

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-132
)
 v.) PERB Decision No. 1008
)
 CALIFORNIA SCHOOL EMPLOYEES) August 9, 1993
 ASSOCIATION,)
)
 Respondent.)

Appearances; Howard O. Watts, on his own behalf; William C. Heath, Attorney, for California School Employees Association.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

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. In his complaint, Watts alleged that the California School Employees Association (CSEA) violated section 3547 of the Educational Employment Relations Act (EERA)¹ by: (1) failing to adequately develop its

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

(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

proposals to allow the public to understand what issues were to be discussed at the bargaining table; and (2) not making its proposals available to the public.

The Board has reviewed the entire record in this case, including Watts' appeal. We affirm the Board agent's determination as to the first issue. We reach the same result on the second issue, but base our result on a different theory, as discussed below.

DISCUSSION

Availability of Proposals

Watts alleges that he received a copy of CSEA's proposal at a public meeting where the reopeners were presented, but that it

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.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(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.

was incomplete. He contends that the second side of the proposal had not been xeroxed and so was blank. On the basis of these facts, Watts claims that CSEA failed to make its proposals available to the public.

The Board agent found that CSEA's action of providing the Los Angeles Unified School District (District) with copies of the proposals demonstrated a conscious effort to fulfill the public notice requirements of section 3547(a).

However, this is not a proper violation with which to charge an employee organization. Only the employer can be held liable for violation of the duty to present proposals at a public meeting, because the employer controls the meeting agenda.

(Service Employees International Union. Local 99 (Watts) (1990)

PERB Decision No. 863.) In Los Angeles Community College District (Kimmett) (1981) PERB Decision No. 158, the Board held that it is the district's obligation and responsibility to provide proper public notice and to present all initial proposals--its-own as well as those of the exclusive representative--to the public at an appropriate meeting.

Citing Kimmett, the Board, in United Professors of California (Watts) (1984) PERB Decision No. 398-H, states that the proper respondent for this allegation is the employer only. Thus, CSEA is not the proper respondent to the allegation that its proposals were not made available to the public.

Appeal

On appeal, Watts alleges for the first time that CSEA and the District engaged in negotiations before the public notice process had been completed.

PERB Regulation 32635 states, in pertinent part:

(b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

This allegation was not presented prior to Watts' appeal, and no assertion of good cause was made. Therefore, the Board cannot consider whether CSEA violated EERA by negotiating before the public notice process had been completed.

ORDER

The unfair practice charge in Case No. LA-PN-132 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Member Caffrey joined in this Decision.

Member Carlyle's concurrence and dissent begins on page 5.

Carlyle, Member, concurring and dissenting: I concur with the majority insofar as it affirms the Board agent's determination that the California School Employees Association (CSEA) did make its proposals available to the public; however, I disagree with the majority's theory and, in part, with the Board agent's reasoning as well.

The Educational Employment Relations Act (EERA)¹ section 3547 states,- in pertinent part:

(a) All initial proposals of exclusive representatives and of the 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.

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

Pursuant to EERA section 3547(a) and (e), the Los Angeles Unified School District (District) promulgated Bulletin No. 18 (Rev.) dated September 26, 1988 (hereinafter referred to as "Bulletin").

The District's Bulletin concerning accessibility of initial proposals is set forth, in relevant part:

V. ACCESSIBILITY OF INITIAL PROPOSALS

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

A. Certificated Proposals

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

1. The PIO and the Office of Staff Relations shall maintain a file of all initial and subsequent new proposals, each of which shall be available for public inspection during regular working hours on the day following presentation and thereafter until the close of negotiations. The Staff Relations Office will respond to questions from the public on collective bargaining issues.

2. Such files shall also include within 24 hours the position of each Board Member if orally expressed by vote at a public meeting.

3. A copy of initial proposals presented at a regular public meeting of the Board shall be posted and available for inspection and review through the PIO until such time as negotiations are completed.

C. Classified Proposals

The PIO and the Office of Staff Relations shall maintain a file of all initial classified proposals and subsequent new subjects for negotiations. Each initial proposal or new subject shall be available for public inspection during regular working hours on the day following presentation and thereafter until the close of negotiations. The Staff Relations Office will respond to questions of the public on classified collective bargaining issues.

Each exclusive representative shall provide a reasonable number of copies, not to exceed twenty (20), of its initial proposals at the time the exclusive representative presents its proposals to the District. These copies shall be made available to the public at the Board meeting at which the proposals are presented.

