

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-121
)
 v.) PERB Decision No. 964
)
) December 8, 1992
)
 LOS ANGELES UNIFIED SCHOOL)
 DISTRICT,)
)
 Respondent.)

Appearances: Howard O. Watts, on his own behalf; Ron Apperson, Legal Adviser, for Los Angeles Unified School District.

Before Hesse, Chairperson; Caffrey and Carlyle, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal filed by the Los Angeles Unified School District (District) of a Board agent's Administrative Determination. The Board agent found that the District violated section 3547(a) and (b) of the Educational Employment Relations Act (EERA)¹ by its failure to clarify the

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3547(a) and (b) state:

(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.

initial proposal made to United Teachers-Los Angeles (UTLA) at the June 3, June 10 and June 17, 1991 public meetings of the District Board of Education.

After review of the entire record, including the original complaint, the Administrative Determination, the District's appeal, Howard O. Watts's (Watts) response thereto and tape recordings of the relevant meetings of the District Board of Education, the Board reverses the Board agent's finding of a violation of EERA section 3547(a) and (b) , and dismisses the complaint.

FACTUAL SUMMARY

The District first presented its initial proposal to UTLA for the 1991-92 year at a public meeting of the District Board of Education on June 3, 1991. The proposal was presented in a format consistent with the interest-based bargaining approach the parties were taking. This was a departure from the traditional bargaining approach and introduced a new format for initial proposals. Public comment and input was solicited by the District at the meeting of June 3, and accepted at the meetings of June 10 and June 17, 1991.

At the June 17, 1991 public meeting, Watts testified, informing the District Board of Education that he intended to file public notice complaints with PERB because the initial proposals did not describe "what really you are going to do in your negotiations." Watts did not specifically seek clarification of the initial proposals during his testimony. Instead, he criticized the Board of Education for what he

described as the deficiencies of the proposals. The initial proposals were formally adopted by the District Board of Education at the June 17, 1991 meeting.

Watts filed his public notice complaint on July 17, 1991.² The complaint consists of sixteen handwritten pages plus attachments in which Watts cites many individual sections of the initial proposal, followed by questions seeking more specific information. The questions typically ask how the proposal will be carried out, or what specific actions the District intends to take as a result of the proposal.

An informal settlement conference failed to resolve the case. Findings of a prima facie violation of EERA sections 3547(a) and (b) were served on the parties on March 5, 1992. After considering the responses of the parties, the Board agent issued an Administrative Determination on July 6, 1992, finding that a violation of EERA sections 3547(a) and (b) did occur, and ordering appropriate remedies.

BOARD AGENT'S ADMINISTRATIVE DETERMINATION

After concluding that Watts had filed his complaint in a timely fashion, the Board agent addressed the issue of whether the District's initial proposal to UTLA adequately informed the public of the issues to be negotiated. The Board agent noted the interest-based approach to bargaining adopted by the parties, and

²Watts initially contended that the District had violated public notice provisions in the seven bargaining units with which it meets and negotiates. The complaint was verbally amended on August 8, 1991 to drop six units from the complaint, leaving only the certificated unit represented by UTLA.

concluded that parts of the proposal "were not specific enough to allow the public to be able to form a response." The Board agent then determined that the District had the opportunity to clarify its proposal at the June 17, 1991 Board of Education meeting at which Watts testified, but failed to do so. He, therefore, concluded that a violation of EERA sections 3547(a) and (b) had occurred.

DISTRICT'S APPEAL

On appeal the District argues that the complaint should have been dismissed as untimely filed, since Watts was aware of the conduct alleged to be a violation more than 30 days before the complaint was filed.³

The District also argues that the Board agent's decision not to allow a formal hearing before issuing his Administrative Determination denied the District due process.

The District asserts that it fully complied with the requirements of EERA sections 3547(a) and (b) by presenting its initial proposal at the June 3 Board of Education meeting and by accepting public comment on the proposal at meetings on

³PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation section 32910 provides, in pertinent part:

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.

