

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ROBERT J. O'MALLEY,

Charging Party,

v.

CALIFORNIA NURSES ASSOCIATION,

Respondent.

Case No. SA-CO-19-H

PERB Decision No. 1673-H

August 6, 2004

Appearance: Robert J. O'Malley, on his own behalf.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Robert J. O'Malley (O'Malley) to an administrative law judge's (ALJ) proposed decision (attached). The unfair practice charge alleged that the California Nurses Association (CNA) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by collecting annual agency fees prior to sending an annual notice to O'Malley as a non-member. O'Malley alleged that this conduct constituted a violation of HEERA section 3583.5 and PERB Regulations 32992 and 32997.² As a remedy, O'Malley requested that CNA be ordered to cease collection of agency fees until CNA issues an adequate

¹HEERA is codified at Government Code section 3560, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

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

Hudson notice³ and that CNA account for all funds collected from non-members and refund all funds to non-members.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, O'Malley's motion for summary judgment, O'Malley's response to the ALJ's request to address the Board's decision in California Nurses Association (O'Malley) (2004) PERB Decision No. 1607-H (CNA (O'Malley)), the ALJ's proposed decision, and O'Malley's exceptions. The Board finds the ALJ's proposed decision to be free of prejudicial error and adopts it as the decision of the Board itself.

BACKGROUND

O'Malley is part of a bargaining unit of nurses represented by CNA, the exclusive representative, but is not a member of CNA. The charge alleges that PERB Regulation 32992 requires CNA to send each nonmember required to pay an agency fee an annual notice (Hudson notice) explaining the amount of the fee. O'Malley states that CNA has caused an agency fee to be deducted from O'Malley's paycheck on a semi-monthly basis from July to November 2003. Agency fees for July, August and September 2003 were refunded by check from CNA to O'Malley on September 15, 2003. O'Malley further alleges that the 2003 Hudson notice was mailed to him on October 30, 2003.⁴

The Board agent issued a complaint. The complaint alleges that on July 15, 2003, CNA caused agency fees to be deducted from O'Malley's paycheck without first providing him with

³Hudson refers to the Supreme Court's decision in Chicago Teachers Union v. Hudson (1986) 475 U.S. 292 [121 LRRM 2793].

⁴In its Answer, CNA countered that it mailed the Hudson notice to the addresses provided by the University of California, O'Malley's employer, of all non-members on July 14, 2000. Attached to O'Malley's motion for summary judgment is a cover letter dated October 30, 2003 from CNA stating that it was sending another copy of the notice sent to employees in July 2003 to O'Malley. O'Malley did not include the attached copy in his motion.

an annual agency fee notice and that this conduct is inconsistent with PERB Regulations and thus interfered with the right of O'Malley to refrain from participation in the activities of CNA in violation of HEERA section 3571.1(b). Before formal hearing, O'Malley moved for summary judgment. CNA requested a settlement conference. Settlement was not achieved. However, before a ruling was issued in the matter, the parties were invited to address the Board's decision in CNA (O'Malley).

O'Malley argues that this decision is not applicable to the instant matter. He contends that Hudson and its progeny require both timely and adequate notice, and the opportunity to challenge the fee after receiving the notice. O'Malley claims that CNA (O'Malley) only addresses the part of the process requiring a challenge and escrow procedure. Moreover, according to O'Malley, CNA (O'Malley) only deals with an individual's rights and not CNA's responsibility to nonmembers as a whole.⁵

In a declaration submitted in a companion case, Case No. SA-CO-17-H, CNA Treasurer, Robert Henderson (Henderson) states that he sent a check in September 2003 for agency fees through September 2003. This check was accompanied by a spread sheet showing exactly how the \$702.76 was computed. On December 31, 2003, Henderson states that he forwarded to O'Malley the agency fees for October through December 2003 and an advance refund of January through March 2004 agency fees. On January 6, 2004, Henderson stated that he forwarded to O'Malley the interest on the October through December 2003 agency fees.

