STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS, Complainant, v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. LA-PN-43 PERB Decision No. 411 October 4, 1984

Appearances: Howard O. Watts, representing himself; Mary L. Dowell, Attorney for the Los Angeles Community College District.

Before Tovar, Jaeger, and Burt, Members.

DECISION

JAEGER, Member: Howard O. Watts appeals the attached decision of a Public Employment Relations Board hearing officer granting the Respondent's motion to dismiss his charge alleging a violation of section 3547 of the Educational Employment Relations Act.

We have reviewed the hearing officer's decision in light of the appeal and, finding it free from error, adopt it as the decision of the Board itself.

ORDER

The public notice complaint in Case No. LA-PN 43 is DISMISSED WITHOUT LEAVE TO AMEND.

Members Tovar and Burt joined in this Decision.

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS, Complainant, v. Los Angeles Community College District, Respondent.	)	Case No. LA-PN-43 ORDER GRANTING MOTION TO DISMISS WITHOUT LEAVE TO AMEND

Appearances: Howard O. Watts, representing himself; Mary Dowell, representing Los Angeles Community College.

Before: Patricia Hernandez, Hearing Officer.

DECISION

Complainant, Howard O. Watts, filed a public notice complaint on September 3, 1982 and amended it on October 12, 1982. Complainant alleges that the Los Angeles Community College District (District or respondent) failed to comply with section 3547(a) of the Educational Employment Relations Act (EERA)[1] when on August 4 and 18, 1982, the District did not

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[1]The EERA is codified at Government Code section 3540 et seq. All section references are to the government code unless otherwise stated. Section 3547(a) provides that:

> All initial proposals of exclusive representative and of public schools 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.

make a verbal presentation of its initial proposals and (2) when the District withheld pertinent documents from its initial life insurance proposals precluding the public from being fully informed of the issues.

The instant decision arises from the filing of a Motion to Dismiss on November 24, 1982 by respondent alleging that the complaint fails to state a prima facie allegation. The complainant asserts that the motion is "illegal" because it was filed concurrent with respondent's answer to public notice complaint required by PERB Regulation 32930(a).[2] Complainant further asserts that the motion should be denied and a hearing scheduled because a board agent deemed a prima facie violation existed.

DISCUSSION

PERB regulations neither expressly allow nor expressly preclude the filing of a motion concurrent with the filing of an answer. However, PERB regulation 32190 does allow for the

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[2]PERB rules are codified at California Administrative Code, Title 8, section 3100 et seq. PERB regulation 32930(a) provides that:

> If the complaint states a prima facie violation, the respondent or respondents shall file with the regional office an answer to the complaint not later than 15 days following service of the complaint by a Board agent. Service and proof of service of the answer pursuant to Section 32140 are required.

filing of a pre-hearing motion[3].

On December 2, 1982, after receipt of respondent's answer and motion to dismiss, a board agent advised the parties that pursuant to their desires there would not be an informal conference, and that the motion would be placed in abeyance pending reassignment of the case to a hearing officer. On January 11, 1983 the undersigned hearing officer advised the parties that the motion would be taken out of abeyance and considered a pre-hearing motion pursuant to PERB regulation 32190. On January 11, 1983, the complainant was granted twenty days to respond to the motion. The substance of the complainant's response, filed January 25, 1983, is limited to his argument that the motion is "illegal" and that he is entitled to a formal hearing.

First, the motion can hardly be deemed "illegal." PERB regulations clearly permit the filing of pre-hearing motions, and complainant was afforded full opportunity to respond to the District's motion. Secondly, a party to a public notice complaint is not necessarily entitled to a hearing once a board agent determines the complaint states a prima facie case. In Los Angeles Community College District (6/16/80) PERB Decision

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[3]PERB Regulation 32190 states as follows:

> (a) Written motions made before, during or after a hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

No. Ad-91 and Los Angeles Community College District (12/31/80), PERB Decision No. 153, the Board itself affirmed on appeal the regional director's dismissal of complaints after a determination of prima facie violation, conduct of an informal conference and the setting of a formal hearing. Although in those cases complainant did not assert on appeal that his due process rights and PERB regulations required that he be granted a hearing, nevertheless, the Board could have, but did not, remand the cases for hearing. Consistent with this, the Board has recently amended its Public Notice Regulations to expressly allow for the dismissal of 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 section 3547.[4]