When one reads the previously cited EERA section in conjunction with the District's Bulletin, one arrives at the following conclusion: There is no per se statutory requirement that copies of the initial proposals be supplied to the public at public meetings; only that they become public records. The only requirement concerning such availability at public meetings is

found in the District's Bulletin, and it only applies to copies being made available at the Board meeting at which the proposals are presented.

Howard O. Watts (Watts) alleges that he did in fact receive a full and complete copy of CSEA's initial re-opener proposal at the August 3, 1992 District public meeting at which it was presented. The one and only requirement concerning production of copies at a public meeting as a result of the Bulletin has been met. Watts does not allege or assert that the various other provisions of District Bulletin No. 18 concerning retention of all initial proposals and availability to the public as public records were violated by the District.

Accordingly, I would affirm the Board agent's decision finding that CSEA properly made its proposal available as required. The discussion by the Board agent concerning CSEA's "conscious effort," relative to the August 17, 1992 meeting, is not necessary to dispose of this issue.

While it is undoubtedly true that CSEA is not the proper party to be charged for an alleged violation of the duty to present proposals at a public meeting, I do not endorse the majority's notion that the dismissal should be affirmed for this reason. To me, reliance on such a basis puts "form over substance" and has the potential to lead to dangerous results in future cases, not just those limited to the public notice arena.

Further, this defect was imminently correctable at the complaint stage but was not rectified by the Board agent. Again, I am not prepared to rule against someone, in part, because of

failure to correct a procedural defect in the pleading at an early stage of the proceeding which would not have resulted in any prejudice to anyone.

As I stated in my dissent in Los Angeles Unified School District (Watts) (1992) PERB Decision No. 964:

Under EERA, the public has an opportunity to make its views known at the beginning of the collective bargaining process. There is no obligation on the part of the District to receive any additional public input during or at the end of the process when the final agreement is to be voted/ratified upon. This is true even if the final document bears little, if any, resemblance to the initial proposal which was subject to public comment.

Accordingly, under such constraints, I weigh more heavily to the side of an informed public and full compliance with the public notice requirements than I do any derived benefits of the interest-based bargaining format on an initial proposal.

My view has not changed nor does it change if the initial proposal is made by the exclusive representative instead of the District. Indeed, one could envision an even more compelling rationale of the need for detail and specificity if the initial proposal in question is proffered by other than one's elected representatives.

In my opinion, the initial re-opener proposal of CSEA in Article IV (CSEA Rights), Article X (Evaluation Procedures), Article XII (Wages and Salaries, Pay Allowances, Differentials and Special Salary Practices), and Article XIII (Health and Welfare), is lacking in sufficient detail and specificity so as to comply with EERA section 3547(b).

Indeed, in reading the Board agent's administrative determination, one cannot help but be struck by the "assumption language" utilized in the decision. On page 7, the determination reads, relative to Article IV, that "[t]he issue regarding the reinstatement of CSEA's right to use the school's mail system, can be reasonably understood to provide that the mail system would be used as a vehicle for CSEA" (Emphasis added.)

Article X is addressed in the determination: "[a]lthough CSEA did not provide specific details indicating how they intended to evaluate . . . it can be reasonably understood" (Emphasis added.)

Concerning Article XII, again on page 7, the determination states:

Perhaps CSEA could have been more specific in describing the possible budgetary impact of this proposal, but consideration must be given to the fact that the District's financial situation has been well publicized. It is common knowledge that the District is facing a financial crisis.
(Emphasis added.)

Finally, regarding Article XIII, the Board agent states that in the proposal, "CSEA indicated that they were 'interested in maintaining and/or improving the current benefit package'" and that "they would consider all suggestions and/or options which would 'improve or maintain the current benefit package and still be cost-effective.'" The Board agent found this language to be satisfactory, holding that the "proposal provides the public with sufficient information regarding what health and welfare-related issues will be discussed and negotiated, and the public is also informed of CSEA's bargaining position." (Emphasis added.)

I am concerned that affirming the administrative determination which found CSEA's initial re-opener proposal to adequately inform the public in compliance with EERA section 3547(b), will result in virtually every future public notice complaint case being decided in a similar fashion.

It is hard to imagine language which could be more general or broad than that utilized by the Board agent in the administrative determination in finding that CSEA did not violate EERA section 3547(b) or that CSEA could be more general and lack any more detail in its positions, particularly relating to "Health and Welfare," which was akin to "we want to keep what we have at a minimum, and we will try to get more, and we are open to any and all options to get us there."

