STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LEON E. MC KINNEY, Complainant,	)	Case No. LA-PN-135
v.	)	PERB Decision No. 1016
HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT, Respondent.	)	October 7, 1993

Appearances; Leon E. McKinney, on his own behalf; Rutan & Tucker by David C. Larsen, Attorney, for Huntington Beach Union High School District.

Before Blair, Chair; Caffrey and Garcia, Members.

DECISION

GARCIA, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal filed by Leon E. McKinney (McKinney) of a Board agent's dismissal of his public notice complaint (attached) as untimely filed and failing to state a prima facie violation. McKinney's basis of appeal is that: (a) the Huntington Beach Union High School District (District) should have formally adopted the initial proposal before negotiating and (b) the complaint was timely because of the date McKinney obtained actual knowledge of negotiations. McKinney concludes that a prima facie violation was established. Based on a review of the entire case record we affirm the dismissal.

DISCUSSION

The Educational Employment Relations Act (EERA) does not require formal adoption of a proposal prior to negotiations. The goals of the statute are stated in EERA section 3547(e).[1] The 1993 meetings of the District's board on February 9, March 9 and April 27 satisfy the District's obligations under the statute.

PERB Regulation 32910[2] requires the complainant to file a complaint no later than 30 days after a violation could have been

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[1]EERA is codified at Government Code section 3540 et seq. Section 3547 states, in pertinent part:

> (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.

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation section 32910 states:

> A complaint alleging that an employer or an exclusive representative has failed to comply with Government Code sections 3547 or 3595 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 school district or is an adult student in the district. The complaint shall be filed no later than 30 days subsequent to the date when conduct alleged to be a violation was known or reasonably could have been discovered. Any period of time used by the complainant in first exhausting a complaint procedure adopted by an EERA or HEERA employer shall not be included in the 30-day limitation.

reasonably discovered. McKinney's letter of May 21, 1993 to PERB's Labor Relations Specialist, Roger Smith, indicates he thought negotiations were occurring when he went into the March 30 meeting with the District superintendent; at that meeting he could have reasonably discovered the situation by asking. He offers no credible evidence that negotiations occurred prior to March 9, 1993. McKinney has failed to establish a prima facie case of a violation of EERA's public notice requirement.

ORDER

. The appeal of dismissal in Case No. LA-PN-135 is DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Caffrey joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

LEON E. MCKINNEY, Complainant, v. HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT, Respondent.	)	Case No. LA-PN-135 Dismissal of Public Notice Complaint July 1, 1993

This decision dismisses the public notice complaint filed with the Public Employment Relations Board (PERB or Board) by Leon E. McKinney (Complainant or McKinney) on May 13, 1993, and amended on May 28, 1993, against the Huntington Beach Union High School District (District). The complaint alleges violations of Government Code section 3547(b) and (c).[1]

BACKGROUND

The complaint, as initially filed, alleges that the District engaged in negotiations with the exclusive representative for a unit of certificated employees, the District Educators Association (DEA), prior to the adoption of its own initial

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[1]Government Code sections 3547(b) and (c) provide:

> (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.

proposals at a public meeting as required by Government Code sec. 3547(c).[2] The Complainant contends that the District sunshined its initial proposal on February 9, 1993,[3] presented the proposal for public comment at a Board meeting on March 9, and then, sometime between March 9 and April 27, the date the District adopted its own proposal, the District and DEA engaged in negotiations.[4]

On May 28, McKinney submitted additional information to support his case and amended his complaint to allege that the District's initial proposal of February 9 was not sufficiently developed to allow the public to understand the District's position. The Complainant contends that since the District's proposal did not become official until April 27, and he had no confirmation that the District and DEA met prior to the March 9, District Board of Education meeting until he read a newspaper article on May 20, the timeliness of his filing should not be at issue.[5]

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[2]See footnote 1 above.

[3]A11 dates referenced herein are in calendar year 1993, unless otherwise indicated.

[4]The Complainant relies on newspaper articles and information gathered in his meeting with the superintendent. The District admits through its June 3 letter to the undersigned that following the March 9 meeting negotiations commenced. The District also acknowledges that two informational meetings occurred with DEA prior to the public response date. The District contends that it provided DEA with budget and staffing/enrollment projections and scheduled future meeting dates. No evidence to the contrary has been provided.

[5]See Cal. Code of Regulations, title 8, section 32910.

POSITION OF THE DISTRICT

The District contends that no negotiations with DEA occurred prior to the public's response to the sunshined proposals on March 9. The District further argues that to the extent that the failure to formally adopt its proposal following the March 9 public comment might be construed as a technical violation of Government Code 3547, it was not timely complained of by McKinney. The District asserts that McKinney was advised at a March 30 meeting with the Superintendent that the District intended to adopt its proposal on March 9, but due to oversight failed to do so and had commenced bargaining with DEA.

ISSUES

1. Was the complaint timely filed?

2. If the complaint was timely filed, did the District violate Government Code 3547(c) by meeting and negotiating with DEA prior to formally adopting its proposal?

