

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTOR WIGHTMAN,)
) Case Nos. LA-CE-1736
) LA-CE-1765
 Charging Party,) LA-CE-1767
) LA-CE-1769
 v.) LA-CE-1771
) LA-CE-1773
 LOS ANGELES UNIFIED SCHOOL) LA-CE-1774
 DISTRICT,) LA-CE-1781
)
 Respondent.) Administrative Appeal
)
) PERB Order No. Ad-155
)
) June 24, 1986

Appearances: Victor Wightman and Jules Kimmett for Victor Wightman; O'Melveny & Myers by Elaine M. Lustig for Los Angeles Unified School District.

Before Hesse, Chairperson; Burt and Porter, Members.

DECISION

HESSE, Chairperson: Victor Wightman appeals the rejection of his statement of exceptions to a proposed decision and his request for oral argument. His exceptions and request for oral argument were rejected by the assistant executive director of the Public Employment Relations Board (PERB or Board) as being untimely filed. For the reasons set forth below, we reverse the dismissal and accept Wightman's statement of exceptions and request for oral argument as timely filed.

PROCEDURAL HISTORY

On July 26, 1985, a proposed decision was issued and served on the parties in the above-entitled case. Pursuant to PERB

Regulation 32300,¹ exceptions were due 20 days later on August 15, 1985. Wightman mailed his² statement of exceptions on August 13 by first-class mail. The exceptions were received by PERB on August 16, 1985. On August 19, the assistant executive director rejected Wightman's filings. Wightman's appeal of this administrative decision was timely filed on August 28, 1985.

DISCUSSION

Exceptions to this proposed decision were to be filed with the Board itself within 20 days following service of the decision. Thus, the last date for filing exceptions to the proposed decision was August 15, 1985. PERB Regulation 32135 provides that:

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 Express United States mail postmarked not later than the last day

¹PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

Regulation 32300 provides, in relevant part:

(a) 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.

²The Los Angeles Unified School District (District) did not file any exceptions.

set for filing and addressed to the proper PERB office.

Although Wightman's statement of exceptions and request for oral argument were postmarked August 13, the documents were not received by PERB until August 16. Since he did not send the documents by telegraph or certified mail, his documents were not timely filed.

Late filings may be excused, however, where extraordinary circumstances prevent timely filing.³ In Anaheim Union High School District (1978) PERB Order No. Ad-42, the Board held that, since mail delays were ordinary, commonly-accepted occurrences, they generally will not serve to excuse a late filing. We find nothing in this case to warrant a finding of extraordinary circumstances.

Under section 1013 of the California Code of Civil Procedure (CCP),⁴ where agency documents are served on parties by mail,

³Regulation 32136 provides that:

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

⁴CCP section 1013 provides, in pertinent part:

(a) In case of service by mail, . . . The service is complete at the time of the deposit, but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such document served by mail shall be extended five days if the place of address is within the State of California, . . . but such

the period for responding is extended by five days. Previously, Regulation 32140(b) provided that this section would not apply to PERB procedures. However, that Regulation has since been repealed.⁵ Also, as the Board discussed in Lake Elsinore School District (1986) PERB Order No. Ad-154, Regulation 32140(b) was invalid.⁶

The Board agent's proposed decision was served on the parties by mail. Although Regulation 32140(b) was in effect in July and August 1985, we find that it is more equitable that its repeal should be applied to cases that are now before the Board. Thus, the time period for filing exceptions in this case was extended to August 20, 1985. As Wightman's exceptions were received by PERB on August 16, 1985, they were timely filed. Accordingly, we reverse the assistant executive director's decision and will entertain Wightman's exceptions and request for oral argument.

Pursuant to Regulation 32310, the District will have 20 days from the date of service of this Decision to respond to

extension shall not apply to extend the time for filing notice of intention to move for a new trial, notice of intention to move to vacate judgment pursuant to Section 663a of this code or notice of appeal.

⁵Regulation 32140(b), repealed on May 27, 1986, provided that: "That portion of section 1013 of the Code of Civil Procedure relating to extending time after mailing shall not apply."

⁶For the Board's rationale, see Lake Elsinore School District, supra, at p. 5.

Wightman's exceptions.⁷ We note that the District did not file exceptions within the allotted time. Nevertheless, Regulation 32310 provides that the response may contain a statement of exceptions.

ORDER

The decision of the assistant executive director is REVERSED. The executive director is hereby ORDERED to accept as timely filed Victor Wightman's Statement of Exceptions and Demand for Oral Argument. The District may file a response and supporting brief within 20 days after service of this Decision.

Members Burt and Porter joined in this Decision.

⁷Regulation 32310 reads as follows:

Response to Exceptions. 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 response shall be filed with the Board itself in the headquarters office. The response may contain a statement of any exceptions the responding party wishes to take to the recommended decision. Any such statement of exceptions shall comply in form with the requirements of section 32300. A response to such exceptions may be filed within 20 days. Such response shall comply in form with the provisions of this section. Service and proof of service of these documents pursuant to section 32140 are required.

