

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DR. LOUIS FEIN,)
)
 Complainant,) Case No. SF-PN-5
)
 v.)
) PERB Decision No. 184
 PALO ALTO UNIFIED SCHOOL DISTRICT,)
)
 Respondent,) December 2, 1981
)
 and)
)
 PALO ALTO EDUCATORS ASSOCIATION,)
)
 Respondent.)
 _____)

Appearances: Dr. Louis Fein, representing himself;
Bruce A. Barsook, Attorney for the Palo Alto Unified School
District.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION

Dr. Louis Fein excepts to the attached administrative determination issued by the San Francisco regional director of the Public Employment Relations Board (hereafter Board) dismissing his public notice complaint without leave to amend. After considering the entire record in light of the exceptions, the Board affirms the regional director's administrative determination consistent with the discussion below.

Dr. Fein argues that initial proposals of the Palo Alto Educators Association (hereafter Association or PAEA) regarding Article II, Term and Article VI, Compensation violate subsections 3547(a) and (b) of the Educational Employment

Relations Act (hereafter EERA or the Act).¹ These proposals allegedly violate the Act because they were not specific and determinable at the time the proposals were made.

Initial proposals of exclusive representatives and of public school employers must satisfy the intent of the public notice requirements found in subsection 3547(e) that,

. . . the public be informed of the issues that are being negotiated upon and have full

¹The EERA is codified at Government Code section 3540 et seq. All statutory references hereafter are to the Government Code unless otherwise indicated.

Section 3547 reads in pertinent part:

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives. (Emphasis added.)

The Board recognizes that the initial proposals presented to the public must be sufficiently developed to permit the public to comprehend them. An initial proposal which is simply a statement of the subject matter such as "wages" does not adequately inform the public of the issues that will be negotiated.

In this case the Association initially proposed that the compensation of teachers be modified according to a formula based on changes in the Consumer Price Index. Although the actual dollar and cents cost of such a proposal is not subject to calculation in advance, it is sufficiently developed to inform the public what issue will be on the table at negotiations.

The Association's initial proposal concerning "Term" stated the following: "Article II, Term, 'New dates for adoption and expiration.'" This proposal was later amended to read "starting with the adoption date and ending June 30, 1982." This change was consistent with PAEA's earlier oral representation that they were proposing a term of one year. Such language clearly outlines the issue which PAEA sought to discuss during negotiations. Thus, these proposals satisfy the requirements of subsections 3547(a) and (b). The decision of

the regional director is affirmed and the instant appeal is denied.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The public notice complaint, SF-PN-5, filed by Dr. Louis Fein against the Palo Alto Unified School District and the Palo Alto Educators Association is hereby DISMISSED in its entirety without leave to amend.

By: John Jaeger, Member

Harry Gluck, Chairperson

Barbara D. Moore, Member

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post St., 9th Floor
San Francisco, California 94108
(415) 557-1350



April 17, 1981

Dr. Louis Fein

Mr. Robert E. McLean
Assistant Superintendent
Palo Alto Unified School District

Ms. Kathryn Hoover Calfee
Palo Alto Educators Association

Re: Palo Alto Unified School District
Case No. SF-PN-5

Dear Interested Parties:

On March 19, 1981, Dr. Louis Fein filed a public notice complaint against the Palo Alto Unified School District (hereinafter District) alleging violations of sections 3547(a) and (b) of the Educational Employment Relations Act (hereinafter Act).¹ On March 31, 1981 he amended his complaint to also

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(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

allege the same violations by the Palo Alto Educators Association (hereinafter PAEA).

The complaint alleges that when the PAEA (the exclusive representative), made its initial proposal to the District, two proposals were not specific enough to allow the public to respond in any meaningful way. The articles in question were Article II, Term, and Article VI, Compensation.

The facts in this case are not in dispute and are as follows:

On February 17, 1981, by way of a letter dated February 6, 1981, the PAEA notified the District that they wished to enter into negotiations with the District regarding certain articles of the existing contract between PAEA and the District. In that communication to the Board of Education, PAEA referred to Article II, Term, as follows:

We are proposing a one year term. Length depends on the quality of the agreement.

Article VI, Compensation, was referred to as follows:

We want a compensation and benefits package that reflects the increased cost of living and is consistent with the District's ability to pay.

This February 17 communication was not the formal proposal of PAEA, but rather notice to the District that PAEA wished to open negotiations on certain items.

At a school board meeting on March 3, 1981 PAEA formally presented its 1981/82 initial proposals to the District and to

the public. The texts of the two items in question are as follows:

Article II, Term, "New dates for adoption and expiration."

Article VI, Compensation, "Effective September 1, 1981 the existing teachers' salary schedule shall have the March to March U.S. Department of Labor Consumers Price Index for California Urban Centers and U.S. "All City" Average Percentage applied to the base step."

After the initial proposal was made, the complainant addressed the board and pointed out that, in his view, the two articles were so non-specific that the public could not react to them in an informed and intelligent manner; he then asked the District to reject the initial proposals as inadequate for public response. The District, however, did not do so. When asked by a board member about the proposal regarding "Term", the PAEA representative responded orally that PAEA was proposing a one year agreement.

At the next school board meeting on March 17, 1981 the school board allowed opportunity for public response to PAEA's initial proposals. At that meeting Dr. Fein once again argued that the two articles in question were not specific enough to allow meaningful response by the public.

In response to the school board, Dr. Fein acknowledged that the PAEA spokesperson had earlier identified the proposed term as one year. The PAEA clarification of the proposal regarding

"Term" had been made orally, however, and the written proposal which was included in the packet of information disseminated for the school board meeting was not changed. It still listed the proposal as "new dates for adoption and expiration."