3. If the complaint was timely filed, was the District's proposal as presented on February 9 and March 9 sufficiently developed to allow the public to comprehend and respond?

DISCUSSION

In an early PERB decision, Los Angeles Community College District (1978) PERB Order No. Ad-41, the Board reviewed the basis for its regulation 37010 which provides that

> "[a] complaint alleging that an employer or an exclusive representative has failed to comply with [the public notice provisions of the Government Code]... shall be filed no later than thirty calendar days subsequent to the date when conduct alleged to be a

violation was known or reasonably could have been discovered..."[6]

That decision held:

> In implementing the public notice provisions of the EERA, the Board has adopted rules and regulations that provide for expedited proceedings so that the right of the public to receive notice, learn the positions of its elected representatives, and to express its own views can be fully protected. The public notice provisions, however, were never intended to be read in a vacuum but must be considered in light of the entire EERA. The Legislature has determined that it is within the public interest to achieve improved employer-employee relations within public school systems. The EERA was enacted to promote this goal and reflects the Legislative judgment that the desired improvement in employer-employee relations can best be obtained though a process of collective negotiations culminating in final agreement and resulting in a mature and stable negotiating relationship. In one section of the EERA, the public notice section, the Legislature secured to the public the right to be informed and to express its view on the negotiating process. This public awareness and input was intended to further, not impede, the broad goals of the EERA.
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> Serious injury to educational employment relations would result if concerned or merely disgruntled citizens could utilize the public notice provisions of the EERA to bring delayed challenges to negotiations that had otherwise been satisfactorily completed. Moreover, there are compelling reasons to bar untimely public notice complaints even though the parties may not yet have reached agreement. While the Board has specifically provided in its rules and regulations that the pendency of a public notice complaint will not cause negotiations to cease, the filing of a complaint nonetheless has an unsettling effect on the negotiations in progress. This is so because should such a complaint be found to have merit, the status of any final agreement between the parties is uncertain and they must necessarily divert their attention from reaching agreement to defending against the charge. That the parties may ultimately be vindicated in their conduct does not save the negotiating process from

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[6]This regulation was subsequently renumbered 32910. (See footnote 5.)

> harm, for the damage occurs when the unreasonably delayed complaint is filed. A citizen who seeks to file a complaint alleging a violation of the public notice provisions after the prescribed time has elapsed could thus thwart the very harmony between the employer and its employees sought to be promoted by the EERA. Accordingly, we conclude that such untimely complaints must be barred. (Id.)

In analyzing the instant complaint, it is undisputed that the public was made aware of both DEA's and the District's initial proposals as of February 9 and that the public had the opportunity to address its comments at a March 9 public meeting. In fact, the minutes from that meeting indicate that the Complainant, Mr. Jim Ball, and Mr. Joe Wagner responded to the sunshined proposals using overhead transparencies to outline their perspective as concerned members of the public.

Based on the facts and precedent, Complainant's allegation contained in his **May** 27 amendment, that the District's proposal as presented on **February 9 and** formally adopted on April 27, was not specific enough, is not timely filed. The Complainant was aware of the language of the District's proposal for more than three months and could have sought clarification at any time. The contention that the proposal is a "talking paper" and did not become official until adopted by the school board on April 27 is not supported by law or fact.

As to the manner in which the District sunshined its proposals, PERB has held that the only prescribed order for employers to comply with the public notice provisions of Government Code section 3547 is that the public must be apprised of a proposal with enough notice to allow analysis and

consideration prior to the receipt of public comment, and, no meeting and negotiating regarding the subject matter of the proposal shall occur between the employer and exclusive representative before public comment has been received and considered by the duly elected school board members. There is no requirement that the employer formally adopt its proposal prior to entering into negotiations. (See Los Angeles Community College District (1984) PERB Decision No. 455.)

There is no evidence to demonstrate that the District and DEA entered into negotiations relating to each other's initial reopener proposals before public comment was accepted on March 9. Even assuming arguendo that the District and DEA negotiated prior to March 9, the Complainant had knowledge of the relevant information as of March 30 when he met with the Superintendent relating to his concerns about bargaining, and therefore would have had to submit his complaint to PERB[7] not later than April 29. McKinney's assertion that he did not have verification of the District and DEA meeting prior to March 9 until he read a newspaper article on May 20 does not comport with the Board's standard for determining the timeliness of a filing. McKinney's complaint, even if valid, was filed too late for recourse with PERB.

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[7]In Healdsburg Unified School District (1984) PERB Decision No. 467, PERB held that timelines commence when the conduct constituting the violation is discovered, not from the date the legal significance of the matter is discovered, or from the date the matter is verified. See also California State Employees Association (1985) PERB Decision No. 546-S, and Fairfield-Suisun Unified School District (1985) PERB Decision No. 547.

CONCLUSION

For the foregoing reasons, the complaint and amendment are DISMISSED for being untimely filed and for failing to state a prima facie violation.

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 Code of Regulations, 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 Code of Regulations, 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 Code of Regulations,

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 Sacramento 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 Code of Regulations, 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 Code of Regulations, title 8, section 32132).

DATE: July 1, 1993

Roger Smith
Labor Relations Specialist