

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-48-H
)
 v.) PERB Decision No. 453-H
)
 CALIFORNIA STATE UNIVERSITY,) December 7, 1984
)
 Respondent.)
 _____)

Appearance: Howard O. Watts, on his own behalf.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.*

DECISION

This case is before the Public Employment Relations Board (Board) on an appeal by Howard O. Watts of the Board agent's dismissal, attached hereto, of his public notice complaint alleging that the California State University violated section 3595(a) and (b) of the Higher Education Employer-Employee Relations Act (Government Code section 3560 et seq.).

We have reviewed the Board agent's dismissal in light of the Complainant's appeal and the entire record in this matter and adopt that dismissal as the decision of the Board itself. The Board agent's denial of Watts' request for assistance made pursuant to California Administrative Code, title 8, section 32163 is affirmed for the reasons set forth in Los Angeles

*Members Tovar and Burt did not participate in this Decision.

Unified School District and California State University

(8/16/84) PERB Decision No. 396-H.

ORDER

The public notice complaint in Case No. LA-PN-48-H is
DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



March 14, 1984

Mr. Howard O. Watts

Mr. Caesar J. Naples, Assistant Vice
Chancellor, Employee Relations
California State University
400 Golden Shore
Long Beach, CA 90802

Re: NOTICE OF DISMISSAL
Watts v. California State University LA-PN-48-H

Dear Interested Parties:

The above-referenced Public Notice Complaint (Complaint) was filed with our office on February 11, 1983. A first Amended Complaint was filed March 22, 1983. A Second Amended Complaint was filed February 14, 1984 subsequent to a December 28, 1983 personal meeting I had with Mr. Watts.¹ The second amendment makes new legal argument but fails to allege any new facts. For the reasons which follow, all allegations in the Complaint fail to state a prima facie violation of Government Code subsections 3595(a) and (b)² and cannot be amended to do so. The entire Complaint is, accordingly, hereby dismissed.

Allegation No. One: The respondent, California State University (CSU), violated subsections 3595(a) and (b) by scheduling the presentation of an exclusive representative's initial proposals at Long Beach and the public response to those proposals at San Francisco. There was no meeting held for public response in southern California. Since Mr. Watts could not afford to travel to San Francisco, he could not express himself regarding those proposals.

¹At that meeting I explained to Mr. Watts the Complaint's deficiencies and the apparent impossibility of perfecting them. However, at his insistence, I allowed time to amend the Complaint.

²All statutory references are to the Government Code unless otherwise specified.

Determination: Nothing in section 3595 requires the public meetings for presentation and response to initial proposals to be held at the same location. The only requirement of subsection 3595(b) is that the public be given an opportunity to express itself at a (i.e. one) meeting of the higher education employer. This was done.

While conducting the meeting in San Francisco may have precluded Mr. Watts from attending the meeting, other members of the public would no doubt have been precluded from attending if the meeting had been held in Long Beach. In other words, no matter where an employer decides to conduct such meetings, someone will potentially be inconvenienced. This is especially true with respect to an employer with statewide facilities such as CSU. It is noted that CSU has attempted to mitigate this problem through its acceptance of written comments from the public as indicated by an unmarked exhibit to the Complaint entitled "Committee on Collective Bargaining Agenda Item I for March 24-25, 1981".³

Subsection 3593(b) does not require the higher education employer to schedule meetings in both northern and southern California, nor does it require that the meeting conducted for public response be held at the same location as the meeting at which the initial proposals were presented. CSU's internal policy implementing the statute appears to be a reasonable accommodation to its statewide constituency. It is, therefore, found that this allegation does not constitute a violation of subsections 3595(a) and (b).

Allegation No. Two: The January 13, 1983 meeting of CSU's committee on collective bargaining was not an appropriate meeting of the higher education employer because the committee, being composed of staff rather than trustees, cannot take official action:

" . . . to change the proposal by amendment or other action that could effect (sic) the Proposals in either philosophy or direction

³This is CSU's internal procedure implementing section 3595. See California Administrative Code, title 5, section 43725.

of purpose. In the case of this union's (United Professors of California) proposals they (CSU) would have to accept them without altering them.