O'Malley did not dispute Henderson's assertions. Under PERB Regulation 32207, no hearing is required unless the parties dispute the relevant facts in the case. According to the

⁵O'Malley's assertion is incorrect in that the Board's decision in CNA (O'Malley) holds that O'Malley may not assert agency fee objections on behalf of other unit employees. (CNA (O'Malley) at p. 7, fn. 8.)

ALJ, the relevant facts were not in dispute in this matter and so the proposed decision was issued without a hearing.

ALJ'S PROPOSED DECISION

The ALJ agreed that CNA only addressed the challenge and escrow portion of the process but found the distinction between CNA (O'Malley) and the instant matter unpersuasive. He reasoned that the rationale in Los Rios College Federation of Teachers, Local 2279, CFT/AFT (Deglow) (1992) PERB Decision No. 950, CNA (O'Malley), Hudson and its progeny established certain guarantees to prevent the exclusive representative's wrongful use of agency fees. When a union has returned all agency fees to the nonmember, those procedural guarantees are no longer applicable. It is undisputed that CNA has returned all fees, including an advance for future fees.⁶ Thus, there is no harm to O'Malley's rights under HEERA and no possibility for harm that the Board could remedy. This ruling is consistent with PERB Regulation 32992 which requires the annual notice to be sent only to nonmembers who are required to pay agency fees. The ALJ further opined that, in reality, since CNA has returned his fees, O'Malley has not been required to pay the fee and so there is no need to afford O'Malley the procedural guarantees designed to allow a nonmember to challenge the use or amount of his fees. In reaching these conclusions, the ALJ declined to address O'Malley's motion for summary judgment or other arguments raised by the parties.

DISCUSSION

In his exceptions, O'Malley cites California School Employees Association, Chapter 258 (Gerber) (2001) PERB Decision No. 1472 (CSEA) in support of his contention that a violation should be found. In that case, the charging party paid agency fees before receiving a

⁶Henderson's declaration stated that CNA asked the University of California (University) not to deduct O'Malley's agency fees from his paycheck but the University refused. O'Malley does not dispute this fact.

Hudson notice and CSEA refunded the fees within two months. Notwithstanding the refund of fees, the Board found a violation and ordered that interest be paid and a notice posted indicating the violation and CSEA's intention to comply with the order.

In this case, CNA has made every possible effort to accommodate O'Malley. CNA quickly refunded the fees to O'Malley after O'Malley brought the issue to its attention. In addition, CNA was proactive in attempting to arrange with the University to stop the deduction of agency fees from O'Malley's paycheck but, unfortunately, the University refused. Even if CNA had temporary use of O'Malley's fees, O'Malley was reimbursed promptly with interest. Moreover, CNA advanced unpaid fees to O'Malley in its desire to prevent future claims. As the Board stated in CNA (O'Malley), once CNA has refunded his agency fees, "[t]here is no possibility for harm to O'Malley that the Board could remedy." In CNA (O'Malley), the Board further found that PERB agency fee regulations presume the possession of agency fees by the exclusive representative. We thus find CNA (O'Malley) to be dispositive of this case.⁷

ORDER

The unfair practice charge in Case No. SA-CO-19-H is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Member Neima joined in this Decision.

Chairman Duncan's dissent begins on page 6.

⁷To the extent that CSEA is inconsistent with CNA (O'Malley) or this decision, it is overturned. In light of this discussion, we deny O'Malley's motion for summary judgment.

