STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ACADEMIC PROFESSIONALS OF CALIFORNIA, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Respondent.	Case No. LA-CE-579-H PERB Decision No. 1451-H June 25, 2001

Appearances: Rothner, Segall, & Greenstone by Ricardo Ochoa, Attorney, for Academic Professionals of California; James R. Lynch, University Counsel, for Trustees of the California State University.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case comes before the Public Employment Relations Board (Board) on exceptions filed by the Trustees of the California State University (CSU) to an administrative law judge's (ALJ) proposed decision (attached) finding a violation of section 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (HEERA).[1]

[1] HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3571 states:

> It shall be unlawful for the higher education employer 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

After reviewing the entire record, including the stipulations of the parties, the ALJ's proposed decision, CSU's statement of exceptions and the response of the Academic Professionals of California, the Board hereby affirms the ALJ's proposed decision in its entirety and adopts it as the decision of the Board itself.

ORDER

Based on the foregoing, it is found that the Trustees of the California State University (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571(a), (b) and (c) by unilaterally changing its policy on name tags. Pursuant to HEERA section 3563.3, it is hereby ORDERED that CSU, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally changing its policy on name tags.

2. Interfering with the right of employees to be represented by the Academic Professionals of California (APC).

3. Denying APC, its right to represent employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HEERA:

1. If requested by APC, within 10 days of this decision, meet and negotiate in good faith with APC concerning the name tag policy.

2. If requested by APC, rescind the current name tag policy.

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

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

3. Make whole any unit members adversely affected by the current name tag policy, with interest at the rate of 7 percent per annum on any back pay.

4. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all locations where notices are customarily posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSU, indicating that CSU will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

5. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with the director's instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on the APC.

Members Amador and Whitehead joined in this Decision.

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-579-H, Academic Professionals of California v. Trustees of the California State University, in which all parties had the right to participate, it has been found that the Trustees of the California State University violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571(a), (b) and (c), by unilaterally changing its policy on name tags.

As a result of this conduct, we have been ordered to post this notice and we will:

A. CEASE AND DESIST FROM:

1. Unilaterally changing our policy on name tags.

2. Interfering with the right of employees to be represented by the Academic Professionals of California (APC).

3. Denying APC its right to represent employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HEERA:

1. If requested by APC, within 10 days of this decision, meet and negotiate in good faith with APC concerning the name tag policy.

2. If requested by APC, rescind the current name tag policy.

3. Make whole any unit members adversely affected by the current name tag policy, with interest at the rate of 7 percent per annum on any back pay.

Dated: _____

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ACADEMIC PROFESSIONALS OF CALIFORNIA, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-579-H PROPOSED DECISION (3/16/2001)

Appearances: Edward R. Purcell, Consultant, for Academic Professionals of California; James R. Lynch, University Counsel, for Trustees of the California State University.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union alleges that a higher education employer made an unlawful unilateral change in policy concerning name tags. The employer denies any unlawful conduct.

On April 19, 2000, the Academic Professionals of California (APC or Union) filed an unfair practice charge against the Trustees of the California State University (CSU or University). On August 9, 2000, the Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint against CSU, which filed an answer on September 5, 2000.

On September 29, 2000, PERB held an informal settlement conference with the parties. The case was not settled, but the parties agreed to the use of a stipulation in lieu of a formal hearing. With the receipt of the final post-stipulation brief on March 5, 2001, the case was submitted for decision.

FINDINGS OF FACT

CSU is a higher education employer under the Higher Education Employer-Employee Relations Act.[1] APC is an employee organization under HEERA and is the exclusive representative of employees in CSU's Unit 4. There has been a collective bargaining agreement in effect between the parties at all relevant times.

Because the parties' stipulation is relatively brief, I shall quote it in full. It begins:

> The parties hereby stipulate that the following definitions and statements of fact are relevant and true, for the purpose of this proceeding. In entering this stipulation, the parties do not waive their respective rights to make any other legal arguments about these definitions and facts. In writing their "post-hearing" briefs, either party may refer to and attach copies of the applicable collective bargaining agreement in effect on December 7, 1999.
>
> Definitions:
>
> "Bargaining Unit" - Unit 4 in the California State University system, whose exclusive representative is the Academic Professionals of California.
>
> "Name tag" - a tag, card, or other insignia that displays the name of the wearer and the division/department in which he/she works.
>
> "Directive" - a memo dated December 7, 1999, issued by Vincent Lopez, requiring employees within the Division of Student Affairs under the supervision of Karl Beeler, Assistant Vice President for Student Affairs, to wear name tags at all times while on duty. A true and correct copy of the directive is attached hereto.

