

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



ASSOCIATION OF SONOMA COUNTY	)	
OFFICE OF EDUCATION,	)	
	)	
Charging Party,	)	Case No. SF-CE-1449
	)	
v.	)	Administrative Appeal
	)	
SONOMA COUNTY OFFICE OF	)	PERB Order No. Ad-230
EDUCATION,	)	
	)	March 23, 1992.
Respondent.	)	
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Appearances: California Teachers Association by Ramon E. Romero, Attorney, for Association of Sonoma County Office of Education; School and College Legal Services by Margaret M. Merchat, Attorney, for Sonoma County Office of Education.

Before Hesse, Chairperson; Camilli and Caffrey, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Sonoma County Office of Education (SCOE) from the PERB appeals assistant's rejection of its exceptions to the underlying proposed decision as untimely filed. After a second extension of time had been granted, exceptions to the proposed decision were due to be filed on or before January 16, 1992.<sup>1</sup> On January 16, SCOE mailed a statement of exceptions and supporting brief by regular first-class mail to the PERB San Francisco Regional Office. The documents were received in the San Francisco office on January 17.

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<sup>1</sup>Unless otherwise noted, all references are to 1992.

On January 22, the appeals assistant rejected the exceptions and supporting brief. In rejecting the appeal as untimely filed, the appeals assistant relied on PERB Regulations 32300 and 32135<sup>2</sup> which require exceptions to be filed in the Sacramento Headquarters Office. The appeals assistant also noted that the exceptions were due to be filed on January 16, but were instead received on January 17 in the PERB San Francisco office.

In its appeal of the rejection of its statement of exceptions, SCOE states that through an inadvertent clerical error, the documents were sent to the San Francisco Regional Office rather than the Headquarters Office in Sacramento. SCOE explains that a new secretary's experience was limited to serving

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<sup>2</sup>PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

PERB Regulation section 32300(a) states, in pertinent part:

A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to section 32215, and supporting brief, within 20 days following the date of service of the decision or as provided in section 32310. The statement of exceptions and briefs shall be filed with the Board itself in the headquarters office. . . . (Emphasis added.)

PERB Regulation section 32135 states:

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. (Emphasis added.)

documents on the San Francisco office. SCOE further claims that the secretary was not aware that the statement of exceptions was required to be served on the Sacramento Headquarters Office. SCOE fails to provide any explanation, however, for filing the exceptions late. In fact, SCOE claims on appeal that the exceptions were filed "within the appropriate timeframe."

#### DISCUSSION

SCOE faces two problems with the filing of its statement of exceptions. The appeal was filed at the wrong PERB office, and it was filed late. Pursuant to PERB Regulation section 32136,<sup>3</sup> the Board may excuse a late filing for good cause only. The Board has previously excused late filings which have gone astray. In North Orange County Regional Occupational Program (NOCROP) (1990) PERB Decision No. 807, exceptions were filed well before the deadline, but were inadvertently filed in the Los Angeles Regional Office, rather than the Sacramento Headquarters Office. NOCROP explained that the secretary generally submitted a large volume of filings with PERB, usually with the Los Angeles office. In this case, through force of habit, she had filed the exceptions in Los Angeles. The Board found that NOCROP had attempted to file in a timely fashion, but, due to an honest mistake, the documents had been filed in the wrong PERB office.

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<sup>3</sup>PERB Regulation section 32136 provides:

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

The Board has also excused filings which were mailed to the proper office, but were not timely received. In The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H, the Board found good cause to excuse the respondent's untimely filed opposition brief. In an unrefuted declaration, the attorney stated that it was the policy of his office to file documents with PERB by certified mail, but his secretary had inadvertently sent them by regular first-class mail on the last day set for filing. Similarly, in Trustees of the California State University (1989) PERB Order No. Ad-192-H, the Board found the secretary's explanation that the postage meter had been incorrectly set, causing the exceptions to be untimely filed, constituted good cause.

However, the Board has refused to excuse untimely documents where no explanation has been provided. In Ventura Unified School District (1989) PERB Decision No. 757, the Board did not consider an untimely response to an appeal because no reason for the late filing was provided. In Los Angeles Community College District (1991) PERB Decision No. 908 (Los Angeles), there were two problems with the District's late filing. PERB's address had been incorrectly typed on the envelope, causing it to be misdirected, and the documents had been mailed by regular first-class mail from Los Angeles to Sacramento one day before the filing deadline. The Board noted that the District focused on the envelope's typographical error, failing to submit an

explanation for mailing its documents by regular first-class mail. The Board, therefore, concluded that good cause did not exist to excuse the late filing.

This case is similar to Los Angeles in that two problems exist with the filing of SCOE's statement of exceptions. SCOE mailed its documents to the wrong PERB office, and filed them after the last date set for filing. SCOE explains that a new secretary's inexperience resulted in the documents being sent to the wrong PERB Office. Although SCOE provides an explanation for the misdirection of the documents, it offers no explanation for its failure to timely file the appeal. The Board's discretion in excusing a late filing is limited to good cause only. (PERB Regulation 32136.) Because SCOE fails to provide any reason for filing the documents late, the Board is precluded from finding that good cause exists to excuse the late filing. Therefore, the Board concludes that good cause does not exist to excuse SCOE's late filing.

#### ORDER

SCOE's appeal of the rejection of its statement of exceptions and supporting brief is hereby DENIED.

Chairperson Hesse and Member Camilli joined in this Decision.