STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

WILLIAM F. HORSPOOL, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS), Respondent.	Case No. LA-CE-403-S Administrative Appeal PERB Order No. Ad-287-S January 29, 1998

Appearance: Hartnell, Horspool and Fox by J. David Horspool, Attorney, for William F. Horspool.

Before Caffrey, Chairman; Johnson and Jackson, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Robert G. Horspool (R. Horspool) of the rejection of his untimely filed appeal of a Board agent's determination that he is not a party to the unfair practice charge in Case No. LA-CE-403-S.

BACKGROUND

The unfair practice charge in Case No. LA-CE-403-S was filed by William F. Horspool (W. Horspool) on May 14, 1997. The Board agent issued a partial warning letter on September 22, 1997. W. Horspool responded by filing an amended unfair practice charge which included the assertion that R. Horspool was a party to the original charge. In an October 24, 1997, partial dismissal letter, the Board agent states that the original charge named and was signed only by W. Horspool, and that the original charge did not indicate that R. Horspool was a party to the charge. The

Board agent further indicates that the charge included no facts demonstrating a prima facie violation of the Ralph C. Dills Act (Dills Act)[1] involving R. Horspool, even if he were to be considered a party to the charge.

Pursuant to PERB Regulations 32635(a) and 32135[2], an appeal of the October 24, 1997, partial dismissal was due to be filed no later than November 18, 1997. On November 25, 1997, R. Horspool filed an appeal of the Board agent's partial dismissal in Case No. LA-CE-403-S. On December 1, 1997, the PERB appeals assistant rejected R. Horspool's November 25, 1997, appeal as untimely filed.

On December 15, 1997, R. Horspool filed an appeal of the rejection as untimely filed of his appeal of the Board agent's

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[1]The Dills Act is codified at Government Code section 3512 et seq.

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32635 states, in pertinent part:

> (a) Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent.

Regulation 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.

partial dismissal. R. Horspool asserts that he "wrote an appeal stating why he should be included in the original charge and had it mailed by priority mail on November 18th, 1997." However, the appeal also states that R. Horspool "did not fully understand that the appeal needed to be sent by certified mail post marked by November 18th, 1997."

DISCUSSION

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.)

R. Horspool first asserts that his appeal was mailed by priority mail on the filing deadline, November 18, 1997. This is inaccurate, however. The appeal was filed at PERB headquarters on November 25, 1997, via priority mail postmarked November 21, 1997, three days after the filing deadline. R. Horspool also asserts that he did not understand the filing deadline, but the Board agent's dismissal letter includes clear information on this subject. Failure to review PERB materials relative to filing

deadlines cannot be considered good cause to excuse a late filing. (Los Angeles Unified School District (1993) PERB Order No. Ad-247.)

Under these circumstances, the Board concludes that there is not good cause to excuse R. Horspool's late filing.[3]

ORDER

The request by Robert G. Horspool that the Board accept his late filed appeal in Case No. LA-CE-403-S is hereby DENIED.

Members Johnson and Jackson joined in this Decision.

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[3]The Board also notes that PERB records indicate that the original unfair practice charge in Case No. LA-CE-403-S was filed by W. Horspool only on May 14, 1997. The Board agent correctly concluded that R. Horspool is not a party to that charge.