The attached directive states in relevant part:

> Nametags: In the interest of good customer service, Dr. Beeler has directed all units under his supervision to wear nametags. Nametags were provided to each full-time staff member. The nametags provided need to be worn while representing the university both on and off campus. Please discard any previous nametags you have.

[1] HEERA is codified at Government Code section 3560 and following.

The stipulation continues:

> Statements of Fact:
>
> 1. All name tags are paid for by the University and provided free to bargaining unit employees.
>
> 2. Until December 7, 1999, no written University policy or directive compelled employees in the bargaining unit to wear name tags. It is possible that bargaining unit employees wore name tags on a voluntary or intermittent basis, or pursuant to non-written directives prior to December 7, 1999.
>
> 3. The policy reflected in the directive is not applied systemwide.
>
> 4. The University has not offered to meet and confer regarding the directive, either before or after its issuance.
>
> 5. The University employs some bargaining unit employees in divisions other than Student Affairs.
>
> 6. The bargaining unit's collective bargaining agreement in effect at the time of the issuance of the directive does not specifically address or refer to the wearing of name tags. The collective bargaining agreement contains a "zipper clause," a copy of which is attached hereto.

The attached "zipper clause" (Article 3 of the collective bargaining agreement) states in relevant part:

> 3.1 This Agreement constitutes the entire Agreement of the Trustees [CSU] and the Union, arrived at as a result of meeting and conferring. The terms and conditions may be altered, changed, added to, deleted from, or modified only through the voluntary and mutual consent of the parties in an expressed written amendment to the Agreement. This Agreement supersedes all previous Agreements, understandings, policies, and prior practices related to matters included within this Agreement.
>
> 3.2 The parties acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to offer proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and

> opportunity are set forth in this Agreement. Except as provided for in this Agreement, the Employer and the Union, for the life of this Agreement, voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

The stipulation concludes:

> 7. The directive does not specify penalties or a process for reviewing violations thereof. The University does treat violation of the directive as an offense for which, depending on the circumstances, an employee may be reprimanded or disciplined (suspended, demoted, or dismissed).
>
> 8. Since December 7, 1999, the University has suspended one employee for various charges that included one violation of the directive. An appeal of the suspension has been heard and is pending before the State Personnel Board.
>
> 9. When employees in the Department of Outreach and Recruitment (which is within the Student Affairs division) were told of the name tag policy, one employee expressed safety concerns related to a previous incident on campus of an employee being stalked.
>
> 10. The work performed by bargaining unit members in the Department of Outreach and Recruitment involves substantial off-campus travel and appearances.

This proposed decision is based exclusively on the stipulation and its attachments.[2]

ISSUE

Did CSU make an unlawful unilateral change in policy concerning name tags?

[2] Because it is not within the stipulation, I have not read and shall not consider the State Personnel Board decision that CSU attached to its brief.

CONCLUSIONS OF LAW

The PERB complaint alleges that CSU violated HEERA section 3571(c) by unilaterally requiring some Unit 4 employees to wear name tags. In determining whether a party has violated HEERA section 3571(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of the conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

In the present case, the crucial question is whether CSU's policy on name tags concerns a matter within the scope of representation. HEERA section 3562(r) defines the relevant scope of representation as follows:

> (1) For purposes of the California State University only, "scope of representation" means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:
>
> (A) Consideration of the merits, necessity, or organization of any service, activity, or program established by statute or regulations adopted by the trustees, except for the terms and conditions of employment of employees who may be affected thereby.
>
> (B) The amount of any student fees which are not a term or condition of employment.
>
> (C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and conduct of courses, curricula, and research programs.

> (D) Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees, which shall be the joint responsibility of the academic senate and the trustees. The exclusive representative shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this subparagraph. If the trustees withdraw any matter in this subparagraph from the responsibility of the academic senate, the matter shall be within the scope of representation.
>
> (E) The amount of rental rates for housing charged to California State University employees.
>
> (2) All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

PERB has not yet provided general guidance on how to interpret and apply this section of HEERA.

In the present case, it appears that CSU's name tag policy does not concern "wages" or "hours of employment." The name tags are paid for by CSU and provided free to the employees, and wearing the name tags has no apparent effect on the employees' work hours. The question, therefore, is whether the name tag policy concerns "other terms and conditions of employment" within the meaning of HEERA section 3562(r).

In its brief, CSU argues that PERB should interpret the phrase "terms and conditions of employment" in HEERA the same way PERB interprets that phrase in the Educational Employment Relations Act (EERA).[3] APC, however, argues that PERB should interpret the phrase the way PERB interprets it in the Ralph C. Dills Act (Dills Act).[4] On this point, APC has the better argument. EERA section 3543.2 differs from HEERA section 3562(r) in that the

[3] EERA is codified at Government Code section 3540 and following.
[4] The Dills Act is codified at Government Code section 3512 and following.

