STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD 0. WATTS, Complainant, v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. LA-PN-34 PERB Decision No. 388 June 29, 1984

Appearances: Mary L. Dowell, Attorney for the Los Angeles Community College District.

Before Tovar, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to the proposed decision of an Administrative Law Judge (ALJ) filed by the Los Angeles Community College District (District). The ALJ found that the District violated the public notice provisions, subsections 3547(b) and (c) of the Educational Employment Relations Act (EERA),[1] by denying Complainant Howard Watts,

[1]EERA is codified at Government Code section 3540 et seq. All references herein are to the Government Code unless otherwise indicated.

Subsections 3547(b) and (c) provide as follows:

> (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

a member of the public, an opportunity to address three collective bargaining initial proposals which were on the agenda of a meeting of the District board of trustees.[2]

For the reasons discussed herein, we reverse the ALJ's proposed decision and dismiss the complaint.

FACTS

Pursuant to EERA section 3547 and PERB rule 37000,[3] the District adopted a Collective Bargaining Initial Proposal Procedure. The District's procedure provides that the public shall have an opportunity to respond to initial proposals of an exclusive representative or the District at the board meeting following the meeting at which the proposals are presented as

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> 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.

[2]Watts filed no exceptions to the ALJ's dismissal of his alleged violation of subsection 3547(a). Therefore, that matter is not before us.

Subsection 3547(a) provides:

> 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.

[3]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. At all

information items. The District procedure further provides that its rules of decorum (2501 and 2502) apply to public response to collective bargaining initial proposals.

At issue in this case is District rule 2502.11 which, at the time the events at issue occurred, provided as follows:

> Withdrawal of Privileges. Speakers or other persons who are in attendance at a meeting of the [b]oard who violate any of the provisions of this Article V may be denied the opportunity to attend [b]oard [m]eetings or to speak to the [b]oard providing notice of this rule is first communicated to the person.
>
> Following such notice, any speaker or member of the audience whose conduct continues to violate any provisions of this Article may be directed by the chair to cease such conduct or speech. After a warning from the chair, any offending speaker or participant who continues to violate any provisions of this Article will be subject to removal from the podium or audience and will forego future opportunity to speak before the [b]oard for a period of one month. Upon a second such offense, within the same year, the speaker will forfeit his/her opportunity to speak before the [b]oard for six months.[4]

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times relevant to this case, PERB rule 37000 provided, in pertinent part, as follows:

> The Board urges all public school employers to promulgate a local policy to implement Government Code section 3547 . . . .

Effective September 1982, rule 37000 was recodified as rule 32900 and now provides, in pertinent part, as follows:

> EERA employers shall promulgate a local policy to implement section 3547 . . . .

[4]In settlement of a Superior Court case challenging rule 2502.11 on constitutional grounds (Cowsill v. Board of

Article V of the board rules is entitled "Communications to the Board." Section 2500 covers Written Communications to the Board, section 2501, Oral Communications, and section 2502, Rules of Decorum. Rule 2501.10 provided that the president of the board could terminate immediately a speaker's permission to address the board where the presentation included profanity, obscenity, offensive language or defamatory allegations against officers or employees of the District. Rule 2502.10 prohibited willful interruption of a meeting.

The March 25, 1981 Board Meeting

The record includes a transcript of the relevant portion of the March 25 meeting. The proceedings are summarized below.

While addressing the board on another public notice complaint, Watts referred to certain statements of Mary Dowell, Associate General Counsel for the District, as "foolishness." Board member Monroe Richman made a motion that "Mr. Watts' time be suspended as of now." The motion was seconded and was followed by a heated discussion in which Watts repeatedly

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Trustees, Case No. C371196), the rule was substantially amended on July 1, 1981 and September 2, 1981. As revised, the rule requires that the board make a finding of an intentional, knowing violation of a provision of Article V before removing a speaker from the podium or suspending his or her right to speak. Before denying the opportunity to speak at its next following meeting, the revised rule requires: (1) a recommendation after an interim hearing by an ad hoc committee composed of up to three trustees, at which the speaker has a right to appear and be represented; and (2) a finding by the board at its next meeting of a substantial likelihood that the violation will recur and would materially and substantially disrupt the functioning of the board.

referred to Richman as a "Nazi." The Chair, President Ralph Richardson, ruled Watts out of order three times. The board voted unanimously to approve Richman's motion.