DUNCAN, Chairman: I respectfully dissent. The majority has made reference to Case No. SA-CO-17-H. This is another case that was filed by Robert J. O'Malley (O'Malley) related to the fact that his money was being taken from his paychecks after he had advised the California Nurses Association (CNA) that he did not want to pay agency fees. His notice to CNA was documented in Case No. SA-CO-20-H (California Nurses Association (O'Malley) (2004) PERB Decision No. 1607-H (CNA (O'Malley)), yet another case he had filed because of fees being taken from his paychecks after he indicated he did not want to pay agency fees. In that case, it is documented that he was sent a Hudson¹ agency fee notice in May 2002. O'Malley replied to the notice in a protest letter dated June 6, 2002. The deductions continued until the end of the fiscal year in June 2003. Only after the end of the fiscal year 2002-2003 was O'Malley sent a refund for all the fees deducted from his pay after he sent his protest letter.²

The present case is based on CNA continuing the deductions beginning with the 2003-2004 fiscal year. CNA provided no documentation that it sent a Hudson notice to O'Malley in July 2003. He had already protested the prior Hudson notice. The first Hudson notice documented in 2003 is the one sent to him in October 2003. Fees were deducted in July,

¹The U.S. Supreme Court decision in Chicago Teachers Association v. Hudson (1986) 475 U.S. 292 [121 LRRM 2793] (Hudson) held that under an agency shop agreement, procedural safeguards are necessary to prevent compulsory subsidization of ideological activity by nonunion employees who object to use of their fees for those activities while at the same time making sure not to restrict the union's ability to require any employee to contribute to the cost of collective-bargaining activities. The court stated that "nonunion employees' rights are protected by the First Amendment [and that] requires that the procedure be carefully tailored to minimize an agency shop's infringement on those rights. The nonunion employee must have a fair opportunity to identify the impact on those rights and to assert a meritorious First Amendment claim."

²See CNA (O'Malley) at p. 2.

August and September, and returned to him in September 2003. The deductions continued but CNA paid O'Malley ahead of time for those, as the majority notes.

CNA has provided no evidence here that O'Malley's money, taken after he had sent his letter of protest, was held in escrow as required under the Hudson case. This is a violation of Public Employment Relations Board (PERB or Board) Regulation 32992.³

Apparently, the majority believes there is no violation of this section and there is no unfair practice under PERB Regulation 32997.⁴ The majority appears to reason that because O'Malley does not want to pay agency fees these regulations do not apply to him.

³PERB Regulation 32992 states, in pertinent part (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.):

(a) Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:

(1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;

.....

(c) Such written notice shall be sent/distributed to the nonmember either:

(1) At least 30 days prior to collection of the agency fee, after which the exclusive representative shall place those fees subject to objection in escrow, pursuant to Section 32995 of these regulations; or

(2) Concurrent with the initial agency fee collection, provided however, that all agency fees so noticed shall be held in escrow in toto until all objectors are identified. Thereafter, only the agency fees for agency fee objectors shall be held in escrow, pursuant to Section 32995 of these regulations.

⁴PERB Regulation 32997 states "[i]t shall be an unfair practice for an exclusive representative to collect agency fees in violation of these regulations."

Whether he likes it or not, because of the union's action, O'Malley has in fact paid the fees. CNA has put forth no evidence that they have complied with the regulations. The unfair practice charge should stand because not putting the money taken from O'Malley into an escrow account in itself is a violation of PERB Regulation 32992 and therefore an unfair practice under PERB Regulation 32997.

Just as in California School Employees Association, Chapter 258 (Gerber) (2001) PERB Decision No. 1472 (CSEA), fees were deducted without proper Hudson notice and even if inadvertently deducted, they were still taken when O'Malley had indicated he did not want them deducted. That is a violation not only of PERB regulations, but of Hudson as well. The reason the Board found a violation in CSEA is because once the money is taken there is a violation, just as in this case. The majority wants to overturn CSEA. Even if they do that, Hudson still applies.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



ROBERT J. O'MALLEY,

Charging Party,

v.

CALIFORNIA NURSES ASSOCIATION,

Respondent.

UNFAIR PRACTICE
CASE NO. SA-CO-19-H

PROPOSED DECISION
(5/4/04)

Appearances: Robert J. O'Malley, on his own behalf; Law Offices of James Eggleston, by M. Jane Lawhon, Attorney, for California Nurses Association.

Before Fred D'Orazio, Administrative Law Judge.

