**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| DARRELL RICHARD CREED, Charging Party, | ) | Case No. LA-CE-407-S |
| v. | ) | PERB Decision No. 1292-S |
| STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS), Respondent. | ) | October 21, 1998 |

Appearances: Darrell Richard Creed, on his own behalf; State of California (Department of Personnel Administration) by Michael P. Cayaban, Labor Relations Counsel, for State of California (Department of Corrections).

Before Johnson, Dyer and Jackson, Members.

DECISION

JOHNSON, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Darrell Richard Creed (Creed) of an administrative law judge's (ALJ) proposed decision (attached). The ALJ dismissed the charge which alleged that the State of California (Department of Corrections) (State) violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act)[1] by issuing a Letter of Instruction and a Counseling

[1]The Dills Act is codified at Government Code section 3512 et seq. Section 3519 states, in pertinent part:

> It shall be unlawful for the state to do any of the following:
>
> (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. For purposes of

Memorandum to Creed in retaliation for his protected activity.

The Board has reviewed the entire record including the proposed decision, Creed's exceptions and the State's exceptions and responses. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge and complaint in Case No. LA-CE-407-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Jackson joined in this Decision.

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this subdivision, "employee" includes an applicant for employment or reemployment.

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

**STATE OF CALIFORNIA**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| DARRELL RICHARD CREED,<br><br>Charging Party,<br><br>v.<br><br>STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS),<br><br>Respondent. | ) | Unfair Practice<br>Case No. LA-CE-407-S<br><br>PROPOSED DECISION<br>(5/21/98) |

Appearances: California Correctional Peace Officers Association by Chris Uyemura, Senior Hearing Representative, for Darrell Richard Creed; State of California (Department of Personnel Administration) by Michael P. Cayaban, Legal Counsel, for State of California (Department of Corrections).

Before Thomas J. Allen, Administrative Law Judge.

## PROCEDURAL HISTORY

In this case, a state employee alleges the state employer retaliated against him because of his protected activity. The state employer denies any retaliation.

Darrell Richard Creed (Creed) filed an unfair practice charge against the State of California (Department of Corrections) (State) on May 20, 1997. The Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint on July 1, 1997, alleging the State retaliated against Creed, by issuing him a letter of instruction and a counseling memorandum, because he had served as a job steward for the California Correctional Peace Officers Association (CCPOA) and had filed numerous grievances. The State filed an answer on July 14, 1997, denying it retaliated against Creed.

PERB held an informal conference on September 4, 1997, and a formal hearing on January 22 and 23, 1998. With the filing of post-hearing briefs on April 20, 1998, the case was submitted for decision.

## FINDINGS OF FACT

The State is the state employer under the Ralph C. Dills Act (Dills Act).[1] Creed is an employee under the Dills Act, and CCPOA is an employee organization under the Dills Act.

Creed worked for the State as a parole agent for over three years, until his retirement shortly before the hearing. By all accounts, he was good at his job. In April 1996, Creed became a CCPOA steward. At that time, Arthur Ramirez (Ramirez) was the assistant unit supervisor for Creed's unit, and Creed and Ramirez had a friendly relationship.

Creed testified he had a conversation with Ramirez while considering becoming a steward. According to Creed, Ramirez told him to be careful if he became a steward, that he might win some issues but the State would wait and retaliate against him. Creed did not understand this to be a threat, but it understandably caused him concern. Ramirez denies making the comment, but I credit Creed's testimony on this point. It may have been a

[1]The Dills Act is codified at Government Code section 3512 and following. Unless otherwise indicated, all statutory references herein are to the Government Code.

casual comment on Ramirez's part, but Creed had reason to remember it. I do not believe Creed fabricated the incident.[2]

Between May and November of 1996, Creed filed approximately 15 grievances. It was stipulated that Creed engaged in protected activity. On August 15, 1996, Ramirez became the unit supervisor for Creed's unit. At some point, the relationship of Creed and Ramirez became less friendly and more formal.