The Complaint goes on to argue that Education Code section 89035 precludes the board of trustees from delegating the authority for conduct of such meetings to the committee on collective bargaining.

Determination: Subsection 3562(h) defines "higher education employer" as follows:

(h) "Employer" or "higher education employer" means the regents in the case of the University of California, the directors in the case of Hastings College of Law, and the trustees in the case of the California State University and Colleges, including any person acting as an agent of an employer. (Emphasis added.)

Black's Law Dictionary, Fifth Ed., defines "agent" in the following manner:

Agent. A person authorized by another act for him, one intrusted with another's business. (Citation omitted.) One who represents and act for another under the contract or relation of agency. A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons. One who undertakes to transact some business, or to manage some affair for another, by the authority and on account of the latter, and to render an account of it. One who acts for or in place of another by authority from him; a substitute, a deputy, appointed by principal with power to do the things which principal may do. One who deals not only with things, as does a servant, but with persons, using his own discretion as a means, and frequently establishing contractual relations between this principal and third person.

The above-specified functions which an agent may perform on behalf of a principal are certainly broad enough to encompass

the functions of the committee on collective bargaining pursuant to subsection 3595(a) and (b).⁴

Education Code Section 89035 provides:

Whenever in this code a power is vested in the Trustees, the Trustees by majority vote may adopt a rule delegating such power to an officer, employee or committee as the Trustees may designate.

Subsection 5(h) of article VI of the Rules of Procedures of CSU's board of trustees provides as follows:

(h) Committee on Collective Bargaining

The Committee on Collective Bargaining shall have delegated authority to act for the Board of Trustees in order to comply with the requirements of the Higher Education Employer-Employee Relations Act (HEERA) (including section 3595) and implement the collective bargaining policy of the Board of Trustees. The delegation to the Committee on Collective Bargaining includes, but is not limited to, authority to negotiate memoranda of understanding pursuant to the policies of the Board of Trustees. The Committee on Collective Bargaining shall submit periodic process reports to the Board of Trustees on matters pertaining to collective bargaining and actions which it has taken.
(Emphasis supplied.)

⁴Mr. Watts implies that since the Los Angeles Unified School District (LAUSD) Board of Education and the Los Angeles Community College District (LACCD) Board of Trustees themselves conduct these meetings, the instant board of trustees must do so. However, the definition of employer under the Educational Employment Relations Act (Government Code section 3540 et seq.) to which LAUSD and LACCD are subject, has an employer definition distinguishable from subsection 3562(h). Further, PERB has never found that these governing boards must perform those functions as a matter of law. Hence, what LAUSD and LACCD do with respect to public notice is irrelevant.

The above plainly permits the board of trustees to delegate to the committee on collective bargaining authority to act in the realm of collective bargaining, including the public notice requirements of section 3593.⁵

As to Mr. Watts' allegation that a committee composed entirely of staff cannot take official action, this argument is also irrelevant. The Complaint alleges only that subsections 3595(a) and (b) were violated. Unlike subsection (c), these subsections do not require the committee to take any action. They require only the holding of a meeting open to the public. This was done.⁶ Hence, this allegation is also without merit.

Allegation No. Three: The original and First Amended Complaint alleged that a violation occurred in the failure of CSU to attach a copy of the initial proposal of United Professors of California to the January 13, 1983 committee on collective bargaining agenda. The assertion is not raised in the Second Amended Complaint which indicated that it superseded the First Amended Complaint. Hence, it is presumed that this allegation has been withdrawn.⁷

⁵The fact that Mr. Watts can find no appellate decisions allowing the board of trustees to delegate this authority to the committee on collective bargaining does not decide, nor even imply, that such delegation is improper.

⁶Moreover, it is not my reading of section 3595 to allow the higher education employer to "alter" the initial proposal of an exclusive representative.