PROCEDURAL HISTORY

Robert J. O'Malley (O'Malley) initiated this action on August 12, 2003, by filing an unfair practice charge against the California Nurses Association (CNA). The Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint on September 17, 2003. The complaint alleges that on or about July 15, 2003, CNA caused agency fees to be deducted from O'Malley's paycheck without first providing him with an annual agency fee notice. The complaint alleges that CNA's conduct is inconsistent with PERB regulations¹ and thus interfered with the right of an employee to refrain from participation in the activities of an employee organization. It is further alleged that CNA by

¹ PERB regulations are codified at California Code Regulations, title 8, section 31001 et seq. PERB Regulation 32992 provides that each nonmember who will be required to pay an agency fee shall receive an annual notice from the exclusive representative before collection of the fee.

this conduct violated the Higher Education Employer-Employee Relations Act (HEERA or Act) section 3571.1(b).²

CNA answered the complaint on October 17, 2003, generally denying the allegations and setting forth an affirmative defense. Denials and defenses will be addressed below, as necessary.

A settlement conference was conducted by a PERB agent on October 23, 2003, but the dispute was not settled. A formal hearing was scheduled for February 11, 2004. Before the hearing, however, O'Malley on December 1, 2003, moved for summary judgment. In lieu of filing a response to the motion, CNA on December 31, 2003, requested another settlement conference to attempt to resolve the matter without litigation. Over O'Malley's objection, the request was granted and a second settlement conference was scheduled for March 18, 2004. However, a settlement was not achieved and the matter was returned to the undersigned for further processing.

Before a ruling could be issued, however, the Board issued its decision in Robert J. O'Malley v. California Nurses Association (2004) PERB Decision No. 1607-H (California Nurses Association) and the parties were invited to submit their respective positions on the application of that case to the instant matter. As more fully discussed below, O'Malley argues that California Nurses Association has no application here. The time for CNA to submit its position was extended to April 19, 2004. However, CNA declined to respond and the matter was submitted for proposed decision on that date.

² HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3571.1(b) provides that it shall be unlawful for an employee organization to

impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

FINDINGS OF FACT

CNA is an employee organization within the meaning of section 3562(f)(1) and the exclusive representative of an appropriate unit of nurses within the meaning of section 3562(i). O'Malley is an employee within the meaning of section 3562(e). He is also a member of the unit of nurses represented on an exclusive basis by CNA. He is not a member of CNA.

O'Malley's unfair practice charge, as amended, and motion for summary judgment alleges that CNA in July 2003 began to collect agency fees from him without first providing the annual notice as required by PERB Regulation 32992. The central allegation is set forth in his motion as follows:

5. Government Code section 3583.5 requires any non-member who is in a unit for which an exclusive representative has been selected pursuant to this chapter, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee.

6. PERB regulation 32992 requires California Nurses Association send each non-member required to pay agency fee an annual notice (Hudson³) notice) explaining the amount of the fee. This section provides for a period for objection prior to collection of fees or for fees to be held in escrow pending identification of objections.

7. CNA has caused an agency fee to be deducted from Charging Party's pay on a semi-monthly basis July 2003 through November 2003.⁴

8. Agency fees for July, August, September 2003, were refunded by check (#015632) September 15, 2003, from CNA to Charging Party.

9. 2003 Hudson notice was mailed to Charging Party October 30, 2003.

³ Chicago Teachers Union v. Hudson (1986) 475 U.S. 292 [121 LRRM 2793].)

⁴ The complaint alleges that an agency fee was deducted from O'Malley only on July 15, 2003.

In a declaration submitted in a companion case, Case No. SA-CO-17-H, CNA Treasurer

Robert Henderson wrote:

13. In September 2003, after an arbitration concerning fair share and *Beck*⁵ fees involving, *inter alia*, Robert J. O'Malley, I was asked to send Mr. O'Malley another check refunding the fair share fees through September 2003. Because he had not yet negotiated the July 21, 2003 check, I simply substituted the new check for that one. I prepared a spread sheet showing exactly how the total about of \$702.76 was computed. The check and spread sheet were forwarded to O'Malley by CNA counsel Jane Lawhon.

