

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



STANLEY MINDEL,	)	
	)	
Charging Party,	)	Case No. LA-CE-2720
	)	
v.	)	PERB Decision No. 785
	)	
LOS ANGELES UNIFIED SCHOOL DISTRICT,	)	December 29, 1989
	)	
Respondent.	)	
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Appearances: Stanley Mindel, on his own behalf; Belinda D. Smith, Assistant Legal Adviser, for Los Angeles Unified School District.

Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the charging party, Stanley Mindel, to a proposed decision by a PERB administrative law judge (ALJ), attached hereto, dismissing the complaint in its entirety. At issue is whether the commercial photography course which Mindel taught was cancelled because of low enrollment or because Mindel engaged in protected activity.

PERB Regulation 32300<sup>1</sup> requires the party filing exceptions to a proposed decision to meet certain specific guidelines, including: (1) a statement of the specific issues of procedure, fact, law or rationale to which each exception is taken; (2) identification of the page or part of the decision to which each exception is taken; (3) designation of the portions of the record

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

relied upon; and (4) the grounds for each exception. (Regulation 32300, subd. (a)(1)-(4).) Additionally, the matters raised in the exceptions may only come from the record. (Regulation 32300, subd. (b).) Mindel has failed to meet any of these requirements.

The respondent, Los Angeles Unified School District, urges the Board to dismiss this appeal for failure to comply with PERB's regulations. Compliance with the regulations is required in order to afford the respondent and the Board an adequate opportunity to address the issues raised. (Ibid., see also San Diego Community College District (1983) PERB Decision No. 368.) A failure to comply with Regulation 32300 can result in the dismissal of an appeal. (See California State Employees Association (O'Connell) (1989) PERB Decision No. 726-H at p. 3.) In the case currently before us, Mindel has submitted a rambling rendition of the facts, as he views them, with no reference to the record. Additionally, he has made numerous statements of fact which are completely unsupported by the evidence presented to the ALJ. Furthermore, Mindel has pointed to no specific errors of law or prejudicial errors of fact made by the ALJ.

We, therefore, affirm the ALJ's dismissal of the complaint.

#### ORDER

The charge and complaint in Case No. LA-CA-2720 are hereby DISMISSED.

Chairperson Hesse and Member Shank joined in this Decision.

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



STANLEY MINDEL,	)	
	)	
Charging Party,	)	Unfair Practice
	)	Case No. LA-CE-2720
v.	)	
	)	PROPOSED DECISION
LOS ANGELES UNIFIED SCHOOL	)	(8/28/89)
DISTRICT,	)	
	)	
Respondent.	)	
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Appearances: Stanley Mindel, Charging Party, on his own behalf; Los Angeles Unified School District, Office of the Legal Adviser, Belinda D. Stith, Attorney, for the Los Angeles Unified School District.

Before Allen R. Link, Administrative Law Judge.

PROCEDURAL HISTORY

On February 22, 1988, Stanley Mindel (hereafter Charging Party or Mindel) filed an unfair practice charge with the Public Employment Relations Board (hereafter PERB) against the Los Angeles Unified School District (hereafter Respondent or District) alleging violations of unspecified subdivisions of Government Code section 3543.5 of the Educational Employment Relations Act (hereafter EERA or Act).<sup>1</sup>

A Notice of Partial Dismissal of Unfair Practice Charge/Refusal to Issue Complaint was issued on October 20, 1988, and on that same date the General Counsel of PERB, after an investigation of the charge, issued a Complaint alleging

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<sup>1</sup> The EERA is codified at Government Code section 3540 et seq. All section references, unless otherwise noted, are to the Government Code.

violations of section 3543.5(a) and (b).<sup>2</sup> On November 9, 1988, an informal conference was held to explore voluntary settlement possibilities. No settlement was reached. On November 10, 1988, the District filed its Answer to the Complaint. The formal hearing was held on January 17 and February 14, 1989. The parties briefed their respective positions. The case was submitted for decision on May 26, 1989.

