STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JOSEPH A. SPENCER, Complainant, APPELLANT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, Respondent, and SACRAMENTO CITY TEACHERS ASSOCIATION, Respondent.	Case Nos. S-PN-2 S-R-88 PERB Decision No. 205 April 9, 1982

Appearances: John A. Spencer, Chairman, Children First.

Before Gluck, Chairperson; Moore and Jaeger, Members.

DECISION

John A. Spencer, chairman of Children First (Complainant), appeals an order of the Sacramento regional director of the Public Employment Relations Board (PERB) dismissing his public notice complaints without leave to amend. Upon consideration of the entire record, in light of Complainant's exceptions, the Board affirms the regional director's determination.

PROCEDURAL HISTORY

Complainant alleges that Respondents Sacramento City Unified School District (District) and the Sacramento City Teachers Association (Association) violated subsections 3547(a), (b), and (d) of the Educational Employment Relations Act (EERA)[1] by failing to provide the public with adequate notice and opportunity to comment on certain of the Association's proposals. The regional director dismissed

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[1]The EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code. Subsections 3547(a), (b) and (d) provide as follows:

> (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.
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> (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.
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> . . . . . .
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> (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.

Complainant's allegations respecting subsections 3547(a) and (d) without leave to amend, and dismissed his subsection 3547(b) allegation with leave to amend. Subsequently, Complainant filed a timely appeal respecting the dismissal of his subsection 3547(a) and (d) allegations and an amendment of his subsection 3547(b) allegation. Thereafter, the regional director dismissed the amended complaint without leave to amend. Complainant then appealed the dismissal of his amended complaint.

FACTS

Respondents entered into a collective bargaining agreement effective for the period of July 1, 1980 through June 30, 1983, which included a reopener clause on subjects of compensation, class size, and school calendar. In addition to these subjects, each party could elect to reopen on two additional subjects of its choice. Pursuant to this provision, the District selected "hours of employment" and "employee benefits"; the Association selected "grievance procedure" and "transfers." The District immediately presented proposals on the five subjects, including the two it selected. The Association did likewise. The District also submitted proposals on the two subjects the Association had chosen. The Association did not respond to the District's optional proposals, hours and benefits.

All proposals were made available to the public in accordance with the District's public notice policy.[2] Negotiations were later commenced in accord with the policy timetable.

After negotiations began, Complainant learned for the first time through a District publication summarizing the status of negotiations that the Association had made counterproposals during negotiations on hours of employment and employee benefits, the two optional subjects chosen by the District. The publication set forth the gist of the Association's proposal on hours of employment, but not the Association's proposal on benefits. Complainant asserts that at no time was the public afforded an opportunity to comment on these Association proposals.

On October 19, 1981, the parties executed the amendments to the 1980-83 contract covering all of the subjects in question.

In dismissing the complaints, the regional director found: (1) the Association's proposals on hours and benefits were counterproposals and therefore were not subject to the public notice requirements; (2) because the District controls the

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[2]The record indicates that the District's public notice policy provides for a 30-day period between the presentation of initial proposals and final adoption by the District of its proposals and the commencement of negotiations. During this 30-day period, there are generally at least three public meetings of the board of education in the District. The public may comment on initial proposals at any public meeting of the board of education during the 30-day notice period.

subject matter of its public meeting agendas, an employee organization is not a proper respondent to a complaint alleging a violation of subsection 3547(a);[3] (3) the Association's proposals on hours and benefits were not "new subjects" requiring prior public notice; and (4) an employee organization is not a proper respondent where the complaint alleges failure to publicly notice "new subjects."

DISCUSSION

Appellant argues that the Association's response to the District's proposals on hours and benefits is subject to the public notice requirement because the public must be informed of the respective positions of the parties before it can intelligently comment on them. We disagree.

Section 3547(a) requires only that

> 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.