On March 31, 1981 an informal conference was held pursuant to PERB Regulation 37030. The conference was attended by the complainant, representatives of PAEA and the District, and the San Francisco Regional Director. At the conference the PAEA once again clarified the proposal on "Term" and gave the District representative a letter dated March 31, 1981 stating the following:

As was stated in our Contract Articles
Opened memo of February 6, 1981 (Enclosure
No. un-numbered, Agenda Item 10-A, Board
Meeting February 17, 1981),. "We are
proposing a one year term."

We would like to amend our contract wording
for Article II, Term initial proposal to read
"starting with the adoption date and ending
June 30, 1982." This is consistent with my
answer to Mrs. Young's question at the
meeting of March 3, 1981 (Minutes, Page 7,
Paragraph 2.)

We also request that we not discuss Article
II, Term until the public has had an
opportunity to respond.

signed Kathryn Hoover Calfee
Palo Alto Educators Association
Negotiation Team

The March 31, 1981 letter was put on the agenda for the
April 7, 1981 school board meeting and included in the packet
of information disseminated in preparation for the school board

meeting. At the meeting the letter was presented to the school board which agreed to allow public input at its April 21, 1981 meeting. It also agreed not to negotiate over the term of the agreement until after that meeting.

This charge alleges violations of the Act by both the employer and the employee organization. In this case the District did exactly what it is required to do. It received PAEA's proposal, put it on the school board agenda and made it public. The District then provided an opportunity for public comment at one of its school board meetings. A District has no authority to dictate the content of a union's proposal. For it to interfere in any way with the formulation of the union's proposals may very well be an unfair practice itself. It therefore has no authority to do what is requested by the complainant, i.e., reject the union's proposal as inadequate for public response.

Therefore the complaint, as filed against the District, is dismissed for failing to state a prima facie violation of the Act.

The complaint as filed against the employee organization is more complex. In order for the public to become informed and to have the opportunity to express itself on proposals, those proposals must be specific enough to be understood. It is not sufficient to merely propose that a subject be negotiated.

PAEA's March 3, 1981 proposal regarding "Term" is little

more than a proposal that the parties enter into negotiations without making a substantive proposal at all. As such, it does not provide the public with an opportunity to give meaningful input prior to the start of negotiations. I, therefore, find that as to Article II, Term, the complaint against the employee organization does allege a prima facie violation of the Act.

Pursuant to PERB Regulation 37030(g), the Regional Director has authority to dismiss a complaint, if, once a prima facie violation is found, the parties voluntarily comply with the Act. In this case, the employee organization amended its position to clarify in writing that the proposal is a one-year agreement. The District made that clarification public and has agreed to allow further public input at the next school board meeting. The parties have also agreed not to enter into negotiations on the subject until after the public has had opportunity to provide further input.

Although it is generally unadvisable to allow negotiations to begin on some items prior to public input on all items, I feel the facts of this individual case warrants such a solution.

On at least four occasions at public school board meetings the public was made aware that PAEA was proposing a one-year agreement; first on February 17 by way of the PAEA February 6 letter, then orally on March 3 and March 17, and then both orally and in writing on April 7. It is highly unlikely that

there is any real confusion in anyone's mind as to what was actually being proposed by PAEA.

The complaint against the PAEA regarding Article II, Term, is therefore dismissed because the parties are voluntarily complying with the public notice provisions of the Act.

Because full voluntary compliance will not be achieved until the public has an opportunity to respond to the clarified written proposal at the April 21, 1981 school board meeting, the Regional Director will retain jurisdiction over the compliance issue. That aspect of this case will not be closed until full compliance has been achieved.

The second proposal at issue is Article VI, Compensation. The complainant argues that because the March to March Consumer Price Index is uncertain at this time, the cost of the proposal is unknown and, therefore, he is unable to formulate a response. Dr. Fein argues that it is possible to respond only to a specific percentage proposal. Dr. Fein, however, confuses specificity of a proposal with the ability to accurately determine the cost of such a proposal. There is nothing whatsoever vague or uncertain about PAEA's proposal. It very specifically calls for a wage increase tied to the cost of living. The public can easily identify what PAEA is proposing even though it may not be able to accurately determine the cost of the proposal. The proposal is no less specific than a proposal that the District pay 100 percent of the cost of a

dental benefits program, without specifying exactly which program; or a proposal that teachers receive an additional fixed sum of money for every student in the classroom in excess of 30 without knowing exact enrollment figures.

If Dr. Fein feels the proposal is unwise because the District or the public won't be able to accurately calculate its ultimate cost, that is precisely the type of input he should give to the District at the school board meeting provided to receive public input.

For the reasons set forth above, the complaint against PAEA regarding Article VI, Compensation, is dismissed for failure to state a prima facie violation of the Act.

ORDER

1. The complaint against the District is dismissed for failure to state a prima facie violation.

2. The complaint against the PAEA regarding Article II, Term, is dismissed because the parties are voluntarily complying with the public notice provisions of the Act.

3. The complaint against the PAEA regarding Article VI, Compensation, is dismissed for failure to state a prima facie violation.

An appeal of this decision may be made to the Board itself within 10 calendar days of service of this letter by filing a statement of the facts upon which the appeal is based with the

Executive Assistant to the Board at 923 12th Street, Sacramento, California 95814. Copies of any appeal must be concurrently served upon all parties and the San Francisco Regional Office. Proof of service of the appeal must be filed with the Executive Assistant.

Should you have any questions concerning this matter, please contact me.

Very truly yours,

JAMES W. TAMM
Regional Director