#### INTRODUCTION

Charging Party alleges that his commercial photography class at the West Valley Occupational Center was closed due to his having filed grievances against the school's administrators in an attempt to enforce provisions of the Collective Bargaining Agreement (hereafter CBA). The District insists that Mr. Mindel's photography class was closed due to insufficient enrollment and such closure had nothing to do with his having filed grievances.

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<sup>2</sup> Sections 3543.(a) and (b) state:

#### 3543.5 UNLAWFUL PRACTICES: EMPLOYER

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

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

### JURISDICTION

The parties stipulated, and it is therefore found, that the Charging Party is a public school employee and the Respondent is a public school employer, within the meaning of section 3540.1.

### FINDINGS OF FACT

The West Valley Occupational Center (Center), an entity within the Los Angeles Unified School District, offers programs designed to train, retrain or upgrade both high school and adult students to enter the entry level work force. None of the programs are designed to exceed one year in length. Job placement is an important part of the function of the Center. Each year it must make a report to the state Department of Education showing the results of its efforts to place students.

The Center employs various categories of teachers: (1) part-time; (2) contract without tenure; (3) hourly rate or tenure; and (4) monthly-rated.

The contract teacher without tenure may be assigned up to 30 hours per week or 120 hours per pay period. These teachers are hired to teach a specific class for a specific period of time. Normally the employment contract is for a one-year period, however, the validity of that contract is determined by how long the class meets. If the class is closed, for any reason, the contract is no longer in effect. Stanley Mindel was this type of teacher.

### Stanley Mindel - Background

Stanley Mindel has extensive experience in both photographic and educational settings. He has worked at West Valley Occupational Center since the start of the 1982-83 school year as an instructor in various aspects of photography. He was originally hired to teach 27 hours a week but had his hours reduced to 15 on his first day of employment. At the time of the cut, the principal, Mr. David Steinberg, told him that the additional hours would be returned some time in the future. In the spring of 1984, Steinberg wanted to give Mindel 30 hours in the upcoming fall semester because the demand for his class had grown. He therefore created two small classes from one large one. In anticipation of this split class Mindel signed a contract for 30 hours for the fall of 1984. During the summer Steinberg was replaced by Principal James Wall who had served a previous term as the principal of the Center. The two photography classes did not separately generate sufficient enrollment to meet the District's minimum standards. There were eight students in one class and seven in the other. Wall cancelled both classes, refusing to consolidate them as requested by Mindel.

### District Regulations re: Contract Teachers Without Tenure

Mindel is a contract teacher without tenure. In this status, each year he signs a one-year employment contract. This contract, by its own terms, may be terminated at any time prior to its expiration date for any of four reasons. One of these

reasons is "Insufficient enrollment or attendance as determined by the District." The CBA dictates 18 students as the minimum number of students in occupational classes.

#### Student Petition

In November and December 1986, Daniel Stark, the new industrial education coordinator, began to visit Mindel's classroom with increasing frequency. Wall, the principal, also increased the number of his visits. The students, as well as Mindel, began to resent these visits. Mindel contacted his exclusive representative, the United Teachers of Los Angeles (hereafter UTLA), for suggestions as to how to handle this situation. Barbara Farrell, a UTLA representative, told him he should get the parents of the students involved in any protest over what Mindel believed to be the excessive monitoring of his classes. Mindel collected parental letters as well as a protest petition from eleven of his adult students and mailed them, on December 19, 1986, to Mr. Cortina, a District assistant superintendent with supervisory responsibilities over the Center. The petition, in its entirety, is as follows:

We, the undersigned, are adult students of Stanley Mindel in his Commercial Photography class at the West Valley Occupational Center, Woodland Hills. Until about one month ago, this was a congenial class. But in the past few weeks, at least once a day, Mr. Mindel and the students have been harassed and intimidated by Mr. Dan Stark, the Industrial Co-ordinator and on occasions followed by Mr. Wall, the principal. At least once a day, a visit by the security guard is made and usually follows Mr. Stark. We know of no irregularities going on in this class. But the moral (sic) now is very low and several

students have left. This situation is not conducive to good learning and teaching. This petition was not suggested by Mr. Mindel, it is our initiative and no way have we been coerced. Several of us wish to return to this class next semester.

