



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-108
)
 v.) PERB Decision No. 832
)
 LOS ANGELES UNIFIED SCHOOL DISTRICT,) August 8, 1990
)
 Respondent.)
 _____)

Appearance: Howard O. Watts, on his own behalf.
Before Hesse, Chairperson; Shank and Cunningham, Members.

DECISION

CUNNINGHAM, Member: This case is before the Public Employment Relations Board (Board or PERB) on an appeal filed by Howard O. Watts (Watts) to an administrative determination (attached) by a PERB Board agent.¹ The Board agent dismissed the complaint filed by Watts against the Los Angeles Unified School District (District) which alleged that the District violated the Educational Employment Relations Act (EERA) section 3547(a), (b), (c), (d) and (e)² by actions taken on July 24, August 7 and 10,

¹This appeal is brought pursuant to PERB regulation 32925 which states, in pertinent part:

Within 20 days of the date of service of a dismissal made pursuant to section 32920(b)(8) or a determination made pursuant to section 32920(b)(10), any party adversely affected by the ruling may appeal to the Board itself.

²EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3547 states, in pertinent part:

1989.³ We have reviewed the dismissal and, finding it free of

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

³Unless otherwise indicated, all dates refer to 1989.

prejudicial error, adopt it as the decision of the Board itself consistent with the discussion below.⁴

FACTUAL SUMMARY

The facts are accurately stated in the Board agent's administrative determination. However, we briefly summarize relevant events here. According to the minutes of the July 24 regular meeting of the Los Angeles Board of Education, member Mark Slavkin (Slavkin) announced his intention to present a motion for an initial proposal regarding an agency fee election for the United Teachers-Los Angeles (UTLA) bargaining unit.⁵

⁴In addition to the events recited by the Board agent, the District's Board of Education minutes of the meeting held on September 11, indicate that, after extensive public comment was received on the District's initial proposal, several amendments were added. The initial proposal and the amendments were adopted by the board. Although an amendment to an already sunshined initial proposal may constitute a violation of section 3547 (Los Angeles Community College District (1980) PERB Decision No. 153), Watts did not allege a violation of section 3547 based on this action; therefore, it will not be considered by the Board. (See Tahoe-Truckee Unified School District (1988) PERB Decision No. 668.)

⁵Evidence reveals that this proposal was being raised by the District under the collective bargaining agreement (Agreement) with UTLA then in effect. Section 1.0 of the Agreement states:

However, there shall be negotiations during the term of the Agreement as follows:

.

c. Any other subjects which UTLA and the District mutually agree to negotiate in the future.

Substantive proposals which are brought forth in reopener situations, such as the present case, must be sunshined according to EERA section 3547(a), (b) and (c). (Los Angeles Community College District (1981) PERB Decision No. 158.)

Subsequently, at the regular board meeting on August 7, public comment on the agency fee motion occurred. Slavkin then made the following motion:

That the Superintendent be instructed to enter into an agreement with United Teachers-Los Angeles (UTLA) as to an organizational security arrangement in accordance with Section 3540, et. seq., of the California Government Code, to include the following:

1. The organizational security arrangement shall require an employee within the UTLA certificated employee bargaining unit, as a condition of continued employment, either to join UTLA, as the certificated employee organization, or pay UTLA a service fee not to exceed the standard initiation fees and periodic dues of UTLA. Such arrangement shall be included in the Collective Bargaining Agreement between the District and UTLA. Such service fees shall not include any portion of the UTLA dues that are nonchargeable to nonmembers of UTLA under the criteria established by the Public Employees [sic] Relations Board (PERB), the California Courts and the federal courts under the U.S. Supreme Court case of Hudson v. Chicago Teachers Union.
2. PERB shall conduct a secret ballot election of certificated employees in the UTLA bargaining unit under Section 3546 of the Government Code and PERB regulations as to the organizational security arrangement.
3. The organizational security arrangement shall become effective as provided for in Section 3546 of the Government Code and the Regulations of PERB, upon a majority of the certificated employees of the UTLA bargaining unit voting to approve the arrangement.
4. The election shall take place between September 15, 1989, and November 1, 1989, or if required by PERB as close to November 1, 1989, as possible. However, such election shall not be held during any school holiday.

