

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-126
)
 v.) PERB Decision No. 1000
)
 LOS ANGELES UNIFIED SCHOOL DISTRICT,) June 22, 1993
)
 Respondent.)
 _____)

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

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION AND ORDER

BLAIR, Chair: This case is before the Public Employment Relations Board (Board) on appeal by Howard O. Watts (Watts) of a Board agent's administrative determination (attached) dismissing Watts' public notice complaint. Watts' complaint alleged that the Los Angeles Unified School District (District) violated section 3547(b) and (c) of the Educational Employment Relations Act (EERA)¹ by: (1) failing to adequately inform the public of

¹EERA is codified at Government Code section 3540 et seq. Section 3547 states, in pertinent part:

(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.

the District's initial proposals; (2) failing to give the public a full opportunity to express their views; (3) failing to timely post the initial proposals; and (4) improperly adopting the initial proposals.

The Board has reviewed the entire record in this case, including Watts' public notice complaint, the administrative determination and Watts' appeal. Finding the administrative determination to be free of prejudicial error, the Board adopts it as the decision of the Board itself.

The public notice complaint in Case No. LA-PN-126 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Hesse and Caffrey joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

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| HOWARD WATTS, |) | |
| |) | |
| Complainant, |) | Case No. LA-PN-126 |
| |) | |
| v. |) | ADMINISTRATIVE |
| |) | DETERMINATION |
| LOS ANGELES UNIFIED SCHOOL DISTRICT, |) | |
| |) | March 10, 1993 |
| Respondent. |) | |
| <hr style="border-top: 1px solid black;"/> | | |

This administrative determination dismisses the above-referenced public notice complaint filed by Mr. Howard Watts (Complainant or Watts) against the Los Angeles Unified School District (District or Employer).

BACKGROUND

On June 22, 1992,¹ Complainant filed a public notice complaint in the Los Angeles Regional Office of the Public Employment Relations Board (PERB or Board) pursuant to PERB regulation 32190.² The complaint contended that the District

¹All dates referenced herein are calendar year 1992 unless otherwise noted.

²PERB regulation 32190 states in part:

32190. Filing of EERA. . . . Complaint. A complaint alleging that an employer or an exclusive representative has failed to comply with Government Code section 3547 . . . may be filed in the regional office. An EERA complaint may be filed by an individual who is a resident of the school district involved in the complaint or who is the parent or guardian of a student in the district. 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. . .

had violated Government Code sections 3547(b) and (c)³ in negotiations concerning the certificated bargaining unit, represented by United Teachers-Los Angeles (UTLA). The complaint contended that the District failed to adequately develop its proposals to allow the public to understand what issues were to be discussed at the bargaining table, and that the public was not given a full opportunity to express their views on the issues. The complaint also alleged that the District failed to post and improperly adopted the initial proposals.

On May 19, the District posted copies of the initial proposals for eight bargaining units⁴ at various school sites throughout the District. The District's Board of Education held public meetings where initial proposals for 1992-93 were presented for information and comment, on May 21 and May 26, and

³The Educational Employment Relations Act (EERA) is codified at Government code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3547(b) and (c) states:

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposals 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

⁴In addition to the certificated unit the proposals applied to the following bargaining units: Instructional Aides, Operations-Support Services, Teachers Assistants, School Police, Office Technical/Business Service, Trades/Crafts, and Certificated Supervisory.

such proposals were adopted subsequent to the receipt of public comment on May 26.

In the certificated unit, the District presented initial proposals in the areas of "Assessment and Accountability -- Improvement of Program Support" and "Compensation Matters -- Balancing the Budget." Regarding "Assessment and Accountability -- Student Achievement," the District proposed review and consideration of:

- a. Strengthening the evaluation process for students and employees, including the development of improved standards for measuring student progress, early and more effective intervention for staff and students where needed, peer assistance/coaching, methods of recognition and/or incentives, professional growth activities and possibly broadening the services of Mentor Teachers to assist tenured employees as well as probationary employees. Continue the work of the Joint District-Union committees on this subject.
- b. Redirection of the Urban Classroom Teacher Program toward a "specialist" model.
- c. Review the delivery of library services, including possible adjustment of the librarians' on-site obligation.
- d. Increasing continuity of instruction, including exploration of methods and incentives to reduce absenteeism, and scheduling School Leadership Council meetings outside the hours of instruction.
- e. Address the adverse impact of Chapter Chair release time upon the State-reported administrative ratio.
- f. Continue the process of reallocation of District resources to permit greater local school autonomy in decision making, and facilitate local site efforts to initiate school based management.