14. On December 31, 2003, I forwarded to O'Malley the fair share fees for October through December 2003 and an advance refund of January through March 2004 fair share fees.

15. On January 6, 2004, I forwarded to O'Malley interest on the October through December 2003 fair share fees.⁶

At no time has O'Malley disputed Henderson's assertions regarding refund of his agency fees with interest.⁷

ISSUE

Assuming CNA failed to send O'Malley an annual agency fee notice prior to the automatic deduction of his fees for several months beginning in July 2003, did its conduct violate section 3571.1(b)?

⁵ Communication Workers v. Beck (1988) 487 U.S. 735 [128 LRRM 2792].

⁶ Although Henderson's declaration was presented in the companion case, Case No. SA-CO-17-H, official notice is taken of the declaration. (See Delano Union Elementary School District (1982) PERB Decision No. 213, p. 2, fn. 2.)

⁷ PERB Regulation 32207 provides that no hearing shall be conducted unless the parties dispute the relevant facts in the case. (See also San Diego Unified School District (1987) PERB Decision No. 610.) The relevant facts here are not in dispute. Therefore, this decision will be issued without a hearing.

CONCLUSIONS OF LAW

In the underlying unfair practice charge, O'Malley asserts that PERB regulations require an exclusive representative to send each nonmember an annual agency fee notice explaining the amount of the fee before any fees are deducted. In this instance, O'Malley contends, CNA began to collect the fees before providing the notice, and this conduct violated the union's obligations under HEERA, as well as PERB regulations.

With respect to the application of California Nurses Association to this matter, O'Malley asserts that courts have required unions to follow a process designed to protect a nonmember's constitutional right not to support political causes. The first part of the process provides for a timely and adequate notice regarding the determination of an agency fee, while the second part of the process provides an opportunity to challenge the fee after receiving the notice. O'Malley argues that California Nurses Association applies only to the part of the process that requires a challenge and escrow procedure, not the part of the process that requires the notice meet certain standards. Moreover, O'Malley continues, California Nurses Association deals only with the rights of an individual and not CNA's responsibility to nonmembers as a whole. Accordingly, O'Malley would conclude that California Nurses Association has no application here.

In a separate unfair practice charge (Case No. SA-CO-20-H), O'Malley challenged an arbitrator's decision that he had no standing to contest the amount of the agency fee; the arbitrator had concluded that O'Malley lacked standing because CNA had returned the fee with interest. The Board rejected this argument. In California Nurses Association, the Board reasoned that the arbitrator's decision did not render the hearing unfair or irregular, nor was it repugnant to the purposes of the Act. (California Nurses Association at p. 6, citing ABC Federation of Teachers, AFT Local 2317 (1998) PERB Decision No. 1295 (ABC Federation of

Teachers) [PERB will uphold arbitrator's decision in agency fee procedure unless it is unfair and irregular or clearly repugnant to the purposes of the Act].) In fact, the Board found, the decision to prevent O'Malley from participating in the arbitration is consistent with PERB precedent holding that an employee whose agency fees have been returned has no standing in such a proceeding. (California Nurses Association at p. 7, relying on Los Rios College Federation of Teachers, Local 2279, CFT/AFT (1992) PERB Decision No. 950 (Los Rios).

In Los Rios, an employee charged that a union acted unlawfully by denying her right to an agency fee determination hearing after the union returned her fees. Finding the employee had no standing to participate in the hearing, the Board adopted the following rationale.

While Hudson sets forth certain procedural guarantees, it does so for the purpose of preventing the exclusive representative's wrongful use of the agency fees. Here, the exclusive representative has not used the agency fees. Abood⁸ and its progeny have, as a common basis, the fact that the exclusive representative was entitled to, and did use agency fees for various chargeable purposes. Hudson provides a constitutional framework for the agency fee-payer to challenge the union's use of agency fees. [Los Rios; emphasis in original.]

