

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS, )  
 )  
 Complainant, ) Case No. LA-PN-112  
 )  
 v. ) PERB Decision No. 852  
 )  
 LOS ANGELES UNIFIED SCHOOL ) November 28, 1990  
 DISTRICT, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

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

Before Hesse, Chairperson; Camilli and Cunningham, Members.

DECISION

CUNNINGHAM, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal filed by Howard O. Watts (Watts) to an administrative determination (attached) by a PERB regional director.<sup>1</sup> The regional director dismissed the complaint filed by Watts against the Los Angeles Unified School District (District) which alleged that the

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<sup>1</sup>PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 32925 states:

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. The appeal shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the appealing party or its agent. The appealing party shall serve the appeal and all supporting documents upon all other parties. Within 20 days of service, each other party may file with the Board itself an opposition to the appeal.

District violated the Educational Employment Relations Act (EERA) section 3547 (a) and (b)<sup>2</sup> by allowing the Los Angeles City and County Employees Union Local 99, Service Employees International Union (Local 99) to present initial proposals before it had been recognized as the exclusive representative of Unit F for collective bargaining purposes. We have reviewed the dismissal and, finding it free of prejudicial error, adopt it as the decision of the Board itself consistent with the discussion below.

#### FACTUAL SUMMARY

The facts are accurately stated in the regional director's administrative determination; however, we will briefly summarize relevant events. On January 16, 1990,<sup>3</sup> District Superintendent Leonard Britton presented to the District's Committee of the Whole his recommendation that the District adopt a Voluntary

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<sup>2</sup>EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3547(a) and (b) states:

(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.

<sup>3</sup>Unless otherwise noted, all dates refer to 1990.

Conditional Recognition Agreement with Local 99 for representation of Unit F, a unit consisting of teachers' assistants. On January 22, the District granted conditional, voluntary recognition to Local 99 as exclusive representative of Unit F. This grant of recognition was based on evidence that Local 99 possessed a showing of majority support, and was expressly contingent upon the District receiving written notification from PERB, by June 30, that a majority of the employees in Unit F supported Local 99 as their exclusive representative. An initial proposal for bargaining was presented by Local 99 at the January 22 District Board of Education meeting. Public comment occurred on Local 99's proposal on January 29, and again on February 5. Subsequently, on May 10, the regional director of PERB verified that Local 99 had submitted sufficient evidence of majority support.

The regional director determined that the issue raised in Watts' complaint was whether the District violated public notice requirements in allowing sunshining of the proposal of Local 99 prior to recognition of that employee organization by PERB. Noting that the facts stated above did not support a finding that the District violated section 3547(a) or (b), the regional director found that the complaint also raised the issue of whether Local 99 was properly recognized by the District. She determined that the recognition portion of the complaint did not fall within the purview of EERA's public notice provisions.

Accordingly, the complaint was dismissed for failure to state a violation of section 3547.

DISCUSSION

Watts raises two objections to the administrative determination of the regional director, and argues that the regional director erred in dismissing his complaint. The first issue is whether the procedure followed by the District for the sunshining of Local 99's proposals demonstrates a violation of section 3547. Second, Watts apparently argues that allowing an employee organization to present an initial proposal, prior to its recognition as an exclusive bargaining agent, violates section 3547.

The regional director correctly determined that the District complied with both the spirit and substance of section 3547(a) and (b). Local 99's initial proposal was presented at a public meeting, and a reasonable time elapsed for public comment, in this case, approximately two weeks. (See Los Angeles Unified School District (1987) PERB Order No. Ad-162.)

Watts next argues that the very act of allowing Local 99 to present an initial proposal prior to its compliance with recognition requirements in section 3544 et seq. violates section 3547. As stated by the regional director, the intent of the public notice provision of section 3547 is to inform the public on issues to be negotiated and to afford a full opportunity for public comment. The procedure followed here by the District, in allowing Local 99 to present an initial proposal for public

comment at a District meeting, is entirely consistent with the goals and intent of section 3547.

Furthermore, allowing Local 99 to present an initial proposal for public comment does not violate the express language of section 3547. Section 3547 requires, "All initial proposals of exclusive representatives . . . shall be presented at a public meeting of the public school employer." (Emphasis added.) Use of the word "shall" in a statute normally imports that its provisions are mandatory in nature. (Lori Doyle, et al. v. Board of Supervisors of Costa County, et al. (1988) 197 Cal.App.3d 1358, 1364 [243 Cal.Rptr. 572] review den. Apr. 21, 1988, 211 Cal.App.3d 379.) This mandatory language is directed at exclusive representatives, which Local 99 apparently was not at the time of the presentation of the subject proposals.<sup>4</sup> A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves exclusion of other things not expressed. (Anne T. Henderson, et al. v. Mann Theatres Corporation of California (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266] cert. den. 434 U.S. 825.) Accordingly, a public school employer is not mandated to comply with the

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<sup>4</sup> As stated by the regional director, the propriety of the District's recognition of Local 99 cannot be addressed via the filing of a public notice complaint. We also note that resolution of this issue is not necessary to determine whether a violation of section 3547 occurred based on these facts. If Local 99 was an exclusive representative at the time of the presentation, all notice requirements were satisfied. If, conversely, Local 99 was not an exclusive representative at the time of the presentation of the initial proposal, as discussed below, no violation of 3547 occurred.

provisions of section 3547 in relation to the initial proposals of employee organizations not recognized as exclusive representatives. Conversely, there is no language in section 3547 which prohibits a public school employer from allowing the initial proposals of employee organizations not recognized as exclusive representatives to be presented at its public meetings. As the District's actions in allowing the presentation of Local 99's proposals do not conflict with either the intent or express language of section 3547, the regional director properly dismissed this complaint.

ORDER

The complaint in Case No. LA-PN-112 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Camilli joined in this Decision.