

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-97
)
 v.) PERB Decision No. 713
)
 UNITED TEACHERS OF LOS ANGELES,) December 29, 1988
)
 Respondent.)
)

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

Before Hesse, Chairperson; Porter and Shank, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Howard O. Watts of the Board agent's dismissal, attached hereto, of his public notice complaint alleging that the United Teachers of Los Angeles (UTLA) violated section 3547 of the Educational Employment Relations Act (EERA).¹ The complainant asserts that

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated all statutory references are to the Government Code. Section 3547 reads, in pertinent part:

(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.

UTLA failed to present its proposal relative to the change in the 1987-88 school calendar due to the papal visit to Los Angeles September 15-16, 1987. Mr. Watts alleged that such failure denied the public an opportunity to respond to UTLA's proposal, and in his appeal, he makes reference to copies of "special reports" received subsequent to the filing of his original complaint.

FACTS

In August 1987, the Los Angeles Unified School District (District) changed the school calendar to avoid traffic congestion due to the upcoming papal visit of September 15-16. Mr. Watts filed a public notice complaint against the District. In that case, the Board agent found the District violated EERA section 3547(d) by failing to adequately explain its proposal on the new subject of bargaining. The complaint (LA-PN-96) resulted in a cease and desist order and a subsequent compliance letter issued on July 27, 1988, from the Los Angeles Regional Office.

UTLA and the District had been meeting on contract reopeners and other matters on August 5, 21, and 27, 1987. The District announced, at one of these meetings, its plan to delay the first day of the traditional school year because of the Pope's visit. UTLA then suggested two alternatives the District could have pursued. On August 31, 1987, the Los Angeles Board of Education received a recommendation to revise the 1987-88 school calendar so as to cancel classes on September 15, 1987.

Mr. Watts filed a public notice complaint against UTLA on September 25, 1987. The essence of Mr. Watts' complaint against UTLA was that it had failed to comply with the public notice (EERA) section 3547 in making proposals to the District regarding the change of the 1987-88 school calendar. The Board agent found that UTLA had not participated in the decision to close the schools during the Pope's visit and did not present a "proposal" to the District regarding such decision.

DISCUSSION

Mr. Watts' appeal arises primarily out of a special report published by the UTLA dated September 1, 1987, outlining the District's actions and UTLA's responses. Also dated September 1, 1987, the District issued a "special report" indicating that UTLA had rejected the Board's "offer" and had offered "counterproposals." Mr. Watts contends that the two reports published by the District and UTLA, as well as various newspaper articles and other documents are more than enough proof that negotiations took place. He argues the Board agent prematurely dismissed the complaint.

Assuming that UTLA's response to the District's action could be characterized as a "counterproposal," there is no requirement that counterproposals made by the exclusive representative be publicly noticed prior to the commencement of negotiations pursuant to section EERA 3547. (Sacramento City Unified School District (1982) PERB Decision No. 205.)

ORDER

For the reasons stated above, the Board DENIES Howard O. Watts' appeal of the notice of dismissal and AFFIRMS the dismissal in Case No. LA-PN-97.

Member Shank joined in this Decision.

Member Porter's concurrence begins on page 5.

Porter, Member, concurring: I concur in the dismissal of the complaint herein.

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED TEACHERS OF LOS ANGELES,)
)
Employee Organization,) Case No. LA-PN-97
)
and) July 14, 1988
)
HOWARD O. WATTS,) NOTICE OF DISMISSAL
)
Complainant.)
_____)

The above-captioned public notice complaint was filed with this office on September 25, 1987. The complaint alleges that the United Teachers of Los Angeles (UTLA) violated Section 3547(b) of the Educational Employment Relations Act (EERA or Act) by failing to present its proposal relative to the change in the 1987-88 school calendar due to the papal visit to Los Angeles on September 15-16, 1987. By its failure to present its proposal, UTLA has allegedly denied the public an opportunity to respond to its proposal of the rescheduling of the opening day of the Los Angeles Unified School District 1987-1988 school year.

This office in another case (LA-PN-96) found that the Los Angeles Unified School District (District) violated EERA section 3547(d) by its failure to adequately explain its proposal on this new subject of bargaining.

Investigation of this complaint has revealed that UTLA never made a proposal on this subject. Discussions did occur

between the District and UTLA subsequent to the district's unilateral action, but the nature of those discussions appear to have been to accommodate the rest of the school calendar to its 180 day schedule. Due to the fact there was no proposal from UTLA to alter the school calendar, it cannot be found that UTLA violated the Act.

Thus, the Complaint is hereby DISMISSED.

RIGHT TO APPEAL

An appeal of this decision to the Board itself may be made within twenty (20) calendar days following the date of service of this decision (PERB regulation 32925). To be timely filed, the appeal must be filed with the Board itself at the following address:

Members, Public Employment Relations Board

1031 18th Street

Sacramento, California 95814-4174

A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, "... or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing ..." (regulation 32135). Code of Civil Procedure section 1013 shall apply.

The appeal shall be filed in writing and be signed by the appealing party or its agent.

If a timely appeal is filed, any other party may file with the Board an opposition to the appeal within twenty (20)

calendar days following the date of service of the appeal
(regulation 32925).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see regulation 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Robert R. Bergeson
Regional Director

Roger Smith
Labor Relations Specialist