

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-129
)
 v.) PERB Decision No. 1001
)
 ASSOCIATED ADMINISTRATORS OF) June 22, 1993
 LOS ANGELES,)
)
 Respondent.)
 _____)

Appearance: Howard O. Watts, on his own behalf.
Before Blair, Chair; Hesse and Caffrey, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Howard O. Watts (Watts) of a Board agent's administrative determination (attached) which partially dismissed Watts' public notice complaint.¹ In his complaint, Watts alleged that the Associated Administrators of Los Angeles (AALA) violated section 3547 of the Educational Employment Relations Act (EERA)² by not making available copies

¹The complaint filed by Watts also alleged that the initial proposal presented by the Associated Administrators of Los Angeles did not adequately inform the public of the issues to be negotiated, in violation of EERA's public notice requirements. That allegation has not been dismissed and is not under consideration in this case.

²EERA is codified at Government Code section 3540 et seq. Section 3547 states, in pertinent part:

- (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

of its initial proposals, and by indicating that the AALA reserved the right to supplement its initial proposals.

The Board has carefully reviewed the entire record in this case, including the Board agent's administrative determination, Watts' complaint and his appeal of the partial dismissal. The Board finds the Board agent's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

The Board hereby AFFIRMS the Board agent's partial dismissal of the complaint in Case No. LA-PN-129.

Chair Blair and Member Hesse joined in this Decision.

to express itself regarding the proposal at a meeting of the public school employer.

(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.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD WATTS,)	
)	
Complainant,)	Case No. LA-PN-129
)	
v.)	
)	ADMINISTRATIVE
ASSOCIATED ADMINISTRATORS)	DETERMINATION
OF LOS ANGELES,)	
)	April 8, 1993
Respondent.)	
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This administrative determination dismisses those allegations in the above-referenced public notice complaint which state that the Associated Administrators of Los Angeles (AALA) violated Government Code section 3547(b)¹ by not making available copies of its initial proposals, and by indicating that they reserved the right to supplement their proposals.

BACKGROUND

Mr. Howard Watts (Complainant or Watts) filed the instant complaint against AALA on July 7, 1992.² AALA represents the Los

¹The Educational Employment Relations Act (EERA) is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3547(b) provides:

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of proposals 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.

²All dates referenced herein are calendar year 1992 unless otherwise noted.

Angeles Unified School District's (Employer or District) certificated supervisory bargaining unit. The Complainant filed an amended complaint by certified mail on August 5.³

The District's public notice policy⁴ in pertinent part states:

V. Accessibility of Initial Proposals

A. Certificated Proposals

The District shall make the Board's and the exclusive representative's proposals accessible to the public in the following manner:

3. A copy of initial proposals presented at a regular public meeting of the Board shall be posted and available for inspection and review through the PIO until such time as negotiations are completed. (The exclusive representative will provide the District with copies of its initial proposals which shall be distributed through regular District mail service procedures.)

In the instant case, the District held its first public notice meeting on June 15, wherein they acknowledged the receipt of AALA's initial proposals. Complainant affirms that he attended the June 15 meeting and received a copy of AALA's proposals. He further states that he addressed the District's School Board at two separate public comment meetings which were

³Case Number LA-PN-131 was earlier assigned to the amended complaint in error. The complaint, as amended, is being processed only under Case Number LA-PN-129.

⁴The Complainant provided PERB with a copy of the District's Public Notice policy, Bulletin No. 18 (Rev) September 26, 1988, section V (A).

held on June 25 and July 6.

Mr. Watts alleges that on June 25 at the public comment meeting AALA failed to make its proposals available for public inspection. Mr.. Watts also alleges that at the July 6 public notice meeting AALA failed to meet the public notice requirements because it failed to make its proposal available to the public in a timely manner. Specifically, he received a copy of AALA's proposals approximately one and one-half hours after he addressed the Board.

Mr. Watts further asserts that AALA violated the EERA public notice requirement by articulating in its proposals the following Statement: "AALA RESERVES THE RIGHT TO SUPPLEMENT THE ABOVE WITH PROPOSALS REGARDING ANY MATTER WITHIN SCOPE. IF ADDITIONAL PROPOSALS ARE MADE, APPROPRIATE PUBLIC NOTICE PROCEDURES WILL BE FOLLOWED. " It is Mr. Watts' contention that AALA cannot supplement its proposals without informing the public.

ISSUE

Did the Association fail to make its initial proposals available to the public in a timely manner? Did the Association violate the EERA's public notice requirement by articulating that they had the "right to supplement" their initial proposals?

DISCUSSION

Availability of Proposals

In Los Angeles Unified School District (Watts) (1980) PERB Decision No. 153, the Board held that:

[T]he statute requires that all initial proposals be presented at a public meeting

and, thereafter, become public records. Beyond this the statute is silent. It does not specify that copies of proposals must be made available at all subsequent meetings.

The issue regarding the availability of proposals at subsequent public comment meetings was also addressed by the Board in Los Angeles Unified School District (1981) PERB Decision No. 181a. In that case, the Board affirmed the regional director's dismissal of an allegation that the District failed to make its proposal available at subsequent meetings, finding that "Mr. Watts has failed to state any sufficient facts to constitute a prima facie complaint."

As evidenced in the complaint, the Complainant received a copy of the initial proposals at the first public notice meeting which was held on June 15. The complaint confirms that Watts spoke at both public comment meetings which succeeded the June 15 public notice meeting where the proposals were initially made available for public inspection.

AALA provided its proposals at the June 15 public notice meeting and there is no requirement for the exclusive representative to make its proposals available at subsequent meetings. Thus, AALA fulfilled its public notice obligation under the EERA. The Complainant offers no evidence or argument to support or require a different finding in this case.

Supplemental Proposals

The Association's initial proposal states that "AALA reserves the right to supplement" its proposals "regarding any matters within scope", and that "if additional proposals are

made, appropriate public notice procedures will be followed."

(Emphasis added.)

The Complainant argues that the Association violated section 3547 (b) because "AALA cannot present any other proposals by supplement" without informing the public. While the Complainant only alleges a violation of section 3547(b), the matter that he raises is addressed under section 3547(d).

EERA section 3547(d) provides:

(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.

The statute clearly allows that after initial proposals are presented new subjects may arise and that there is a duty to make them public.

It is clear that the proposals, including the amendments, must be sunshined. The Association's proposals explicitly state that appropriate public notice procedures will be followed in the event that their initial proposals are supplemented. In sum, the Association's statement indicates an intent to meet its obligations pursuant to the EERA's public notice requirement.

In Los Angeles Community College District (1981) PERB Decision No. 158, the Board noted that it is not an unreasonable burden to require the exclusive representative to "sunshine" its amended proposals. However, in a later, case, the Board held that only employers can violate section 3547(d). (Sacramento City

Unified School District (1982) PERB Decision No. 205.)

For the reasons set forth above, it has been determined that the Association did not violate section 3547 (b) or (d) by articulating in its proposals that it reserved the right to supplement their proposals.

CONCLUSION

Based on the facts, law and precedent discussed above, it is determined that the allegations that AALA violated section 3547 by failing to make its proposals available, and by its stated intention to possibly supplement its initial proposals fail to state a prima facie violation of Government Code Section 3547(b). These allegations are hereby DISMISSED without leave to amend.

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 Code of Regulations, 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 Code of Regulations, 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 of opposition within twenty calendar days following the date of service of the appeal (California Code of Regulations, 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 document 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 Code of Regulations, 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 Code of Regulations, title 8, section 32132).

DATE:

April 8, 1993

Nora M. Baltierrez
Nora M. Baltierrez
Labor Relations Specialist.