

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-37
)
 v.) PERB Decision No. 330
)
 LOS ANGELES COMMUNITY COLLEGE) August 15, 1983
 DISTRICT,)
)
 Respondent.)
 _____)

Appearances: Howard O. Watts, representing himself;
Mary L. Dowell, Associate General Counsel, for Los Angeles
Community College District.

Before Tovar, Jaeger and Burt, Members.

DECISION AND ORDER

JAEGER, Member: Howard O. Watts has appealed the regional director's dismissal in part without leave to amend of his public notice complaint, in which he alleged that the Los Angeles Community College District violated Government Code subsections 3547(a), (b), (c), (d) and (e) of the Educational Employment Relations Act.¹ The Public Employment Relations Board affirms the dismissal of the subsection (a), (c), (d) and

¹Subsections 3547(a), (b), (c), (d) and (e) of the California Government Code read:

- (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

(e) complaints for the reasons set forth in the attached regional director's decision.

The hearing officer's dismissal of a complaint alleging the violation of subsection 3547(b) arising from the same factual situation is addressed in PERB Decision No. 331.

Members Tovar and Burt joined in this Decision.

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.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(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.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3470 Wilshire Blvd., Suite 1001
Los Angeles, California 90010
(213) 736-3127



October 15, 1981

Mr. Howard O. Watts

Mr. Daniel Means, Staff Relations
Los Angeles Community College District
617 W. 7th Street
Los Angeles, California 90017

Re: LA-FN-37

Amended Dismissal in Part Without Leave to Amend

Dear Mr. Watts & Mr. Means,

The above-referenced complaint was received in this office on June 18, 1981. On August 19, 1981, a dismissal with leave to amend was issued by the Regional Director pursuant to PERB regulation 37030(d). The amended complaint, received on August 20, 1981, stated that allegations No. 3 and No. 6 of the original complaint were resolved by the Chancellor's action on June 17, 1981 (Com. No. 3), requiring posting of all initial proposals, new subjects of bargaining and proposed amendments to collective bargaining contracts.

Pursuant to PERB regulation 37030(e), certain portions of the public notice complaint LA-FN-37 against the Los Angeles Community College District are hereby dismissed as follows:

(1) Those parts of allegations No. 1 and No. 2 which are based on the complainant's alleged lack of opportunity to address Dr. Hewitt's Legislative Report and Agenda Item VIII A at the Board of Trustees' meeting on May 20, 1981 are dismissed.

(2) Allegations No. 4 and No. 5 are dismissed in their entirety.

(3) Allegation No. 7 is dismissed in its entirety.

Discussion

- (1) Allegations (1) and (2) - Violation of Government Code sections 3547(a), (b), (e)

Sections 3547(a), (b), (c) and (e) provide that:

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within

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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.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

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

The amended complaint alleges that the District's five minute limitation on the length of comments on collective bargaining proposals from members of the public (Exhibit No. 8) prevented the complainant from speaking to Dr. Hewitt's legislative report and to agenda Item VIII A. The latter item concerned a shooting incident at Valley College on April 24, 1981. Since neither of these agenda items concerns an initial proposal of an exclusive representative or a public school employer concerning a matter within the scope of representation under Government Code sec. 3543.2, this part of the complaint fails to allege and cannot be amended to allege a prima facie violation of sections 3547(a) (b) (c) & (e). It is therefore dismissed without leave to amend.

(2) Allegations (4) and (5) - Violation of Government Code section 3547(d)

Section 3547(d) provides that:

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

The complaint alleges that the District violated sec. 3547(d) by failing to publish a vote on its proposed amendments to the Maintenance and Operations Unit, Unit 2, agreement and to the Technical Clerical Unit, Unit 1,

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agreement. PEPB Decision No. 158, Kimmatt v. Los Angeles Community College District and California School Employees Association, Chapter 507, holds that proposals made during negotiations to amend existing provisions of an agreement (including reopeners) are "initial proposals" within the meaning of section 3547(a). Thus the proposed amendments were not new subjects of meeting and negotiating subject to the procedural requirements of sec. 3547(d). Instead, they were subject to the requirements of sec. 3547(a)(b)&(c). Since the essence of the complaint is that no votes on the proposed amendments were made public within twenty-four hours of the May 20 meeting, it fails to state and cannot be amended to state a prima facie violation of section 3547(d). Allegations (4) and (5) are therefore dismissed without leave to amend.

(3) Allegation (7) - Violation of Government Code sections 3547(a)(b) and (e)

Allegation (7) simply reiterates allegation (1): that the five minute rule did not provide enough time for the complainant to comment on the District's proposed amendment to the Maintenance and Operations Unit, Unit 2, agreement. In addition, the allegation in the amended complaint that there was no explanation of the issue beforehand so that the complainant was not given an opportunity to become informed would appear to be contradicted by complainant's Exhibit No. 6. That document indicates that the proposed amendment to the contract was first made known to the public on May 6, 1981. Allegation 7 is therefore dismissed without leave to amend.

The Regional Director has determined that the following portions of the complaint state a prima facie violation of Government Code section 3547:

Allegations (1) and (2): The contention that the District's five minute rule interfered with complainant's right to express his views on the District's initial proposal for the College Safety and Police Service Unit, and on its Proposed Amendments to the Maintenance and Operations Unit, Unit 2, Agreement and to the Technical Clerical Unit, Unit No. 1, Agreement, since all of these items were on the May 20, 1981 agenda meeting and he was allowed only five minutes total speaking time.

Accordingly, this portion only of the complaint will be processed further.

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Pursuant to PERB regulation 37050, Respondent is required to file an answer to only that portion of allegation (1) and (2) of the complaint indicated above. The answer must be received by this office not later than October 30, 1981. I am enclosing for Respondent copies of the initial complaint filed on June 18, 1981, and of the amended complaint filed on August 20, 1981.

Complainant may appeal this dismissal in part without leave to amend to the Board itself at the headquarters office in accordance with the provisions of Division 1, Chapter 4, Article 2 of the PERB Regulations. Any appeal must be filed within 10 days following the date of service of this letter of dismissal. Please contact this office if you have any questions.

Very truly yours,

Frances A. Kreiling
Regional Director

Marjorie Weinzweig
Graduate Legal Assistant

MW:eb