On November 27, 1996, Creed was served with both a letter of instruction and a counseling memo. The letter of instruction stated in full as follows:

> LETTER OF INSTRUCTION REGARDING UNAUTHORIZED CHANGING OF WORK SCHEDULE AND OVERTIME
>
> Section 11.15(e) of the most recent Unit Six Memorandum of Understanding (MOU) stipulates that parole agent requested changes in the work schedules, excluding emergencies, will require prior supervisory approval. In addition, parole agents will advise the supervisor of emergency changes no later than the next working day.
>
> On August 30, 1996, the above information was reviewed during the Santa Ana II staff meeting. Parole Administrator Art Lucero also attended this staff meeting and affirmed the above information.
>
> On November 1, 1996, I reviewed your Employee Attendance Record (CDC 998) for the month of October, 1996. I observed you changed your work schedule on October 30 and 31, 1996, without prior unit supervisor approval in order to do non-emergency work. In addition, I observed that you submitted overtime for

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[2]I do not give any weight, however, to the declaration of another former parole agent, who supposedly witnessed the conversation. This former agent could have been subpoenaed to testify but was not. He resigned after being charged with (among other things) dishonesty.

three hours on October 30, 1996, without prior unit supervisor approval.

On November 1, 1996, I discussed this issue with you. You stated the overtime was necessary because you were asked to cover officer of the day duties for three hours on October 30, 1996. I had informed you on October 30, 1996, if the amount of time you worked as OD precluded you from completing your casework requirements to contact me later in the week to discuss the issue further.

You admitted that you changed your work schedule on October 30 and 31, 1996, without prior unit supervisor approval. You stated you changed your work schedule to add one hour of work (nine hours) on each date, to collect the overtime. You also stated that you intended to work one hour (nine hours) on November 1, 1996, to collect the final hour of overtime to compensate for the extra OD coverage on October 30, 1996. You indicated you realized that you could have made a request to receive overtime for three hours later in the week and that you did not want to do that.

You are instructed to review Section 11.15 (e) of the Unit Six MOU. It is expected that you will comply with the requirements of the MOU and future requests for work schedule changes will be approved in advance by the Unit Supervisor except in emergency situations.

This Letter of Instruction is not intended to be construed as an adverse personnel action. It may be used as supporting evidence by the State in a later disciplinary action, if the expiration date has not yet occurred, in order to show that the State has attempted to apply progressive discipline.

This Letter of Instruction will be placed in your personnel file for 12 months from the start of business on November 27, 1996, and will be removed from your file upon your request after the close of business on November 27, 1997.

The counseling memorandum stated in full as follows:

COUNSELING MEMORANDUM REGARDING REQUESTING POLICE ASSISTANCE WITHOUT SUPERVISORY CONFERENCE

On October 31, 1996, I reviewed the BPT report written by you on Parolee Lawrence Pease, J-68841. While reviewing the report, I noted you requested the assistance of deputies from the Orange County Sheriff's Department (OCSD) in an attempt to locate Parolee Pease, a pre-pal, at a specific motel room in the City of San Clemente without conferencing the Subject's case with a supervisor. I asked AUS Myrtle Sheffield if you conferenced the Subject's case with her and she stated you did not.

A review of the Subject's field file indicates an activity report, submitted by you, showing the Subject's arrest by the OCSD on October 22, 1996. The BPT report, written by you, states "On 10/22/96, at 1405 hours, Deputy Higa, #1925 and other deputies of the Orange County Sheriff's Department, at the request of the undersigned, responded to a local transient motel in an attempt to locate the Subject." I also noted that the Subject attempted to flee the motel area causing the OCSD to initiate a foot pursuit to place the Subject in custody.

On October 31, 1996, I discussed this with you and you initially stated you could not remember if you conferenced with a supervisor sending the OCSD to attempt to locate the Subject. You later stated you believed you did conference the case with me. I told you that you had not conferenced the case with me regarding sending the OCSD to attempt to detain or arrest the parolee at a specific motel room. You stated that you believe it is within department policy to request law enforcement assistance in attempting to locate and detain parolees until the officers can contact the Agent for further instructions.

