

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

ANGELS CAMP EDUCATORS ASSOCIATION,
CTA/NEA,

Charging Party,

v.

MARK TWAIN UNION ELEMENTARY
SCHOOL DISTRICT,

Respondent.

Case Nos. SA-CE-2014-E
SA-CE-2017-E

Administrative Appeal

PERB Order No. Ad-319

February 11, 2003

Appearances: Kronick, Moskovitz, Tiedemann & Girard by Robert A. Rundstrom, Attorney,
for Mark Twain Union Elementary School District.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Mark Twain Union Elementary School District (District) from a rejection by the appeals office of the District's response to exceptions to the administrative law judge's (ALJ) proposed decision as untimely.

After reviewing the record, the Board reverses the administrative determination that the response was untimely. The Board excuses the late filing and accepts the response to exceptions as timely filed.

BACKGROUND

An ALJ issued a proposed decision in the underlying case. The Angels Camp Educators Association, CTA/NEA (Association) prevailed before the ALJ, but was unhappy with the remedy and filed an exception to only that portion of the decision. The District did

not file any exceptions to the decision, but did file a response to the Association's exception. The Association's exception was served on the District on May 6, 2002¹ and the response was due May 31. The Board's appeals office considered the response filed on June 1, one day late. The response was received and signed by PERB staff, via certified mail, on June 3.

DISTRICT'S APPEAL

The District requests its late filed response be excused pursuant to Board regulation. The District's attorney has filed a declaration indicating he completed the response May 31, before noon, and asked his secretary to file an original and five copies with PERB by certified mail and to serve a copy on the Association.

The secretary has filed a declaration indicating that at approximately 11:30 a.m. on May 31, she provided the original and five copies of the response to the staff of a company which provides the law firm's mail service. She instructed a mail service company staff person to send the original and five copies to PERB via certified mail. She declares that the mail service company has provided mail services to the firm for the full five years she has been employed with the firm and to the best of her knowledge, the staff has always followed her instructions.

The account supervisor employed by the mail service company in charge of providing mail services to the law firm, as well as his staff, are housed in the law firm's offices. The account supervisor has filed a declaration which describes the typical process for mailing certified mail documents. The documents are delivered to the mail service company staff in a

¹ All references are to 2002.

properly addressed envelope. A machine weighs the document, determines the appropriate postage and postmarks the envelope. The document is routinely postmarked on the date it is mailed.

Attached to the account supervisor's declaration is a copy of the U.S. Postal Service "Certified Mail Receipt." According to the declaration, long-hand notes on receipts are routinely made. The notes on the particular receipt at issue in this case demonstrate that it was mailed on May 31, by certified mail. The routine practice would be to mark the envelope the same date, May 31.

The account supervisor was asked by the District to review the copy of the envelope in question. He says that it is dated June 1, but he cannot explain how that postmark was put on the envelope. He notes that it is physically possible for the postage/postmark machine to be manually moved forward to the next day's date if someone inadvertently hits the button on the machine that controls the postmark date. To his knowledge, that has not previously occurred as long as the mail service company has served the law firm. He concludes his declaration by stating that the mail service company's records show the document in question was mailed on May 31, noting that no one from the mail service company worked at the law firm on Saturday, June 1.

The District argues there is no prejudice as the document was received by PERB the next business day and the proof of service demonstrates that the response was mailed to the Association on May 31.² The District asserts the document must have been mailed on May 31, since no one from the mail service company worked on June 1. The District argues that this is

² The Association did not file a response to the instant appeal.

an inadvertent error, the reasons it has provided are plausible and there was no prejudice to the parties. The District requests we reverse the appeals office's administrative decision.

DISCUSSION

PERB Regulation 32136³ provides that:

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

In Trustees of the California State University (1989) PERB Order No. Ad-192-H (Trustees), the Board excused a late filing where the document was sent by certified mail on the last day for filing, but due to an error in the mailroom, the postage meter was incorrectly set for the following day.

In this instant appeal, the District, through declarations of all individuals in the chain of custody of the response document, has attempted to paint the picture of what happened. While the District cannot explain exactly how this incorrect postmark came to be on an envelope it claims was mailed on May 31, the explanation that it must have been an inadvertent error seems plausible and is accepted by the Board. This case, therefore, falls squarely within Trustees. As such, the late filing is excused pursuant to PERB Regulation 32136 and the District's response to the Association's exception is accepted as timely filed.

³ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. and may be found on the Internet at www.perb.ca.gov.

ORDER

Mark Twain Union Elementary School District's request that the Board accept its response to the Angels Camp Educators Association, CTA/NEA's statement of exceptions in Case Nos. SA-CE-2014-E and SA-CE-2017-E is hereby GRANTED. The response is ACCEPTED as timely filed.

Members Whitehead and Neima joined in this Decision.