of proposed arbitrators, and CSU's contention that APC had not invoked AAA procedures in a timely manner.

In addition, APC argues that CSU has flatly refused to process the so-called statewide grievance. This refusal, APC argues, deviated from established grievance processing procedures and thus repudiated the MOU.

In response, CSU first argues that it had no duty to arbitrate the gap grievances because they were filed when no agreement was in effect and they were based on events that took place when no agreement was in effect. CSU next argues that this charge presents a mere arbitrability dispute under the collective bargaining agreement and "the unfair practice procedure does not exist to simply cure contractual breaches." Lastly, CSU argues that this matter belongs before an arbitrator or a court pursuant to section 3589.³

³HEERA, section 3589 states in relevant part:

(b) Where a party to a memorandum of understanding is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided therefor in the

An employer's unilateral change in terms and conditions of employment within the scope of representation is, absent a valid defense, a per se refusal to negotiate and violative of section 3571(c). (Regents of the University of California (1985) PERB Decision No. 520-H; Pajaro Valley Unified School District (1978) PERB Decision No. 51 (Pajaro Valley).)

To prevail on a complaint of unilateral change, the charging party must establish by a preponderance of the evidence that (1) the employer breached or altered the party's written agreement or own established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change is not merely an isolated breach of the contract, but amounts to a change of policy (i.e., having a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant); see also Pajaro Valley; Davis Unified School District, et al. (1980) PERB Decision No. 116.)

The actions taken by CSU in processing the grievances at issue here do not meet the requirements of the Grant test. As

memorandum, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided therefor in such memorandum of understanding.

explained below, the evidence cannot reasonably be construed as amounting to a change in an established grievance and arbitration procedure.

A past practice is one that is widely recognized as (1) unequivocal; (2) clearly enunciated and acted upon; and (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. (Hacienda La Puente Unified School District (1997) PERB Decision No. 1186, adopting proposed decision of administrative law judge at 20 PERC Para. 27116, p. 359.) On another occasion, the Board observed that a past practice is one that is "regular and consistent" or "historic and accepted." (Pajaro Valley, at pp. 6-10.)

The record evidence simply does not support the conclusion that such a practice existed or that CSU's conduct changed any practice. CSU's various responses to the gap grievances cannot realistically be described as a change in grievance processing procedures. Consistent with Mr. Gibson's testimony, they are more accurately characterized as responses based on a considered legal position that CSU had no duty to arbitrate the gap grievances because they were filed when no MOU was in effect and they were based on events that took place when no agreement was in effect.⁴

⁴Given the evidence about these grievances in the record, this position was certainly arguable. Even APC concedes in its brief that a "colorable claim" existed that, prior to the effective date of the successor MOU, CSU had no duty to arbitrate the gap grievances.

The right to file and arbitrate post-contract grievances is not automatic. PERB has held that arbitration clauses do not continue in effect after expiration of a collective bargaining agreement except for disputes that: (1) involve facts and occurrences that arose before expiration; (2) involve post-expiration conduct that infringes on rights accrued or vested under the agreement; or (3) under normal principles of contract interpretation, survive expiration of the agreement. (State of California (Department of Youth Authority) (1992) PERB Decision No. 962-S (Youth Authority).)

Therefore, it is by no means clear on this record that APC had a right under Youth Authority to arbitrate the gap grievances. However, this proposed decision does not address the underlying arbitrability claims, for that issue is not before me. Questions of arbitrability are expressly reserved for the arbitrator under Article 10. The complaint here accuses CSU of a unilateral change in the way it processed the grievances. An employer does not commit a unilateral change when it merely takes a legal position contrary to that advanced by the union. (See Hacienda La Puente Unified School District (1997) PERB Decision No. 1187, adopting proposed decision of administrative law judge at 20 PERC Para. 27090, p. 277 (Hacienda La Puente).)

Further, evidence of an established practice that specifically covered processing grievances when no MOU was in effect is lacking. The main reference in the record to such a practice is found in a declaration submitted by Edward Purcell,

APC representative and chief negotiator, wherein he stated.⁵

No contract, or agreed upon contract extension existed between the Parties for the period June 30, 1992 through May 1, 1994. During that period, CSU processed APC grievances and arbitration requests as provided for under the terms of the expired contract. One example of this practice is the grievance of Judith Peters (CSU Fresno) which was processed in the Chancellor's Office on December 3, 1992 and heard on its merits in arbitration without arbitrability challenge on June 17, 1993.

This testimony does not establish a practice of grievance processing when no MOU is in effect. The testimony cites only one example, and there is no indication if any of the grievances allegedly processed during the 1992-94 period fell within any of the Youth Authority exceptions. Further, CSU produced a copy of the Judith Peters grievance. It indicated the grievance was filed on June 29, 1992, prior to the expiration of the MOU.

