

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



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|----------------------------|---|------------------------|
| HOWARD O. WATTS, |) | |
| |) | |
| Complainant, |) | Case No. LA-PN-133 |
| |) | |
| v. |) | PERB Decision No. 1013 |
| |) | |
| LOS ANGELES UNIFIED SCHOOL |) | September 9, 1993 |
| DISTRICT, |) | |
| |) | |
| Respondent. |) | |

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

Before Blair, Chair; Carlyle and Garcia, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Howard O. Watts (Watts) of a Board agent's administrative determination (attached) dismissing Watts' public notice complaint. Watts' complaint alleged that the Los Angeles Unified School District (District) violated section 3547(a) of the Educational Employment Relations Act (EERA)¹ by: (1) not making copies available to the public of the exclusive representatives' (Associated Administrators of Los Angeles and the United Teachers of

¹EERA is codified at Government Code section 3540 et seq. Section 3547 states, 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.

Los Angeles) respective initial proposals, and (2) the proposals were not collated properly.

The Board has reviewed the entire record in this case, including Watts' public notice complaint, the administrative determination and Watts' appeal. The Board affirms the Board agent's dismissal but reverses the Board agent's awarding of litigation expenses, including reasonable attorney fees against Watts.

DISCUSSION

In the administrative determination, the Board agent concluded that Watts had once again raised nonmeritorious complaints. This was found to be an abuse of Board processes and a waste of state resources. The Board agent then ordered Watts to reimburse the District for any litigation expenses, including reasonable attorney fees, incurred by the District in defending against the complaint.

"The Board will award attorneys' fees and costs where a case is without arguable merit, frivolous, vexatious, dilatory, pursued in bad faith or otherwise an abuse of process." (State of California (Office of the Lieutenant Governor) (1992) PERB Decision No. 920-S; relying on Chula Vista City School District (1990) PERB Decision No. 834, pp. 73-74; United Professors of California (Watts) (1984) PERB Decision No. 398-H; El Dorado Union High School District (1985) PERB Decision No. 495, dismissal letter, p. 2.) However, the Board finds that the issues raised by Watts are properly before the Board. Although

Watts has several charges pending before the Board on similar issues, these issues have not been the subject of Board decisions in the past. Finally, it is important to note that the Board has strongly indicated in the past, and does so again now, that a balancing of all factors on future complaints involving the same issues already decided by this Board may result in different remedies being meted out in the future. (Los Angeles Unified School District (Watts) (1982) PERB Decision No. 181a.)

ORDER

The public notice complaint in Case No. LA-PN-133 is hereby DISMISSED WITHOUT LEAVE TO AMEND. The Board agent's order for reimbursement to the District of any litigation expenses, including reasonable attorney fees by Watts, and written notification of his actions in complying with such reimbursement is hereby REVERSED.

Chair Blair and Member Garcia joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

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|--|---|--------------------|
| HOWARD WATTS, |) | |
| |) | |
| Complainant, |) | Case No. LA-PN-133 |
| |) | |
| v. |) | ADMINISTRATIVE |
| |) | DETERMINATION |
| LOS ANGELES UNIFIED SCHOOL DISTRICT, |) | |
| |) | May 28, 1993 |
| Respondent. |) | |
| <hr style="border: 0.5px solid black;"/> | | |

This administrative determination dismisses the above-captioned public notice complaint filed by Mr. Howard Watts (Complainant or Watts) against the Los Angeles Unified School District (District).

BACKGROUND

On October 9, 1992,¹ Complainant filed a public notice complaint in the Los Angeles Regional Office of the Public Employment Relations Board (PERB or Board) pursuant to PERB regulation 32190.² The complaint contended that the District

¹All dates referenced herein are calendar year 1992 unless otherwise noted.

²PERB regulation 32190 states in part:

32190. Filing of EERA . . . Complaint. A complaint alleging that an employer or an exclusive representative has failed to comply with Government Code section 3547 . . . may be filed in the regional office. An EERA complaint may be filed by an individual who is a resident of the school district involved in the complaint or who is the parent or guardian of a student in the district. 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

violated Government Code section 3547(a)³ by not making available to the public copies of the exclusive representatives'

(Associated Administrators of Los Angeles, "AALA," and the United Teachers of Los Angeles, "UTLA")⁴ respective initial proposals, and that these proposals were not collated properly.⁵

The complaint also alleged that the District violated its own public notice policy by not resolving an internal public

³The Educational Employment Relations Act (EERA) is codified at Government code section 354 0 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3547(a) 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.

The complaint on its face states that it is not alleging an EERA violation. However, based upon the information articulated in the complaint we are construing it as an allegation of a violation of section 3547(a).

⁴AALA represents the District's certificated supervisory bargaining unit. The certificated bargaining unit is represented by UTLA.

⁵A review of the District's Public Notice Policy reveals that there is no requirement for the exclusive representatives to physically present its proposals in a particular manner. The proposals were stacked and separated by a colored sheet of paper.

