

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-113
)
 v.) PERB Decision No. 863
)
 SERVICE EMPLOYEES INTERNATIONAL) December 28, 1990
 UNION, LOCAL 99,)
)
 Respondent.)
 _____)

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

Before Hesse, Chairperson; Camilli and Cunningham, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Howard O. Watts of an administrative determination (attached hereto) by the Los Angeles regional director dismissing his public notice complaint which was filed against the Service Employees International Union, Local 99 (Local 99). The complaint alleged that Local 99 violated the Educational Employment Relations Act (EERA) section 3547(a) and (b)¹ by submitting bargaining

¹EERA 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) state, 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.

proposals to the Los Angeles Unified School District (District), pursuant to EERA's public notice requirements and prior to Local 99's recognition by PERB as an exclusive representative of the District's employees in Unit F.²

We have reviewed the regional director'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.³

(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.

In his appeal, Watts asserts that the administrative determination is in error because it stated that he had charged Local 99 with the violation of 3547 "section A" [sic] when he, in fact, only referred to section "B." Nevertheless, the gist of his original complaint focuses both on the words "exclusive representative" in subsection (a) as well as the lack of opportunity for the public to comment on the proposals as mandated by subsection (b).

²Watts also argues that he did not receive assistance with this complaint, as is required by PERB Regulation 32920. However, the nature of the assistance to be provided by PERB Board agents is technical only, and legal assistance is not mandated by this section. (Los Angeles Community College District (Watts) (1981) PERB Decision No. 186.) The record in this case indicates that Watts was provided with necessary technical assistance during the investigation of this complaint; thus, this argument is without merit.

³In addition to the rationale set forth in the regional director's administrative determination herein, we also note the Board's holding in Los Angeles Unified School District (Watts) (1990) PERB Decision No. 852 that "... 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." (Emphasis added, p. 6.)

ORDER

The public notice complaint in Case No. LA-PN-113 is
DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Cunningham join in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

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|---------------------------------|---|--------------------|
| HOWARD WATTS, |) | |
| |) | |
| Complainant, |) | |
| |) | Case No. LA-PN-113 |
| v. |) | |
| |) | |
| SERVICE EMPLOYEES INTERNATIONAL |) | ADMINISTRATIVE |
| UNION, LOCAL 99, |) | DETERMINATION |
| |) | |
| |) | September 19, 1990 |
| Respondent. |) | |
| <hr/> | | |

This administrative determination dismisses a public notice complaint filed by Howard Watts against the Service Employees International Union, Local 99 (Local 99 or Union) for failure to state a violation of section 3547(a) and (b)¹ of the Educational Employment Relations Act (EERA).²

¹Government Code Section 3547 provides 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.

²The EERA is codified at Government Code section 3540 et seq. All references are to the Government Code unless otherwise noted.

BACKGROUND

On February 22, 1990,³ Howard Watts filed a public notice complaint pursuant to PERB regulation 32910 in the Los Angeles Region of the Public Employment Relations Board (PERB). The complaint alleges the Union violated section 3547(a) and (b) of the EERA "by not allowing the public to speak to the [initial] proposal that was presented to the [Los Angeles] Board [of Education] by a recognized Exclusive Bargaining Agent and not only by the employee organization." The essence of the complaint is that the Union violated public notice requirements when it presented, and allowed comment upon, bargaining proposals prior to its recognition by PERB as an exclusive representative of certain employees of the Los Angeles Unified School District (District).

The factual assertions of this complaint are as follows. On January 16, the District staff presented a recommendation for "conditional voluntary recognition"⁴ of Local 99 for Unit F, Teachers Assistants, to the District's Committee of the Whole. On January 22, the District granted "conditional voluntary recognition" to Local 99. On that same date, Local 99 presented initial bargaining proposals for Unit F to the Board of Education. Public comment was scheduled and held on January 29,

³All dates referred to are 1990 unless otherwise noted.

⁴The District "conditionally recognized" Local 99 based on a letter, dated January 16, from the State Mediation Service's Presiding Mediator, Tom McCarthy, indicating that "a majority of Teacher Assistants signed the authorization cards." A copy of this letter was attached to the complaint.

and again on February 5. The public was afforded full opportunity to comment at these meetings.⁵

DISCUSSION

PERB case law has established that only the employer can violate section 3547(a).⁶ In Los Angeles Community College District (Kimmett) (1981) PERB Decision No. 158, the Board stated that

the preparation of the agenda for public meetings and the conduct of such meetings are the province of the District, and it is the District's obligation and responsibility to provide proper public notice and to present all initial proposals—its own as well as those of the exclusive representative—to the public at an appropriate meeting.

Therefore, the Union cannot have violated the requirements of section 3547(a) because it did not control the agenda.

Furthermore, even if Local 99 could have controlled the public notice procedure of the District, proposals were presented, and public comment was held on two separate dates. In Los Angeles Unified School District (Kimmett) (1979) PERB Order No. Ad-53, PERB noted that the intent of section 3547, as stated by the Legislature in section 3547(e), is that

the public be informed of the issues that are being negotiated upon and have full opportunity to express their view on the issues to the public school employer, and to know of the positions of their elected representatives.

⁵Mr. Watts has indicated that he spoke at the public hearings on January 29 and February 5.

⁶Sacramento City Unified School District (Spencer) (1982) PERB Decision No. 205; Kern Community College District (1983) PERB Decision No.372

Complainant did not allege any facts to indicate that meeting and negotiating occurred either prior to Local 99's presentation of its initial bargaining proposals to the District or prior to the two public comment meetings held by the District, nor did the complainant in this case allege any other facts which would support a finding of a violation of section 3547(b).⁷

Based on the facts alleged in the complaint, the District presented Local 99 initial proposals at a public meeting, and held public comment on two occasions prior to negotiations. These facts do not support a finding that the District or the Union failed to comply with section 3547(a) and (b). Los Angeles Community College District (1984) PERB Decision No. 411; Los Angeles Community College District (1980) PERB Order Ad-91. Hence no violation of section 3547 occurred.

This complaint instead goes to the issue of whether Local 99 was properly recognized by the District. As such, it does not actually allege a violation of section 3547.⁸ PERB regulation 32910 limits the scope of EERA public notice complaints to allegations of failure to comply with section 3547. Violations of the procedure for recognition of an employee organization do not fall within the purview of EERA's public notice provisions. Therefore, the propriety of the District's recognition of Local

⁷Palo Alto Unified School District (Fein) (1981) PERB Decision No. 184.

⁸Recognition procedures for employee organizations are covered in sections 3544 - 3544.9.

99 cannot be addressed via the filing of a public notice complaint.

CONCLUSION

This complaint is DISMISSED for failure to state a violation of section 3547.

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

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 Los Angeles 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 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 3, section 32132).

Dated: September 19, 1990

Carol L. Karjala
Regional Director