STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GORDON BUSCH, Complainant, v. OCEAN VIEW SCHOOL DISTRICT, Respondent.	)	Case No. LA-PN-122 PERB Decision No. 938 June 9, 1992

Appearance: Gordon Busch, on his own behalf.

Before Hesse, Chairperson; Camilli and Caffrey, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on an appeal filed by Gordon Busch (Busch) to an administrative determination (attached) by a PERB regional director. The regional director dismissed the complaint filed by Busch against the Ocean View School District (District) which alleged that the District violated section 3547(a), (b) and (c) of the Educational Employment Relations Act (EERA).[1]

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3547 provides, in pertinent part:

> (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.

Specifically, Busch alleges that the District's initial proposals "lack[ed] the specificity that would allow the public to comprehend it, particularly as it relates to financial impact." Busch also alleges that the District: (1) failed to allow public comment after the September 19, 1991 public board meeting; and (2) failed to adopt its amended initial proposals prior to negotiations.

The Board has reviewed the dismissal, and finding it free of prejudicial error, adopts it as the decision of the Board itself consistent with the following discussion.

DISCUSSION

Busch's first argument that the regional director failed to make a determination regarding the District's initial proposals is without merit. As stated by the regional director in her administrative determination, PERB cases establish that in determining the sufficiency and specificity of an initial proposal, the Board may look to subsequent oral clarifications and explanations. (Los Angeles Community College District (1985)

> (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.

PERB Decision No. 489; Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO (1985) PERB Decision No. 490; and Los Angeles Community College District (1991) PERB Decision No. 908.) In this case, the regional director properly concluded that the District's oral clarifications at the September 3, 1991, public board meeting were sufficient to cure any defects or insufficiencies in the District's initial proposals.

In Busch's second argument, he admits that oral clarifications are sufficient. However, Busch questions the regional director's citations to PERB cases and states the only remotely relevant case is the Board's decision in Los Angeles Community College District, supra, PERB Decision No. 908, where the public school employer adopted an amended initial proposal prior to negotiations. It appears Busch is asserting that the District should have adopted the September 3, 1991 oral clarifications as amendments to the initial proposals or amended initial proposals. In the PERB cases involving subsequent clarifications of initial proposals, there is no requirement that the public school employer amend its initial proposals. Rather, the issue is whether the subsequent clarifications result in the initial proposals being "sufficiently developed to permit the public to comprehend them." (Palo Alto Unified School District (1981) PERB Decision No. 184.) Here, there were no amendments to the District's initial proposals, only oral clarifications. Based on these facts, the regional director correctly concluded

that oral clarifications of the District's initial proposals constituted sufficient notice under section 3547(a) of EERA.

Finally, Busch argues that the regional director's citation to Los Angeles Unified School District (1987) PERB Order No. Ad-162 does not support her conclusion that the District is not required to re-adopt its initial proposals. In PERB Order No. Ad-162, the Board dismissed a public notice complaint because the public school employer had voluntarily complied with a previous cease and desist order and posting order, which resulted from a settlement of a prior public notice complaint. In his appeal, Busch has misstated the facts and holding of this case. Therefore, Busch's argument must be rejected.

ORDER

The complaint in Case No. LA-PN-122 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Caffrey joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

OCEAN VIEW SCHOOL DISTRICT, Respondent, - and - GORDON BUSCH, Complainant.	))))))))	DISMISSAL OF PUBLIC NOTICE COMPLAINT Case No. LA-PN-122 March 17, 1992

PROCEDURAL HISTORY

On August 8, 1991,[1] Gordon Busch (Busch or Complainant) filed a public notice complaint against the Ocean View School District (District) alleging violations of section 3547(a), (b), and (c) of the Educational Employment Relations Act.[2] The

[1]All dates referenced herein are in calendar year 1991, unless otherwise indicated.

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

Section 3547 provides in pertinent part:

> (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 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.

complaint alleges that the District's initial proposals "lacked the specificity required for the public to reasonably comprehend them on issues that are of major importance . . . particularly as it relates to financial impact." During processing of the complaint, on January 27, 1992, Complainant further alleged a (b) violation because the District did not allow public comment after a September 19 public Board meeting and a (c) violation due to the district's failure to adopt its amended initial proposal prior to the negotiations session conducted on September 23.[3]

The District presented its initial proposals at a public Board meeting on June 20, and provided the public an opportunity to address its proposals at a public Board meeting on July 8. Busch addressed the Board on the issue of public notice.[4]

An informal settlement conference[5] was conducted on August

> (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 . . .