Watts asserts that he felt that the manner in which the proposals were collated was inappropriate because there was a possibility that someone could have picked up a part rather than the entire proposal. Watts' complaint is based on speculation, rather than an actual incident. There is no evidence that indicates that the public was prevented or precluded from obtaining an entire copy of either proposal because of how or the way in which they were stacked. A requirement to separate the proposals in a manner different from what was done in this case is beyond EERA's public notice requirements.

policy complaint which Watts filed against the District on July 15. Watts contends that the settlement of a prior charge prompted the District to issue local public notice complaint resolution procedures. Watts alleges that the District has failed to comply with these rules, and asks PERB to enforce the District's local policies.

FACTS

In 1979 public notice complaints filed by Watts (Case Nos. LA-PN-9 and LA-PN-10) against the District resulted in a signed stipulation for settlement. The settlement reads in pertinent part:

The District hereby agrees to the following changes in policy and further agrees to incorporate these changes into the next revision of Los Angeles Unified School District Office of the Superintendent Bulletin No. 18 (Rev 7-7-79).

1. A staff report on the complaint (filed pursuant to Section IV of Bulletin No. 18) shall be submitted to Board Members and to the complainant at least one week prior to the Board's consideration of said complaint. The Board's agenda will note the complaint on the day it is considered. (Above to be inserted in Bulletin #18 Section IV A.)

In 1988 the District revised its Public Notice policy⁶ which in pertinent part states:

III. Complaint Procedure

A. Any person representing himself or herself or an organization may file a formal complaint to the Board on a form provided by the District citing failure to comply with the provisions of Government Code Section

⁶The Complainant provided PERB with a copy of the District's most current public notice policy, Bulletin No. 18 (Rev) September 26, 1988, section V (A) .

3547 or this policy. Such complaints to the Board must be filed in the office of the Clerk, of the Board within thirty (30) calendar days after the event giving rise to the complaint.

A staff report on the complaint shall be submitted to Board Members and to the complainant at least two weeks prior to the Board's consideration of said complaint. The Board's agenda will note the complaint on the day it is considered. Within thirty (30) working days after receipt of the complaint, the Board shall review the complaint and, upon a motion requested by the Superintendent, make a decision on said complaint at a regular meeting of the Board unless additional time for further investigation is requested by the Board. Such extension shall not be for more than (30) days. The decision of the Board shall be final.

B. The Board's complaint procedure shall not prohibit any person from filing a complaint with the Public Employment Relations Board (PERB) as provided in Chapter 7, Public Notice Proceedings, of that Board's rules and regulations. A copy of Chapter 7 will be provided by the PIO or the Office of Staff Relations upon request. The Board or PERB's complaint procedures shall not prohibit the parties from continuing the negotiate process pending the resolution of any complaint filed.

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.

On June 15 the District's board held its first public notice

meeting where AALA's and UTLA's initial proposals were made available to the public.

Complainant affirms that he attended the June 15 meeting and received a copy of AALA's and UTLA's proposals. He further states that he addressed the District's board at the two public comment meetings held on June 25 and July 6.

On July 15, Watts filed a public notice procedure complaint with the District. The complaint indicated the following:

Public notice requirements were violated by not having the UTLA and AALA Initial Proposals available at the time Watts was scheduled to speak at the Board meeting of June 25, 1992. Additionally, on July 6, 1992, the unions' initial proposals available at the Board meeting were not collated properly.

The District's response to Watts' internal complaint was as follows:

For public input, district policy requires that an opportunity be provided at two separate meetings of the Board of Education with a three minute time allocation to address proposals. In this case, the UTLA and AALA proposals were sunshined on June 15, 1992 and 50 copies were made available to the public. The Order of Business was posted prior to the June 25 meeting as usual, giving the public advance notice of the presentation of the proposals. The proposals were made available to the public for review during the meeting, the three minute time allocation was available to you to speak to proposals; in fact, the three minute allocation was utilized by you for this purpose. A similar opportunity to speak was provided to you on July 6, 1992.

On June 25, 1992 there was a brief delay in placing the UTLA proposals on the table outside the Board meeting room. The delay occurred because UTLA delivered copies of the 200+ page document to the wrong location [which they acknowledged]. However, since the Bulletin does not contain any regulations concerning the exact time the proposals are to be provided for viewing, staff believes the District substantially complied with its own regulations.

Regarding the fact that the proposals were not collated, there is no requirement in District policy that the unions' proposals be separated and rubber-banded. It was bur understanding that the 200+ page sets were separated by a colored sheet of paper.

In your complaint, you pointed out that all proposals should be presented at a regular meeting. In this case, the proposals were received at the meeting of June 15, 1992, which clearly was a regular Board meeting.

ISSUES

Did the District fail to make AALA's and UTLA's initial proposals available to the public? Did the District fail to comply with its local public notice policy?

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."

In order for the District to meet its public notice

obligations under EERA, it must make copies of the exclusive representative's initial proposals available to the public at a public meeting. There is no requirement for the District to make available copies of proposals at subsequent meetings. Thus, when it provided copies of the initial proposals at the June 15 public meeting, the District 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.

