STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS, Charging Party,	)	Case No. LA-PN-114
v.	)	PERB Decision No. 865
LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	)	February 5, 1991

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

Before Shank, Camilli and Cunningham, Members.

DECISION

CUNNINGHAM, Member: This case comes before the Public Employment Relations Board (Board) on an appeal by Howard O. Watts (Watts) of an administrative determination (attached hereto) by a Board agent who dismissed a public notice complaint filed by Watts against the Los Angeles Unified School District (District). The complaint alleged that the District violated section 3547(a) and (b) of the Educational Employment Relations Act (EERA)[1] by failing to provide sufficient information

[1]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

regarding its proposal for reopener negotiations presented at District Board of Education meetings on April 23, April 30 and May 7, 1990.

We have reviewed the Board agent's dismissal, the complainant's appeal and the entire record in this matter, and adopt the attached dismissal as the decision of the Board itself.[2]

ORDER

The public notice complaint in Case No. LA-PN-114 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shank and Camilli joined in this Decision.

> 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.

[2]We note that Article XVIII of the agreement between the District and the Los Angeles Unified School District Peace Officers Association states, in pertinent part:

> Nothing herein is intended to prevent the parties from meeting and negotiating during the term of this Agreement, pursuant to mutual consent.

This provision was inadvertently misquoted in the attached administrative determination.

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. LA-PN-114
	)	
LOS ANGELES UNIFIED SCHOOL DISTRICT,	)	ADMINISTRATIVE DETERMINATION
	)	
Employer.	)	September 24, 1990
	)	

The above-captioned public notice complaint was filed with the Public Employment Relations Board on May 26, 1990. The complaint alleges that the Los Angeles Unified School District (District) violated section 3547(a) and (b) of the Educational Employment Relations Act (EERA)[1] by presenting an initial proposal which lacked sufficient detail to permit the public to understand and express itself with regard thereto.

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[1]Section 3547(a) and (b) 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.

The proposal to which the complaint is directed was set forth in a memorandum[2] to the Committee of the Whole of the Los Angeles Unified School District from the Superintendent dated April 23, 1990. The proposal reads as follows:

> **It** is proposed that **the** 1988-91 collective bargaining agreement with the Los Angeles Unified School District Peace Officers Association (LAUSD POA), exclusive representative for Unit A, School Police, be reopened for the purpose of partially addressing the $150-$220 million financial deficit facing the District for fiscal 1990-91. Such reopeners could include any contractual provisions which involve financial obligations, including items such as reduction in the number of paid days, suspension of Employee Assistance Program, and various alternatives to layoffs.

Significantly, the April 23 memo includes a section entitled "BACKGROUND," which notes that

> [i]n order to consider the above negotiable items for potential budget reductions, the District must submit initial reopener proposals. Pursuant to Section 3547 of the Government Code, these will be presented to the public at two regular meetings. . .(emphasis added)

The memo also comments upon the budget implications "[i]f LAUSD POA were to agree to reopen negotiations and then agree to any cost reduction proposals."

Section 3547(a) does not require public noticing of all proposals, but rather only those initial proposals "which relate to matters within the scope of representation." In Palo Alto Unified School District and Palo Alto Educators Association (Fein) (1981) PERB Decision No. 189, the Board noted that "the

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[2]The complaint erroneously indicated that a copy of the memorandum was attached as Exhibit 1. The undersigned informed the complainant of the omission, and he later filed it contained in a document entitled "Items Postponed."

initial proposals must be sufficiently developed to permit the public to comprehend them," and went on to criticize a proposal which "does not adequately inform the public of the issues that will be negotiated." (emphasis **added)**

The essence of the "proposal" set forth in the April 23 memorandum is simply the desire of the District to reopen the collective bargaining agreement in an attempt to address a looming financial crisis. Review of the 1988-91 Agreement between LAUSD POA and the District on file with PERB reveals that it does not provide for specific reopeners. Rather, Article XVIII provides that nothing in the agreement "is intended to prevent the parties from meeting and negotiating during the term of this Agreement, by mutual consent." At best, the District's "proposal" constituted a request to bargain pursuant to Article XVIII, and, as such, is quite different from a District bargaining proposal. The former is procedural, the latter is substantive. Therefore, since the "proposal" did not constitute a presentation of initial proposals relating to matters within the scope of representation as contemplated by Section 3547, there was no requirement that it conform to the public notice provisions. It would be premature to require an employer to provide specific information about the substance of its collective bargaining proposals prior to the time the parties have even agreed to bargain. In the event LAUSD POA agreed to reopen contract negotiations, however, any proposals advanced by

the District would require adequate public notice sufficient to enable the public to understand and respond thereto.[3]

For the foregoing reasons, the public notice 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

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.

[3]In conversations with the undersigned, the District indicated that LAUSD POA did not agree to reopen the agreement.

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).

Dated: September 24, 1990

Jerilyn Gelt
Labor Relations Specialist