⁷This allegation would have been dismissed in any event. In Los Angeles Community College District (12/31/80) PERB Decision No. 154, the Board itself affirmed the regional director's dismissal of an allegation that the employer violated subsection 3547(b) by its failure to make available copies of an exclusive representative's initial proposals at the meeting held for public response to those proposals. Subsection 3547(b) is substantively similar to subsection 3595(b). Since there is no requirement that copies of the proposal be present at all, it follows that the absence of a copy of the proposals as an attachment to the agenda cannot be a violation.

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Allegation No. Four: The original and First Amended Complaint contended that CSU had violated section 3595 in failing to place its name on the published agenda. This allegation has been explicitly withdrawn in the Second Amended Complaint. Withdrawal of that allegation is hereby accepted.

Allegation No. Five: This allegation, raised for the first time in the Second Amended Complaint, is that CSU violated Government Code section 11120 et seq., the so-called "state open meeting act." San Mateo City Schools v. PERB (1983) 33 Cal.3d 850 [___ Cal. Rptr. ___] is cited for the proposition that PERB must "harmonize" other conflicting statutes with section 3595.

Determination: PERB does not administer the open meeting act. Mr. Watts fails to explain how section 11120 et seq. has been violated, much less how such a violation would also constitute a violation of section 3595. In any event, the opening meeting act does not appear to in any manner buttress Mr. Watts' arguments dismissed above. Thus, no harmonization appears necessary and this allegation, too, lacks merit.

REQUEST FOR ASSISTANCE

Mr. Watts has filed PERB form GC-5 requesting assistance with his Complaint. A cover letter to the request states that he hopes that he will not ". . . have to appeal this request for Assistance since (he) did qualify for this Assistance in the past." While it is true that Mr. Watts financially qualified for Board assistance, PERB's decision in prior cases was to deny such requests by Mr. Watts because he had already received the level of assistance required by Board policy. For the same reason, the instant request must also be denied.

In Los Angeles Community College District (12/15/81) PERB Order No. Ad-119, Los Angeles Community College District (12/15/81) PERB Decision No. 186 and Los Angeles Unified School District (2/22/82) PERB Decision No. 181a, the Board itself affirmed the regional director's denial of Mr. Watts' request for assistance. PERB regulation 37030 (now regulation 32920) was then the only regulation which addressed the assistance to be given public notice complainants. The Board itself stated that that regulation required that a public notice complainant receive only technical (as opposed to legal) assistance.

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Effective September 20, 1982, public notice complainants were placed under PERB regulation 32163, which had previously applied only to charging parties in unfair practice cases. As Mr. Watts suggests, that regulation provides as follows:

32163. Board Assistance. If a party is unable to retain counsel or demonstrates extenuating circumstances, as determined by the Board, a Board agent may be assigned to assist the party in accordance with Board policy.

As I have previously advised Mr. Watts, there presently exists no Board policy delineating the assistance to be given under regulation 32163. Mr. Watts has already been provided the same manner of assistance the Board found to be appropriate in the above-cited decisions. Although those decisions were issued prior to regulation 32163 becoming relevant to public notice requests, they constitute the only Board policy regarding the appropriate extent of Board assistance.

In the absence of any further direction from the Board itself as to the assistance to be granted a public notice complainant, it is determined that, for the reasons stated above, Mr. Watts request for assistance must be DENIED.

Based upon my investigation of the instant Complaint and the above rationale, it is determined that none of the allegations made by Mr. Watts state a prima facie violation of Government Code subsections 3595(a) or (b). They cannot be amended to do so. Accordingly, they are hereby DISMISSED without further leave to amend. Moreover, Mr. Watts' request for further assistance in this matter is also hereby DENIED.

Pursuant to PERB Regulation 32925, Mr. Watts may appeal the dismissal to the Board itself as follows:

Right to Appeal

An appeal of this decision pursuant to PERB regulation 32925 may be made within 20 calendar days following the date of this decision by filing an original and five copies of a statement of the facts upon which the appeal is based with the Board

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itself at 1031 18th Street, Suite 200, Sacramento, California 95815. Copies of any appeal must be concurrently served upon all parties and the Los Angeles regional office. Proof of service pursuant to regulation 32140 is required.

Very truly yours,

Frances A. Kreiling
Regional Director

Robert R. Bergeson
Senior Regional Representative

RRB:bw