

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-50-H
)
 v.) PERB Decision No. 457-H
)
 CALIFORNIA STATE UNIVERSITY,) December 10, 1984
)
 Respondent.)
 _____)

Appearance: Howard O. Watts, on his own behalf.

Before Hesse, Chairperson; Tovar and Jaeger, Members.

DECISION AND ORDER

HESSE, Chairperson: This case is before the Public Employment Relations Board on an appeal by Howard O. Watts of a Board agent's denial, attached hereto, of his request for assistance made pursuant to California Administrative Code, title 8, section 32163.

We have reviewed the Complainant's request and appeal, and hereby AFFIRM the denial for the reasons set forth in Los Angeles Unified School District and California State University (8/16/84) PERB Decision No. 396-H.

Members Tovar and Jaeger joined in this Decision

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



March 21, 1984

Mr. Howard O. Watts

Mr. Caesar J. Naples, Assistant Vice
Chancellor, Employee Relations
California State University
400 Golden Shore
Long Beach, CA 90802

Re: NOTICE OF DISMISSAL
Watts v. California State University; LA-PN-50-H

Dear Parties:

The above-referenced Public Notice Complaint (Complaint) was filed with our office on March 7, 1983. A First Amended Complaint was filed February 14, 1984, subsequent to a December 28, 1983 personal meeting I had with Mr. Watts.¹ The amendment makes new legal argument but fails to allege any new facts. For the reasons which follow, all allegations in the Complaint fail to state a prima facie violation of Government Code subsections 3595(a) and (b)² and cannot be amended to do so. The entire Complaint is, accordingly, hereby dismissed.

Allegation No. One: The respondent, California State University (CSU), violated subsections 3595(a) and (b) by the presentation of its initial proposals at Long Beach and the conduct of a meeting for public response to those proposals

¹At that meeting I explained to Mr. Watts the Complaint's deficiencies and the apparent impossibility of perfecting them. However, at his insistence, I allowed time to amend the Complaint.

²All statutory references are to the Government Code unless otherwise specified.

only at San Francisco. There was no meeting held for public response in southern California. Since Mr. Watts could not afford to travel to San Francisco, (see case No. LA-PN-48-H) presumably he could not express himself regarding those proposals.

Determination: Nothing in section 3595 requires the public meetings for presentation and response to initial proposals to be held at the same location. The only requirement of subsection 3595(b) is that the public be given an opportunity to express itself at a (i.e. one) meeting of the higher education employer. This was done.

While conducting the meeting in San Francisco may have precluded Mr. Watts from attending the meeting, other members of the public would no doubt have been precluded from attending if the meeting had been held in Long Beach. In other words, no matter where an employer decides to conduct such meetings, someone will potentially be inconvenienced. This is especially true with respect to an employer with statewide facilities such as CSU. It is noted that CSU has attempted to mitigate this problem through its acceptance of written comments from the public as indicated by an unmarked exhibit to the Complaint entitled "Committee on Collective Bargaining Agenda Item I for March 24-25, 1981."³

Subsection 3595(b) does not require the higher education employer to schedule meetings in both northern and southern California, nor does it require that the meeting conducted for public response be held at the same location as the meeting at which the initial proposals were presented. CSU's internal policy implementing the statute appears to be a reasonable accommodation to its statewide constituency. It is, therefore, found that this allegation does not constitute a violation of subsections 3595(a) or (b).

³This is CSU's internal procedure implementing section 3595. See California Administrative Code, title 5, section 43725.

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Allegation No. Two: The February 9, 1983 meeting of CSU's committee on collective bargaining was not an appropriate meeting of the higher education employer because the committee, being composed of staff rather than trustees, cannot take "official action."

The Complaint goes on to argue that Education Code section 89035 precludes the board of trustees from delegating the authority for conduct of such meetings to the committee on collective bargaining.

Determination: Subsection 3562(h) defines "higher education employer" as follows:

(h) "Employer" or "higher education employer" means the regents in the case of the University of California, the directors in the case of Hastings College of Law, and the Trustees in the case of the California State University and Colleges, including any person acting as an agent of an employer.
(Emphasis added.)

Black's Law Dictionary, Fifth Ed., defines "agent" in the following manner:

Agent. A person authorized by another to act for him, one intrusted with another's business. (Citation omitted.) One who represents and acts for another under the contract or relation of agency. A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons. One who undertakes to transact some business, or to manage some affair for another, by the authority and on account of the latter, and to render an account of it. One who acts for or in place of another by authority from him; a substitute, a deputy, appointed by principal with power to do the things which principal may do. One who deals not only

with things, as does a servant, but with persons, using his own discretion as to means, and frequently establishing contractual relations between his principal and third persons.

The above-specified functions which an agent may perform on behalf of a principal are certainly broad enough to encompass the functions of the committee on collective bargaining pursuant to subsections 3595(a) and (b).⁴

Education Code section 89035 provides:

Wherever in this code a power is vested in the trustees, the trustees by majority vote may adopt a rule delegating such power to any officer, employee or committee as the trustees may designate.