Concluding that no remedy exists for employees who have received a refund of their agency fees, the Board wrote, "since the charging parties in this case have suffered no harm, nor do they have any potential for harm, they have no standing to challenge the union's refusal to provide them with arbitration." (Los Rios adopting dismissal of regional attorney at p. 3.)

Following the reasoning of Los Rios, the Board concluded in California Nurses Association that "there is no possibility for harm to O'Malley that the Board could remedy. To hold otherwise would lead to an absurd result: that individuals may challenge the use of funds no longer in the possession of the exclusive representative or of funds held by the exclusive representative but collected from other employees." (California Nurses Association, at p. 7.)

⁸ Abood v. Detroit Board of Education (1977) 431 U.S. 209 [95 LRRM 2411].

Because O'Malley had suffered no harm, the arbitrator correctly excluded him from the hearing and precluded him from challenging the May 2002 notice which determined the amount of the agency fee, a decision that is not subject to attack under the ABC Federation of Teachers standards.

As O'Malley correctly points out, California Nurses Association and Los Rios involved challenges to the agency fee, not the notice itself. Nevertheless, I find that distinction unpersuasive and conclude that the rationale of those cases is applicable here. As the Board found in Los Rios and affirmed in California Nurses Association, Hudson and its progeny set forth certain procedural guarantees "for the purpose of preventing the exclusive representative's wrongful use of the agency fees." (Underlining in original; Los Rios, regional attorney dismissal letter at p. 2; California Nurses Association at pp. 6-7.) Where a union has returned all agency fees to a nonmember, the procedural guarantees established to prevent improper use of the fees realistically would have no meaningful application to that nonmember. As Henderson's declaration establishes, CNA has returned all fees, has not used the fees for any purpose and refunded future fees in advance of automatic deduction.⁹ Thus, there has been no harm to O'Malley's rights under HEERA. As PERB has observed, "there is no possibility for harm to O'Malley that the Board could remedy." (California Nurses Association at p. 7.)

⁹ As Henderson states in his declaration in the companion case, Case No. SA-CO-17-H, his "understanding is that the option of having UC stop taking any deductions from Mr. O'Malley's paychecks was explored with UC by a CNA representative. The conclusion reached after several discussions was that UC would not do it. This left CNA in the position of having to send refund checks as fair share fees were received." As noted earlier, O'Malley has not disputed the statements in Henderson's declaration.

This conclusion is consistent with the plain language of PERB Regulation 32992.¹⁰ By its terms, that section does not apply to all nonmembers. The annual notice must be sent only to nonmembers “who will be required to pay an agency fee.” Granted, O’Malley’s agency fee initially was deducted by the university and then returned by CNA. In reality, however, O’Malley has not been “required to pay an agency fee” and thus there would be no useful purpose in affording him the procedural guarantees designed to enable a nonmember to challenge the use or amount of his fee.¹¹

¹⁰ Section 32992 states in its entirety:

(a) Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:

(1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;

(2) The basis for the calculation of the agency fee; and

(3) A procedure for appealing all or any part of the agency fee.

(b) All such calculations shall be made on the basis of an independent audit that shall be made available to the nonmember.

(c) Such written notice shall be sent/distributed to the nonmember either:

(1) At least 30 days prior to collection of the agency fee, after which the exclusive representative shall place those fees subject to objection in escrow, pursuant to Section 32995 of these regulations; or

(2) Concurrent with the initial agency fee collection, provided however, that all agency fees so noticed shall be held in escrow in toto until all objectors are identified. Thereafter, only the agency fees for agency fee objectors shall be held in escrow, pursuant to Section 32995 of these regulations.

¹¹ Given the conclusions reached herein, it is unnecessary to address O’Malley’s motion for summary judgment or other arguments raised by the parties.

PROPOSED ORDER

Based on the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No. SA-CO-19-H, Robert J. O'Malley v. California Nurses Association, are 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 Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (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. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 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, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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, 32140, and 32135(c).)

Fred D'Orazio
Administrative Law Judge