EERA section enumerates specific terms and conditions of employment. Dills Act section 3516 is more similar to HEERA section 3562(r) in that it contains no such enumeration. It thus appears the Dills Act precedents are more directly applicable to HEERA cases.

PERB interpreted Dills Act section 3516 for the first time in State of California (Department of Transportation) (1983) PERB Decision No. 333-S. In that case, PERB stated in part:

> In interpreting language of [the Dills Act], cognizance should be taken of the decisions of the National Labor Relations Board (NLRB) interpreting identical or similar language in the NLRA [National Labor Relations Act]. Fire Fighters v. City of Vallejo (1974) 12 Cal.3d 608. In light of the virtually identical scope language of [the Dills Act] and the NLRA, PERB finds private sector precedent regarding scope to be applicable to [Dills Act] cases.

For the same reason, private sector precedents regarding the scope of representation should also be applicable to HEERA cases.

Unfortunately, neither the parties nor I have found any private sector precedents specifically concerning name tags. CSU's name tag policy does, however, appear to fall into a category of policies that in the private sector would be called "plant rules." The NLRB has long held plant rules to be within the scope of representation. In Miller Brewing Co. (1967) 166 NLRB 831 [65 LRRM 1649], enforced (9th Cir. 1969) 408 F.2d 12 [70 LRRM 2907], the NLRB declared in part:

> There can be no doubt . . . that the contents of plant rules are mandatory subjects of bargaining.

Similarly, in Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802, 815 [165 Cal.Rptr. 908], the court noted in part:

> In the private sector it has been found that disciplinary and plant rules are examples of "terms and conditions of employment," . . .

The NLRB has treated dress codes, among other policies, as plant rules within the scope of representation. (Transportation Enterprises, Inc. (1979) 240 NLRB 551 [100 LRRM 1330], modified in other respects (5th Cir. 1980) 630 F.2d 421 [105 LRRM 3168]; Concord Docu-Prep, Inc. (1973) 207 NLRB 981 [85 LRRM 1416].)

PERB again interpreted Dills Act section 3516 in State of California (Department of Transportation) (1983) PERB Decision No. 361-S. PERB set out to "fashion and state a test to guide the parties in determining whether given subjects are within scope." PERB stated in part:

> Initially we note that it is unnecessary to apply a test to certain matters which clearly fall within the category of wages or hours, for such subjects are expressly enumerated as within scope by the statute. With respect to other subjects arguably within the less precise category ". . . terms and conditions of employment . . . .", PERB will find such matters within scope if they involve the employment relationship and are of such concern to both management and employees that conflict is likely to occur, and if the mediatory influence of collective negotiations is an appropriate means of resolving the conflict.
>
> Such subjects will be found mandatorily negotiable under [the Dills Act] unless imposing such an obligation would unduly abridge the . . . employer's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the [employer's] mission.

Thus, under the Dills Act, a subject is within the scope of representation as concerning "terms and conditions of employment" if (1) it involves the employment relationship, (2) it is of such concern to both management and labor that conflict is likely to occur and the mediatory influence of collective negotiations is an appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not unduly abridge its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement

of the employer's mission.[5] Presumably the same test should be used under HEERA, which has language similar to Dills Act section 3516.

Applying this test to the present case I conclude, first, that CSU's name tag policy "involves the employment relationship." As the parties stipulated, the policy requires employees to wear name tags "at all times while on duty." Furthermore, as also stipulated, CSU treats violations of the policy as offenses for which employees may be "reprimanded or disciplined (suspended, demoted, or dismissed)." Also, while CSU employees may be CSU students or tenants of CSU housing, the name tag policy applies to them only as employees, not as students or tenants.[6]

Second, I conclude that CSU's name tag policy is of sufficient concern as to give rise to conflicts that collective negotiations may appropriately resolve. The fact is that some people hate to wear name tags. To accommodate such people, APC and CSU could conceivably negotiate exceptions or alternatives to CSU's policy. For example, the parties might negotiate exceptions for employees working away from public view (on computers or telephones, for example). For another example, the parties might negotiate alternative ways for employees to identify themselves, such as the use of nameplates or business cards.

Some people are concerned that name tags may compromise their personal security. Unfortunately, one cannot dismiss the possibility that a disgruntled or unstable student might use the information on an employee's name tag to harass the employee at home. To accommodate such concerns, some employers have allowed employees to choose what goes on

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[5] This test is parallel to but somewhat different from the test for subjects not specifically enumerated under EERA. (See Anaheim Union High School District (1981) PERB Decision No. 177.)