In the area of "Compensation Matters -- Balancing the Budget," the District first stated its goal of balancing the budget "within the legally required dates, in compliance with its legal obligations, avoiding external fiscal intervention, and

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maintaining the required levels of service," and then presented an estimate of the dimensions of the District's anticipated income deficit ("a minimum of \$400 million and a maximum ... unknown"). With this background, the District proposed the following items for possible adjustment, reduction or curtailment:

- a. Restoration of salaries to 1990-91 levels on an interim basis (July 1, 1992 to September 15, 1992) as previously committed. This interim payment, if made, would simply add to the size of the salary reduction for the balance of the 1992-93 fiscal year.
- b. All salary schedules and rates, including differentials.
- c. The number of paid days and assigned instructional hours.
- d. Health benefits package cost, including but not limited to deductibles, co-payments, eligibility criteria, level of benefits, etc.
- e. Salary step/column advancement policies and requirements.
- f. Pay provisions relating to off-basis assignments.
- g. Illness pay for "Z" (additional assignment) time,
- h. Elementary supervision duties and costs.
- i. Various methods and incentives for compliance with AQMD regulations to avoid financial penalties.

ISSUES

Did the District's initial proposals adequately inform the public? Was the public given a full opportunity to express their views regarding initial proposals? Did the District fail to timely post initial proposals? Did the District improperly adopt the initial proposals?

DISCUSSION

Specificity of Proposals

The intent of the public notice requirements is set forth in Government Code section 3547(e).⁵ PERB's regulations implementing the provisions of section 3547 were adopted to fully protect the public's rights in this regard. (Los Angeles Community College District) (1978) PERB Order No. Ad-41.)

In Palo Alto Unified School District (1981) PERB Decision No. 184, the Board found that "the initial proposals presented to the public must be sufficiently developed to permit the public to comprehend them." PERB found a proposal "which is simply a statement of the subject matter such as 'wages' does not adequately inform the public of the issues that will be negotiated." (Id.) The Board held, however, that a proposal for a cost of living adjustment based on the Consumer Price Index is "sufficiently developed to inform the public what issue will be on the table at negotiation." (Id.; see also American Federation of Teachers College Guild, Local 1521 (Watts)) (1989) PERB Decision No. 740.)

As noted by the Board in Los Angeles Unified School District

⁵EERA section 3547(e) states:

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of 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.

(1992) PERB Decision No. 964 (LAUSD),. "EERA's public notice statute, Government Code Section 3547, contains no express provision stating that the initial proposals which it requires be made public must be 'specific' in nature."

For the District to fulfill its public notice obligation, its initial proposals must be sufficiently developed to allow the public to comprehend the issues which will be on the table during negotiations. A review of the District's initial proposal to UTLA indicates that it sought to address issues related to improving student achievements and the financial crisis facing the District. In the section on "Assessment and Accountability - - Improving Student Achievement," the District indicates a desire to strengthen the evaluation process, "including the development of improved standards for measuring student progress; early and more effective intervention;" methods of recognition and to continue the work of the joint District-Union committees. The District also proposed "[r]edirection of the Urban Classroom Teacher Program toward a 'specialist' model." These proposals are specific enough to inform the public of the issues which will be the subject of negotiations.

The second section of the District's initial proposal addresses the issue of "Compensation Matters -- Balancing the Budget." The proposal clearly states that the District anticipates an income deficit from the General Fund budget of at least \$400 million, and further states "that significant adjustments to the compensation package appear to be

unavoidable." The District then listed "nine items, including all salary schedules, rates and differentials, where they proposed consideration of "possible adjustments, reduction or curtailment." Although the District could have been more specific in describing the possible impact of budget cuts on staffing, pay and benefits, the Board has held that proposals of similar specificity were adequate to allow the public to understand the issues to be negotiated. (See LAUSD). The compensation proposals offered in this case are sufficiently developed to allow the public to understand the issues to be negotiated.