Mindel insists that Wall told him that he "got hell from downtown" about the petition and wanted to know why Mindel sent it to the District's administration. Mindel told him that he did it because Wall would not leave him alone. Wall denies making any such statement and insists that he did not even learn of the petition until he began to prepare the defense to this case.

Once the winter vacation was over the repetitive classroom visits began to subside and things started to calm down. Mindel received a call from a Mr. McIntyre, an assistant to Cortina, asking him if the situation had improved. Mindel said that the situation was much improved.

#### Student Re-enrollment

Shortly after McIntyre called, but before the second semester was to have started, Wall told Mindel's students that any student who had completed numerous semesters of the commercial photography class could not enroll in the upcoming spring semester. One of the handicapped adult students contacted Cortina and a meeting was arranged between Wall and the students. Mindel did not attend that meeting. The primary topic of that meeting was how many hours of instruction were necessary for a student to attain minimum entry level proficiency in the field of commercial photography. Each semester constituted approximately 300 hours of instruction. It was Wall's contention that 500



hours was sufficient instruction to reach an employable level of proficiency. The students disagreed. Eventually Wall relented and withdrew his objections to a repeat semester for the current students. He stated that the handicapped students could take an indefinite number of semesters.

#### Saturday Class Assignment

At this same meeting, Wall told the students there would be a Saturday class offered the next semester, Spring, 1987. Upon hearing this, Mindel sent a memo to Wall asking that he be assigned to teach the Saturday class. He was not given the assignment. Mr. Shela, a new employee, was hired to teach this class.

#### Summer School Assignment and Grievance

In March of 1987, Mindel, along with all the other teachers at the Center, was asked how many hours he wished to teach during the summer session. Mindel had always worked during the summer although his hours had been cut since Wall became the principal. When Mindel failed to receive a summer session assignment, he contacted Stark and was told that photography was not going to be offered that summer. He went to his school's UTLA representative, and was told that he should file a grievance but there were no blank forms available. Once the forms arrived, Mindel immediately filed his grievance but it was eventually denied as being untimely. Mindel asked Wall why there would be no photograph classes during the summer session. Wall said he was going to use the money that would be saved by eliminating

summer session to enhance the department with an extended curriculum. Mindel insisted, without contradiction, that even though he submitted various requests, no extra money was spent on equipment for the photography department when he was there.

#### Classroom Monitoring

Both Wall and Stark were concerned, in the beginning of the fall 1987 semester, that there were insufficient students attending Mindel's class to enable the Center to keep the class open. Both of these men, but especially Wall, began to physically monitor the size of the class on a daily basis. Nineteen students had paid entry fees for Mindel's class. The average daily attendance, according to Mindel's records, for the first three weeks was approximately 15 with its highest level of attendance at 18 students, which was reached only twice. Wall believed that even these numbers were not a correct reflection of the actual students in attendance each day. He based his opinion on discrepancies between Mindel's records, signatures on the daily attendance sheets and on his daily classroom observations. However, the visits Wall made did not necessarily include the darkroom, a separate part of Mindel's classroom. Wall did not discuss this discrepancy with Mindel.<sup>3</sup>

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<sup>3</sup> There were numerous charges and counter-charges regarding alleged tardiness on Mindel's part, student vandalism, insufficient student control, eating lunch in the classroom and inadequate curriculum presentation referenced in the formal hearing. These charges are not directly relevant to the charge and complaint set forth herein and were not considered in the final determination in this case.

### Commercial Photography Class Closure

On October 2, 1987, Wall, with Stark accompanying him, went into Mindel's class shortly after it was scheduled to begin. Mindel asked Stark to accompany him to the darkroom to examine a malfunctioning color developer. Wall went to Mindel's desk and examined the sign-in sheet. There were only 12 students' signatures on the sheet. Wall joined Mindel and Stark in the darkroom and asked Mindel if he had warned his students that the class was in danger of being closed due to low enrollment. Mindel said that he had.

