

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)	
)	
Complainant,)	Case No. LA-PN-91
)	
v.)	PERB Decision No. 705
)	
LOS ANGELES UNIFIED SCHOOL)	December 16, 1988
DISTRICT,)	
)	
Respondent.)	

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

Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

HESSE, Chairperson: Howard O. Watts appeals the dismissal (attached hereto) by a Public Employment Relations Board (Board) agent of his public notice complaint alleging that the Los Angeles Unified School District (District) violated section 3547(a), (b), (c), and (e) of the Educational Employment Relations Act (EERA)¹ by failing to place its 1987-88 school

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3547 reads, in pertinent part, as follows:

(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

calendar proposal on the order of business for the March 16 and 30, 1987 board of education meetings. Such alleged failure, it is claimed, denied the public an opportunity to respond to the proposal which indicated the starting and ending days, holidays, and recesses for the year-round and traditional school calendars.

FACTS

The Board agent found that the District's initial proposal for 1987-88 was on the order of business in February 1986. Public response time was provided by the District at its regular meetings of February 11 and 24, 1986. Further, these facts are not and cannot be in dispute. (See Los Angeles Unified School District (Watts) (1987) PERB Order Ad-162.)

Not only were these calendars presented in a manner to give the public an opportunity to speak in 1986, but additionally the 1987-88 calendar was presented in February 1985. The Board, in

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

Los Angeles Unified School District (1985) PERB Decision No. 506,
found:

On February 7, 1985, the District sent PERB a memorandum showing the presentation of the 1985-86, 1986-87 and 1987-88 calendars as initial proposals on November 19, 1984, and also the agenda for the January 28, 1985 board meeting where the proposal was adopted.

In this decision, the Board held that the District had voluntarily complied with the public notice requirements by allowing for public comment during at least six meetings

DISCUSSION

In his appeal of the Board agent's dismissal, Mr. Watts claims that the 1987-88 calendar was again presented to the Board, but this time without an opportunity for public comment. Mr. Watts takes issue with the fact that a calendar which was properly presented at a public meeting can be reviewed by the District in subsequent years without further opportunity for public notice and comment.

The District does admit there was an amendment to the 1987-88 calendar. However, this amendment in no way changed the calendar which was presented on February 3, 1986, but was simply an amendment to add a footnote to accommodate PERB's cease and desist order arising from the settlement of a prior public notice complaint by Mr. Watts. Thus, the District was simply advising the public of its unchanged proposal.

A portion of Mr. Watts' appeal requests the Board remand

the case to the regional office for further investigation into additional facts. However, evidence offered for the first time on appeal must be:

Newly discovered . . . which was not previously available and could not have been discovered with the exercise of reasonable diligence. (Regents of the University of California (1987) PERB Decision No. 640-H.)

The appellant has not presented any showing that the evidence he refers to ("more documents") was previously unavailable.

ORDER

For the reasons stated above, the Board DENIES Howard O. Watts' appeal of the notice of dismissal and AFFIRMS the dismissal in Case No. LA-PN-91.

Members Craib and Shank joined in this Decision.

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES UNIFIED SCHOOL DISTRICT,)
Employer,) Case No. LA-PN-91
and ,) October 23, 1987
HOWARD O. WATTS,) NOTICE OF DISMISSAL
Complainant,)
_____)

The above-captioned public notice complaint was filed with our office on April 16, 1987. The complaint alleges that the Los Angeles Unified School District (District) violated sections 3547(a), (b), (c) and (e) of the Educational Employment Relations Act (EERA or Act) by failing to place its 1987-88 school calendar proposal on the order of business for the March 16 and 30, 1987 Board of Education meetings. By its failure to place the 1987-88 calendar proposal on the order of business as an initial proposal, the District has allegedly denied the public an opportunity to respond to the proposal which indicates the starting and ending days, holidays and recesses for year-round and traditional school calendars.

At meetings which the Complainant and I attended with representatives of the District in June and September it was learned that the District's initial proposal for 1987-88 was on the order of business in February 1986. Public response time was provided by the District at its regular meetings of February 11

and February 24, 1986. The Complainant does not dispute this. Further, the Public Employment Relations Board (PERB or Board) itself has so found. (Los Angeles Unified School District (Watts) (1987) PERB Order No. Ad-162,).

Due to the fact that the District properly sunshined its 1987-88 school calendar proposal in February 1986, (See p. 1 of Los Angeles Unified School District (Watts), supra) and was simply advising the public of its unchanged proposal in April 1987, no violation can be found. Thus, the Complaint is hereby DISMISSED.

RIGHT TO APPEAL

An appeal of this decision to the Board itself may be made within twenty (20) calendar days following the date of service of this decision (PERB regulation 32925). To be timely filed, the appeal must be filed with the Board itself at the following address:

Members, Public Employment Relations Board

1031 18th Street

Sacramento, California 95814-4174

A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (regulation 32135.) Code of Civil Procedure section 1013 shall apply.

The appeal shall be filed in writing and be signed by the appealing party or its agent.

If a timely appeal is filed, any other party may file with the Board an opposition to the appeal within twenty (20) calendar days following the date of service of the appeal (regulation 32925).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding. A "proof of service" must accompany each copy of a document served upon a party of filed with the Board itself (see regulation 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.

Robert R. Bergeson

Regional Director

~~Roger~~ Smith
Labor Relations Specialist