

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



ELSINORE VALLEY EDUCATION ASSOCIATION, CTA/NEA,	)	
	)	
Charging Party,	)	Case No. LA-CE-1968
	)	
v.	)	Administrative Appeal
	)	
LAKE ELSINORE SCHOOL DISTRICT,	)	PERB Order No. Ad-154
	)	
Respondent.	)	June 12, 1986
	)	

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Appearance: Parham & Associates, Inc. by James C. Whitlock for  
Lake Elsinore School District.

Before Hesse, Chairperson; Porter and Craib, Members.

DECISION

PORTER, Member: Lake Elsinore School District (District) appeals the executive director's rejection for lack of timeliness of its exceptions to the administrative law judge's proposed decision. The proposed decision was served on the District by mail on December 13, 1985. The cover letter attached to the decision specified that the deadline for filing exceptions was January 2, 1986. The District's exceptions were sent via regular mail from Irvine on December 31, 1985, and were received in the Headquarters of the Public Employment Relations Board (PERB or Board) on January 3, 1986, one day past the specified deadline.

In its appeal, the District urges PERB to excuse its late filing by considering the "delay," presumably caused by the

holiday mail, as an extraordinary circumstance. Further, the District urges PERB to consider the excusableness of its attorney's secretary's error in not mailing the exceptions by certified mail. No declaration is attached to the appeal explaining or supporting the District's argument that clerical error was involved, nor specifying the time of day at which the exceptions were deposited in the mail.

#### DISCUSSION

Current PERB Regulations establish the procedures for excepting to a proposed decision.<sup>1</sup> Section 32300 of those regulations states in pertinent part,

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

"Filing" is defined in section 32135 as follows:

All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last date set for filing or when sent by telegraph or certified or Express United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office.

Section 32136 provides,

A late filing may be excused in the discretion of the Board only under extraordinary circumstances. A late filing which has been excused becomes a timely filing under these regulations.

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<sup>1</sup>PERB Regulations are set forth in Title 8 of the California Administrative Code, commencing with section 31001.

Previous PERB decisions have held that delays caused by the U.S. mail do not constitute extraordinary circumstances. See, e.g., University of California, Riverside (Jones) (1984) PERB Decision No. 386-H, in which the Board stated,

Mail delays are ordinary, commonly accepted occurrences and, therefore, will generally not serve to excuse a late filing. Anaheim Union High School District [(1978) PERB Order No. Ad-42].

Further, it does not appear here that any delay occurred, in that only one full business day (January 2) passed between mailing and receipt, since January 1 was a holiday. Therefore, this argument is rejected.

As to the asserted clerical error, while the Board has in the past excused a late filing caused by a temporary employee's failure to deliver exceptions to a PERB regional office (Chula Vista City School District (1978) PERB Order No. Ad-29), the facts in that case were supported by an unrefuted affidavit from the attorney explaining his normal practice and the instructions he gave to the temporary office help, who failed to follow, or did not understand, the directions. Here, there is no declaration explaining what steps were taken to insure that the exceptions were sent by certified mail. A mere allegation of secretarial error, without more, does not establish good cause, let alone extraordinary circumstances.

Notwithstanding the foregoing lack of merit in the District's arguments, we nevertheless find the exceptions to

have been timely filed, based on the five-day extension mandated by Code of Civil Procedure (CCP) section 1013.<sup>2</sup> In so holding, we expressly overrule Lincoln Unified School District (1978) PERB Order No. Ad-35, which held that CCP section 1013 does not apply to PERB.

Statutory and case law do not support the Board's prior holding in Lincoln Unified School District, supra, that CCP section 1013 does not apply to administrative actions before this Board, nor did they support former section 32140(b) of PERB Regulations.<sup>3</sup>

First, the fact that section 1013 appears in the Code of Civil Procedure, rather than in the Government Code provisions that are under PERB's jurisdiction,<sup>4</sup> does not render that

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<sup>2</sup>CCP section 1013 states in relevant part,

a) In case of service by mail, . . . the service is complete at the time of the deposit, but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such document served by mail shall be extended five days if the place of address is within the State of California, . . .

<sup>3</sup>Section 32140(b) stated:

That portion of section 1013 of the Code of Civil Procedure relating to extending time after mailing shall not apply.

<sup>4</sup>PERB administers the State Employer-Employee Relations Act (SEERA) found at Government Code sections 3512 through 3524; the Educational Employment Relations Act (EERA) at sections 3540 through 3549.3; and the Higher Education Employer-Employee Relations Act (HEERA) at sections 3560 through 3599.

provision inapplicable to PERB. It is a well-settled rule of statutory construction that,

the separation of the various statutes into codes is for convenience only, and the codes are to be read together and regarded as blending into each other thereby forming but a single statute. . . .  
People v. Ashley (1971) 17 Cal.App.3d 1122, 1126. See also, Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal.2d 310, 312; 64 Ops. Atty. Gen. 240, 252 (1981).

Second, CCP section 1013 has been found specifically applicable to actions, decisions and orders of administrative agencies, where the prescribed period of appeal runs from the service of the administrative document and the agency effects service by mail. See, e.g., Pesce v. Department of Alcoholic Beverage Control, supra, at 312-13; Industrial Indemnity Co. v. Industrial Accident Commission (1961) 57 Cal.2d 123, 126; California Accounts, Inc. v. Superior Court (1975) 50 Cal.App.3d 483, 486-87. If, however, the appeal period runs from issuance of the administrative decision rather than from the service, then CCP section 1013 is not applicable. Mario Saikhon, Inc. v. Agricultural Labor Relations Board (1983) 140 Cal.App.3d 581, 583.

For the foregoing reasons, the Board repealed section 32140(b).<sup>5</sup>

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<sup>5</sup>On May 27, 1986, the Office of Administrative Law (OAL) approved PERB's emergency filing for, among other items, repeal of section 32140(b).

PERB's current Regulations establish that the 20-day appeal period runs from date of service of the proposed decision and, thus, if service occurs by mail, then CCP section 1013 is clearly applicable.<sup>6</sup> Consequently, PERB is mandated by CCP section 1013 to accord the District an additional five days in which to file its exceptions, thus making them due at the PERB office on or before January 7, 1986. Since they were received on January 3, 1986, we deem them to be timely filed.

ORDER

The executive director is hereby ORDERED to accept as timely filed the District's exceptions to the proposed decision in this case.

Chairperson Hesse and Member Craib joined in this Decision.

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<sup>6</sup>It should be noted that PERB Regulations on this issue are currently under review, and future parties should ascertain the status of the regulations before assuming they have an additional five days to file exceptions. In addition, parties should clearly understand that this five-day extension only applies where service occurs by mail.