You are instructed to review Sections 81030.5.1 and 81030.15.1 of the CDC DOM which stipulate the parole agent will conference the case with the Unit Supervisor prior to arresting a parolee. Any future requests to

> send any other law enforcement official or parole agent to attempt to detail or arrest a parolee shall include a prior conference with a supervisor.

The factual background of these two documents is discussed below.

The service of the two documents was procedurally unusual, at least in part because Ramirez had just been transferred to a different unit in a different office. Although the documents called for Ramirez's signature, they were actually signed for him by another unit supervisor, and they were served by the regional employee relations officer. As was normal, the regional administrator signed the letter of instruction (a higher level of documentation) but not the counseling memo. It was unusual for an employee to receive both a letter of instruction and a counseling memo on the same day.

The documentation process began in early November, when Ramirez told his superior, the district administrator, about problems with Creed. The district administrator told Ramirez to write memos about the problems, which Ramirez did. The district administrator then forwarded the memos to the regional employee relations officer for guidance. Neither Ramirez nor the district administrator made the decision as to what documentation, if any, would be issued. The regional employee relations officer testified the decision was made either by the regional administrator (who ultimately signed the letter of instruction) or by the deputy regional administrator. The regional employee relations director then put the documentation in final form.

Ramirez and the district administrator could have issued a counseling memorandum without involving the regional administration. The regional employee relations director could not recall receiving other counseling memorandums from Ramirez. The district administrator testified he involved the regional administration in order to make sure the documentation was "compatible with what we do throughout the Region."

After he received the documents, Creed filed a grievance challenging both of them. In response to the grievance, the regional administrator decided to "pull" the counseling memorandum, but she let the letter of instruction stand.

Letter of Instruction (Work Schedule)

The letter of instruction, quoted in full above, cited section 11.15(e) of the most recent collective bargaining agreement between CCPOA and the State. That section stated in full as follows:

> Each Parole Agent shall submit a proposed work schedule to the supervisor for each month at least seven (7) calendar days, but no more than fourteen (14) calendar days, prior to the beginning of the scheduled month for supervisory approval. The schedule will represent all work hours which shall include all regular and irregular work hours, work days, weekend work, evening work, days off, Office Day duty, and other special assigned responsibilities. The supervisor shall insure that Agents comply with the scheduling requirements of the Contract and the meeting of operational needs. The supervisor shall approve, unless it can be documented that the scheduled work hours as submitted would be detrimental to the needs of the office or would hinder the Parole Agent in the performance of his/her duties and responsibilities, the work schedule at least

> three (3) days prior to the scheduled month. This documentation shall be provided upon the employee's request. If the Parole Agent does not submit a monthly work schedule, the supervisor will assign the work schedule.
>
> During the scheduled month the supervisor may occasionally adjust the work hours based on operational needs with written justification to the Parole Agent. This adjustment shall not be intended to avoid the assignment of overtime if the Agent's workload requires overtime work. Parole Agent requested changes in the work schedules, excluding emergencies, will require prior supervisory approval. Parole Agents will advise the supervisor of emergency changes no later than the next work day. [Emphasis added.]

Management regarded the requirement of prior supervisory approval for schedule changes as important for both operational and safety reasons.

In late August 1996, shortly after Ramirez became unit supervisor, he held a staff meeting at which the requirement of prior supervisory approval for schedule changes was discussed. The district administrator was present to reinforce the message; Creed was also present. According to Ramirez, there was specific discussion that a parole agent asked to do "officer of the day" duties early in the week would need to show the unit supervisor towards the end of the week that the agent needed overtime to complete particular job requirements.

In September 1996, Ramirez became aware a parole agent (not Creed) had changed his work schedule without prior approval. Ramirez spoke to this agent, who agreed to comply with the requirement in the future. Either before or after speaking with

the agent, Ramirez verbally "noticed" the district administrator about the situation, which was not documented at that time.