Public Comment Time Limitation

Section 3547 generally requires that the public have an opportunity to express itself regarding initial bargaining proposals at a meeting of the public school employer.

The Board has previously held that nothing in section 3547 or in the PERB Regulations defines how a school board meeting should be regulated. The regulation of those meetings is left to the discretion of the local school board. (Los Angeles Community College District (Kimmitt) (1981) PERB Decision No. 158; Los Angeles Community College District (Watts) (1980) PERB No. 153; Los Angeles Community College District (Watts) (1980) PERB Decision No. 154.)

Pursuant to section 3547 the District has adopted a public

notice policy⁶ which provides in relevant part as follow:

(B) Absent an emergency or other compelling circumstances, the district will allow at least two opportunities at two separate meetings for public expression on initial proposals following the presentation of the proposals at a regular meeting of the Board. Such opportunities shall be prior to the time the Board adopts the proposals, but may occur at the same meeting during which the adoption occurs.

(D) In conformity with Board Rules governing speakers before the Board, each public speaker addressing the issue of such proposals shall be permitted to speak for three minutes at Board meetings during which such proposals are reviewed and adopted. A total of 20 different public speakers shall be permitted to address the issue of initial contract proposals at such meetings, if 20 persons indicate a desire to do so. Speakers shall not be permitted to waive their time to other speakers. The Board, in its discretion, may allow more than 20 speakers. Absent an emergency or other compelling circumstances, a quorum of the Board shall be present in the Board Room during the time such speakers speak, although a speaker may waive this provision and continue speaking when a quorum is not present.

The Board's decision in Los Angeles Community College District (1984) PERB Decision No. 385 provides that the section 3547 mandate is amply satisfied if a time for comment is provided prior to the commencement of negotiations. In Los Angeles Unified School District (1990) PERB Decision No. 832, the Board found that the form in which an initial proposal is brought to public attention is relevant only insofar as it must allow time

⁶The District's Public Notice Policy, Bulletin No. 18 (Rev) September 26, 1988.

for adequate public comment. (See also Los Angeles Unified School District (1983) PERB Decision No. 335.) Finally, in Los Angeles Unified School District (1984) PERB Decision No. 405, the Board upheld the Regional Director's dismissal of a similar allegation that the District violated EERA section 3547(b) by limiting the public's opportunity to address collective bargaining proposals to three minutes at a Board meeting.

Watts provided PERB with a copy of a tape recording which contained segments of the special board meetings, specifically, his public notice comments. An auditory review of this tape clearly indicates that the Complainant was given an opportunity to express his views at the aforementioned Board meetings. During his three minutes Mr. Watts addressed several issues. He criticized the Board for failing to follow their own public notice policy; he expressed his dissatisfaction with the Board's implementation of its "three minute rule"; he informed the Board that three minutes was an inadequate amount of public comment time, particularly when multiple unit proposals were being addressed; and, finally, Watts stated that the proposals lacked specificity.

For the District to fulfill its public notice obligation, it must allow the public an opportunity to express their views regarding the initial proposals. Based on the facts in this case it is not apparent that the "three minute rule" has prevented or precluded the public from the opportunity to express their views. In fact, the allotted time was used to express views that were

not specific to the bargaining proposal issues. These facts do not support a finding that the "three minute rule" precluded public comment on the proposals.

Posting of Initial Proposals

Mr. Watts alleges that the District failed to properly post its initial proposals. He asserts that the District posted the proposals only two days before the first public comment meeting.

EERA's public notice statute, Government Code section 3547, contains no express provision stating that the initial proposals must be made public or accessible for a specific period prior to conducting a public comment meeting.

In the present case the District posted notices on May 19, and held public comment meetings on May 21 and 26. Subsequent to receiving public comment on May 26, the District adopted the proposals.