June 10 and June 17, 1991.

Finally, the District asserts, without elaboration, that items within the initial proposal which were cited in the Board agent's Administrative Determination are "beyond the scope of negotiations and, therefore, arguably, the District has no obligation under the public notice requirements established by the EERA."

DISCUSSION

On the subject of the timeliness of the filing of the complaint, the Board concludes that Watts timely filed his complaint on July 17, 1991.⁴ The District's assertion that Watts is a dedicated viewer of televised Board of Education meetings and, therefore, was aware of the initial proposal when it was first offered at the June 3, 1991 Board of Education meeting, is simply not sufficient to conclude that the complaint is not timely. The purpose of EERA's public notice requirement is to allow the public the opportunity to be informed of the issues which are to be negotiated. An interpretation of PERB filing requirements which would make it difficult for the public

⁴The complaint was mailed to the PERB Los Angeles regional office via certified mail with a postmark of July 17. PERB Regulation section 32135 provides that:

All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last date 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 and addressed to the proper PERB office.

to fully participate in a school district's public notice process, including the opportunity to express their views on the issues to the public school employer, would be contrary to this purpose.

Watts attended only the June 17, 1991 meeting, the final meeting at which the District presented to the public its initial proposal. It was at that meeting that Watts addressed the Board of Education and asserted that a public notice violation had occurred. Therefore, the Board concludes that the complaint filed by Watts on July 17, 1991 is timely.

The District's assertion that it was denied due process when the Board agent did not schedule a hearing in this case is without merit. PERB regulations describe the process for considering an EERA public notice complaint, and define the powers and duties of Board agents in these matters. PERB Regulation section 32920(b)(II)⁵ gives a Board agent the

⁵PERB Regulation section 32920 states, in pertinent part:

(b) The powers and duties of such Board agent shall be to:

(11) Schedule a hearing pursuant to the hearing procedures described in Division 1, Chapter 3 (commencing with section 32165) of these regulations when material factual disputes exist. Any hearing shall be limited to the issues set forth in the complaint. At the close of the hearing and subsequent to the hearing officer's declaration of the proposed findings of facts and conclusions of law, the hearing officer may solicit the aid of the parties in fashioning a mutually satisfactory remedy of any violations found.

discretion to schedule a hearing to consider a public notice complaint "when material factual disputes exist." The District believes that the extent to which Watts was familiar with the District's initial proposal prior to his appearance at the June 17, 1991 Board of Education meeting, constitutes a material factual issue justifying a hearing. Through the hearing process the District asserts that it could demonstrate that Watts fully comprehended the issues presented in the initial proposal, did so prior to his June 17, 1991 appearance before the Board of Education, and, therefore, had not filed his complaint in a timely fashion.

The issue of the timeliness of the complaint is addressed above. With respect to the assertion that a hearing would reveal that Watts fully comprehended the initial proposal, the District misinterprets the fundamental question before the Board in this case. The Board must decide whether the District's initial proposal to UTLA adequately informed the public in accordance with EERA's public notice requirements. It is not essential to evaluate what Watts or any individual knew in addressing this question. Therefore, the Board concludes that the District has not cited a sufficient material factual dispute to support its request for a hearing in this case.

EERA's public notice statute, Government Code section 3547, contains no express provision stating that the initial proposals which it requires be made public must be "specific" in their nature. In Palo Alto Unified School District (1981) PERB

Decision No. 184, the Board noted that such proposals must satisfy the intent expressed in subsection 3547(e), i.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. (Emphasis added.)

The Board went on to explain that "the initial proposals presented to the public must be sufficiently developed to permit the public to comprehend them." PERB found a proposal "which is simply a statement of the subject matter such as 'wages' does not adequately inform the public of the issues that will be negotiated." The Board continued, however, that a proposal for a cost of living adjustment based on the Consumer Price Index is "sufficiently developed to inform the public what issue will be on the table at negotiations," notwithstanding complainant's assertion that it was not specific. The same result was reached in a later, similar case. (See American Federation of Teachers College Guild, Local 1521 (Watts) (1989) PERB Decision No. 740.)