It may be assumed that the Legislature was aware of the ordinary and distinctive meaning of each of the terms "initial proposals" and "counterproposals" in the collective bargaining

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[3]Los Angeles Community College District (3/3/81) PERB Decision No. 158.

scheme when it drafted this language.[4] Such an assumption is supported by reference to a similar provision found in the State Employees Employment Relations Act.[5] There, section 3523, unlike section 3547, specifically addresses both categories of proposals:

> (a) All initial meet and confer proposals of recognized employee organizations shall be presented to the employer at a public meeting, and such proposals thereafter shall be a public record.
>
> All initial meet and confer proposals or counterproposals of the employer shall be presented to the recognized employee organization at a public meeting, and such proposals or counterproposals thereafter shall be a public record. (Emphasis added.)

It seems beyond dispute that the purpose of section 3547 is to enable the public to give its views on subjects under negotiation to its elected officials for the purpose of influencing the latter's bargaining decisions (subsection 3547(e)). Subsection (c) requires the employer to defer adopting its initial proposals until the public has had the opportunity to comment on them.

By the District's noticing of and subsequent public meeting on its own proposals and its counterproposals to the

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[4]See also Webster's Third New International Dictionary (1976 Unabridged Edition): Counterproposal: A countering proposal; a rejoinder to something proposed. Initial: Marking the commencement; beginning; first.

[5]Codified at Government Code section 3512 et seq.

Association's, both the letter and the spirit of section 3547 were complied with. We find in section 3547 no requirement that counterproposals made by the exclusive representative be publicly noticed prior to the commencement of negotiations.

ORDER

Based on the foregoing decision and the entire record in this case, the Board hereby ORDERS that Appellant's public notice complaint be DISMISSED in its entirety.

By:
Harry Gluck, Chairperson John Jaeger, Member

Member Moore, concurring and dissenting:

Because I feel the majority view subverts the intent of the public notice provisions of EERA, and thus shortchanges the public, I must respectfully dissent.

The facts are essentially as presented by the majority. At the time prescribed by the contract, each party elected to reopen negotiations regarding two subjects. The District selected "hours of employment" and "employee benefits"; the Association selected "grievance procedure" and "transfers." The District immediately presented proposals respecting each of the subjects upon which negotiations were to be reopened, including those suggested by the Association. The Association

presented proposals on each subject except hours of employment and employee benefits (the two elective subjects chosen for reopened negotiations by the District).

The Association proposals respecting these latter two issues were never made available to the public, nor was there an opportunity for any public comment on Association proposals respecting these subjects prior to the commencement of negotiations. Indeed, at no time was any member of the public given an opportunity to comment upon the initial Association proposals respecting hours of employment or employee benefits.

Initially it should be noted that the Board has held that proposals for amendments to an existing agreement are "initial proposals" within the meaning of subsection 3547(a) and thus that such proposals must be presented at a public meeting. (Los Angeles CCD, supra.) At the heart of the majority's dismissal of the instant allegations is its determination that the proposals by the Association regarding hours of employment and employee benefits were merely counterproposals to those presented by the District, and hence that they need not be sunshined.

It is true that the District selected hours of employment and employee benefits as subjects regarding which negotiations would be reopened and submitted initial proposals of its own regarding those subjects. Thus, as the majority notes, the subsequent proposals regarding those subjects by the

Association were "counterproposals", within the literal meaning of that term. It is no less true, however, that the Association's proposals regarding these subjects constituted its initial proposals on these subjects.[1] As a hearing officer stated, with Board approval, in Los Angeles CCD, supra:

> It does not appear to be an unreasonable burden to require a public school employer and the exclusive representative to "sunshine" their initial proposals on possible amendments to their agreement. Nor does it seem to be unreasonable to permit the public to provide input on the issue being negotiated. In either event, the public's role is limited and the parties are free to reject, modify or adopt the suggestions of the public.

Taken to its logical conclusion, the holding of the majority in the instant case could require the sunshining of the "initial" proposals of only one of the parties to a collective negotiating relationship, for, unless initial proposals sprang into being simultaneously, the inital proposal of one party would be a "counterproposal" to that of the other

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[1]While I certainly agree with Mr. Webster's definition of the terms "counterproposal" and "initial", I believe that the majority's blithe citation of those definitions is an overly simplistic analysis of the realities of collective bargaining. As pointed out in the text, a party's initial ("beginning, first") proposal regarding a given issue may also be a "rejoinder to something proposed." I would not hold that each ensuing exchange of proposals must be sunshined to satisfy the requirements of section 3547. That section requires simply that a party's initial ("marking the commencement; beginning; first") proposal on a given subject, such as the Association's so-called counterproposal regarding hours of employment and employee benefits herein, be sunshined.

