

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GORDON BUSCH,)
)
Complainant,) Case No. LA-PN-118
)
v.) PERB Decision No. 943
)
OCEAN VIEW TEACHERS ASSOCIATION,) June 18, 1992
)
Respondent.)
_____)

Appearances: Gordon Busch, on his own behalf; Robert Einar Lindquist, Attorney, for Ocean View Teachers Association.

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 a partial dismissal of public notice complaint (attached) by a PERB regional director. The regional director dismissed the complaint filed by Busch against the Ocean View Teachers Association (Association) which alleged that the Association violated section 3547(a), (b) and (e) 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.

The complaint alleged that: (1) the Association's initial proposals presented were not sufficiently developed for the public to comprehend; (2) the Association and Ocean View School District (District) may have negotiated in an executive session before the public was afforded an opportunity to express itself;² and (3) "PERB should consider Government Code 54950 in addition to section 3547 in making its ruling."³

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

In his appeal, Busch argues that the regional director failed to make a determination regarding the Association's

(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.

(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.

²The regional director determined that this allegation stated a prima facie violation.

³See footnote 5 on page 2 of the regional director's partial dismissal of public notice complaint.

initial proposals. This argument 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) PERB Decision No. 489; Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO (Watts) (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 Association's oral clarifications at the September 3, 1991 public board meeting were sufficient to cure any defects or insufficiencies in the Association's initial proposals.

Busch's argument that the regional director unnecessarily expanded the scope of Palo Alto Unified School District (1981) PERB Decision No. 184 (Palo Alto) is also without merit. In Palo Alto, the Board found that a proposal for a cost of living adjustment based upon the consumer price index was sufficient to inform the public of the issue to be negotiated. The Board also stated that an initial proposal which is simply a statement of a subject matter, such as wages, does not adequately inform the public of the issues to be negotiated.

In the present case, the regional director found that the subsequent oral clarifications of the Association's initial proposals cured any defects or insufficiencies. In reviewing the

minutes of the September 3 and 19, 1991 public board meetings, it is clear that the Association's initial proposals, including the subsequent oral clarifications, are more than mere statements of the subject matter to be negotiated. As these oral clarifications of the initial proposals were held to be sufficient to inform the public of the issue to be negotiated, the administrative determination is consistent with the Board's decision in Palo Alto.

While Busch admits that oral clarifications are sufficient, 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.) 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 Association's initial proposals constituted sufficient notice under section 3547(a) of EERA.

Busch's arguments that the Association failed to present sufficient information on certain issues must be rejected. Both the regional director's administrative determination, and Busch's own appeal, demonstrate that he had sufficient information on the

Association's initial proposals. For example, Busch's objection to the use of the words "usually" and "probably" in the Association's oral clarification of the issue regarding the maintenance of a competitive salary schedule is meticulous. Busch is dissecting the Association's initial proposals and subsequent oral clarifications to find any possible ambiguity. Based on PERB case law regarding the sufficiency of initial proposals, the regional director properly found that the Association's initial proposals, with its subsequent oral clarifications, were sufficient to inform the public of the issues to be negotiated. (See Palo Alto, supra, PERB Decision No. 184.)

Finally, the Association's argument that its reliance on "collaborative bargaining" equitably estops PERB from finding a public notice violation is without merit. Regardless of whether "collaborative bargaining" was advocated by PERB, the parties' use of a new or different bargaining technique does not excuse the parties from the statutory requirements set forth in EERA.

ORDER

The allegation in the complaint in Case No. LA-PN-118 that the Association violated EERA section 3547 by presenting initial proposals which were not sufficiently developed for the public to comprehend is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Caffrey joined in this Decision.

complaint alleges that the initial proposal presented by OVTA on May 7 was not sufficiently developed for the public to comprehend; that OVTA and the Board of Trustees met on May 21 and may have negotiated in an executive session before the public was afforded an opportunity to express itself⁴; and, "that PERB should consider Government Code 54950 in addition to section 3547 in making its ruling."⁵

(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.

⁴The allegations regarding the May 21 meeting have been severed from this dismissal since they have been found to state a prima facie violation. A separate Determination of Prima Facie Violation has been issued this date.

⁵Government Code section 54950, the "Declaration of public policy" within the Ralph M. Brown Act, states the following:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

PERB's jurisdiction in this case is limited to enforcing violations of the EERA. Bracey v. Los Angeles Unified School Dist. (1986) PERB Decision No. 588. While PERB's interpretation of the EERA may reasonably be construed in a way which will harmonize it with other laws, San Mateo City School Dist., v.

OVRTA presented its initial proposal at a public Board meeting on May 7. The public was provided an opportunity to address the proposals at a public Board meeting on May 21.⁶

An informal settlement conference⁷ was conducted on August

Public Employment Relations Bd., (1983) 33 Cal.3d 850 [191 Cal.Rptr. 800], the issues in this case do not require that EERA be harmonized with the Brown Act.

⁶A copy of the District's May 21 agenda lists "Public Hearing - Initial Proposals for Collective Bargaining - Ocean View Teachers Association" as an Information Item. Minutes reflect that Complainant and another member of the public addressed the Board.