District's Failure To Comply With Local Public Notice Policy

Nothing in section 3547 requires school districts to have a local public notice complaint resolution procedure, nor does it define how a school board's local policy shall be regulated. The regulation of those procedures is left to the discretion of the local school boards.

Although there is no statutory requirement for school boards to have a local public notice complaint resolution procedure, PERB may entertain a complaint and intercede if the complaint alleges that the locally adopted rules facially conflict with the law and if the application of such rules deprives the public of their statutory rights.

In Los Angeles Unified School District (1983) PERB Decision No. 335, the Board found that the regional director erred when she dismissed Watts' public notice complaint based specifically on the fact that he alleged violations of the District's own public notice policy. It concluded that:

... we must determine whether the statutory public notice provisions have been violated. If the locally

adopted rules facially conflict with a public notice requirement, the Board will necessarily intercede. Where the application of local rules results in deprivation of statutory rights, we will likewise entertain the complaint.

In Los Angeles Unified School District (1980) PERB Decision No. 152, the Board found that "whether or not the complaint asserts violation of local rules is not determinative." In Los Angeles Community College District (Watts) (1981) PERB Decision No. 150a, the Board found that a dismissal may not rely solely on the fact that a complaint alleges violation of a school district's own public notice rules.

In order for PERB to intercede in this matter, there must be evidence that the local rules adopted by the school board facially conflict with the EERA public notice requirement and that the application of those rules resulted in deprivation of statutory rights.

Although Watts asserts that the District failed to adhere to a local rule (public notice complaint resolution procedure), he offers no evidence to support such an assertion. In fact, the District's written response regarding Watt's internal complaint is evidence of action taken by the District which conforms to its Public Notice Complaint procedures. Further, the allegation articulated in the Complainant's internal complaint involved District public notice requirements which are beyond those mandated by the EERA. It appears that Watts' contention is based on his dissatisfaction with the District's response to his complaint rather than a failure on their part to follow the local

rule. Additionally there is no evidence to substantiate the Complainant's contention that the application of the District's complaint procedures deprived the public of any statutory rights.

PERB's Authority to Enforce Agreements

Government Code section 3541.5(b) states:

The Board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

In Los Angeles Unified School District (1984) PERB Decision No. 448 and Los Angeles School District Peace Officer's Association (1987) PERB Decision No. 627, the Board held that PERB does not have, the authority to enforce agreements between the parties. Rather, PERB can only investigate conduct alleged to violate an agreement if such conduct also constitutes a deprivation of statutory rights under EERA.

In the instant case, it has not been established that any of the purported settlement agreement violations deprived the public of their statutory rights under EERA. Further, the instant complaint clearly articulates issues beyond the scope of public notice requirements. It appears that Watts has attempted to utilize the public notice complaint procedure to involve PERB in the enforcement of an agreement between the parties.

CONCLUSION AND ORDER

Based on the facts, law and precedent discussed above, the following conclusions have been reached. First, the District met its public notice obligation under EERA by making AALA's and

UTLA's proposals available to the public at its first public notice meeting. Second, there is no factual information from which it can be determined that the application of the District's public notice policy resulted in a deprivation of statutory rights. Finally, PERB does not have the authority to enforce settlements between the parties. It is therefore determined that the instant public notice complaint fails to state a prima facie violation of Government Code section 3547.

In addition, it is concluded that Watts has again raised nonmeritorious complaints which the Board has already fully considered. In this case, Watts' complaint regarding the availability of proposals at subsequent meetings is not only an issue decided often and consistently by the Board but was also an issue he raised in several recent complaints (LA-PN-129, LA-PN-130, and LA-PN-132). Further, it is apparent that Watts has asserted allegations that go beyond the scope of PERB's authority, i.e., resolving internal complaints and enforcement of settlement agreements. On the face of the instant complaint Watts indicated that he recognized that the allegations he articulated were outside of PERB's boundaries, yet he still chose to file the instant complaint. Therefore, the filing of this complaint is considered an abuse of Board processes and a waste of State resources. (See Los Angeles Unified School District (Watts) (1992) PERB Decision No. 181a.) It is again appropriate, under these circumstances, to assess litigation expenses against the complainant. (United Professors of California (Watts) (1984)

PERB Decision No. 398-H.)

For the foregoing reasons, the instant complaint is DISMISSED without leave to amend. Further, Watts is hereby ORDERED to:

1. CEASE AND DESIST from abusing the Board's administrative processes by filing public notice complaints not supported by evidence which the Board has made clear is necessary, or which merely raise questions of law previously decided by the Board.

2. Reimburse any litigation expenses, including reasonable attorney fees, incurred by the District in defending against this complaint.

3. Make written notification of the actions taken to comply with the Order to the Los Angeles Regional Director of the Public Employment Relations Board in accord with the director's instructions.

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 3295). 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 3215). The Board's address

is:

Members, Public Employment Relations Board
1031 18th Street
Sacramento, CA 9 5814

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 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 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 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 know, 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 Regulation, title 8, section 32132).

DATE: May 28, 1993

Nora M. Baltierrez
Labor Relations Specialist