[3] Complainant's allegations were first raised in reply to the District's December 23 submission. Because the complaint is being dismissed herein, the District was not required to file an additional response.

[4] The record in this case does not contain the minutes of this meeting which would reflect the specific comments made by Busch. However, in the submissions in a related case, LA-PN-119, a Board agenda for the July 8 meeting is attached which states that the Board advertised the meeting as one in which the public would address the District's initial proposals.

[5] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32920 provides in part:

23, with the District,[6] OVTA[7] and Busch. Although settlement of the complaints was not reached at the informal conference, **both**

(a) When a complaint is filed, the case shall be assigned to a Board agent for processing.

(b) The powers and duties of such Board agent shall be to:

(4) Facilitate communication and the exchange of information between the complainant and the respondent or respondents;

(5) Explore the possibility of and facilitate the voluntary compliance and settlement of the case through informal conferences or other means;

(6) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;

(7) If the Board agent receives **proof that the** respondent has voluntarily complied with **the provisions of** Government Code sections 3547 or 3595, **a Board agent may** either approve the complainant's **withdrawal of the complaint** or dismiss the complaint.

(8) Dismiss any complaint **which, after investigation,** is determined to fail to **state a prima facie allegation or** which is not supported by sufficient **facts to comprise a** violation of Government; Code sections 3547 **or** 3595. **Any** such dismissal is appealable to the Board itself pursuant to section 32925 of these regulations;

(9) If the complaint is found by the Board agent to state a prima facie violation of Government Code sections 3547 or 3595, direct each respondent to file with the regional office a written answer, signed by an authorized agent of the respondent, which contains:

[6]The complaints against the District in this case and in LA-PN-119 were consolidated for purposes of investigation.

[7]A separate public notice complaint (LA-PN-118) was filed against OVTA on June 6. Resolution of that complaint was also attempted at the August 23 settlement conference by agreement of the parties. However, since no settlement was obtained, a separate investigation regarding the allegations against OVTA was conducted.

the District and OVTA expressed a willingness to present further explanation of their respective initial proposals at another public Board meeting(s). The District and OVTA were also encouraged at the conference and during subsequent telephone conversations with the undersigned to provide the Complainant with information and documentation which might facilitate voluntary resolution of the complaints.

At a September 3 public Board meeting, the District provided explanatory comments regarding the eleven separate Articles that it wished to negotiate with the OVTA. At the end of the District's presentation, the public was informed that an opportunity to present input and questions would be provided at the September 17 public Board meeting.[8]

Thereafter, at its September 19 public Board meeting, the public was afforded an opportunity to present input and ask questions regarding the District's proposal. Two members of the public addressed the Board, in addition to Busch who was allowed thirty minutes to do so.[9] The District and OVTA commenced negotiations on September 23. At this session, the parties set

[8]Although the September 3 minutes reflect that the next meeting would be held on September 17, documentation provided by both parties reflects that it was, in fact, held on September 19.

[9]Busch also mentions an October 1 public meeting wherein the public was allowed to comment on the "District's amended proposal". No minutes or additional information as to the content or extent of the comments were provided, so this meeting is not considered in this dismissal.

ground rules and apparently engaged in collaborative bargaining.[10]

After various conversations with the Complainant, it was determined by the undersigned that he would not withdraw this complaint, regardless of the steps undertaken by the District. Therefore, on November 22, the District was ordered to produce documents and argument which substantiated its belief that it had complied with the law. The Complainant was afforded an opportunity to respond to the District's submissions. Both parties filed timely responses on December 23 and January 27, 1992 respectively.

POSITIONS OF THE PARTIES

Busch alleges that the District violated section 3547(3), (c), and (b) because the District's proposals "lacked the specificity required for the public to reasonably comprehend them on issues that are of major importance . . . particularly as it relates to financial impact." In his January 27, 1992 response, Busch alleges a (b) violation because the District did not allow public comment after its September 19 meeting and a (c) violation

[10]In April, the District and OVTA participated in training under the auspices of the California Foundation for the Improvement of Employer/Employee Relations to learn the techniques of collaborative bargaining. While PERB contributed to the development of the training module, its participation in the project ceased after March, 1991. PERB does not endorse a particular negotiations model over others, since its mission is simply to administer and enforce the statutes under its jurisdiction, regardless of the model or method chosen by the parties to effectuate their labor relations.

due to the District's failure to adopt its amended initial proposal prior to the negotiations session held on September 23.

The District denies any wrongdoing and asserts that it has presented proposals that clearly meet all statutory requirements and that it did not negotiate until public comment occurred.

