

unilaterally established a new disciplinary rule. A cover letter from the Board's chief ALJ accompanied the proposed decision. That cover letter outlined the procedures and deadlines for filing and responding to exceptions to the proposed decision. Specifically, the cover letter explained that:

A document is considered 'filed' when actually received before the close of business (5:00 p.m.) on the last day 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.'
(PERB Reg. sec. 32135.)³

On November 16, the State timely filed exceptions to the proposed decision. The State served a copy of those exceptions on PEGC by mail. Accordingly, any response to those exceptions was due to be filed no later than December 11. (PERB Reg. sec. 32310.)⁴

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

³PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. A revision of PERB Regulation 32135 became effective February 7, 1999, subsequent to the filing of this request. The revision has no bearing on the Board's consideration in this case.

⁴PERB Regulation section 32310 provides, in relevant part:

Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself an original and five copies of a response to the statement of exceptions and a supporting brief. The

On Friday, December 11, PEGC responded to the State's exceptions. PEGC mailed its response to the Board via first class U.S. mail. The Board's appeals assistant received PEGC's response to the exceptions on December 14. On December 15, the appeals assistant rejected it as untimely filed. (See PERB Reg. sec. 32135.)

PEGC'S REQUEST

PEGC contends that the lateness of its filing is due to a reasonable mistake on the part of its attorney. In his supporting declaration, PEGC's attorney avers that he had never previously filed or participated in filing a response to a statement of exceptions. On December 11, PEGC's attorney prepared a response to the State's exceptions. He was aware that December 11 was the last day for PEGC to file any response to the State's exceptions.

After reviewing the chief ALJ's cover letter, PEGC's attorney determined that PEGC could file its response by placing it in the first class U.S. mail on December 11.

PEGC contends that the foregoing constitutes good cause sufficient to excuse its late filing. (Citing Klamath-Trinity Joint Unified School District (1993) PERB Order No. Ad-238 [excusing late filing where secretary erroneously mailed statement of exceptions via regular first class mail on the last

response shall be filed with the Board itself in the headquarters office.

day set for filing because she failed to read the PERB letter setting forth the standards for filing].)

DISCUSSION

As noted above, a document is considered "filed" under the Board's regulations when actually received at the appropriate Board office or when sent by certified or Express U.S. mail. (PERB Reg. sec. 32135.) However, PERB Regulation section 32136 provides that the Board may excuse a late filing for good cause.⁵ The Board has found good cause to excuse a late filing only where a party made a conscientious effort to complete its filing in a timely manner but failed to do so because of a clerical or postal error, provided that the delay was brief and no prejudice resulted to any party in the case. (See, e.g., State of California (Department of Forestry and Fire Protection) (1998) PERB Order No. Ad-286-S; Trustees of the California State University (1989) PERB Order No. Ad-192-H at p. 5; The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H at p. 3; North Orange County Regional Occupational Program (1990) PERB Decision No. 807 at p. 5.)

⁵PERB 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.

Here, PEGC contends that its attorney made a reasonable mistake regarding the manner for filing a response to exceptions. Further, PEGC argues, its response to exceptions reached the Board one workday after the filing deadline, the same day that the Board would likely have received a response sent via certified mail. Finally, because service was accomplished by an appropriate method and PERB regulations provide for no response from the State, PEGC claims that no party to the case has been prejudiced as a result of the late-filing.

The Board has refused to find good cause to excuse a late filing on substantially similar facts. In Calipatria Unified School District (1990) PERB Order No. Ad-217 (Calipatria), the appeals assistant rejected exceptions as untimely when they were deposited in the first class U.S. mail on the last day set for filing. The District requested that the Board find good cause to excuse the late filing based on the mistake of its attorney. In a supporting declaration, the District's attorney indicated that he understood PERB regulations to permit a filing by regular mail on the last day set for filing. The Board concluded that the attorney had not made an attempt to file in a timely fashion but had incorrectly determined that PERB regulations permitted filing by regular mail in the same manner as by certified mail.

(Calipatria at p. 11.) The Board held that the attorney's misreading of the regulation did not constitute good cause.

(Ibid.) In this case, PEGC's attorney either misread or failed

to read PERB's regulations and the chief ALJ's letter. PERB Regulation section 32135 would become meaningless if the Board considered an attorney's misreading of that regulation to constitute good cause to excuse a late filing.

ORDER

Professional Engineers in California Government's request that the Board accept its late-filed response to the State's exceptions in Case No. SA-CE-1083-S is hereby DENIED.

Chairman Caffrey and Member Amador joined in this Decision.