In addition, arguments that CSU's challenge to APC's standing to grieve certain articles, failure to respond to APC's proposed list of arbitrators, and failure to invoke AAA procedures are matters more appropriately resolved under the agreement. While the Board has authority to interpret collective bargaining agreements to determine if the Act has been violated, not every contract breach violates the Act. As the Board has observed:

. . . Such a breach must amount to a change of policy, not merely a default in a

⁵Mr. Purcell also served as APC representative at the hearing and was available for cross examination on the declaration.

contractual obligation, before it constitutes a duty to bargain. This distinction is crucial. A change in policy has, by definition, a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members. On the other hand, when an employer unilaterally breaches an agreement without instituting a new policy of general application or continuing effect, its conduct, though remediable through the courts or arbitration, does not violate the Act. . . . [Grant, at p. 9.]

The evidence does not show that CSU engaged in an ongoing pattern of obstructing the grievance and arbitration procedure or otherwise deviated from a well established practice for processing grievances. The evidence shows only that CSU took positions during the grievances contrary to those advanced by APC. It bears repeating that an employer does not commit a unilateral change and thus violate the Act solely by taking positions that are contrary to those adopted by a union.

Therefore, it cannot be concluded that CSU has violated the Act merely because it took contrary positions associated with issues such as APC standing to grieve, selecting arbitrators, and the like. If disputes in these areas exist, they are more appropriately resolved under the procedures established in the MOU. (See Hacienda La Puente; Baldwin Park Unified School District (1979) PERB Decision No. 92 (Baldwin Park).)

The new MOU took effect on May 14, 1996. Section 10.15 provided that "the processing of grievances filed and unresolved prior to the effective date of this Agreement shall proceed under the provisions of the grievance procedure as amended by this

Agreement." Initially, CSU remained fixed in its decision not to arbitrate the gap grievances. On July 19, 1996, it reiterated its position with respect to the Fullerton grievances (Grievance Nos. 4-95-006 and 4-95-007). And on August 14, 1996, it reiterated its position with respect to the Pomona grievance (Grievance No. 4-96-003) .

This unfair practice was filed on September 20, 1996, and an informal settlement conference followed. Shortly thereafter, on December 20, 1996, CSU agreed to submit the gap grievances to arbitration. Presumably its decision to do so was based on section 10.15 of the new MOU.

As I have determined earlier, CSU's conduct prior to May 14, 1996, was based on an arguable legal position adopted when no MOU was in effect and did not constitute a unilateral change. CSU held this position for several months after the new MOU became effective in May 1996, before agreeing to arbitrate the grievances. It was not until APC filed the instant charge that CSU modified its position. However, this does not detract from the conclusion reached earlier that CSU has committed no unilateral change and there has been no HEERA violation.

Assuming for argument's sake that CSU had a duty to arbitrate the grievances after the new MOU took effect, its conduct after May 14, 1996, may have caused some delay in processing the grievances. However, delays in grievance processing are not uncommon. More importantly, the complaint in this case does not address the question of delay. It concerns

the allegation that CSU has unilaterally changed the practice used to process and arbitrate grievances. As discussed above, that has not happened. If anything, CSU has adopted a position in line with the contractual requirements. All indications in the record are that the grievances are being processed before an arbitrator who will decide the arbitrability claims in accordance with the procedure agreed to by the parties in section 10.6.c of the MOU. I decline to find a unilateral change on these facts.

APC raises essentially the same arguments with respect to CSU's failure to respond and process the statewide grievance. At the hearing, CSU dismissed this claim as involving a moot point because it had already agreed to arbitrate the gap grievances. Counsel for CSU characterized the statewide grievance as a "grievance on a grievance" or a "piling on grievance."

It is true that outright failure of an employer to comply with the steps in a negotiated grievance and arbitration procedure may occur in ways that violate HEERA. (See e.g., Hacienda La Puente.) However, that has not occurred here.

The statewide grievance, filed on September 5, 1996, protests CSU's refusal to process the gap grievances to arbitration. As a remedy, it asks that CSU "agree to arbitrate all cases in question." The grievance was ambiguous and CSU responded accordingly. However, even if CSU did not respond to the grievance in the detail called for by the agreement and preferred by APC, such conduct does not itself constitute a unilateral change in established practice. It is a matter for

resolution under the agreement. (Hacienda La Puente; Baldwin Park.)

In addition, it cannot be overlooked that, while CSU may have not responded appropriately, it summarily agreed to the remedy demanded by APC in the grievance. In view of these facts, it cannot seriously be argued that the failure to process the statewide grievance further constituted a unilateral change that runs afoul of CSU's duty to bargain under HEERA.

CONCLUSION

Based on the foregoing findings of fact, conclusions of law, and the entire record herein, the complaint in Unfair Practice Case No. LA-CE-465-H, Academic Professionals of California v. California State University, is hereby dismissed.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day 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" (See Cal. Code Regs., tit. 8,

sec. 32135; Code Civ. Proc, sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs, 32300, 32305 and 32140.)

FRED D'ORAZIO
Administrative Law Judge