DISCUSSION

Specificity and Public Response Time

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 their nature. However, in Palo Alto Unified School District (1981) PERB Decision No. 184, the Board noted that such proposals must satisfy the intent expressed in subsection 3547(e), i.e., 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.

The Board went on to explain that "the initial proposals presented to the public must be sufficiently developed to permit the public to comprehend them." PERB found a proposal for a cost of living adjustment based upon the Consumer Price Index to be "sufficiently developed to inform the public what issue will be on the table at negotiations," notwithstanding Complainant's assertion that it was not specific. The same result was reached in a later, similar case. American Federation of Teachers College Guild, Local 1521 (1989) PERB Decision No. 740.

In other decisions, the Board has shown that it will look beyond the actual initial proposal to determine whether the requirements of section 3547 have been met. In Los Angeles Community College District (1984) PERB Decision No. 411, the Board was presented with the issue of whether or not the employer's initial proposal regarding amendments to life insurance plans provided sufficient information. The Board found it unnecessary to decide whether the proposal, alone, "[met] the requirements of Government Code section 3547, because the District also included explanatory information with its initial proposal." (footnote omitted)

Explanation of an initial proposal to bring it into conformity with the requirements of section 3547 need not be in writing. Oral clarification of initial proposals at public meetings held by the employer has been found to constitute sufficient notice under subsection 3547(a) in Los Angeles Community College District (1985) PERB Decision No. 489, Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO (1985) PERB Decision No. 490, and Los Angeles Community College District (1991) PERB Decision No. 908.

As noted previously, the District presented its initial proposals at a public meeting on June 20 and provided an opportunity for public response at a meeting on July 8. These proposals were presented in terms of proposed changes to eleven distinct articles in the then current collective bargaining

agreement. Complainant perceived these proposals lacked the requisite specificity, and filed the complaint in this case on August 8.

It is fair to say that the proposals presented by the District on June 20 varied in the extent to which they provided insight into the issues which would be at the negotiating table, and some proposals might well have been found insufficiently specific had there been no further explanation. However, it is unnecessary to decide whether any of those written proposals were inadequate standing alone, because, in response to the complaint, and pursuant to agreement reached at the August 23 settlement conference, the District provided oral explanation of each proposal at the September 3 public Board meeting. The explanation consisted of a recitation of the original written proposal followed by a more complete and detailed statement of the District's intent. For example, the explanations of proposals regarding two economic subjects, salary and health and welfare benefits, each included, among other statements, the revelation that the District sought to maintain the status quo. Taken together, the initial written proposals and the subsequent explanatory remarks are sufficiently developed to inform the public of the issues which would be on the table when negotiations began on September 23. Thus, even if the District's proposals violated the requirements of subsection 3547(a) at the time the complaint was filed, the deficiencies were cured as of September 3.

Complainant does not disagree with the legal theory that subsequent oral statements may be used to cure defects in initial proposals. To the contrary, Complainant quotes approvingly the following statement in the District's brief:

> [B]oth the written initial proposal and any oral statements explaining or presenting it must be used in determining whether the proposal complies with the public notice requirements'. District Brief at 8.[11]

However, Complainant argues that the original and inadequate written proposal "was not cured of its insufficiencies until September 19, 1991, when the District representative responded to Complainant's questions during a public meeting." (footnote omitted) Thus, argues the Complainant, the District having finally presented sufficient proposals, then had an obligation to provide an opportunity for public response pursuant to subsection (b), and to adopt its proposals pursuant to subsection (c).

The Complainant fails to acknowledge or mention the public meeting of September 3, notwithstanding the fact that the minutes of that meeting and of the September 19 meeting confirm that he was present[12] and familiar with the District's

---

[11]Complainant's Brief p.10.

[12]On page 113.1 of the Board minutes of the September 3, 1991, meeting appears the following:

> Gordon Busch, parent, commented on closed session notification and details given in public notices, and stated that he had not dropped complaints related to OVTA and District initial proposals for collective bargaining, but looked forward to seeing the Board's explanation.

explanations.[13] In fact, in order to have asked the clarifying questions at the Septembers 19 meeting, Complainant had to have understood the District's initial proposals as explained on September 3.[14] A comparison of the minutes of the two meetings fails to sustain Complainant's assertion that deficiencies in the initial proposal were not cured until the latter meeting. The minutes of the September 19 meeting reflect that Complainant asked clarifying questions concerning four of the District's proposals. The very nature of the Complainant's questions indicates that he had an understanding of the issues which were to be on the negotiating table.[15] For example, addressing the

---

[13]At the September 19 meeting, Complainant asked the following question which could only have been in response to the District's explanation on September 3:

*

#2, under Salaries. Does status quo mean zero?