In Ocean View Teachers Association (Busch) (1992) PERB Decision No. 943, the Board considered the question of whether the use of the interest-based or collaborative bargaining approach relieved the parties of the burden to provide public notice. The Board found that "the parties' use of a new or different bargaining technique does not excuse the parties from the statutory requirements set forth in EERA."

It is clear, however, that the interest-based approach to bargaining tends to produce initial proposals which do not

include a great deal of specific details. To the extent EERA's public notice requirement is interpreted to mandate that initial proposals include detailed information concerning subjects to be discussed during negotiations, the interest-based approach makes that task more difficult. The Board takes notice of the potential inconsistency between EERA's public notice requirement and the tendency for initial proposals under the interest-based bargaining approach to be general in nature.

While interest-based bargaining may hold many advantages, public school employers and exclusive representatives must strive to insure that it does not have the effect of failing to fully inform the public of the issues to be negotiated in collective bargaining. Therefore, initial proposals presented in the interest-based bargaining format, and the public notice processes in which they are presented, must be reviewed closely on an individual, case-by-case basis to determine if they meet the underlying EERA public notice requirement.

A review of the initial proposal in this case, and the District's public notice process, reveals that the District has adequately complied with EERA's public notice requirement.

The District's initial proposal to UTLA was presented in five separate interest-based sections: Improving Student Achievement; Restructuring the District; Enhancing Working Relationships; Increasing Attendance; and Balancing the Budget. For the District to fulfill its public notice obligation, these initial proposal sections must be sufficiently developed to allow

the public to comprehend which issues will be on the table during negotiations.

With regard to the "Improving Student Achievement" section, the District indicated its intent to explore ways to "expand staff development and in-service training opportunities" for teachers. The District also noted its interest in "establishing a program in designated schools to address the needs of identified low achieving students." It is clear from these statements that the focus of negotiations in this area will be to improve methods through which teachers identify and deal with the educational needs of students, particularly low-achieving students. This adequately informs the public of the issue which will be the subject of negotiations.

The "Restructuring the District" section indicates the District's plan to continue restructuring efforts designed to increase and enhance local control, responsibility and accountability. The specific issues to be discussed include "enhancing the role of teachers, parents, administrators and others involved in shared decision making and school-based management." This section of the proposal notes plans to increase support for the restructured approach among all the District's constituencies, and to provide training and staff development to employees concerning the restructuring efforts. The Board agent concluded that one element of this section was not sufficiently developed to allow the public to comprehend it. The Board disagrees. Although the specific details of the

District restructuring are not included, it is clear that the effort involves the assignment of greater responsibility and authority over the District's educational program to the local school community.

The "Enhancing Working Relationships" section of the initial proposal clearly delineates a number of approaches the District suggests to enhance working relationships with UTLA. Among these are issues such as "expanding joint legislative efforts," "facilitating conflict resolution by focussing on early identification and resolution," and "providing comprehensive, coordinated assistance and information to employees regarding available District and statutory benefits." These descriptions are sufficiently developed to allow the public to reasonably comprehend the subject which will be negotiated at the bargaining table.

In the area of "Increasing Attendance," the initial proposal discusses the "need for improved student and employee attendance" and the "educational and economic costs of absenteeism." Several specific attendance-related topics are cited so that the focus of negotiations in this area can be reasonably understood.

The final initial proposal area is "Balancing the Budget." In this section the District indicates it must achieve a balanced budget in the midst of "the financial crisis which has resulted from the State's revenue shortfall." As a result "the District

identifies for negotiations all matters relating to employee staffing, compensation and related costs."