party. Such a conclusion would be anomalous and would frustrate the purposes of the Act. The proposals by the Association relating to hours of employment and employee benefits, although they followed the District's proposals chronologically, were "initial proposals" within the meaning of subsection 3547(a) since they were the Association's first proposals on those subjects.[2]

I also reject the holding of the regional director, implicitly affirmed by the majority, that the purpose of section 3547 is simply to ensure that the public is informed of the subjects of negotiations to the extent that it implies that it would be sufficient if the District merely listed the headings or titles of the subjects upon which negotiations were to be held and allowed the public to express its opinions regarding those subjects without fleshing out what its position was regarding them. Such a result would subvert the purpose of the public notice sections of the statute. As noted by the hearing officer in Los Angeles CCD, supra:

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[2]The majority asserts that the Legislature's use of the word "counterproposals" in SEERA section 3523, and its omission from section 3547, indicates that the Legislature intended that a distinction be made between initial proposals and counterproposals. I see no conflict between section 3523 and my interpretation of the language of section 3547. I read section 3523 to require that the State employer's initial proposals and all counterproposals thereafter be sunshined. As I have made clear above, I believe that EERA requires sunshining only of so-called counterproposals which constitute a party's initial proposal regarding a subject.

> The public's right to know and to have input in the negotiation process is thus not absolute. The EERA limits the public's role to being informed of the initial proposals presented and to the right to input on the issues presented by the initial proposals. Correspondingly, the public school employer and the exclusive representative do not have an absolute right to negotiate in secret -- they must make their initial proposals public and provide the public with a reasonable opportunity to provide input.

It is thus clear that the proposals, including the positions on subjects, must be sunshined, and not merely the subjects themselves. Otherwise there can be no reasonable opportunity to provide input. As the Board noted recently in Palo Alto Unified School District (12/2/81) PERB Decision No. 184:

> The Board recognizes that the initial proposals presented to the public must be sufficiently developed to permit the public to comprehend them. An initial proposal which is simply a statement of the subject matter such as "wages" does not adequately inform the public of the issues that will be negotiated.

The Association's proposals regarding hours of employment and employee benefits were initial proposals within the meaning of subsection 3547(a); thus EERA requires that they be presented at a public meeting of the public school employer and become public records. EERA further requires, pursuant to subsection 3547(b), that Respondents refrain from meeting and negotiating until such time as the public has been presented with both the District's and the Association's proposals

respecting those subjects and given a reasonable opportunity to become informed and comment upon them at a meeting of the public school employer.

In sum, I would find that the District and Association violated subsection 3547(b) by meeting and negotiating regarding the Association's proposals on hours of work and employee benefits without first sunshining those proposals and giving the public an opportunity to comment upon them at a public meeting of the District.[3] This does not mean that the parties had a duty to forego negotiations on any other topics until the Association made initial proposals regarding hours of work and employee benefits. Rather, the parties' obligation

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[3]Because I would find that the Association's proposals regarding hours of employment and employee benefits were initial proposals and not "new subjects of meeting and negotiating" within the meaning of subsection 3547(d), I would find that the provisons of that subsection were not violated by the conduct of the District and Association in this case. Further, I agree with the majority that the Association is not a proper respondent to the subsection 3547(a) allegation and would dismiss that allegation as to the Association. See Los Angeles CCD, supra. In the circumstances of this case, I would not find that the District violated subsection 3547(a), either. There is no showing that the District was presented with particular proposals by the Association and requested to sunshine them and then failed or refused to publish them or present them. It is up to the Association to tell the District which Association proposals are to be sunshined. If the Association fails to include all appropriate proposals, it does not fall to the District to sunshine proposals for the Association without its request or consent. The District's responsibility is simply to not meet and confer over those proposals which have not been properly sunshined.

herein was to timely commence negotiations on those proposals which had been fully developed and sunshined.

For the reasons set forth above, I would find that the District and Association violated subsection 3547(b) by commencing negotiations regarding hours of work and employee benefits prior to sunshining the Association's proposals thereon.

Barbara D. Moore, Member