

Pursuant to Palo Alto Unified School District (1981) PERB Decision No. 184, the Board agent dismissed the complaint, concluding that AFT's proposal basing certificated salary-schedules upon the "Los Angeles-Long Beach Consumer Price Index-Urban for the preceding quarter or 2.5% whichever is higher" was sufficiently specific to inform the public of the issue to be negotiated. As a second basis for dismissal, the Board agent stated that pursuant to PERB Regulation 32910,² the complaint may be untimely if complainant knew or reasonably could have become aware of the salary proposal at any time prior to September 14, 1988.

In his appeal, Watts argues that (1) the present case involves "different circumstances" than the Board decision in Palo Alto, supra, PERB Decision No. 184; (2) the public complaint was timely filed within 30 days from the date of the public hearing; (3) the Board agent failed to contact or assist Watts in the investigation of the public notice complaint; and (4) the public notice complaint should be adjudicated by "lay people non-attorney types."

The Board, after review of the entire record, adopts the attached Board agent's dismissal, consistent with the discussion below.

²PERB Regulation 32910 provides, in pertinent part:

. . . The complaint shall be filed no later than 30 days subsequent to the date when conduct alleged to be a violation was known or reasonably could have been discovered. . . .

Although there is a statement in the public notice complaint which indicates that Watts may have known of the salary proposal prior to September 14, 1988, the Board finds it unnecessary to resolve the timeliness issue. Assuming that the public notice complaint was filed in a timely manner, the Board finds that, consistent with Palo Alto, the salary proposal was sufficiently specific to adequately inform the public of the issue to be negotiated. The fact that the actual salary increase is not subject to calculation in advance does not render the proposal insufficient under section 3547(b).

Finally, Watts' exceptions to the Board agent's investigation of the public notice complaint and his alleged refusal to assist Watts have no merit. The fact that the Board agent is an attorney is irrelevant to the investigation of a public notice complaint. Regarding the Board agent's alleged refusal to assist Watts, Watts has experience and expertise in the filing of public notice complaints. Thus, pursuant to Los Angeles Unified School District and California State University (1984) PERB Decision No. 396-H, the Board finds no violation of PERB Regulation 32920.

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-105.
Members Porter and Camilli joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

Howard O. Watts,)	
)	
Complainant,)	Case No. LA-PN-105
)	
v.)	NOTICE OF DISMISSAL
)	
American Federation of Teachers)	
College Guild, Local 1521,)	
)	
Respondent.)	

The above-captioned public notice complaint was filed with this office on October 14, 1988.¹ The complaint alleges that the American Federation of Teachers College Guild, Local 1521 (AFT) violated section 3547(b) of the Educational Employment Relations Act (EERA) by failing to be sufficiently specific concerning a proposed salary schedule increase. The complaint further alleges that the proposal was presented on August 31, 1988, and that the date for public comment was September 14, 1988.

An exhibit filed with the complaint shows that the AFT submitted the following proposal:

All certificated salary schedules including increments and differentials, shall be increased quarterly beginning October 1, 1988, based upon the Los Angeles-Long Beach Consumer Price Index-Urban for the preceding quarter period or 2.5% whichever is higher.

¹Although the complaint was actually received by PERB on October 17, 1988, it was postmarked October 14, 1988. Pursuant to PERB regulation 32135, because it was sent by certified mail, the date of filing is October 14.

The complainant argues that this proposal is not sufficiently specific in that it requires the public "to guess what the CPI will be after the proposal has gone to the negotiating table."

A similar complaint was considered by the Board in Palo Alto Unified School District and Palo Alto Educators Association (Fein) (1981) PERB Decision No.184. There, a proposed salary increase was also tied to the Consumer Price Index. The Board observed that "[a]lthough 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 Board held, therefore, that the requirements of **subsections 3547(a) and (b) had been met.**

As the Regional Director observed in dismissing the complaint in Fein, this complaint confuses specificity of a proposal with the ability to determine the cost of the proposal. A belief that the proposal was unwise because of the difficulty of calculating the cost is the kind of input which could have been given to the District at the meeting held on September 14, which the complainant states he attended.

Therefore, because the instant complaint does not state a prima facie violation of EERA section 3547, and cannot be amended to do so, it is hereby DISMISSED WITHOUT LEAVE TO AMEND.²

²It appears that a second basis for dismissal may also exist. As noted, the complaint was filed 30 days after the September 14, 1988 public hearing. Complainant does not state when he learned of the proposal, although he does state that the proposal was presented on August 31, 1988. If complainant knew of or reasonably could have become aware of the proposal at any time prior to September 14, the complaint would be untimely pursuant

Right of 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. To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Members, Public Employment Relations Board
1031 18th Street, Suite 200
Sacramento, CA 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 must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal.

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within twenty (20) calendar days following the date of service of the appeal.

Service

to PERB regulation 32910, which requires a complaint to "be filed no later than 30 days subsequent to the date when conduct alleged to be a violation was known or reasonably could have been discovered."

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Los Angeles Regional Office. A "proof of service" must accompany each copy of a document served upon a party or 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.

Dated: December 8, 1988

Charles F. McClamma
Labor Relations Specialist