Watts continued to make remarks, and Richardson warned him that "if you speak I am going to ask that you be removed from the room." Richman moved that Watts be allowed "no further speaking here in accordance with our board rules for as long a period as our board rules permit." The Chair then stated, "And I wish to use the board Rules that will inform Mr. Watts that he has violated." He requested that the District Counsel, Robert Henry, "refer to the appropriate board rules." Henry stated:

> Yes, Mr. President, the reference is to Section 2502.11 of the board rules, which is labeled Withdrawal of Privileges. Speakers or other persons who violate any of the provisions of Article V and Article V includes the rules on decorum, may be denied the opportunity to attend board meetings or to speak to the board, providing notice of this rule is first communicated to that person. And then, if he should continue in that violation, he may be suspended from addressing the board for a period of one month, and if a second offense, for a period of an additional 6 months.

The board discussed whether it was then proper to vote on Richman's motion. Board member Harold Garvin stated, "I think we must follow our normal procedure. And, therefore, I move that the lawyer be instructed to communicate the first step of denying Mr. Watts the right to speak, as our rules require." The Chair responded, "The Chair has already so informed Mr. Watts. You have violated and you are on notice now."

The Chair moved that "the board profoundly regrets the insulting, intemperate, stupid language used by Mr. Watts." This motion was seconded and passed unanimously.

Richman then noticed a motion to amend rule 2502.11 to make the period of suspension of speaking privileges open-ended. Watts interjected, "You, too?," and the Chair warned Watts that "We are at the point of removing you unless you give me your personal promise not to say another word in this meeting."

Richman demanded that Watts apologize for his defamatory language, "Otherwise, I'm going to walk out of the meeting." Watts responded, "Go ahead." Richman then moved that Watts be "removed from the room." The motion was seconded and passed unanimously. Watts was told to "leave the room" and, when he refused, was escorted out.

Watts was out of town and did not request permission to attend an April 8 board meeting where three initial bargaining proposals were discussed.

On April 21, Watts telephoned the District to put his name on the list of speakers for the April 22 board meeting. He was informed that he would not be permitted to speak at that meeting, which included three initial bargaining proposals on its agenda. He was not prevented from attending the meeting.

DISCUSSION

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. Pursuant to section 3547, the District adopted a Collective Bargaining Initial Proposal Procedure which incorporates by reference certain rules of decorum regulating the conduct of its meetings.

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 (Kimmett) (3/3/81) PERB Decision No. 158; Los Angeles Community College District (Watts) (12/31/80) PERB Decision No. 153; Los Angeles Community College District (Watts) (12/31/80) PERB Decision No. 154.

However, we have also recognized that, where local rules are at issue,

> the Board must determine whether the statutory public notice provisions have been violated. If the locally adopted rules facially conflict with a public notice requirement, the Board will necessarily intercede. Where the application of local rules results in deprivation of statutory rights, we will likewise entertain the complaint. Los Angeles Unified School District (Watts) (8/18/83) PERB Decision No. 335.

The ALJ found that the District's action to suspend Watts' speaking privilege was not taken in accordance with its rule 2502.11, because he was not provided with adequate "notice of

the rule," and because the board did not pass a motion expressly suspending Watts[1] speaking privilege for one month.

In its exceptions, the District claims that the General Counsel's recitation of the rule constituted notice and that, pursuant to the terms of the rule, the board's approval of the motion that Watts "be removed from the room" automatically effected a one-month suspension. The District further contends that Watts' right to address the board was not denied in any event, since he could have elected to communicate to the board through a representative or in writing.

Initially, we reject the District's contention that the statutory public notice provisions may be satisfied by providing for communications in writing or through a representative. Section 3547 requires in subsection (a) that "all initial proposals . . . be presented at a public meeting," in subsection (b) that "the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer," and in subsection (c) that "the public school employer shall, at a meeting which is open to the public, adopt its initial proposal." Thus, legislative intent that these public notice provisions be implemented at a public meeting is abundantly clear.

Nonetheless, we find no violation of Watts' statutory rights in the facts presented here.