[6] HEERA section 3562(r)(1) specifically excludes from the scope of representation both student fees and rental rates for housing.

their name tags, so employees can identify themselves without necessarily giving out their full names (or even their real names). This is another example of an issue that the parties might negotiate.[7]

The final question is whether obliging CSU to negotiate its name tag policy would unduly abridge CSU's freedom to exercise managerial prerogatives essential to CSU's mission. In its brief, CSU argues that "the decision to identify Student Affairs employees to customers is a management prerogative." I do not disagree. CSU should be free to decide that its Division of Student Affairs will not be a nameless bureaucracy where follow-up and accountability are unnecessarily difficult. As I have already indicated, however, a blanket requirement that all employees wear name tags is not necessarily the only way or the best way to implement such a decision. For some employees, nameplates or business cards may serve the employer's purpose as well as name tags do, while for other employees (working on computers or telephones) name tags may not serve that purpose at all. I conclude that obliging CSU to negotiate its name tag policy would not unduly abridge CSU's freedom to exercise managerial prerogatives.

For all the foregoing reasons, I conclude that CSU's name tag policy does concern "terms or conditions of employment" within the meaning of HEERA section 3562(r). Given that conclusion, the parties' stipulation meets all the criteria for a violation of HEERA section 3571(c), in that (1) CSU implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before CSU notified APC and gave it an opportunity to request negotiations. Because CSU's conduct interfered with the right of

[7] By giving examples of issues the parties might negotiate, I do not imply that the parties should necessarily agree on those issues, or that there are no other issues the parties might negotiate.

employees to be represented on an issue within scope, and denied APC its right to represent employees on that issue, CSU's conduct also violated HEERA section 3571(a) and (b).

REMEDY

HEERA section 3563.3 gives PERB:

> . . . the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter [HEERA].

In the present case, CSU has been found to have violated HEERA section 3571(a), (b) and (c) by unilaterally changing policy on name tags. It is therefore appropriate to direct CSU to cease and desist from such conduct. It is also appropriate to direct CSU to take the affirmative action of meeting and conferring in good faith with APC concerning name tag policy, if APC so requests within 10 days of this proposed decision becoming final.

In California State Employees' Association v. Public Employment Relations Bd. (1996) 51 Cal.App.4th 923, 946 [59 Cal.Rptr.2d 488], the court stated in part:

> Restoration of the status quo is the normal remedy for a unilateral change in working conditions or terms of employment without permitting bargaining members' exclusive representative an opportunity to meet and confer over the decision and its effects. (See, e.g., Oakland Unified School Dist. v. Public Employment Relations Bd. (1981) 120 Cal.App.3d 1007, 1014-1015 [175 Cal.Rptr. 105].) This is usually accomplished by requiring the employer to rescind the unilateral change and to make employees "whole" from losses suffered as a result of the unlawful unilateral change.

It is therefore appropriate to direct CSU to rescind its name tag policy, if APC so requests. It is also appropriate to direct CSU to make whole any employees adversely affected by the name tag policy. To the extent any employees have lost pay due to the name tag policy, they shall

receive back pay with interest at the rate of 7 percent per annum. (See Regents of the University of California (1997) PERB Decision No. 1188-H.)[8]

It is also appropriate to direct CSU to post a notice incorporating the terms of the order in this case. Posting of such a notice, signed by an authorized agent of CSU, will provide employees with notice CSU has acted in an unlawful manner, is being required to cease and desist from this activity and take affirmative remedial actions, and will comply with the order. It effectuates the purposes of HEERA that employees be informed both of the resolution of this controversy and of CSU's readiness to comply with the ordered remedy. (Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, and upon the entire record in this matter, it is found the Trustees of the California State University (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA or Act), Government Code section 3571(a), (b) and (c), by unilaterally changing policy on name tags.

Pursuant to HEERA section 3563.3, it is hereby ORDERED that CSU, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally changing policy on name tags.

2. Interfering with the right of employees to be represented by the Academic Professionals of California (APC).

[8] It is not clear whether there are any such employees. The parties' stipulation states only that one employee was suspended "for various charges that included one violation of the [name tag] directive." From the stipulation, I cannot determine whether the employee was actually suspended because of the name tag policy, that is, whether the employee would not have been suspended (or suspended for as long) but for the name tag policy.

3. Denying APC its right to represent employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. If requested by APC within 10 days of this proposed decision becoming final, meet and negotiate in good faith with APC concerning name tag policy.

2. If requested by APC, rescind the current name tag policy.

3. Make whole any unit members adversely affected by the current name tag policy, with interest at the rate of 7 percent per annum on any back pay.

4. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to unit employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSU, indicating CSU will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure the Notice is not reduced in size, altered, defaced or covered with any other material.

5. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the San Francisco Regional Director of the Public Employment Relations Board Board (PERB or Board), in accord with regional director's instructions.

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 within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (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 mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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, 32140, and 32135(c).)

Thomas J. Allen

THOMAS J. ALLEN
Administrative Law Judge