5. The election shall take place at school sites.

6. The voter eligibility shall include all the certificated employees of the District who are in the UTLA bargaining unit, including employees on illness, vacation, or on leave of absence or in the military service of the United States.

7. The District shall fully cooperate with UTLA in providing UTLA with a list of eligible voters, classifications and work locations.

8. Upon such organizational security arrangement becoming effective, the service fees shall be deducted from the salary or wage payments of certificated employees in the UTLA bargaining unit in accordance with Section 45061 of the California Education Code.

(Complainant Exh. No. 11, pp. 3-4.)

Slavkin added the following provisions:

9. The initial proposal received today shall remain on the agenda of the Personnel and Schools Committee for Thursday, August 10, 1989, solely for the purpose of receiving public comment.

10. The initial proposal received today shall be "sunshined" at each Board meeting through and including September 11, 1989, and be presented for adoption at the regular Board meeting of September 11, 1989.

(Min., Reg. Mtg.; Bd. of Ed., City of L.A.; August 7, 1989.)

The agenda for the personnel and schools committee meeting scheduled for August 10, indicated the agency fee motion as an agenda item. Evidence demonstrated that 20 persons were scheduled to speak on this motion during the meeting. Subsequently, public comment was received on the motion at regular Board of Education meetings on August 21, 28 and

September 11. On September 11, after extensive comment was received from the public, Slavkin moved to amend Board of Education Report No. 1 to include the agency fee initial proposal. The Report No. 1, as amended to include the agency fee initial proposal, was passed by the board on a vote of 5-2.

DISCUSSION

Watts' appeal appears to present one major issue; namely, whether the presentation of an initial proposal in the form of a motion complies with EERA section 3547. Watts claims that the Board's use of a motion form in this circumstance is incompatible with the procedure required for the presentation of an initial proposal. He cites generally Los Angeles Unified School District (1985) PERB Decision No. 527 in support of this contention. Watts argues secondarily that a motion can be amended while an initial proposal cannot be amended. Finally, and alternatively, Watts requests that the complaint be "sent back" to the San Francisco Regional Office, presumably for further investigation of the facts.

In this case, the Board agent correctly concluded that the initial proposal was brought in compliance with EERA section 3547. First, the agency fee proposal was presented in the form of a motion at a public meeting. Second, reasonable time elapsed for public information and comment (approximately seven weeks). Last, the Board adopted its proposal at the public meeting of September 11. As stated by the Board agent, Watts appears to

be confusing the motion which brings the proposal up for public comment with the adoption of the proposal.⁶ The form in which an initial proposal is brought to public attention is relevant only insofar as it must allow time for adequate public comment. (Los Angeles Unified School District (1983) PERB Decision No. 335.) As the method used here by the District satisfies the requirements of EERA section 3547, Watts' appeal is without merit.

Finally, Watts requests that the case be remanded to the regional office, presumably for further investigation. However, Watts does not allege any newly discovered evidence or other circumstances which would justify renewed investigation.

(Los Angeles Unified School District (1988) PERB Decision No. 705 at p. 4.) Accordingly, his request is denied.

ORDER

The complaint in Case No. LA-PN-108 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Shank joined in this Decision.

⁶Watts' argument that Los Angeles Unified School District, supra, PERB Decision No. 527 supports his appeal is misdirected. Los Angeles Unified School District addressed the parameters of what information brought for board action must comply with public notice requirements. The Board stated that a resolution which endorsed the concept of implementing comparable worth proposals in negotiations was indeed an initial proposal which had to be sunshined. This case did not, as Watts argues, prohibit the bringing of an initial proposal in the form of a motion so long as public notice requirements are met.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,)	
)	
Complainant,)	Case Ho. LA-PN-108
)	
v.)	ADMINISTRATIVE
)	DETERMINATION
LOS ANGELES UNIFIED)	
SCHOOL DISTRICT,)	February 8, 1990
)	
Respondent.)	
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BACKGROUND

On August 25, 1989,¹ Howard O. Watts filed the instant public notice complaint pursuant to PERB regulation 32910* against the Los Angeles Unified School District (District). The complaint was held in abeyance pending disposition of a complaint regarding the same matter filed by Watts with the District on August 22 pursuant to the procedure contained in the District's

¹All dates referred to herein will be 1989 unless otherwise noted.

