

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE COMMUNICATIONS)	
ASSOCIATION,)	
)	
Employee Organization,)	Case No. S-R-55-S
)	
and)	PERB Order No. Ad-52-S
)	
STATE OF CALIFORNIA,)	Administrative Appeal
)	
Employer.)	January 2, 1979

Appearances: Dale Buchholz, Secretary/Treasurer, for California State Communications Association.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on an appeal by the California State Communications Association (hereafter Association) from a decision by the Executive Director to dismiss as untimely filed its petition to determine an appropriate unit. The Board affirms the Executive Director's decision.

DISCUSSION

The Association sought to file a petition covering approximately 165 state telecommunications employees. This petition was received in the Sacramento Regional Office at 8:15 a.m. on September 1, 1978.

Under PERB rules and regulations, petitions to determine an appropriate unit under the State Employer-Employee Relations

Act¹ not received by the Sacramento Regional Office before the end of the working day on August 31, 1978, shall be dismissed as untimely filed.² The Association's petition was not received until September 1, 1978.

PERB rule 32133 states:

A late filing may be excused in the discretion of the Board only under extraordinary circumstances.

¹The State Employer-Employee Relations Act (hereafter SEERA) is codified at Government Code section 3512 et seq.

²PERB rules are codified at California Administrative Code, title 8, section 3110 et seq.

PERB rule 41010 (a) provides:

An employee organization may file a petition to determine an appropriate unit not later than August 31, 1978.

PERB rule 41010 (d) provides:

A petition to determine an appropriate unit of an employee organization shall not be considered complete or properly filed unless the requirements of this section and sections 41070 and 41080 have been timely met.

PERB rule 41050 provides in pertinent part:

If the Executive Director determines that the petition or supplementary submission is improperly filed . . . the petition shall be dismissed.

PERB rule 32135 provides:

All documents shall be considered "filed" by a party when actually received by the proper recipient before the close of business on the last day set for filing.

This rule is applicable to both SEERA and the Educational Employment Relations Act (hereafter EERA)³. In Anaheim Union High School District,⁴ a case arising under EERA, the Board defined "extraordinary circumstances" as "out of the ordinary, remarkable, unpredictable situations or occurrences far exceeding the usual which prevent a timely filing." The Board finds no evidence of extraordinary circumstances in this case. Although the Association had approximately 60 days in which to file, its petition was mailed on August 31. A copy of the petition was delivered to the Board on September 1. In its appeal, the Association indicated that it had believed that if a petition was postmarked on August 31, it would be timely. A mistake about filing requirements under Board rules does not constitute extraordinary circumstances excusing an untimely filing. The Board therefore affirms the dismissal of the Association's petition.

This result works no undue hardship on the Association, since it can still participate in the SEERA unit determination hearings as a limited party under PERB rules 32165 and 41130⁵

³The EERA is codified at Government Code section 3540 et seq.

⁴(7/17/78) PERB Order No. Ad-42.

⁵PERB rule 32165 states:

Application to Join Hearing as a Limited Party. In a representation proceeding the Board agent may allow any person, employer, or employee organization which did not file a timely request for a recognition, intervention or petition to join the hearing as a limited party provided:

or as a party of interest under PERB rule 32166⁶, provided that the requirements of these sections are timely met.

(a) The person, employer, or employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the proceedings; and

(b) The Board agent determines that the person, employee organization or employer has a substantial interest in the case and will not unduly impede the proceeding.

PERB rule 41130 states:

Limited Participation in Hearing. An original and three copies of any request for limited participation in the hearing made pursuant to section 32165 shall be filed in writing with the Sacramento Regional Office no later than seven days prior to the date of commencement of the hearing for which participation is requested.

⁶PERB rule 32166 states:

Participation by Party of Interest. An employee organization may be allowed to participate in a representation hearing provided:

(a) it has filed a written application; and

(b) the Board agent determines that the organization has 10 percent support in a unit in dispute at the hearing; and

(c) the Board agent determines that the organization will not unduly impede the hearing; and

(d) this participation is limited to discussion of issues raised by the petition, response thereto, or question of representation.

ORDER

The Public Employment Relations Board ORDERS that the Executive Director's decision to dismiss the petition to determine an appropriate unit filed by the California State Communications Association on September 1, 1978, is affirmed.

~~By: Raymond J. Gonzales, Member~~ ~~Harry Gluck, Chairperson~~

~~Jerilou Cossack Twohey, Member~~

Mr. Dale Buchholz
October 4, 1978

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You may wish to consider utilizing the other opportunities to participate in the unit determination process pursuant to Sections 32165, "Application to Join Hearing as a Limited Party" and 41130, "Limited Participation in Hearing," or Section 32166, "Participation by Party of Interest" in order to provide input to the unit determination process. After the PERB has completed the unit determination process concerning the classifications you seek to represent, you may file a request to conduct an election pursuant to Section 41210 of the PERB Rules and Regulations. A copy of these sections is attached for your information.

As provided in Section 41050, an appeal of this decision may be made within 10 calendar days of service of this letter by filing a statement of the facts upon which the appeal is based with the Board itself, to the attention of the Executive Assistant to the Board, at 923 12th Street, Suite 201, Sacramento CA 95814. Such appeal must be actually received in the Headquarters Office by 5:00 p.m. on October 16, 1978.

Should you file an appeal, the Board will serve copies of the document on all petitioners and the Governor.

Sincerely,

Charles L. Cole
Executive Director

Enclosure
CLC/tz