

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA DEPARTMENT OF FORESTRY )  
FIREFIGHTERS, )  
 )  
Charging Party, )  
 )  
v. )  
 )  
STATE OF CALIFORNIA (DEPARTMENT OF )  
FORESTRY AND FIRE PROTECTION), )  
 )  
Respondent. )  
\_\_\_\_\_ )

Case No. SA-CE-891-S  
Administrative Appeal  
PERB Order No. Ad-286-S  
January 15, 1998

Appearance: Carroll, Burdick & McDonough by Kassi Berg-Beck,  
Attorney, for California Department of Forestry Firefighters.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public  
Employment Relations Board (PERB or Board) on appeal by the  
California Department of Forestry Firefighters (CDFF) to the PERB  
Appeals Assistant's rejection of its response to exceptions as  
untimely filed.

DISCUSSION

CDFF's response to exceptions in Case No. SA-CE-891-S was  
due to be filed no later than November 4, 1997. The response was  
sent on November 4 by overnight Federal Express mail and received  
at PERB on November 5, 1997.

PERB Regulation 32135<sup>1</sup> states:

All documents shall be considered "filed"  
when actually received by the appropriate

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<sup>1</sup>PERB regulations are codified at California Code of  
Regulations, title 8, section 31001 et seq.

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.

Because CDFE did not use certified or Express United States mail, its November 5 filing failed to comply with Regulation 32135 and was rejected as untimely filed.

CDFE asks the Board to find good cause to excuse its late filing because it made a good faith effort to timely file, but erred by using an overnight mail delivery service not specified in PERB's regulations. CDFE notes that the response was received by PERB on November 5, no later than it would have been received had CDFE sent it on November 4 utilizing Express United States mail as specified in PERB Regulation 32135. CDFE also notes that California Code of Civil Procedure section 1013 provides for service by mail utilizing either Express Mail or another method providing for overnight delivery.

PERB Regulation 32136 provides that:

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.

In applying this regulation, the Board has found good cause to excuse late filings when a party has made a conscientious effort to timely file. Consequently, the Board has excused various types of "honest mistakes" involving clerical or mailing errors. (North Orange County Regional Occupational Program (1990) PERB Decision No. 807; Trustees of the California State University

(1989) PERB Order No. Ad-192-H; Barstow Unified School District  
(1996) PERB Order No. Ad-277.)

Here, CDFF made a conscientious effort to timely file but inadvertently utilized an overnight mail delivery system not specified in PERB Regulation 32135. Under these circumstances, the Board finds good cause to accept CDFF's late filed response to exceptions.

ORDER

The request by the California Department of Forestry Firefighters that the Board accept its late filed response to exceptions in Case No. SA-CE-891-S is hereby GRANTED.

Members Dyer and Amador joined in this Decision.