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State of New York Public Employment Relations Board Decisions from August 21, 1975

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 21, 1975

Keywords

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
	:	#1A-8/21/75
PUTNAM COUNTY,	:	<u>BOARD DECISION ON MOTION TO</u>
	:	
Respondent,	:	<u>DISMISS</u>
	:	
-and-	:	
	:	
PUTNAM COUNTY CHAPTER, CIVIL SERVICE	:	<u>CASE NO. U-1542</u>
EMPLOYEES ASSOCIATION, INC.,	:	
	:	
Charging Party.	:	
	:	

On July 17, 1975, the hearing officer issued a decision finding that Putnam County had committed an improper practice in violation of Section 209-a.1(d) in that it refused to execute a contract containing agreements that had been reached by its negotiators in negotiations with Putnam County Chapter, Civil Service Employees Association, Inc. (CSEA). The hearing officer's decision and recommended order was mailed to the parties on the date of its issuance. Transmitted with the decision was a letter stating inter alia:

"Any party to the proceeding may file with the Board an original and four copies of exceptions to the Decision and Recommended Order within 15 working days after receipt of same. A party filing exceptions must simultaneously file an original and four copies of a brief in support of exceptions, together with proof of service of copies of both documents upon all other parties. These exceptions must comply with the requirements set forth in Section 204.10(b) of the Board's Rules of Procedure, as amended."

The decision and recommended order was received by Putnam County on July 21, 1975. On August 11, 1975, Putnam County mailed to us its exceptions to the hearing officer's decision and recommended order and its brief in support of those exceptions. They were mailed to CSEA on the same day. They were received by us on August 12; we have no information when they were received by CSEA. On August 13, 1975, CSEA filed a motion, with notice to Putnam County, for the dismissal of the exceptions on the ground that they were not timely. On August 18, Putnam

County wrote to us urging that we reject the motion to dismiss because

"This matter so important should be decided on a substantive basis and a decision on the merits should not be precluded by a procedural defect."

The relevant provisions of our Rules are:

1. 4 NYCRR 204.10 "Exceptions to Hearing Officer's Decision and Recommended Order. (a) Within fifteen working days after receipt of the decision and recommended order, a party may file with the Board...exceptions thereto.... such exceptions and briefs shall be served upon all other parties...."
2. 4 NYCRR 200.9 "Working Days. The term 'working days', as used herein, shall not include a Saturday, Sunday or legal holiday."
3. 4 NYCRR 200.10 "Filing; Service. (a) The term 'filing', as used herein, shall mean personal service upon the Board or an agent thereof, or the act of mailing to the Board not less than two days before the due date of any filing.

(b) The term 'service', as used herein, shall mean personal service or the act of mailing not less than two days before the due date."

4. 4 NYCRR 204.12 "Request for Extension of Time. A request for extension of time within which to file exceptions and briefs shall be in writing, and filed with the Board at least three working days before the expiration of the required time for filing,...."
5. 4 NYCRR 204.14 "Board Action....
(c) Unless a party files exceptions to the decision and recommended order of the hearing officer within fifteen working days after receipt thereof, the decision and recommended order, or any part thereof which concludes that a charge has merit and that remedial action should be required, will be final except that the Board may, on its own motion, decide to review the remedial action recommended within twenty working days after receipt by the parties of the decision and recommended order."

Also relevant is General Construction Law Section 25-a, which provides, in part:

...."When any period of time, computed from a certain day, within which or after which or before which an act is authorized or required to be done, ends on a Saturday, Sunday or a public holiday, such act may be done on the next succeeding business day...."

August 11 was fifteen working days after receipt by Putnam County of the hearing officer's decision and recommended order. Accordingly, it was obligated to have completed, by the end of that day, actual delivery of its

exceptions and brief to the Board and CSEA, or to have mailed its exceptions and brief to the Board and CSEA by August 9. (Putnam County did not seek an extension of time to file exceptions.) Thus, on the facts before us, the terms of our Rules of Procedure, and the presentations of CSEA in its motion to dismiss the exceptions, and of Putnam County in its response to that motion, we concluded initially that the exceptions were not timely. This would have left the hearing officer's decision intact, but would have permitted us, on our own motion, to revise the remedial action proposed by him.

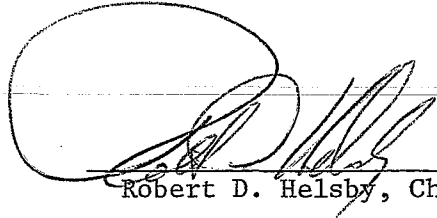
While preparing a written decision, we noted for the first time that August 9, 1975 fell on a Saturday. This circumstance and the above-quoted provision of General Construction Law Section 25-a required us to revise our earlier conclusion that the exceptions were not timely filed. CSEA has requested that, if its motion to dismiss the exceptions is denied, it should be granted an extension of time during which to submit its cross-exceptions and supporting memorandum, and that it be given an opportunity to present oral argument at an early date. Putnam County has consented to this request.

NOW, THEREFORE, WE ORDER that the motion of CSEA to reject Putnam County's exceptions on the ground that they are untimely be, and it hereby is, denied.

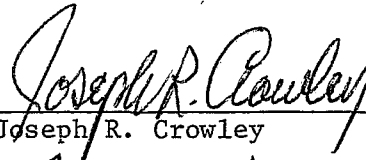
WE FURTHER ORDER that CSEA be granted until September 4, 1975 to file its cross-exceptions and supporting memorandum in this matter. Oral argument is set for 10:15 a.m., Thursday morning, September 11, 1975 at the New York City Office of PERB, Room 1819, 342 Madison Avenue, New York.

The parties will each be allowed fifteen (15) minutes for the presentation of oral argument.

Dated: Albany, New York
August 21, 1975



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson