

DECISION

MORGENSTERN, Member: In each of these cases, which have been consolidated on appeal, complainant Howard O. Watts appeals the administrative decision of an agent of the Public Employment Relations Board (PERB or Board) denying his request for assistance in connection with the filing of a public notice complaint. For the reasons discussed herein, we deny Watts' appeals.

FACTS

In each of these cases, Watts filed an identical Application for Assistance by a PERB agent in which he cited the following "extenuating circumstances" which he believed qualified him for assistance:

I have been disabled since 1968 and I am on Disability with the V.A., Social Security and SSI. I have been having trouble filing these complaints against the previous districts and now CSUS because I do not know how to write a complaint without legal help. I have been up against lawyers for the unions and the previous districts and now CSUS and I can't compete with them.¹

In Case No. LA-PN-42, Watts' request was filed on September 3, 1982 and was denied on September 8, 1982 on the following grounds:

¹We take judicial notice of the more than 40 public notice complaints filed by Watts since 1980, and referred to above. For a complete listing, excluding the instant cases and cases voluntarily withdrawn by Watts, see Appendix A attached hereto.

[I]n accordance with PERB regulation 37030(b) (1), I have already given you assistance in drafting an amendment to your complaint

In Case Nos. LA-PN-46-H and LA-PN-47-H, Watts' requests were filed on January 31, 1983 and were denied on February 16, 1983 on the following grounds:

[T]he lack of any Board policy in this area precludes me from providing any more assistance than has already been given you. To do more without Board policy defining the parameters of the assistance might prejudice the respondents if the assistance exceeded that intended by the Board when rule 32163 was adopted.

In Case No. LA-PN-65-H, Watts' request was filed on March 16, 1983 and was denied on August 31, 1983. The Board agent stated the following reasons:

As with such previous requests, I must deny any further assistance than has already been provided you. . . .

As I have each time you have verbally requested assistance, I have discussed the merits of the Complaint with you and, for purposes of clarity, assisted you in its composition.

The Board has said that public notice complainants shall receive "technical assistance" as opposed to legal representation. (Citations omitted.) You have been provided this degree of assistance and no other "Board policy" exists which provides further guidance regarding the parameters of assistance available to you.

Accordingly, your request for further assistance is hereby DENIED.

DISCUSSION

Rule 32920 (previously rule 37030)² provides, in pertinent part, that in processing a public notice complaint, the Board agent shall, inter alia:

- (1) Assist the complainant to state in proper form the information required . . .; and
- (2) Answer procedural questions regarding the processing of the case.

As indicated by the use of the word "shall," rule 32920 imposes a mandatory requirement on Board agents. With respect to the scope of this obligation, the Board has repeatedly held that rule 32920 "is intended to provide technical assistance rather than legal representation." (Emphasis in original.) Los Angeles Community College District (12/15/81) PERB Decision No. 186; Los Angeles Unified School District (8/18/83) PERB Decision No. 336; and see Los Angeles Community College District (12/15/81) PERB Order No. Ad-119.

In denying each of these requests, the Board agent stated that he had already provided some assistance to Watts but was precluded from providing any "more" or "further" assistance than had already been given.

In his appeal, Watts does not deny that he received such assistance. Indeed, finding no deficiency of a technical nature on the face of his complaints, and absent any evidence

²PERB regulations are codified at California Administrative Code, title 8, section 31001 et seq.

or allegation to the contrary, we must conclude that, in each case, the Board agent provided Watts with technical assistance mandated by rule 32920.

Though Watts does not specify the nature of the additional assistance requested, he states, in pertinent part, as follows:

I have been having trouble filing these complaints . . . because I do not know how to write a complaint without legal help. I have been up against lawyers . . . and I can't compete with them. (Emphasis added.)

Thus, it appears that Watts is seeking legal representation rather than mere technical assistance. He essentially contends that he is entitled to such pursuant to rule 32163.³

Effective September 20, 1982, rule 32163 provides that:

If a party is unable to retain counsel or demonstrates extenuating circumstances, as determined by the Board, a Board agent may be assigned to assist the party in accordance with Board policy. (Emphasis added.)

As noted by the Board agent in his denial of Watts' request for assistance in Case Nos. LA-PN-46-H and LA-PN-47-H, the

³In Case No. LA-PN-42, Watts erroneously applied for assistance under rule 32625 and a "proposed" rule. Rule 32625, in effect at the time of his request, pertained only to unfair practice charges (see footnote 4, infra) and, therefore, is not applicable to this public notice complaint. Equally misplaced is Watts' reliance on a "proposed" rule which had not been finally adopted pursuant to the procedure established by Government Code section 11345 et seq. In this case, the "proposed" rule was finally adopted as rule 32163 after Watts applied for assistance.

In sum, the only rules applicable to assistance in public notice cases are rules 32920 and 32163, as discussed herein.

Board has not promulgated any formal written policy governing the implementation of rule 32163. Indeed, this is a matter of first impression for the Board itself.

We note, initially, that the rule is a general provision applicable not only to the filing of public notice complaints, but to all proceedings before the Board, including, for example, unfair practice charges and matters of representation.⁴

In addition, it is clear that, unlike rule 32920, rule 32163 is discretionary, not mandatory, by its terms. Contrary to Watts' contention, the rule creates no entitlement to legal assistance. Rather, the decision to provide any legal assistance to a party lies solely in the sound discretion of the Board.

In determining appropriate policy in this area, we are guided by the statutory scheme of the Acts which we administer.⁵ Unlike both the National Labor Relations Board

⁴At the same time that rule 32163 was adopted, a more specific rule pertaining only to unfair practice charges was deleted. Previous rule 32625 provided as follows:

If the charging party is unable to retain counsel or demonstrates extenuating circumstances, as may be determined by the Board, a Board agent may be assigned to assist such party to draft the charge or gather evidence.

⁵The Educational Employment Relations Act is codified at Government Code section 3540 et seq. The State Employer-Employee Relations Act is codified at Government Code section 3512 et seq. The Higher Education Employer-Employee Relations Act is codified at Government Code section 3560 et seq.

and the Agricultural Labor Relations Board, this agency is not structured to prosecute cases on behalf of charging parties. Rather, the parties themselves are fully responsible for the preparation and presentation of their cases. Thus, the Board's discretion to grant legal assistance is properly exercised with the utmost restraint.

Such determination must be made on a case-by-case basis, considering, at a minimum, the abilities and experience of the party requesting assistance, the difficulty and complexity of the case, and the public interest in resolution of the issues involved therein.

In the instant case, as we have noted, Watts has previously filed in excess of 40 public notice complaints. Notwithstanding his lack of formal legal education and his protestations to the contrary, Watts is undoubtedly an expert on both the substantive and procedural aspects of the public notice provisions of the Acts administered by this Board. For this reason, we find it difficult to conceive of a situation in which Watts could demonstrate circumstances justifying the provision of legal assistance by this agency in relation to his public notice complaints. Certainly, he has not demonstrated such justification here.

We, therefore, find that Watts' requests for assistance were properly denied.

ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this case, complainant Howard Watts' administrative appeals in Case Nos. LA-PN-42, LA-PN-46-H, LA-PN-47-H and LA-PN-65-H are hereby DENIED.

Chairperson Hesse and Member Burt joined in this decision.

APPENDIX A

PUBLIC NOTICE COMPLAINTS FILED BY HOWARD WATTS

<u>Case No.</u>	<u>Name</u>	<u>Date</u>	<u>Decision No.</u>
LA-PN-20	<u>Los Angeles Community College District</u>	(12/31/80)	153
LA-PN-21	<u>Los Angeles Community College District</u>	(12/31/80)	154
LA-PN-22	<u>Los Angeles Community College District</u>	(12/31/80)	155
LA-PN-25	<u>Los Angeles Community College District</u>	(12/31/80) (4/29/81) (11/30/81) (2/19/82)	150 150a 150b 150c
LA-PN-27	<u>Los Angeles Unified School District</u>	(12/30/80)	151
LA-PN-28	<u>Los Angeles Unified School District</u>	(12/30/80)	152
LA-PN-33	<u>Los Angeles Unified School District</u>	(11/19/81) (2/22/82)	181 181a
LA-PN-34	<u>Los Angeles Community College District</u>	(6/29/84)	388
LA-PN-35	<u>Los Angeles Community College District</u>	(12/15/81)	186
LA-PN-36	<u>Los Angeles Unified School District</u>	(12/15/81)	187
LA-PN-37	<u>Los Angeles Community College District</u>	(8/15/83)	330
LA-PN-37	<u>Los Angeles Community College District</u>	(8/15/83)	331
LA-PN-38	<u>Los Angeles Unified School District</u>	(8/18/83)	335
LA-PN-38		In abeyance on remand	
LA-PN-38	<u>Los Angeles Unified School District</u>	(8/18/83)	336
LA-PN-39	<u>Los Angeles Community College District</u>	(5/22/84)	385
LA-PN-40	<u>Los Angeles Community College District</u>	Dismissed 5/17/82	
LA-PN-41	<u>Los Angeles Community College District</u>	Dismissed 5/17/82	
LA-PN-43	<u>Los Angeles Community College District</u>	Appeal pending	
LA-PN-48-H	<u>California State University</u>	Appeal pending	
LA-PN-50-H	<u>California State University</u>	Appeal pending	
LA-PN-51-H	<u>California State University</u>	Appeal pending	
LA-PN-52-H	<u>California State University</u>	Appeal pending	

<u>Case No.</u>	<u>Name</u>	<u>Date</u>	<u>Decision No.</u>
LA-PN-53-H	<u>California State University</u>	Dismissed	9/7/83
LA-PN-54-H	<u>California State University</u>	Dismissed	9/8/83
LA-PN-55-H	<u>State Employees Trades Council</u>	Dismissed	9/8/83
LA-PN-56-H	<u>California School Employees Association</u>	Dismissed	9/8/83
LA-PN-57-H	<u>Statewide University Police Association</u>	Dismissed	9/8/83
LA-PN-58-H	<u>California School Employees Association</u>	Dismissed	9/8/83
LA-PN-59-H	<u>California State University</u>	Under investigation	
LA-PN-60-H	<u>California State University</u>	Dismissed	4/10/84
LA-PN-61-H	<u>California State University</u>	Dismissed	4/10/84
LA-PN-62-H	<u>California State University</u>	Dismissed	4/10/84
LA-PN-63-H	<u>California State University</u>	Dismissed	4/10/84
LA-PN-64-H	<u>California State University</u>	Dismissed	4/10/84
LA-PN-66-H	<u>California State University</u>	Dismissed	4/10/84
LA-PN-67-H	<u>California State University</u>	Under investigation	
LA-PN-70	<u>Los Angeles Community College District</u>	Appeal pending	
LA-PN-73	<u>Los Angeles Community College District</u>	Appeal pending	
LA-PN-74-H	<u>California State University</u>	Dismissed	8/10/84
LA-PN-77	<u>Los Angeles Unified School District</u>	Under investigation	
LA-PN-78	<u>Los Angeles Community College District</u>	Appeal pending	
LA-PN-79	<u>Los Angeles Community College District</u>	Appeal pending	
LA-PN-80	<u>Service Employees International Union, Local 99</u>	Appeal pending	
LA-PN-81-H	<u>California State University</u>	Under investigation	
LA-PN-82	<u>Service Employees International Union, Local 99</u>	Under investigation	
LA-PN-83	<u>Los Angeles Community College District</u>	Under investigation	