

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)	
)	
Charging Party,)	Case No. LA-PN-52-H
)	
v.)	PERB Decision No. 478-H
)	
UNION OF AMERICAN PHYSICIANS & DENTISTS,)	December 31, 1984
)	
Respondent.)	
)	

Appearance: Howard O. Watts on his own behalf.

Before Hesse, Chairperson; Morgenstern and Burt Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (Board) on an appeal by Howard O. Watts (Complainant) of the Board agent's dismissal of his public notice complaint alleging that the Union of American Physicians and Dentists violated section 3595(a) of the Higher Education Employer-Employee Relations Act (Government Code section 3560 et seq.). The dismissal letter and the November 25, 1983 letter of deficiency are attached hereto.

We have reviewed the Board agent's dismissal in light of the Complainant's appeal and the entire record in this matter and adopt that dismissal as the Decision of the Board itself for the reasons stated therein and in PERB Decision No. 458-H.

The Board denies Watts' request for assistance made pursuant to California Administrative Code, title 8, section

32163 for the reasons set forth in Los Angeles Unified School District, California State University and United Professors of California (Watts) (8/16/84) PERB Decision No. 396-H.

ORDER

The public notice complaint in Case No. LA-PN-52-H is
DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Morgenstern joined in this
Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088



January 5, 1984

Howard Watts

Luella Hanberry
Union of American Physicians and Dentists
1730 Franklin Street, Suite 200
Oakland, CA 94612

RE: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF PUBLIC NOTICE
COMPLAINT H. WATTS v. UNION OF AMERICAN PHYSICIANS AND
DENTISTS, COMPLAINT NO. LA-PN-52-H

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) regulation section 32920(b), a complaint will not be issued in the above-referenced case and the pending complaint is dismissed because it fails to allege facts sufficient to state a prima facie violation of Government Code section 3595. The reasoning which underlies this dismissal follows.

On November 25, 1983, I wrote Mr. Howard Watts a warning letter pointing out the deficiencies in the public notice complaint he filed against the Union of American Physicians and Dentists on March 24, 1983. That letter is hereby incorporated by reference as though set forth in full (letter attached). It summarizes the allegation of the complaint and cites authorities which demonstrate the deficiencies of the allegation as it is presently set forth in the complaint. Additional information is solicited as well. The letter set December 15, 1983, as the date on which Mr. Watts would have to amend or withdraw the complaint to avoid dismissal. Several phone conversations between Mr. Watts and myself resulted in the granting of a 20-day extension of time to file the first amended complaint establishing the new due date as January 4, 1984.

Mr. Watts' first amended complaint was received on December 27, 1983. However, the amended complaint failed to allege any additional facts sufficient to state a prima facie violation of Government Code section 3595. The only new information

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provided in the amended complaint implies wrongful conduct by the CSUS Board of Trustees or its designated committee. This information, however, is irrelevant because CSUS is not a party to this complaint. Accordingly, the allegation is dismissed and no complaint will issue.

Pursuant to PERB regulation section 32950 you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the complaint by filing an appeal to the Board itself within twenty (20) calendar days after service of this Notice (section 32925). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on January 25, 1984, or sent by telegraph or certified United States mail postmarked not later than January 25, 1984, (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an

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extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By

CARL BESSENT
Staff Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350



November 25, 1983

Mr. Howard O. Watts

Re: LA-PN-52-H

Dear Mr. Watts:

The purpose of this letter is to: 1) analyze your complaint (LA-PN-52-H); 2) explain why, as presently written, the complaint does not state a prima facie case; and 3) to provide you an opportunity to amend your charge.

I.

Your above-referenced Public Notice Complaint alleges that the Union of American Physicians and Dentists (UAPD), the exclusive representative of the physicians unit at California State University (CSU), violated Government Code section 3595(a) by failing to present its initial proposals in person and verbally. Your contention is that the availability of 50 copies of the proposal at the February 23, 1983, public meeting of the committee on collective bargaining does not meet the section 3595(a) requirements for a presentation.

My investigation revealed that the initial response meeting for the exclusive representatives and employer was held in Long Beach, California on February 23, 1983 for UAPD - Unit 1, Physicians; California State Employees' Association for Unit 2, Health Care Support; Unit 5 Operations Support; Unit 7, Clerical/Administrative Support; and Unit 9, Technical Support Services; and State Employees Trades Council for Unit 6, Skilled Crafts. Your Complaint shows that 50 copies of the UAPD proposal were available to the public at the public meeting held February 23, 1983.

LA-PN-52-H does not allege that the UAPD proposal was not sufficient for the public to know the issues being proposed. (See Palo Alto Unified School District (12/2/81) PERB Decision No. 184.)

II.

For the following reasons, the complaint, as presently framed, does not state a prima facie case.

1. Section 3595(a) states that:

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

The Webster's New Collegiate Dictionary definition of the verb "present" is "to bring before the public. . .to offer to view." Nothing in the definition or the statute requires that the offering be made in person or verbally to constitute a "presentation" and logic dictates otherwise. The public notice provisions of HEERA were enacted to ensure tht the public has an opportunity to be informed about the substance of collective bargaining proposals submitted by HEERA employers and employee organizations. The documents submitted by UAPD were the best evidence of the proposal UAPD wished to make. UAPD's failure to orally reiterate the contents of its documents cannot reasonably be considered violative of the statute.

For the aforementioned reasons, your complaint, as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the public notice complaint accordingly. The amended complaint should be prepared on a standard PERB public notice complaint form clearly labeled First Amended Complaint, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the complainant.

If I do not receive an amended complaint or withdrawal from you within 20 days of service of this letter, your complaint will be dismissed. If you have any questions on how to proceed, please call me at (916) 322-1320.

Sincerely yours,

Carl J. Bessent
Graduate Legal Assistant