⁷ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32920 provides in part:

(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

23 with the Ocean View School District,⁸ OVTA and Busch. Although settlement of the complaints was not reached at the informal conference, both 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, OVTA provided explanatory comments regarding some 27 separate Articles and subsections that it wished to negotiate with the District. At the end of OVTA's and the District's presentation, the public was informed by the District representative that an opportunity to

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...

⁸Two separate public notice complaints (LA-PN-119 and LA-PN-122) were filed against the District on June 6 and August 8, respectively. Resolution of those complaints 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 the District was conducted.

present input and questions regarding both sets of proposals would be provided at the September 17 public Board meeting."

Thereafter, at the September 19 public Board meeting, the public was afforded an opportunity to present input and ask questions regarding OVTA's proposal. One member of the public addressed the Board, in addition to Busch who was allowed thirty minutes to do so. The District and OVTA commenced negotiations on September 23.¹⁰ At this session, the parties set ground rules and apparently engaged in collaborative bargaining.¹¹

After various conversations with the Complainant, it was determined by the undersigned that he would not withdraw the complaint, regardless of the steps undertaken by OVTA. Therefore, on November 22, OVTA 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

⁹Although 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.

¹⁰The last collective bargaining agreement between the parties expired on July 1.

¹¹In April 1991, 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.

respond to OVTA's submissions. Both parties filed timely responses on December 23 and January 27, 1992 respectively.

POSITIONS OF THE PARTIES

In his complaint, Busch alleges that OVTA has violated section 3547(a), (b) and (e)¹² by not presenting sufficiently developed proposals for the public to comprehend. The complaint also asks PERB to consider Government Code section 54950 when making its determination.

OVTA believes that it has fully complied with the public notice requirements. In the alternative, it believes that PERB should be estopped from finding a violation because it intentionally caused OVTA to fail to comply with section 3547.

DISCUSSION

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 proposals of both the exclusive representative and the employer must satisfy the intent expressed in subsection 3547(e)¹³, i.e., that

¹²The January 27 submission simply states the language contained in subsection (e).

¹³Subsection 3547(e) contains a statement of the legislature's intent in enacting the public notice provisions, and thus, has aided PERB in the interpretation of the remaining subsections. However, it imposes no independent and specific requirements on either the employer or exclusive representative, and, therefore, a party cannot be found to violate this subsection. Accordingly, Complainant's allegation of a violation of subsection 3547(e) is dismissed.

. . . 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.

Sufficiently informative proposals and an opportunity for public comment on such proposals are necessary prerequisites to meeting and negotiating. Complainant contends OVTA's proposals lacked the requisite specificity when they were first presented, and that they remain insufficient even after additional information was provided.

It is fair to say that the proposals presented by the OVTA on May 7 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, OVTA 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 OVTA's intent. Differences in the earlier and explained proposals may be seen,

for example, in proposals concerning teacher discipline and professional growth: The initial proposal in the subject area of "Teacher Discipline" had indicated that OVTA sought, among other items, a "review of process and criteria"; this was expanded to indicate that OVTA sought

to restructure the teacher discipline process to include a series of steps and written warnings and reprimands before any punitive action is administered.¹⁴

Another initial proposal had identified "Professional Growth" as a new article to be negotiated; this was explained to reveal that OVTA sought

to outline the legal requirements for new teachers to successfully complete the 150 clock hours of education that are required every 5 years for new teachers hired after 1986.¹⁵

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 OVTA'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 disputes the adequacy of OVTA's proposals, even after the explanations offered on September 3 and the opportunity for public response and questions on September 19, characterizing OVTA's representative at the latter meeting to have been "at

¹⁴September 19, 1991, Board Meeting Minutes, p. 113.4.

¹⁵September 19, 1991, Board Meeting Minutes, p. 113.5.

best, contentious when responding and [having] evaded or refused to answer questions involving key issues." Complainant proceeds to quote a rather lengthy series of exchanges between himself and OVTA's representative, including, for example, one in which Complainant sought to know how much additional planning time was being sought by OVTA for grades 4 through 6. (Complainant's Brief, pp.7-8.) However, 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. The kind of detailed information which the Complainant sought, and apparently still seeks, is simply not required by the public notice provisions.¹⁶

The September 19 meeting was expressly identified as an opportunity for the public to speak and ask questions on the initial proposals,¹⁷ 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 OVTA's proposals, the requirements of Government Code subsection 3547(b) were met.

CONCLUSION

¹⁶Complainant's desire to understand the fiscal impact of proposals is analogous to the request to obtain disclosure of insurance company bids in Los Angeles Community College District (1984) PERB Decision No. 411. There, PERB found such disclosure "requires specificity beyond the Board's guidelines in Fein." The reference to Fein is to the landmark decision in Palo Alto Unified School District (1981) PERB Decision No. 184, cited previously.

¹⁷September 3, 1991 Board Meeting Minutes, p. 113.10; September 19, 1991 Board Meeting Minutes, p. 137.2.

For the foregoing reasons, that part of this complaint which alleges that the OVTA violated section 3547 by presenting initial proposals which were not sufficiently developed is DISMISSED.

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 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