(September 19 Board Meeting Minutes, p. 137.18.)

[14]Section 3547 allows the public an opportunity to express itself regarding initial proposals; agreement with those proposals is not required and disagreement is not a basis for finding a violation.

[15]Further, the paucity of questions asked and answered at the September 19 meeting contradicts Complainant's argument that deficiencies were not cured before that date. An examination of the questions and comments of the public, including those from Busch, as well as the District's answers, reveals relatively little additional information was forthcoming compared to that which was provided on September 3.

District's early retirement incentive plan in the health and welfare proposal, the Complainant asked the following:

> The District proposes an early incentive [sic] plan that will result in cost-savings to the District. Could you explain to me what this plan is, how it will save money, and whether or not the cost-savings mentioned are based on short-term savings and long-term savings and how much will we save?[16]

After a response from a District representative, the Complainant added the following:

> Well . . . what I have a concern about is that a lot of these so-called early retirement plans -- incentive plans -- may, in fact, early on save the District money, but as you've moved through the years, end up costing lots of money and it's a net loss instead of a gain . . . I would appreciate the District making some kind of a proposal so that we could reasonably ascertain what kind of impact that might have on the District, both short-term and long-term.[17]

The September 19 meeting was expressly identified as an opportunity for the public to speak and ask questions on the initial proposals,[18] which is precisely what Complainant did. Because Complainant was given this opportunity, more than two weeks after presentation on September 3 of a detailed explanation of the District's proposals, the requirements of Government Code subsection 3547(b) were met.

Adoption of Initial Proposals

Complainant's final argument is that "the District violated Govt. Code 3547(c) by failing to adopt its sufficient initial

---

[16]September 19, 1991, Board Meeting Minutes, p. 137.19.

[17]September 19, 1991, Board Meeting Minutes, p. 137.20-21.

[18]September 3, 1991 Board Meeting Minutes, p. 113.10; September 19, 1991 Board Meeting Minutes, p. 137.2.

proposal at a public meeting."[19] The issue here is not whether the District failed to adopt its initial proposal, for Complainant's statement of the facts indicate that the District adopted its June 20 proposal on August 20. Rather, the issue apparently is whether the District was obligated to again adopt its proposals after the September 3 explanation and the September 19 public comment. Complainant asserts that "[a]doption of the amended initial proposal should have been made after the public had an opportunity to comment on such proposal," and cites Los Angeles Community College District and California School Employees Association (1981) PERB Decision No. 158, (Kimmett) in support of that assertion. However, neither the facts in this case nor Kimmett support Complainant's argument. First, despite Complainant's repeated characterizations of the District's proposals as having been amended, there is no evidence that such amendment occurred, but only an explanation and elaboration of the initial proposals. This distinction, however subtle it may appear to be, is an important one. While the Board has, indeed, held that amendments to initial proposals require public comment before adoption, Los Angeles Unified School District (1987) PERB Order No. Ad-162, there appear to be no cases which support a conclusion that re-adoption of the District's proposals are required in this case. The case cited by Complainant,

---

[19]Complainant's Brief p. 14.

In fact, the contrary is true. State of California (Department of Personnel Administration) (1992) PERB Decision No. 921-S, involved alleged violations of the public notice

Kimmett, is completely inapposite, and simply stands for the proposition that proposals regarding reopeners and amendments to existing agreements must comply with the public notice provisions.

The District may have been in violation of Government Code section 3547(a), (b), and (c) when this complaint was filed, but not because it had failed to adopt its proposal prior to allowing public comment. The underlying cause of each of these possible violations was the extent to which the initial proposals provided sufficient information to the public, and once that deficiency was eliminated, all of the requirements of section 3547 were met. Requiring the District in this case to adopt again proposals which have already been presented, proposed, explained extensively, and commented upon, fails to serve the purpose of the public notice provisions, and merely exalts form over, substance.

CONCLUSION

For the foregoing reasons, this complaint is DISMISSED 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)

---

provisions of the Dills Act, which differ somewhat from those in EERA. However, the basic purpose of the provisions are the same, and in that case, the Board specifically held that the State was not required to sunshine a later and more specific set of proposals than it had originally introduced.

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 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 Administrative Code, 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 San Francisco 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 other 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: March 17, 1992

Anita I. Martinez
Regional Director