On November 1, 1997, Ramirez became aware the same agent had again changed his schedule without prior approval. Ramirez again talked to the district administrator, who told Ramirez to write a memo. The resulting memo then apparently went through the same process as the memo about Creed's schedule change: the district administrator forwarded the memo to the regional administration, and the regional administrator ultimately signed a letter of instruction, which was then served on the agent.

The letter of instruction regarding Creed's schedule change arose out of events beginning on October 29, 1996. Creed was scheduled to work 10 a.m. to 6 p.m. that day, but he arrived at the office early. The agent assigned to do "officer of the day" duties was not there, so the assistant unit supervisor asked Creed to cover those duties. Creed asked if he could have overtime. The assistant unit supervisor checked with Ramirez, who said Creed could have overtime if he needed it. Creed then told the unit supervisor he did need overtime. It does not appear, however, that Creed told anyone he needed a specific amount of overtime to complete particular tasks, or that he received authorization to make any specific schedule changes.

On his attendance record for the October 1996 pay period, Creed put down 9 hours of work for both October 29 and 30, instead of the 8 hours he was scheduled to work. October 31 was part of the November 1996 pay period; Creed later put down

9 hours for that day too. On November 1, 1996, when Ramirez saw Creed's October attendance record, he questioned Creed about it. Thereafter, Ramirez spoke to the district administrator and wrote the memo that led to the letter of instruction.

The letter of instruction was inaccurate in at least one detail: it stated Ramirez observed from Creed's October attendance record that Creed had changed his schedule on "October 30 and 31." The correct dates would be October 29 and 30. I attach no significance to this inaccuracy, however. I do not believe Ramirez deliberately misrepresented this or any other fact to his superiors, nor do I believe the inaccuracy shows inadequate investigation.

Counseling Memorandum (Police Assistance)

The counseling memorandum, quoted in full above, cited section 81030 of the Department Operations Manual (DOM), which covers the subject "Arrest and Parole Hold." Subsection 81030.1 states in part, "A parolee shall be arrested and a . . . parole hold placed when there is reasonable cause to believe a parolee has violated the conditions of parole and . . . [m]ay abscond." Subsection 81030.5 states the following planned arrest policy:

> Arrests are situations of high potential danger that require thoughtful planning. Every arrest, when possible, will be reviewed with the unit supervisor prior to the arrest. Arrests will not be made at all cost [sic].

Subsection 81030.5.1 then establishes certain planned arrest procedures; it states in part that prior to the arrest the parole agent "[r]eviews planned arrest with unit supervisor," including

"location of arrest and potential interference by others." The unit supervisor then "[d]etermines which parole agents or law enforcement personnel will assist in the arrest," while the parole agent "[d]etermines tactics to be used (as person in charge)." Subsection 81030.15.1 similarly states in part the parole agent "[r]eviews proposed arrest with unit supervisor," "[p]articipates in arrest," " [r]equests assistance of law enforcement" and "[a]ssumes tactical command."

Subsection 81030.6 states the following unplanned arrest policy:

> The parole agent may unexpectedly find a parolee engaged in behavior which calls for arrest. The decision to arrest must be made quickly and without the opportunity to confer with the unit supervisor. Such an arrest is usually made without assistance and thus potential for injury may be increased.

Subsection 81030.6.1 then establishes unplanned arrest procedures without mentioning the unit supervisor.

Subsection 81030.16 states the following policy on delegation of search and arrest authority to law enforcement:

> A parole agent who, based on reasonable belief concludes that a parole violation has occurred, can delegate [the State's] authority to search and arrest a parolee. The agent is not required to be personally present during the law enforcement arrest or investigation of a parolee.

Subsection 8103 0.16.1 then establishes delegation procedures without mentioning the unit supervisor; it states in part the parole agent "makes independent judgment whether a parole violation or criminal act has occurred" and "[d]elegates parole

authority to law enforcement to arrest or search a parolee if reasonable belief exists."