I would reverse the administrative determination and find that there was a violation of EERA section 3547(b) due to a lack of sufficient detail and specificity concerning all four Articles as previously discussed herein.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,)	
)	
Complainant,)	Case No. LA-PN-132
)	
)	ADMINISTRATIVE
CALIFORNIA SCHOOL EMPLOYEES)	DETERMINATION
ASSOCIATION,)	
)	April 15, 1993
Respondent.)	

This administrative determination dismisses the above-captioned public notice complaint filed by Mr. Howard O. Watts (Complainant or Watts) against the California School Employees Association (CSEA). CSEA represents the Los Angeles Unified School District's (Employer or District) Office Technical/Business Services employees, unit D.

BACKGROUND

On August 8, 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 contends that CSEA violated

¹All dates herein refer to calendar year 1992.

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

Government Code section 3547(b),³ by failing to adequately develop its proposals to allow the public to understand what issues were to be discussed at the bargaining table, and by not making their proposals available to the public.

On August 3 and 17 the District's Board of Education held public meetings where reopener proposals for 1992-93 were presented for information and comment. CSEA asserts that during these meetings proposals were made available to the public. Mr. Watts confirms that on August 3 he received an entire copy of CSEA's proposal, but alleges that he received an incomplete proposal on August 17.

A review of CSEA's 1992-93 reopener proposals indicates that their proposals were presented **in** an interest-based bargaining format.⁴ CSEA's proposals also indicate **that** specific contract

alleged to **be a violation was known** or reasonably could have been discovered. . . .

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. Section 3547(b) 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 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.

⁴ CSEA's proposal in section 1. Reopener Agreement Negotiations indicated that the interest-based bargaining was based on the following elements:

- a. Focus on the interests of the parties, not positions;

language would be "mutually developed by the parties after reaching agreement on specific options." Sections 2 and 3 of CSEA's initial proposal read as follows:

2. ARTICLES EFFECTED

The following articles of the collective bargaining agreement will or may be impacted by negotiations of our proposed interest. Such impact may result in amendments, modifications, and/or eliminations of contract language:

- Article IV CSEA Rights
- Article X Evaluation Procedures
- Article XII Wages and Salaries, Pay allowance, Differentials and Special Salary Practices
- Article XIII Health and Welfare

3. ARTICLE - Statement of Interest

IV CSEA RIGHTS:

- CSEA is interested in having the district grant reasonable release time to CSEA officers, site representatives and job stewards. Such release time would be utilized for the above mentioned to attend and/or conduct CSEA Chapter Meetings, CSEA Workshops and Site Meetings.
- CSEA is interested in having the district reinstate the right of CSEA to use the school mail system.

X EVALUATION PROCEDURE:

- CSEA is interested in evaluating the need, practice, purpose, application and effectiveness of the current evaluation procedures.

-
- b. Work hard on the problem and soft on the people;
 - c. Create "options" which will satisfy the parties' interests, measuring options against mutually established criteria.

XII Wages and Salaries, Pay Allowance, Differentials and Special Salary Practices.

CSEA is interested in preserving and protecting the income of Unit "D" employees.

XIII HEALTH AND WELFARE;

CSEA is interested in maintaining and/or improving the current benefit package without out-of-pocket cost to bargaining unit employees. CSEA is open to considering all suggestions and/or options which would improve or maintain the current benefit package and still be cost-effective.

The District's public notice policy⁵ in pertinent part states:

V. Accessibility of Initial Proposals

A. Classified Proposals .

The PIO and the Office of Staff Relations shall maintain a file of all initial classified proposals and subsequent new subjects for negotiations. Each initial proposal or new subject shall be available for public inspection during regular working hours on the day following presentation and thereafter until the close of negotiations. The Staff Relations Office will respond to questions of the public on classified collective bargaining issues.

Each **exclusive** representative shall provide a reasonable number of copies, not to exceed twenty (20), of **its** initial proposals at the time the exclusive representative presents its proposals to the District. These copies shall be made available to the public at the Board meeting at which the proposals are presented.

ISSUES

Did CSEA's re-opener proposals adequately inform the public?

Did CSEA make its proposals available to the public?

⁵The Complainant provided PERB with a copy of the District's Public Notice policy, Bulletin No. 18 (Rev) September 1988, section V (C).

DISCUSSION

Specificity of Proposals

The intent of the public notice requirements is set forth in Government Code section 3547(e).⁶ 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 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 negotiations." (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 (1992) PERB Decision No. 964 (LAUSD), "EERA's public notice

⁶Section 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.

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."