PERB's public notice complaints are processed similar to the manner in which the National Labor Relations Board (NLRB) processes unfair labor practices. The NLRB has long upheld the

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[4]The amended Public Notice Regulations became effective October 27, 1982. The pertinent sections read as follows:

> 32920(b)(6) The powers and duties of such Board agent shall be to:
>
> 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 32950 of these regulations.

right of a hearing officer to dismiss complaints deemed to be prima facie by the General Counsel prior to hearing. See Cherry Rivet Company (1951) 97 NLRB No. 212, [29 LRRM 1237] where the NLRB held that, "Such dismissals are well established judicial and administrative practice, and are in the interest of speedy administration of law." Cherry Rivet Company, supra, at p.1304 (footnote 1).

For the foregoing reasons, it is determined that the motion is procedurally proper and that the hearing officer does have authority to grant the District's Motion to Dismiss irrespective of a prior prima facie finding.

PUBLIC NOTICE COMPLAINT DOES NOT STATE A PRIMA FACIE VIOLATION

An agent of the PERB Los Angeles regional office ruled that the instant complaint alleges a prima facie violation of 3547(a) because the respondent's initial life insurance proposal failed to provide sufficient information for the public to know what the proposal was.

The Respondent's initial proposals proposed amendments to the life insurance plan provisions of agreements with five exclusive representatives. In each agreement, it proposed to insert language providing that life insurance plans, and benefits and coverage under the plan, "shall be determined by the District". In each case the District included explanatory language which stated that the proposed amendment would allow the District to enter into negotiations concerning the life

insurance provisions of the collective bargaining agreements. The explanatory language also stated that, "It is anticipated that the District and [AFT, CSEA, SEIU, Local 99 and the Building and Trades Council] may be able to settle on a life insurance plan which would be less expensive and provide comparable or better benefits than the current plan" (Emphasis added).

Complainant alleges that he was prevented from being fully informed of the proposals because he was denied access to bids by insurance companies relating to the proposals.

Respondent maintains that no prima facie violation is stated because the proposals were presented in their entirety, i.e., life insurance plans and coverage under the plans "shall be determined by the District." Respondent asserts that the public was fully informed of the issue and of the District's position on it. Respondent also contends that life insurance bids are confidential information according to Government Code section 6254 and 6255 and PERB has no jurisdiction to enforce a possible claim of violation of those sections.

For the reasons that follow, it is determined that the instant complaint fails to state a prima facie violation of the EERA.

Section 3547(e) sets forth the intent of the public notice provisions of the EERA. It states in pertinent part,

> . . . namely that 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 the positions of their elected representatives.

In Dr. Louis Fein v. Palo Alto Unified School District and Palo Alto Educators Association, PERB Decision No. 184 (12/02/81), the Board interpreted section 3547(e) to mean that, "[I]nitial 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."

In Fein, supra, the Palo Alto Education Association (Association) proposed that the compensation of teachers be modified according to a formula based on changes in the Consumer Price Index. The Board found that although the actual dollar and cents amount of the proposal was not subject to calculation in advance, it was sufficiently developed to inform the public what issue would be on the table at negotiations.

In this case the District's initial proposals in each of the five units were presented by showing the exact changes the District proposed in the current contract language. For example:

A. Proposal to AFT For Certificated Contract:

Article XXVI, Life Insurance

9.---Employees-Age-70-65-and-Over

> An-amount-equal-to-50%-35%-less-of-the-amount-in-force immediately-prior-to-his-or-her-70th-65th-birthday.

9. Administration of the Program

The program shall be administered by the Health Insurance Section of the Staff Relations Branch of the Personnel Services Division.

10. Limits of Coverage

The limits of coverage under this Article shall be ~~the same as provided during the 1979-80 academic year~~ determined by the District.

11. Advisory Committee

An advisory committee shall be established to review the District's fringe benefit program (hospital-medical, dental, vision and life insurance coverage). The committee may recommend changes, additions and/or deletions to the fringe benefit program. ~~If the recommended changes, additions and/or deletions reduce the cost of the existing fringe benefit program, the parties to this Agreement shall reopen, upon request of either party, the fringe benefit articles for negotiations for additional benefits not to exceed the amount of the cost reduction for the certificated unit employees.~~ AFT shall be entitled to one member on the advisory committee.