Mindel insists the Wall, while they were in the darkroom, in the presence of students, shouted at him when he asked about whether or not he had informed the students of the possibility of the class closing due to low enrollment. Wall denies he shouted at Mindel. Stark supports Wall. Dianne Ludeman, a student in Mindel's class stated that, at the time in question, she heard Wall speak to Mindel in "a rather stern manner" but did not hear what he was saying. However, she did notice that "he did cause Mr. Mindel to become visibly upset." Mr. Niditz, another adult student, was also in the darkroom at the time Wall was speaking to Mindel. Mindel introduced a letter that was purported to be from Niditz. In that letter Niditz said that:

[Wall] acted very unprofessional-like. His demeanor towards Mr. Mindel was shameful. He acted in a very unbecoming manner.

Wall, along with Stark and Mindel, after their discussion/confrontation, returned to the lecture portion of the classroom area and Wall announced that the class was going to be cancelled due to insufficient enrollment.

Mindel's Grievance re: Wall's Alleged Shouting

Mindel filed a grievance against Wall's behavior in the darkroom. After a first-level meeting, Mindel received a letter from UTLA Area Representative Barbara Ferrell stating that "a letter of apology from Mr. James R. Wall" was attached and that his (Mindel's) "remedy has been met by the District and this grievance is hereby resolved."

The "letter of apology" is set forth, in its entirety, as follows:

November 6, 1987

Ms. Barbara Ferrell  
West Valley Area Representative, UTLA  
2511 West Third Street  
Los Angeles, CA 90057

Dear Ms. Ferrell:

This letter constitutes the Step 1 response following our conference on November 5, 1987. May I thank you and Mr. Mindel for meeting with Len Griswold from Staff Relations and me to discuss this matter.

As I stated in our conference, there has never been any intent on my part at any time to embarrass Mr. Mindel, and I am sorry if he has perceived my remarks to be such.

It is the District's position that the remedy sought has been met and that the grievance is resolved.

Sincerely yours,

James R. Wall  
Principal

Wall's Alleged Promise to Reopen Class

Mindel contends that Wall, at the time he cancelled the commercial photography class on October 2, told the students that "we would try again in the second semester." John Parkhurst, a student in Mindel's class on October 2, stated that Wall told the students they would get priority registration when the class started up again in the spring semester. Parkhurst, personally, asked if the class was going to start up again in the spring and was told by Wall that it would. Wall denies that he made these statements. Parkhurst's signature, however, was not on the class sign-in sheet for that day. His explanation for this omission was that he was late and did not sign the sheet after Wall's cancellation of the class.

Parkhurst's credibility was brought into question somewhat when he admitted he had been discharged as the Center's identification photographer by Education Coordinator Stark over a violation of school rules. However, he insisted his resentment was towards Stark and not Wall.

Wall did not reopen the commercial photography class in February of 1988. Nor was there such a class in the summer of 1988 or in the fall of 1988. Wall explained these actions by stating that the commercial photography class was not a high

priority class; the class did not generate high numbers of students entering the work force.

#### Other Classes with Low Enrollment

Mindel contends there were a number of other classes at the Center that were also suffering from low enrollment and these classes were not closed. He arrived at this conclusion after walking past these classes in the mornings before his own class commenced. He did not have access to student attendance records for these classes. He listed twelve such classes in an exhibit entered into evidence at the hearing. Wall admitted that there were some other classes with low enrollment but insisted he closed two of them at about the same time Mindel's class was closed. These classes were in electronic calculating and in shorthand. He also had to reduce the number of hours of an auto alignment brakes class taught by a Mr. Fields. Fields was a tenured instructor who was guaranteed a minimum number of hours per pay period. Wall reduced Fields' class from 120 hours to 80 hours per pay period, Fields' guaranteed minimum.

