STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS, Complainant, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent, and UNITED TEACHERS OF LOS ANGELES, Respondent.	)	Case No. LA-PN-28 PERB Decision No. 152 December 30, 1980

Appearances: Howard O. Watts, representing himself; William J. Sharp, Assistant Superintendent, Office of Staff Relations, representing the District.

Before Gluck, Chairperson; Moore, Member.

DECISION AND ORDER

The public notice complaint at issue in this case was filed on May 27, 1980. The complaint alleged numerous violations of or inadequacies in the Los Angeles Unified School District District's (hereafter District) public notice rules and regulations and rules governing the conduct of public meetings that purportedly violate section 3547(a), (b), (c), (d), and (e) of the Educational Employment Relations Act (hereafter

EERA)[1] including, but not limited to: (1) the failure to distribute copies of United Teachers of Los Angeles' (hereafter

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[1]All statutory references are to the California Government Code unless otherwise specified.

Section 3547 provides:

> (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.
>
> (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.
>
> (d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.
>
> (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

UTLA) initial negotiating proposals to the schools in the District in time for the public to have them before the first of two meetings designated for public discussion of the proposals which frustrated the District's own rule to provide two full weeks for public response; (2) the three minutes complainant was allowed to speak on May 5 and again on May 12, 1980, pursuant to the District's rules was insufficient time to address UTLA's negotiating proposals; (3) certain new subjects and/or initial negotiating proposals were not sunshined; and, (4) the presentation of UTLA's initial negotiating proposals was not listed on the agenda for the April 28, 1980 meeting of the District's governing board.

On July 9, 1980 a letter of dismissal issued. The regional director determined that each of the allegations failed to state a prima facie case and could not be amended to do so. Complainant appeals that dismissal.

The Public Employment Relations Board (hereafter Board) summarily affirms the dismissal of all of the allegations except the following:

(1) The allegation that the three-minute rule prevented complainant from fully responding to the proposals on May 5 and 12, 1980.

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employer, and to know of the positions of their elected representatives.

(2) The allegation that certain new subjects or initial proposals of UTLA were not sunshined.

(3) The allegation that negotiating proposals were not listed on the agenda for April 28, 1980.

While the Board agrees with the regional director that complainant's allegation concerning the District's three-minute rule for speakers does not, as written, state a prima facie violation of section 3547; the Board disagrees that the complaint could not be amended to state a claim under EERA.

In the portion of the complaint alleging a failure to sunshine certain unspecified new subjects or initial proposals, complainant refers to a prior public notice complaint that he filed with the Board (LA-PN-18).[2] This reference creates ambiguity because it is unclear whether the complainant is referring to the same conduct that formed the basis for his complaint in that earlier case or whether he is alleging new violations of the same type complained of in LA-PN-18. This allegation should not have been dismissed without first giving complainant the opportunity to amend his complaint to remove this ambiguity.

The allegation that the presentation of UTLA's initial proposals was not listed on the governing board's agenda or order of business for April 28, 1980 states a claim under EERA

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[2]Los Angeles Unified School District (12/10/80) PERB Order No. Ad-104.

without need for amendment. The public is not given an adequate opportunity to inform itself of collective bargaining issues if it is not notified that those issues will be the subject of discussion at a public meeting of the governing board of the District.

In his appeal, complainant contends that the letter of dismissal was served on him personally without a proof of service in violation of PERB's rules and regulations.[3] The

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[3]California Administrative Code, title 8, section 37030, subsection (e) provides:

> . . . . . .
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> (e) If the complaint fails to state a prima facie violation of Government Code section 3547 and cannot be amended to state a prima facie violation, the Regional Director shall dismiss the complaint. A copy of the complaint and the letter of dismissal shall be served on the employer and the exclusive representative by the Regional Director.

California Administrative Code, title 8, section 32140 provides:

> (a) All documents referred to in these regulations requiring "service" or required to be accompanied by "proof of service," except subpoenas, shall be considered "served" by the Board or a party when personally delivered or deposited in the first-class mail properly addressed. All documents required to be served shall include a "proof of service" affidavit or declaration signed under penalty of perjury which meets the requirements of section 1013(a) of the Code of Civil Procedure or which contains the following information:

record before the Board in this case contains a declaration of service indicating that the letter of dismissal was personally served on the complainant on July 11, 1980, and also contains a proof of service by mail indicating that the letter of dismissal was mailed to all parties on July 9, 1980. Complainant concedes that the letter of dismissal was personally served on him. His appeal was timely filed. No other party to this action has complained of a failure to be

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I declare that I am employed in the County of _____, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is _____. On _____ I (personally) served the _____ on the _____ (by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail at _____ addressed) as follows:

(names of parties served)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on _____ at _____, California.

_____ _____

(Type of print name) (Signature)

(b) That portion of section 1013 of the Code of Civil Procedure relating to extending time after mailing shall not apply.

(c) Whenever "service" is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question.

served with copies of the complaint or letter of dismissal. It is clear that all requirements for the service of the documents on the parties were met. The alleged failure to provide complainant with a copy of the proof of service did not prejudice him in any way and is, therefore, considered by the Board to be of no consequence in this case.

ORDER

It is hereby ORDERED that those portions of the complaint alleging that the District's three-minute rule for speakers to address collective bargaining proposals violates section 3547 and alleging that certain new subjects or initial proposals were not properly sunshined be DISMISSED WITH LEAVE TO AMEND.

The issue of whether or not the presentation of negotiating proposals is scheduled on the board's agenda is REMANDED to the regional office for further action consistent with this decision. The dismissal of all other allegations in the complaint is AFFIRMED.

PER CURIAM