On March 25, 1981, rule 2502.11 provided that an offending speaker "will be subject to removal . . . and will forego future opportunity to speak before the [b]oard for a period of one month." (Emphasis added.) Thus, as the District contends, on its face the rule provides that removal automatically includes foregoing the opportunity to speak for one month, after satisfaction of the following procedural requirements:

1. Violation of Article V.
2. Notice of rule 2502.11.
3. Warning or direction by the Chair to cease such conduct or speech.
4. Continued violation of Article V.
5. Though the rule does not expressly so state, it is clear from the record that a formal board vote was required to implement this rule.

The transcript of the board meeting of March 25 reveals that the first three procedural requirements were satisfied here.

1. Watts willfully interrupted the meeting so as to render the orderly conduct of the meeting infeasible, in violation of rule 2502.10.
2. Watts was provided notice of rule 2502.11 by the District Counsel. Though the District Counsel stated that an offending speaker "may," rather than "will," be suspended for one month, we find his statement of the

substance of the rule sufficient to constitute "notice of the rule."

3. Watts was subsequently warned by the Chair, "You have violated and you are on notice now."

While it is less clear, we also find that after this warning, Watts continued to violate Article V, satisfying the fourth procedural requirement. After the warning, Watts uttered at least two provocative remarks. Given the highly charged and chaotic nature of the proceedings, we cannot fault the District for construing these remarks as willful interruptions which rendered the orderly conduct of the meeting infeasible.

Thus, the only remaining issue is whether the board's approval of the motion that Watts "be removed from the room" reasonably served to automatically suspend Watts' right to speak for one month. We find that it did.

In determining the validity of an action taken by a school board, it is presumed that an official duty has been regularly performed. Salmon v. Allen (1934) 1 Cal.App.2d 115. Moreover, it is well established that, generally, parliamentary rules are procedural only, and their strict observance is not mandatory. Violations or suspensions of parliamentary rules will not support a challenge by one who is not a member as to the validity of an action taken without compliance with such rules. Cal. Jur. 2d, Administrative Law section 100, and Municipalities section 172.

More specifically, and directly on point, the failure to observe a rule requiring that a motion be read in full before it is voted upon does not invalidate the action. Pasadena v. Paine (1954) 126 CA 2d 93; 26 A.G. Op. 205. In Pasadena v. Paine, the court stated, at 126 CA 2d 93, 97:

> The purpose of a parliamentary procedural rule requiring the reading of a resolution in full before it is voted on is to provide assurance that those whose duty is to vote thereon may have some knowledge of its scope and terms before they cast their votes. In the instant case that purpose was adequately served. Not only had the members of the board of directors visited the site in question as a body several times and come to the conclusion that this particular site should be selected, but the resolution of intention had been explained to them and had been discussed and considered by them informally. To require that the resolution be read in full when the board officially convened would have added nothing to the knowledge of the board members. It would simply have been an idle act. . . . certainly no property owner was prejudiced by a failure to read the resolution in full at the official session of the board.

Similarly, the instant case contains ample evidence that the board had "knowledge of [the] scope and terms [of the motion] before they cast their votes" so that reading the motion in full "would have added nothing to the knowledge of the board members" and "would simply have been an idle act." The transcript of the meeting reflects the board's frequent reference to, and extensive discussion of, the rule, as well as the board's concern that it comply fully with its procedural requirements. The District Counsel read the rule aloud.

Richman's motion to amend the rule to make the period of suspension open-ended served to further alert the board that it could only suspend Watts' rights for one month. Thus, we have little doubt that the board acted knowingly and deliberately to suspend Watts' right to speak for one month.

In addition, as outlined above, when the board approved the motion to "remove Watts from the room," all procedural requirements had been satisfied. Therefore, Watts' violation of the rule was complete without any additional conduct on his part, and he was in no way "prejudiced by a failure to read the [motion] in full." Pasadena v. Paine, supra.

In conclusion, we find that the District's application of its rule to bar Watts from speaking at its April 22 board meeting did not violate EERA's public notice provisions. We, therefore, dismiss the complaint.

ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the complaint in Case No. LA-PN-34 is hereby DISMISSED.

Members Tovar and Burt joined in this Decision.