The Board has noted that the "interest-based approach to bargaining tends to produce initial proposals which do not include a great deal of specific details," therefore, proposals presented in the interest-based format must be reviewed on an individual basis to determine if they meet the underlying EERA public notice requirement. However, the Board applies the same standard to the interest-based proposals as it does to the non interest-based. Thus, the use of a new or different bargaining technique does not excuse the parties from the statutory requirements set **forth in EERA**. (SEE LAUSD).

For CSEA to **fulfill its public** notice obligation, its reopener 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 CSEA's proposals to the District reveals that it sought to focus on four subject areas: (1) CSEA Rights; (2) Evaluation Procedure; (3) Wages and Salaries, Pay Allowance, Differentials and Special Salary Practices; and (4) Health and Welfare. These names of subject areas were reflective of the articles from the current agreement or standard reopener proposals. Such references clearly identified the negotiable issues.

In the area of "CSEA Rights" CSEA addressed two items:

"release time" and the "use of the school mail system."

The "release time" proposal specifically identified who would be using such time and how it would be spent.

The issue regarding the reinstatement of CSEA's right to use the school's mail system, can be reasonably understood to provide that the mail system would be used as a vehicle for CSEA to communicate with its members regarding representation matters, including negotiable issues. Both "CSEA Rights" proposals adequately inform the public of the issues that will be negotiated.

In the area of "Evaluation Procedure" CSEA indicated a desire to evaluate the "need, practice, purpose, application and effectiveness of current the evaluation procedures." Although CSEA did not provide specific details indicating how they intended to evaluate or study the current "Evaluation Procedure," it can be reasonably understood that there is a potential for revising the existing procedure. Furthermore, the public can identify the issue that will be negotiated.

Regarding "Wages and Salaries, Pay Allowances, Differentials and Special Salary Practices," CSEA indicated an interest in "preserving and protecting the income of Unit "D" employees." Perhaps CSEA could have been more specific in describing the possible budgetary impact of this proposal, but consideration must be given to the fact that the District's financial situation has been well publicized. It is common knowledge that the District is facing a financial crisis. The public can easily

identify what CSEA is proposing when it uses the phrase "preserving and protecting" at a time when the District is considering how to make substantial budget cuts.

Finally, regarding the "Health and Welfare" proposal, CSEA indicated that they were "interested in maintaining and/or improving the current benefit package." They further state that they would consider all suggestions and/or options which would "improve or maintain the current benefit package and still be cost-effective." It is clear from these statements that the focus of negotiations will be to maintain and/or improve the current benefit package without out-of-pocket cost. This proposal provides the public with sufficient information regarding what health and welfare-related issues will be discussed and negotiated, and the public is also informed of CSEA's bargaining position.

Availability of Proposals

The Board has held in Los Angeles Unified School District (Watts) (1980) PERB Decision No. 153 that there is no requirement for the exclusive representative or the employer to make available at each public comment meeting a copy of its proposals.

The issue regarding the availability of proposals at subsequent public comment meetings was also addressed by the Board in Los Angeles Unified School District (1981) PERB Decision No. 181a. In that case, the Board affirmed the regional director's dismissal of a similar allegation that the District failed to make its proposal available at subsequent meetings. The

Board found that "Mr. Watts has failed to state any sufficient facts to constitute a prima facie complaint."

On August 3 and 17 the School Board conducted the required public comment meetings where proposals were made available to the public and the public was given an opportunity to express their views.

The Complainant affirms that on August 3 he attended a public notice meeting where he received a copy of CSEA's entire proposal.⁷

CSEA's actions of providing the District with copies of its proposals demonstrates a conscientious effort to fulfill both the public notice requirements as outlined in Section 3547(a),⁸ and the District's Public Notice policy. As evidenced in the complaint there is no question that at the first public notice meeting the District made available to the public an entire copy of CSEA's proposals. Therefore, CSEA's obligation has been met.

CONCLUSION

For the foregoing reasons, the instant complaint is

⁷In the instant complaint the Complainant asserts that on August 17 at a public comment meeting the only proposals that were available for public inspection were incomplete. This is a moot issue. The issue that is being addressed in this administrative determination is whether or not CSEA's proposals were made available to the public as required under the EERA.

"Section 3547 (a) states:

- (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.

DISMISSED without leave to amend for failure to state a violation of Government Code section 3547.

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 Administrative Code, 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 Administrative Code, title 8, section 32135). Code of Civil Procedure section 1031 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 Administrative Code, title 8, section 32635). 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 Administrative Code, 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 known, the position of each party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Administrative Code, title 8, section 32132).

Dated: April 15, 1993

Nora M. Baltierrez,
Labor Relations Specialist