The only other classes in October of 1987, which had student enrollment figures below the 18 student level, according to Wall, were (1) an evening photo equipment repair class, (2) a special option class in printing for high school students and (3) a sign painting class. The first class was kept open because it was the only one of its kind in the District. The second was a weekly class and had not yet met three times and was kept open until the

low enrollment was maintained over that period of time. Wall gave no reason for not closing the sign painting class.

There were no photography classes at the Center during the summer of 1988.

Mindel's Attempt to Reopen Spring 1988 Photography Class

In mid-December, 1987, Mindel sent a letter to Assistant Principal Barbara Arney suggesting specified publicity for his commercial photography class in the spring of 1988. He insists that he received nothing in reply until January 7, 1988, when he received a reply from Wall, dated December 16, 1987. Mindel states that the letter was postmarked January 6, 1987. The letter stated, in its entirety, as follows:

Dear Stan:

Thank you for your letter dated December 14, 1987 to Mrs. Arney. Please be advised however, your contract of employment with West Valley Occupational Center is null and void in accordance with the provision of the contract. I am including a copy of the contract for your information.

Please contact me at your convenience if I may be of further assistance.

Sincerely,

/s/ Bob  
James R. Wall<sup>4</sup>

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<sup>4</sup> "Bob" was the name James Wall was usually referred to by the teachers at the Center. It came from his middle name of Robert.

## ISSUE

Was Stanley Mindel's commercial photography class cancelled because of his protected activities, and therefore in violation of section 3543.5(a)?

## CONCLUSIONS OF LAW

In Novato Unified School District (1982) PERB Decision No. 210, the Board set forth the test for retaliation or discrimination in light of the NLRB decision in Wright Line (1980) 251 NLRB 1083 [105 LRRM 1169] enf. in part (1st Cir. 1981) 662 F.2d 899 [108 LRRM 2513]. Under Novato, unlawful motivation must be proven in order to find a violation.

In both cases, a nexus or connection must be demonstrated between the employer's conduct and the exercise of a protected right resulting in harm or potential harm to that right.

In order to establish a prima facie case, charging party must first prove the subject employee engaged in protected activity.<sup>5</sup> Then it must prove that the person(s) who made the decision that resulted in the harm were aware of such activity. Lastly, it must prove that the subject adverse action was taken, in whole or in part, as a result of such protected activity.

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<sup>5</sup> Section 3543 states, in pertinent part, that public school employees:

. . . have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. . . .



Proving the existence of unlawful motivation can be a difficult burden. The Board acknowledged that when it stated the following in Carlsbad, supra:

Proof of Unlawful Intent Where Offered or Required

Unlawful motivation, purpose or intent is essentially a state of mind, a subjective condition generally known only to the charged party. Direct and affirmative proof is not always available or possible. However, following generally accepted legal principals the presence of such unlawful motivation, purpose or intent may be established by inference from the entire record.

In addition, the Board, in Novato, supra, set forth examples of the types of circumstances to be examined in a determination of whether union animus is present and a motivating factor in the employer's action(s). The type of circumstances to be examined are (1) disparate treatment of the charging party, (2) proximity of time between the participation in protected activity and the adverse action, (3) inconsistent explanation of the employer's action(s), (4) departure from established procedures or standards, and (5) an inadequate investigation. See also Baldwin Park Unified School District (1982) PERB Decision No. 221.

There is no doubt that Mindel engaged in protected activity when he filed a grievance regarding his failure to receive a summer school assignment.

The second issue to be examined is whether the decision-maker was aware of Mindel's protected activity. The evidence shows that Wall made the decision to close Mindel's class in October of 1987. The evidence also shows that Wall was aware of

the grievance on the summer school employment denial as he personally denied the grievance as being untimely. With regard to the petition sent to Cortina, the record is not as clear. Mindel insists that not only did Wall know of the petition, he (Wall) told Mindel that he "caught hell from downtown" about it. Wall, on the other hand, insists that he did not know of the petition until he started to prepare a defense to this case. Although there is no independent proof that Wall was made aware of the petition, it is unlikely that a school administrator would receive a petition signed by eleven adult students and not discuss it with the principal of the involved school. However, Wall's knowledge of the summer school denial grievance is sufficient to support a determination that the Charging Party has met his burden of demonstrating that Mindel had engaged in protected activity which was known to the District administrator taking the subject adverse action.