*PERB regulation 32910 provides:

A complaint alleging that an employer or an exclusive representative has failed to comply with Government Code sections 3547 or 3595 may be filed in the regional office. An EERA complaint may be filed by an individual who is a resident of the school district involved in the complaint or who is the parent or guardian of a student in the school district or is an adult student in the district. The complaint shall be filed no later than 30 days subsequent to the date when conduct alleged to be a violation was known or reasonably could have been discovered. Any period of time used by the complainant in first exhausting a complaint procedure adopted by an EERA or HEERA employer shall not be included in the 30-day limitation.

Public Notice Policy (copy attached). The District dismissed Watts' complaint at its regular Board of Education meeting on October 16, at which time the case before PERB was reactivated.

The complaint alleges that the District violated Government Code sections 3547 (a), (b), (c) and (d)³ by actions taken on July 24, August 7 and August 10. Investigation of this matter has revealed the following facts regarding the relevant events which occurred on those dates.

According to the minutes of the regular meeting of the Los Angeles City Board of Education on July 24, Board Member Mark Slavkin announced his intention to present a motion for action calling for an agency fee election in the bargaining unit

¹Government Code sections 3547(a)-(d) provide:

(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.

represented by the United Teachers-Los Angeles (UTLA). Following some discussion, the Board President determined that the matter should be discussed in the Board's next closed session since it was a collective bargaining issue. If determined appropriate, the matter would then be assigned to a Personnel and Schools Committee meeting on August 10.

At the regular Board meeting on August 7, Slavkin moved that Board Rule 72 be waived so that he could present his July 24 motion regarding an agency fee election. Board Rule 72 states, in pertinent part:

Board members wishing to present a nonprecatory motion of resolution for action by the Board of Education shall announce the subject matter of the intended motion or resolution at least three weeks before the Board meeting at which the motion or resolution will be presented for action. Prior to Board action, the President of the board shall assign such motions and resolutions to the appropriate Standing Committee for consideration of their programmatic and financial effects. The Chairperson shall schedule a hearing and direct the Clerk of the Board to provide notice of the hearing. Draft language of the proposed motion or resolution shall be presented at least one week prior to the meeting at which action is to be taken.

Seven persons, including Watts, addressed the Board regarding Slavkin's motion for a waiver. It was then voted upon by the Board and carried. Slavkin then moved:

That the Superintendent be instructed to enter into an agreement with United Teachers-Los Angeles (UTLA) as to an organizational security arrangement in accordance with Section 3540, et seq., of the California Government Code, to include the following:

1. The organizational security arrangement shall require an employee within the UTLA certificated employee bargaining unit, as a condition of continued employment, either to join UTLA, as the certificated employee organization, or pay UTLA a service fee not to exceed the standard initiation fees and periodic dues of UTLA. Such service fees shall not include any portion of the UTLA dues that are nonchargeable to nonmembers of UTLA under the criteria established by the Public Employees [sic] Relations Board (perb), the California Courts and the federal courts under the U.S. Supreme Court case of Hudson v. Chicago Teachers Union.
2. PERB shall conduct a secret ballot election of certificated employees in the UTLA bargaining unit under Section 3546 of the Government Code and the PERB regulations as to the organizational security arrangement.
3. The organizational security arrangement shall become effective as provided for in Section 3546 of the Government Code and the Regulations of PERB, upon a majority of the certificated employees of the UTLA bargaining unit voting to approve the arrangement.
4. The election shall take place between September 15, 1989, and November 1, 1989, or if required by PERB as close to November 1, 1989 as possible. However, such election shall not be held during any school holiday.
5. The election shall take place at school sites.
6. The voter eligibility shall include all the certificated employees of the district who are in the UTLA bargaining unit, including employees on illness, vacation, or on leave of absence or in the military service of the United States.
7. The District shall fully cooperate with UTLA in providing UTLA with a list of eligible voters, classifications and work locations.
8. Upon such organizational security arrangement becoming effective, the service fees shall be deducted from the salary or wage payments of certificated employees in the UTLA bargaining unit

in accordance with Section 45061 of the California Education Code.