Subsection 5(h) of article VI of the Rules of Procedure of CSU's board of trustees provides as follows:

(h). Committee on Collective Bargaining

The Committee on Collective Bargaining shall have delegated authority to act for the Board of Trustees in order to comply with the requirements of the Higher Education Employer-Employee Relations Act (HEERA) (including section 3595) and implement the collective bargaining policy of the Board of

⁴Mr. Watts implies that since the Los Angeles Unified School District (LAUSD) board of education and the Los Angeles Community College District (LACCD) board of trustees themselves conduct these meetings, the instant board of trustees must do so. However, the definition of employer under the Educational Employment Relations Act (Government Code section 3540 et seq.) to which LAUSD and LACCD are subject, has an employer definition distinguishable from subsection 3562(h). Further, PERB has never found that those governing boards must perform these functions as a matter of law. Hence, what LAUSD and LACCD do with respect to public notice is irrelevant.

Trustees. The delegation to the Committee on Collective Bargaining includes, but is not limited to, authority to negotiate memoranda of understanding pursuant to the policies of the Board of Trustees. The Committee on Collective Bargaining shall submit periodic progress reports to the Board of Trustees on matters pertaining to collective bargaining and actions which it has taken. (Emphasis supplied.)

The above plainly permits the board of trustees to delegate to the committee on collective bargaining authority to act in the realm of collective bargaining, including the public notice requirements of section 3595.⁵

As to Mr. Watts' allegation that a committee composed entirely of staff cannot take "official action," this argument is also irrelevant. The Complaint alleges only that subsections 3595(a) and (b) were violated. Unlike subsection (c), these subsections do not require the committee to take any action. They require only the holding of a meeting open to the public. This was done. Hence, this allegation is also without merit.

Allegation No. Three: This allegation, raised for the first time in the first Amended Complaint, is that CSU violated Government Code section 11120 et seq., the so-called "state open meeting act."

Determination: PERB does not administer the open meeting act. Mr. Watts fails to explain how section 11120 et seq. has been violated, much less how such a violation would also constitute a violation of section 3595. In any event, the opening meeting act does not appear to in any manner buttress Mr. Watts' arguments dismissed above. Thus, this allegation, too, lacks merit.

⁵The fact that Mr. Watts can find no appellate decisions allowing the board of trustees to delegate this authority to the committee on collective bargaining does not decide, nor even imply, that such delegation is improper.

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REQUEST FOR ASSISTANCE

Mr. Watts has filed PERB form GC-5 requesting assistance with his Complaint. A cover letter to the request states that he hopes that he will not " . . . have to appeal this request for Assistance since (he) did qualify for this Assistance in the past." While it is true that Mr. Watts financially qualified for Board assistance in prior cases, PERB denied his requests for assistance in those cases because Mr. Watts had already received the level of assistance required by Board policy. For the same reason, the instant request must also be denied.

In Los Angeles Community College District (12/15/81) PERB Order No. Ad-119, Los Angeles Community College District (12/15/81) PERB Decision No. 185 and Los Angeles Unified School District (2/22/82) PERB Decision No. 181a, the Board itself affirmed the regional director's denial of Mr. Watts' requests for assistance. PERB regulation 37030 (now regulation 32920) was then the only regulation which addressed the assistance to be given public notice complainants. The Board itself stated that that regulation required that a public notice complainant receive only technical (as opposed to legal) assistance.

Effective September 20, 1982, public notice complainants were placed under PERB regulation 32163, which had previously applied only to charging parties in unfair practice cases. As Mr. Watts suggests, that regulation provides as follows:

32163. Board Assistance. If a party is unable to retain counsel or demonstrates extenuating circumstances, as determined by the Board, a Board agent may be assigned to assist the party in accordance with Board policy.

As I have previously advised Mr. Watts, there presently exists no different Board policy delineating the assistance to be given under regulation 32163. Mr. Watts has already been provided the same manner of assistance the Board found to be appropriate in the above-cited decisions. Although those decisions were issued prior to regulation 32163 becoming

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relevant to public notice requests, they constitute the only Board policy regarding the appropriate extent of Board assistance.

In the absence of any further direction from the Board itself as to the assistance to be granted a public notice complainant, it is determined that, for the reasons stated above, Mr. Watts' request for assistance must be DENIED.

Based upon my investigation of the instant Complaint and the above rationale, it is determined that none of the allegations made by Mr. Watts state a prima facie violation of Government Code subsections 3595(a) or (b). They cannot be amended to do so. Accordingly, they are hereby DISMISSED without further leave to amend. Moreover, Mr. Watts' request for further assistance in this matter is also hereby DENIED.

Pursuant to PERB regulation 32925, Mr. Watts may appeal the dismissal to the Board itself as follows.

Right to Appeal

An appeal of this decision pursuant to PERB regulation 32925 may be made within 20 calendar days following the date of service of this decision by filing an original and five copies of a statement of the facts upon which the appeal is based with the Board itself at 1031 18th Street, Suite 200, Sacramento, California 95815. Copies of any appeal must be concurrently served upon all parties and the Los Angeles regional office. Proof of service pursuant to regulation 32140 is required.

Very truly yours,

Frances A. Kreiling
Regional Director

ROBERT K. BERGESON
Sr. Representative

RRB:bw