While the District's public notice policy⁷ indicates that it

⁷The District's policy provides in section V in pertinent part:

A. Certificated Proposals

The District shall make the Board's and the exclusive representative's proposals accessible to the public in the following manner:

3. A copy of initial proposals presented at a regular public meeting of the Board shall be available for inspection and review through the PIO until such time as negotiations are completed... This information, within a reasonable period of time, will be available in the following locations:

- a) Each school within the District

will post initial proposals, it does not state that it will post for a specific period prior to conducting required public comment meetings. As evidenced in the complaint, the District did post the initial proposals at various school sites. The Complainant did not provide any evidence that supports his contention that posting duration adversely affected the public or prevented them from being informed.

The public notice process employed by the District, including the posting period, represents a conscientious effort to fulfill the intent of EERA's public notice requirement.

Adoption of Initial Proposals

The District's public notice policy indicates that, generally, public notice matters will be addressed at regular meetings of the Board, with the following exception: "Absent an emergency or other compelling circumstances." In the complaint Watts indicated that he was aware of the District's reasoning for conducting special, instead of regular board meetings: "There [sic] reasoning was that they had to adopt there [sic] District Budget by June 30, 1992 under State law AB 1200 Chapter 1213 School district budget review."

Watts asserts that the proper proposal adoption process involves three steps: 1) Posting of proposals at school sites; 2)

during school hours. Each principal shall advise the chairperson of the advisory council, PTA/PTSA, and other recognized school community groups as to all public information received by the school on the subject of collective bargaining.

receiving public comment at three separate regular Board meetings; and 3) adoption of such initial proposals.

The Board has held that the manner in which public notice meetings are held is left to the discretion of the local school board. (See Los Angeles Community College District (Kimmet), (1981) PERB Decision No. 158; Los Angeles Community College District (Watts) (1980) PERB Decision No. 153; Los Angeles Community College District (Watts) (1980) PERB Decision No. 154.)

In Los Angeles Community College District (1984) PERB Decision No. 455, the Board found that the EERA does not specify five separate and distinct steps in order to comply with the public notice provision. In San Francisco Community College District (1979) PERB Decision No. 105, the Board held that in determining "reasonable time," no specific formula or time period existed and that each case should be examined based on the facts. In Los Angeles Unified School District (1990) PERB Decision No. 852, the Board found that there was a reasonable time for public comment where two weeks were allowed for public comment. The Board also stated that an employer is not precluded from adopting a proposal at the same meeting as long as there is public comment. (Id.)

In this case, the District posted the initial proposals and received public comment at two separate meetings over an eight day period, and then adopted the proposals after receiving public comment. These actions have not been shown to interfere with the public's right to be made aware of and have an opportunity to

provide input into the negotiations process. Additionally, while the employer is required to adopt its initial proposals at a public meeting, there is no specificity regarding the type of meeting (regular or special) that must be held. The process implemented by the District satisfied the public notice requirements as noted in sections 3547(b) and (c) and the "reasonable time" test adopted by the Board.

CONCLUSION

Based on the facts, law and precedent discussed above, the following conclusion have been reached. First, the initial proposals for 1992-93 presented by the District to UTLA were sufficiently developed to allow the public to understand the issues to be negotiated. Second, the District provided the public an opportunity to express itself regarding such proposals at two separate meetings. Finally, the manner in which the District posted and adopted the proposals was consistent with EERA's public notice requirements. It is determined that the instant public notice complaint fails to state a prima facie violation of Government Code section 3547 (b) and (c). The complaint is hereby DISMISSED without leave to amend.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, any party adversely affected by this ruling may appeal to the Board itself by filing a written appeal within twenty (20) calendar days after service of this ruling (California Code of Regulations, title 8, section 32925). To be timely filed, the

original and five copies of such appeal "must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Code of Regulations, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

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

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed, must clearly and concisely state the grounds for each issue stated, and must be signed by the appealing party or its agent.

If a timely appeal of this ruling is filed, any other party may file with the Board itself an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Code of Regulations, title 8, section 32625). If no timely appeal is filed, the aforementioned ruling shall become final upon the expiration of the specified time limits.

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and 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 California Code of Regulations, title 8, section 32140 for the required contents and a sample form.) The appeal and any

opposition to an appeal 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 an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if know, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Code of Regulations, title 8, section 32132) .

DATE: March 10, 1993

Nora M. Baltierrez
Labor Relations Specialist