It is unclear from the record exactly how all these DOM subsections are supposed to fit together. Creed and another parole agent testified they understood the planned arrest policy, with its emphasis on unit supervisor review, did not apply when parole agents were not involved in the actual arrest. This is a plausible interpretation of the DOM, especially given subsections 81030.16 and 81030.16.1 on delegation.

Ramirez, on the other hand, testified he understood the planned arrest policy applied even when parole agents would not be involved in the arrest. Citing DOM subsection 81030.5.1, he testified, "The unit supervisor makes the decision whether parole agents themselves will participate in the arrest and whether law enforcement personnel . . . will assist in the arrest." This too is a plausible interpretation of the DOM. There was no specific evidence that Ramirez or his superiors were inconsistent in enforcing this interpretation.

Prior to the events giving rise to the counseling memorandum, Ramirez and Creed had another disagreement about the application of the planned arrest policy, when Ramirez questioned whether a particular arrest was planned or unplanned. Creed testified Ramirez "finally concurred" with Creed's view of the arrest, but in his grievance Creed stated, "There did not seem to be any way to resolve the disagreement."

The counseling memorandum itself arose out of events occurring on October 22, 1996. On that date, Creed received information that one of his parolees was possibly at a particular motel in San Clemente. Creed was looking for this parolee, who had absconded from a drug rehabilitation program. Creed had already written a Parolee At Large (PAL) report, which Ramirez had just signed. A PAL report is submitted to the Board of Prison Terms, which can suspend parole and issue a warrant, authorizing law enforcement to arrest the parolee on sight.

Creed was able to get the address of the motel but not a phone number or the parolee's room number. Creed testified he then went to Ramirez and told him they might not need the PAL report, because Creed thought he had found the parolee and was "talking to the cops to send them there." According to Creed, Ramirez's response was "okay, well, let me know." Ramirez testified he did not remember such a conversation. It is clear in any case that Creed and Ramirez did not have the kind of planned arrest conference described in DOM subsection 81030.5.1.

Creed then called the Sheriff's Department and asked an officer to go to the motel to see if the parolee was there and, if so, to detain him while Creed sent a parole hold. About 30 minutes later the officer called back, huffing and puffing and cursing at Creed, because the officer had chased the parolee, who had jumped out a back window. The officer told Creed to send the parole hold to the Orange County jail, where the parolee was being booked for evading arrest.

Creed testified he then went to Ramirez, told him the parolee was in jail, and asked what to do with the PAL report. According to Creed, Ramirez said to "do whatever you want," so Creed tore it up.

On October 31, 1996, Ramirez read Creed's report on the parolee and noted that Creed had requested the assistance of the Sheriff's Department in locating the parolee. Ramirez asked the assistant unit supervisor if Creed had conferenced the case with her; she said no. Ramirez then discussed the matter with Creed and with the district administrator, before writing the memo that led to the counseling memorandum.

The counseling memorandum was inaccurate in at least one detail: it stated Creed asked the Sheriff's Department to help locate the parolee "at a specific motel room." In fact, Creed did not know the specific room. I attach no particular significance to this inaccuracy, however. I do not believe Ramirez deliberately misrepresented this or any other fact to his superiors, nor do I believe the inaccuracy shows inadequate investigation.

In her response to Creed's grievance, the regional administrator stated in part:

> In our grievance conference you provided information which I feel mitigates your actions in the incident described in the Counseling Memorandum. You had submitted a PAL Report on the case prior to requesting the assistance of the police department in arresting the parolee. I am pulling the Counseling Memorandum from your supervisor's file and it will be provided to you.

She further explained to Creed "that you presented a reasonable argument that while the PAL warrant was technically not yet in the system, you had initiated the paperwork to begin the process."

ISSUE

Did the State retaliate against Creed?