This section of the proposal was presented in the context of the multi-million dollar reductions the District was dealing with as it approached the 1991-92 fiscal year. It was well publicized that the District faced a situation in which reductions in employee staffing, pay and benefits would have to be discussed at the bargaining table. Rather than include a detailed proposal for reductions in these areas, the District utilized the interest-based bargaining approach, and described its goals in this area as seeking "the immediate commencement of negotiations on an accelerated and concentrated basis to address specific proposals and measures consistent with the upcoming Tentative Budget." It is clear that employee staffing, pay and benefits could only be supported at the level available in the projected budget for the 1991-92 fiscal year, a level which would require consideration of reductions from prior levels.

Although the District could have been more specific in describing the possible impact of budget cuts on staffing, pay and benefits, the Board believes that this proposal is adequate to allow the public to understand the issues to be negotiated. Just as a proposal to base a cost of living adjustment on the Consumer Price Index fulfills EERA's public notice requirement, so does a proposal to discuss possible reductions in employee staffing, pay and benefits based on anticipated cuts in the resources available to the District.

Furthermore, the public notice process employed by the District represents a conscientious effort to fulfill the intent of EERA's public notice requirement. The District's initial proposal was presented, and opportunity for public comment was provided, at three Board of Education meetings. These meetings were televised and extensively publicized. Copies of the initial proposal were made available at the public meetings, and in the District's Office of Staff Relations and Office of Communications. Additionally, copies of the proposal were sent to more than 1,100 schools and offices within the District with a request to make the proposal available to interested individuals and groups. Clearly, the District's process was designed to fully comply with EERA's public notice requirement.

The Board concludes that the initial proposal presented to UTLA by the District is sufficiently developed to allow the public to understand the issues to be negotiated, and thereby fulfills the public notice requirements of EERA.

Finally, although the District states that items within the initial proposals cited in the Board agent's Administrative Determination were outside the scope of negotiations and, therefore, free from any public notice requirement, no evidence or argument is presented to further this assertion. Therefore, this exception is rejected.

ORDER

The complaint in Case No. LA-PN-121 is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chairperson Hesse joined in this Decision.

Member Carlyle's dissent begins on page 15.

CARLYLE, dissenting: I would affirm the Board agent's determination that the Los Angeles Unified School District (District) violated section 3547(a) and (b) of the Educational Employment Relations Act (EERA). I concur in the majority's determination and rationale that the complaint was filed in a timely manner. However, I disagree with the majority's opinion that the District's initial proposal was sufficiently defined in accordance with the public notice requirements as established by EERA.

In Palo Alto Unified School District (1981) PERB Decision No. 184 (Palo Alto), the Board noted that proposals of both the exclusive representative and the employer must satisfy the intent expressed in section 3547(e):

[T]hat 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.
(Emphasis added.)

The Board went on to explain that "the initial proposals presented to the public must be sufficiently developed to permit the public to comprehend them." (Id. at p. 3.)

In other decisions, the Board has shown that it will look beyond the actual initial proposal to determine whether the requirements of EERA section 3547 have been met. In Los Angeles Community College District (1984) PERB Decision No. 411, the Board was presented with the issue of whether or not the employer's initial proposal regarding amendments to life insurance plans provided sufficient information. The Board found

it unnecessary to decide whether the proposal, alone, "[met] the requirements of Government Code section 3547, because the District also included explanatory information with its initial proposal." (Fn. omitted.)

To meet the requirements of section 3547, an explanation of an initial proposal to the public need not be in writing. Oral clarification of initial proposals at public meetings held by the employer has been found to constitute sufficient notice under section 3547(a). (Los Angeles Community College District (1985) PERB Decision No. 489; Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO (Watts) (1985) PERB Decision No. 490; and Los Angeles Community College District (1991) PERB Decision No. 908.)