This motion was seconded by Board Member Korenstein, and the following two paragraphs were added to the motion with her agreement:

9. The initial proposal received today shall remain on the agenda of the Personnel and Schools Committee for Thursday, August 10, 1989, solely for the purpose of receiving public comment.
10. The initial proposal received today shall be "sunshined" at each Board meeting through and including September 11, 1989, and be presented for adoption at the regular Board meeting of September 11, 1989.

Board minutes reflect that, in the discussion following the presentation of the motion, Richard Mason, the Superintendent's Special Counsel, clarified that "adoption of the motion would allow the initial proposal to be received and held for public comment until September 11, 1989; adoption of the initial proposal would not take place until September 11, 1989." The motion carried, and the minutes indicate that the Board received the organizational security arrangement proposal as its policy position.

The proposal for the agency fee election appeared on the agenda of the August 10 meeting of the Personnel and Schools Committee Meeting. Seventeen persons, including Watts, addressed the Committee on the motion.

Public comment on the proposal was also received at regular Board meetings on August 21, August 28, and September 11. Three people addressed the Board regarding the motion at the August 21

meeting, six at the August 28 meeting, and 43 at the September 11 meeting. Watts spoke at all three of the meetings. The initial proposal was adopted by the Board on September 11.

DISCUSSION

The intent of the public notice requirements is set forth in Government Code section 3547 (e): "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 employer, and to know of the positions of their elected representatives." PERB's regulations implementing the provisions of section 3547 were adopted to fully protect the public's rights in this regard. Los Angeles Community College District (1978) PERB Order No. Ad-41.

Watts' complaint alleges that Slavkin's July 24 motion (and amendments) regarding an agency shop election was not properly noticed under either the Board of Education's public notice policy or Government Code section 3547. Watts seems to be confusing that motion, the effect of which was for the Board to receive the proposal for an agency shop election and hold it open for public comment, with the adoption of an initial proposal after public comment has been received and any other public notice requirements have been met. Thus, although the complaint states that the alleged public notice violations occurred on July

24, August 7 and 10 only,⁴ it is necessary to review all of the relevant events from July 24 to September 11 to obtain a complete picture of the District's course of action and evaluate whether or not a violation occurred.

As accurately summarized in the District's September 29 response to Watts' complaint, Slavkin's motion regarding an agency shop election was presented at the July 24 Board meeting, amended and received by the Board on August 7, and placed on the agenda of the August 10 meeting of the Personnel and School Committee solely for the purpose of receiving public comment. The proposal was sunshined at Board meetings on August 21, 28 and September 11, and adopted as an initial proposal to be presented to UTLA on September 11.

It is clear from this sequence of events that the proposal regarding agency fee was adequately sunshined. In fact, while the District's public notice policy requires it to allow opportunities for public expression at two separate meetings following presentation and prior to adoption of initial proposals, the District provided four opportunities for public expression regarding this issue. Furthermore, the original motion was amended specifically to clarify the District's intent to comply with the public notice requirements.

⁴ Watts' complaint states that events relating to the same issue occurring thereafter would be the subject of a later complaint.

CONCLUSION

The facts in this case clearly show that the public had ample opportunity to express their views regarding the District's proposal for an agency shop election. The public notice requirements contained not only in Government Code section 3547 but also in the District's policy were complied with, both in letter and spirit.⁵ Therefore, the instant complaint is DISMISSED.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, any party adversely affected by this ruling may appeal to the Board itself by filing a written appeal within twenty (20) calendar days after service of this ruling (California Administrative Code, title 8, section 32925). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Members, Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

⁵In Los Angeles Unified School District (1983) PERB Decision No. 335, the Board held that it would entertain a public notice complaint "[w]here the application of local rules results in deprivation of statutory rights..."

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed, must clearly and concisely state the grounds for each issue stated, and must be signed by the appealing party or its agent.

If a timely appeal of this ruling is filed, any other party may file with the Board itself an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Administrative Code, title 8, section 32625). If no timely appeal is filed, the aforementioned ruling shall become final upon the expiration of the specified time limits.

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and the San Francisco Regional Office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See California Administrative Code, title 8, section 32140 for the required contents and a sample form.) The appeal and any opposition to an appeal will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three

calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Administrative Code, title 8, section 32132).

Jerilyn Gelt
Labor Relations Specialist
Attachment