CONCLUSIONS OF LAW

In order to prevail on a retaliatory adverse action charge, a charging party must establish that the employee was engaged in protected activity, the activities were known to the employer, and the employer took adverse action because of such activity. (Novato Unified School District (1982) PERB Decision No. 210 (Novato).) Unlawful motivation is essential to a charging party's case. In the absence of direct evidence, an inference of unlawful motivation may be drawn from the record as a whole, as supported by circumstantial evidence. (Carlsbad Unified School District (1979) PERB Decision No. 89.) From Novato and a number of cases following it, any of a host of circumstances may justify an inference of unlawful motivation on the part of the employer. Such circumstances include: the timing of the adverse action in relation to the exercise of the protected activity (North Sacramento School District (1982) PERB Decision No. 264); the employer's disparate treatment of the employee (State of California (Department of Transportation) (1984) PERB Decision No. 459-S); departure from established procedures or standards (Santa Clara Unified School District (1979) PERB Decision No.

104); inconsistent or contradictory justifications for its actions (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S); or employer animosity towards union activists (Cupertino Union Elementary School District (1986) PERB Decision No. 572).

In the present case, there is no dispute Creed engaged in protected activity known to the State. There is also no dispute the State took adverse actions against Creed.[3]

The question is whether the State took the adverse actions against Creed because of his protected activity.[4] The timing of the adverse actions, after some six months of protected activity by Creed, makes unlawful motivation a possibility, but there is nothing else particularly suspicious about the timing. Timing by itself would not support an inference of unlawful motivation in any case. (Moreland Elementary School District (1982) PERB Decision No. 227.)

Creed argues he received disparate treatment, because the other parole agent who changed his work schedule did not receive a letter of instruction until his second violation. Under the circumstances, however, I do not believe this difference in

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[3]Although the State does not regard a letter of instruction or a counseling memorandum as an "adverse personnel action" for its own purposes, the letter and memorandum to Creed were adverse actions for PERB's purposes, because a reasonable person under the circumstances would consider them to have an adverse impact on Creed's employment. (Newark Unified School District (1991) PERB Decision No. 864.)

[4]The question is not whether the adverse actions were right or wrong in any other way.

treatment justifies an inference of unlawful motivation. The previous verbal agreement with the other parole agent had proved unsuccessful in achieving compliance, even while Ramirez remained supervisor of the unit. With Ramirez transferring away from the unit, it made sense for the State to issue formal counseling memorandums to both Creed and the other parole agent, in order to give the new unit supervisor a reasonable assurance of compliance.

Creed also argues the State departed from established procedures, because the counseling memorandum could have been issued without involving the regional administration. Again, under the circumstances, I find nothing suspicious about the procedure the State followed. Ramirez, the unit supervisor who would normally sign a counseling memorandum, was being transferred, and a new unit supervisor would have to deal with the situation in the future. Furthermore, the contemporaneous letter of instruction to Creed would already normally involve the regional administration. It made sense for the State to have both contemporaneous documents reviewed at the regional level, to make sure (as the district administrator testified) they were "compatible with what we do throughout the Region."

Creed also argues Ramirez's comment in or around April 1996 demonstrated animosity towards union activists. I have credited Creed's testimony that Ramirez told him to be careful if he became a steward, that he might win some issues but the State would wait and retaliate against him. Creed himself, however,

did not understand this to be a threat by Ramirez, with whom he then had a friendly relationship. If anything, the comment would seem to show that Ramirez, before he became unit supervisor, may have had some animosity towards management. I do not believe Ramirez changed so much in six months he became guilty of the same unlawful practices he previously attributed to management (however casually). I conclude Creed has not established a reasonable inference that the adverse actions against him were unlawfully motivated by his protected activity.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, and upon the entire record in this matter, it is ordered that the complaint and the underlying unfair practice charge in Case No. LA-CE-407-S, Darrell Richard Creed v. State of California (Department of Corrections), are hereby dismissed.

Pursuant to California Code of Regulations, 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 Cal. Code Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5 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 Cal. Code Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 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 Cal. Code Regs., tit. 8, secs 32300, 32305 and 32140.)

THOMAS J. ALLEN
Administrative Law Judge