B. Proposal to CSEA For the Technical/Clerical Unit:

Article 21, Health and Welfare

21.1.5. A term life insurance plan ~~comparable to the District's current Confederation Life Plan~~ for eligible employees shall be determined by the District. ~~through age 69 with 50% payable to those 70 years of age or older.~~ The death benefits under the District-paid plan shall be ~~$30,000~~ determined by the District.

In the instant case, as in Fein, the District's initial proposal did not specify the actual dollar and cents amount of the proposal. It did, however, clearly indicate that the subject of the negotiations was a life insurance plan and that the initial position of the District regarding the life insurance plan was that the District alone should determine the

benefits and extent of coverage to be provided. It is not necessary to determine whether this statement, alone, meets the requirements of Government Code section 3547, because the District also included explanatory information with its initial proposal.[5]

In summary, the complete initial proposal submissions of the District informed the public of 1) the exact language of the proposals, 2) the expectations of the District regarding the directions the negotiations would take, and 3) the result that the District was hoping to achieve through negotiations on the subject of life insurance benefits. Thus, the District's initial proposals along with the explanatory language were sufficiently developed to permit the public to comprehend them, and allowed the public to know the position of their elected representatives. Complainant's assertion that disclosure of life insurance bids was necessary to comply with the strictures of section 3547, requires specificity beyond the Board's guidelines in Fein.

The initial proposals as presented were sufficiently developed to comply with the pertinent sections of the EERA. Therefore that portion of the complaint is dismissed without leave to amend.

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[5]Following is the full text of the information which accompanied the initial proposals:

> Background: The above proposed amendment will allow the District to enter into negotiations with CSEA concerning revision of the life insurance provisions of the

Complainant also alleges that respondent violated the EERA by not making a verbal presentation of its life insurance proposals. As cited previously (ante fn.1) section 3547(a) requires that all initial proposals which relate to matters within the scope of representation be presented at a public meeting of a public school employer.

The Dictionary definition of "present" is "to introduce, to bring before the public; to offer to view; to offer for consideration." Nothing in the dictionary indicates that this must, of necessity, be verbal. The intent of the Act, i.e., that the public be informed of the issues, can be accomplished by providing a written proposal to the public as was done in the instant case. Nothing in PERB regulations or EERA prohibits a presentation of this nature. In the instant case it is found that the District complied with the spirit and intent of the law. Accordingly, that portion of the public notice complaint is dismissed without leave to amend.

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current Collective Bargaining Agreement. It is anticipated that the District and CSEA may be able to settle on a life insurance plan which would be less expensive and provide comparable or better benefits than the current plan. In accordance with the District's Collective Bargaining initial proposal procedure approved by the Board of Trustees on September 3, 1980, the above amendment is presented as an informative item at today's meeting so that the public may have an opportunity to respond at the next regularly scheduled Board meeting.

DISTRICT REQUEST FOR ATTORNEY'S FEES

In Los Angeles Unified School District (02/22/82), PERB Decision No. 181a, the Board admonished Mr. Watts to ". . . cease and desist from filing complaints which merely raise facts and questions of law which the Board has already fully considered" and warned Mr. Watts that if he persisted in so doing the Board would consider compelling him to pay the respondent's legal expenses.

In Unit Determination for the State of California (12/21/80) PERB Decision No. 110c-S p.41, the Board held that fees would be awarded only where there was a showing of "frivolous or dilatory litigation" and would be denied, " . . . if the issues are debatable and brought in good faith."

In the instant case complainant raised an issue not previously raised. It was an issue presumably debatable, since even a board agent found respondent's life insurance proposal to be the basis of a prima facie violation. It is found that complainant acted in good faith in filing the complaint, confusing as he did the nature of the District's initial proposal. Attorney's fees should only be awarded where the complaint is without arguable merit and was filed in bad faith. That is not the case here and the request is therefore denied.

CONCLUSION

The complaint does not state a prima facie violation of the Act. It cannot be amended to do so. Hence, the Motion to Dismiss is granted and the complaint is DISMISSED WITHOUT LEAVE TO AMEND.

An appeal of this decision pursuant to PERB regulation 32925, may be made to the Board itself within 20 (twenty) calendar days following the date of service of this decision by filing a statement of the facts upon which the appeal is based with the Board itself at 1031 18th Street, Sacramento, California 95814. Service and proof of service of the appeal are required pursuant to PERB regulation 32140.

DATED: April 29, 1983

Patricia Hernandez
Hearing Officer