The Charging Party must, in order to prevail, provide evidence proving that the cancellation of the commercial photography class was motivated, at least in part, by such protected activity.

In order to determine whether such cancellation was a result of union animus, the five circumstances set forth by the Board in Novato and Baldwin Park, supra, must be examined.

The first of these circumstances concerns the existence of any disparate treatment of the charging party. There were charges and counter-charges regarding enrollment levels of

various classes at the Center during the fall semester, 1987. Mindel listed twelve classes that he believed, based on observation alone, were well below the minimum levels set forth in the CBA. However, Wall credibly testified that he closed two other classes with low enrollment and that there were compelling reasons why he did not close two or three others, despite low enrollment.

Mindel's casual personal observations, without additional evidence, are insufficient to prove there were other classes with low enrollment that were improperly allowed to continue. Absent this proof there can be no determination that Mindel was treated in a disparate manner.

The second of the subject circumstances concerns the proximity of time between the participation in protected activity and the adverse action. The summer school employment denial grievance was filed in June of 1987. The class cancellation occurred in early October of 1987. This proximity of time could add support to an inference there was some level of causal inter-relationship involved but timing alone is not sufficient to create such an inference. Moreland Elementary School District (1982) PERB Decision No. 227; Charter Oak Unified School District (1984) PERB Decision No. 404.

The next circumstance to be examined is whether there is an inconsistent explanation of the employer's action(s). In this case there seems to be no such inconsistency. Wall closely monitored the class during the first few weeks and closed it in

its 15th meeting. It had attained its highest level of attendance, 18, only twice during these 15 sessions. There is nothing in these facts that would support an inference of unlawful motivation.

The fourth circumstance to be examined is whether there were any departures from established procedures or standards. With the exception of Mindel's charge that the Center failed to close other low enrollment classes, there were no such departures alleged.

The last circumstance is an examination of the existence of any inadequate investigation. The evidence set forth in this case reveals nothing with regard to any investigation, inadequate or otherwise.

The analysis set forth above shows that there is insufficient evidence to support a conclusion that the cancellation of Mindel's commercial photography class was the result of union animus or otherwise improperly motivated.

Much of Mindel's charge flowed from his insistence that Wall told him that he (Wall) had been chastised for the December 1986 petition. However, Wall denied making this statement. Absent some proof that the statement was made and/or some other corroborating evidence that Wall was negatively disposed towards Mindel's employment status because of this petition or some other protected activity, the Charging Party has failed to meet its burden of proof.

Based on the above analysis, it is determined that the District did not cancel Mindel's commercial photography class because of his protected activities and, therefore, did not violate section 3543.5(a).

#### SUMMARY

Based on the foregoing Findings of Fact and Conclusions of Law, and a thorough examination of the entire record, it is determined that there is insufficient evidence upon which to conclude that the District has violated sections 3543.5(a), (b) or any other section of the Act. Therefore, the Charge and its accompanying Complaint must be dismissed.

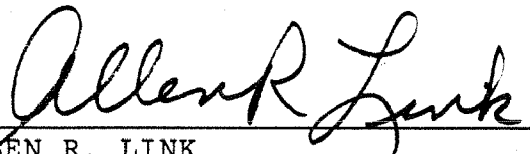
#### PROPOSED ORDER

Upon the foregoing Findings of Fact, Conclusions of Law and the entire record of this case, it is hereby ordered that the entire Complaint and the underlying Unfair Practice Charge are DISMISSED.

Pursuant to California Administrative Code, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, section 32300. 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 . . . ." See California Administrative Code, title 8, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, sections 32300, 32305 and 32140.

Dated: August 28, 1989

  
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ALLEN R. LINK  
Administrative Law Judge