Sufficiently informative proposals and an opportunity for meaningful public comment on such proposals are necessary prerequisites to meeting and negotiating. In this case, the District presented its initial proposal for 1991-92 with an attempt to use an interest based approach rather than the traditional approach of collective bargaining. Presumably, the District made this change to avoid setting itself up for the traditional collective bargaining which had lead to a disruptive relationship between the employee organization and itself in the past. Under the interest based bargaining formula, an employer has the opportunity of introducing proposals that tend to be less specific than under the traditional model. As the majority points out, this may lead to inherent conflicts with the public notice act. However, the use of a different bargaining technique

does not excuse the parties from the statutory requirements set forth in EERA. (Ocean View Teachers Association (Busch) (1992) PERB Decision No. 943.) The District is still required to provide sufficient information or clarification so that the public can 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.

In the case at hand, the District's initial proposal to United Teachers of Los Angeles (UTLA) focused on five subject areas: (1) improving student achievement; (2) restructuring the District; (3) enhancing working relationships; (4) increasing attendance; and (5) balancing the budget. These subject areas do not reflect names of articles from the current agreement or standard reopener proposals, i.e., class size, salaries, extra duties, transfers, etc. One area where the Board agent found the proposal not specific enough involved restructuring the District, which stated:

Restructuring the District

The District seeks to further current restructuring efforts--i.e., changing the way the District and schools are organized and resources are allocated--in order to increase and enhance local control, responsibility and accountability, and improve efficiency of operations, thereby making the educational program more responsive to student needs. Among the items related to the restructuring effort are:

Enhancing the role of teachers, parents, administrators and others involved in shared decision making and school-based management.

Maximizing support of shared decision making in school-based management among all constituencies.

Expanding the training and staff development related to restructuring efforts.

Ensuring the equitable allocation, on a per pupil basis, of General Fund resources among all schools.

Concentrating efforts on the implementation of the Middle School Program throughout the District, including required planning, necessary credentialing and related changes and the reconfiguration of all affected schools.

This proposal has clear language, i.e. "ensuring the equitable allocation, on a per pupil basis, of General Fund resources among all schools," and "concentrating efforts on the implementation of the Middle School Program throughout the District." It also includes language which, based on layperson's review, would require some further explanation. An example of this is "maximizing support of shared decision making and school-based management among all constituencies." The questions that immediately arise are how; why; what constituencies are being referred to (classified employees, parents, students, administrators or teachers) and what impact does this have on the collective bargaining relationship on matters within the scope of the requirements to meet and negotiate. In my opinion, this example of the District's proposal was not specific enough to allow the public to be able to form a truly meaningful comment. (See Palo Alto.)

The District had an opportunity to clarify its proposal at the June 17, 1991 public meeting. In his remarks, Howard O. Watts (Watts) made several statements without specifically asking a question. Although Watts' questions may have been rhetorical, the issues were specifically raised as to the contract. As to

the restructuring issue, the District did not offer clarification of its proposal nor were answers provided by the District's staff. The proposal was adopted, as is, on June 17, 1991 although no negotiating or meeting occurred until August 12.

It is apparent that the District had the opportunity to verbally clarify its proposal at the June 17 meeting or hold the matter over for the next public meeting rather than adopt the proposal at that time. (See Los Angeles Community College District, supra, PERB Decision No. 489; Los Angeles City and County School Employees Union, Local 99, SEIU, AFL-CIO (Watts), supra PERB Decision No. 410 and Palo Alto.)

Under EERA, the public has an opportunity to make its views known at the beginning of the collective bargaining process. There is no obligation on the part of the District to receive any additional public input during or at the end of the process when the final agreement is to be voted/ratified upon. This is true even if the final document bears little, if any, resemblance to the initial proposal which was subject to public comment.

Accordingly, under such constraints, I weigh more heavily to the side of an informed public and full compliance with the public notice requirements than I do any derived benefits of the interest-based bargaining format on an initial proposal.

In my opinion, the language of the District's initial proposal to UTLA concerning restructuring the District is not specific enough to allow general public comprehension and meaningful comment. The District had an opportunity to clarify its proposal following Watts' address at the June 17, 1991

meeting and made no attempt to do so. Therefore, I would find that the District violated EERA section 3547(a) and (b).