



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANAHEIM UNION HIGH SCHOOL DISTRICT,)	
)	
Employer,)	
)	
and)	Case No. LA-CE-128
)	
ANAHEIM SECONDARY TEACHERS ASSOCIATION,)	PERB Order No. Ad-42
CTA/NEA,)	
)	Administrative Appeal
Employee Organization,)	
<u>APPELLANT.</u>)	July 17, 1978
)	
)	

Appearances: Kyle D. Brown, Attorney (Hill, Farrer and Burrill) for Anaheim Union High School District; and Paul Crost, Attorney (Reich, Adell and Crost) for Anaheim Secondary Teachers Association, CTA/NEA.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

OPINION

This is an appeal by Anaheim Secondary Teachers Association, CTA/NEA (hereafter Association) from the rejection by the executive assistant to the Board of its exceptions to the hearing officer's proposed decision. The executive assistant to the Board rejected the Association's exceptions as untimely filed pursuant to Board rule 32300(a).¹

¹The Board's rules are codified at Cal. Admin. Code, tit. 8, sec. 31100 et seq. Sec. 32300(a) provides:

A party may file with the Board itself an original and four copies of a statement of exceptions to a Board agent's proposed decision, and supporting brief, within 20 calendar days following the date of service of the decision.

FACTS

Exceptions to the proposed decision were originally due on May 1, 1978. Pursuant to an agreement between the parties, the due date was extended twice, first to May 15 and then to May 22, 1978. The exceptions were filed with the Public Employment Relations Board (hereafter Board) on Tuesday, May 23, after being mailed in Santa Ana on May 19, 1978.

DISCUSSION

This is the Board's first untimely filing case under its revised rules which became effective on March 20, 1978. Under rule 32300(a), parties are allowed 20 days after service in which to file exceptions to proposed decisions. Rule 32133 provides:

A late filing may be excused in the discretion of the Board only under extraordinary circumstances.

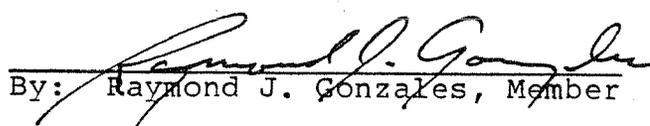
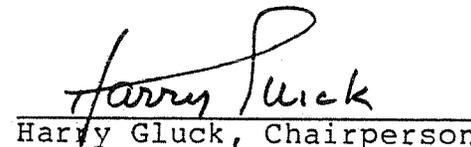
The Association's appeal does not indicate any extraordinary circumstances which might persuade the Board to excuse this untimely filing. The Association only argues that it could reasonably assume that exceptions mailed on Friday in Santa Ana would arrive in Sacramento on Monday. In Anaheim Union High School District,² the Board, under its old rules which allowed seven days for filing exceptions, found no sufficient cause for extending the due date for an appeal when it was mailed on Friday in Santa Ana and arrived a day late in Sacramento on Tuesday. Since this ostensibly unreasonable five-

² (3/16/78) PERB Order No. Ad-27.

day mail service did not constitute "sufficient cause" to excuse an untimely filing in Anaheim, it certainly does not constitute "extraordinary circumstances" in the present case under the new rules. "Extraordinary circumstances" means exactly that - out of the ordinary, remarkable, unpredictable situations or occurrences far exceeding the usual which prevent a timely filing. Mail delays are ordinary, commonly accepted occurrences and, therefore, will generally not serve to excuse a late filing.

ORDER

The decision of the executive assistant to the Board, rejecting the exceptions to the hearing officer's proposed decision filed by the Anaheim Secondary Teachers Association, CTA/NEA, is sustained.

By:  Raymond J. Gonzales, Member  Harry Gluck, Chairperson

Jerilou Cossack Twohey, Member, concurring:

I agree with my colleagues that in this case the executive assistant to the Board properly rejected the Association's untimely filed exceptions to the hearing officer's proposed decision.

I have vigorously opposed the mechanical application of the Board's rules where the result was to deprive parties of the

PUBLIC EMPLOYMENT RELATIONS BOARD

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May 26 1978

Mr. Paul Crost, Attorney
Reich, Adell & Crost
1722 No. Broadway
Santa Ana, CA 92706

Re: ANAHEIM SECONDARY TEACHERS ASSOCIATION/CTA/NEA vs.
ANAHEIM UNION HIGH SCHOOL DISTRICT
CASE NO. LA-CE-128

Dear Mr. Crost:

This will acknowledge receipt of the Exceptions and Supporting Brief filed on behalf of the Anaheim Secondary Teachers Association/CTA/NEA, in the above-captioned case. Unfortunately, your exceptions were not filed timely in accordance with Section 32300(a) of the Board's rules and regulations.

Exceptions to the proposed decision were originally due on May 1, but with two subsequent time extensions, the deadline was extended to May 22, 1978. Your exceptions were not filed in this office until May 23, 1978. As a result of this failure to timely file, the exceptions cannot be submitted to the Board itself for consideration.

Please be advised that while there are no rules to this effect, you may appeal this rejection of your filing to the Board itself. Should you choose to do so, your appeal should be filed in this office on or before ten (10) days after service of this letter.

Sincerely,

Stephen Barber
Executive Assistant to the Board

CV/jd

cc: Kyle D. Brown, Attorney
Hill, Farrer & Burrill

right to appeal a lower decision.¹ The graveman of my opposition was that the time set out in the Board's rules was unreasonably short and did not afford the parties adequate time to review the facts and issues in the case, meet with their clients, prepare the exceptions and supporting rationale and physically deposit the exceptions with the Board itself. However, as my colleagues point out, the Board has modified the time requirements to afford the parties a reasonable and more realistic time frame within which to appeal a lower decision to the Board itself. In these circumstances, parties must not be permitted to ignore the Board's time requirements. Accordingly, I join my colleagues in sustaining the executive assistant.

Verilou Cossack Twohey, Member

¹See my dissents in Manteca Unified School District (8/5/77) PERB Decision No. 21; San Francisco Unified School District (9/8/77) PERB Decision No. 23; Santa Ana Unified School District (10/28/77) PERB Decision No. 36; Anaheim Union High School District (3/16/78) PERB Order No. Ad-27; Lincoln Unified School District (5/30/78) PERB Order No. Ad-35; and Redding Elementary School District (6/21/78) PERB Order No. Ad-39.