

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

HOWARD O. WATTS,

Complainant,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Employer.

Case No. LA-PN-151-E

Administrative Appeal

PERB Order No. Ad-307

February 26, 2001

Appearances: Howard O. Watts, on his own behalf; Paul Hastings, Janofsky & Walker by Niloofar Nejat-Bina, Attorney, for Los Angeles Unified School District.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Howard O. Watts (Watts) of a Board agent's dismissal (attached). The Board agent determined that the Los Angeles Unified School District (District) did not violate sections 3547 (a), (b) or (c) of the Educational Employment Relations Act (EERA)¹ when on

¹ EERA 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.

(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.

April 11, 2000, the District Board of Education adopted initial proposals for negotiations with the United Teachers of Los Angeles.

After a review of the entire record, including the Board agent's dismissal, Watts' appeal and the District's response, the Board hereby affirms the Board agent's dismissal and adopts it as the decision of the Board itself.

ORDER

The public notice complaint in Case No. LA-PN-151-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Whitehead joined in this Decision.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD**

HOWARD O. WATTS,)	
)	
Complainant,)	Case No. LA-PN-151-E
)	
v.)	DISMISSAL OF PUBLIC
)	NOTICE COMPLAINT
LOS ANGELES UNIFIED SCHOOL DISTRICT,)	
)	November 15, 2000
Respondent.)	
_____)	

This decision dismisses the above-captioned public notice complaint filed by Howard O. Watts against the Los Angeles Unified School District.

PROCEDURAL HISTORY

On May 11, 2000,¹ Howard O. Watts filed a public notice complaint with the Public Employment Relations Board (PERB) pursuant to PERB Regulation 32910.² The complaint alleges that the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA or Act) section 3547(a), (b), and (c)³ by adopting

¹ All dates referenced occurred during 2000 unless otherwise specified.

² PERB Regulation 32910 states in pertinent part:

Filing of EERA or HEERA Complaint. A complaint alleging that an employer or an exclusive representative has failed to comply with Government Code section 3547 or 3595 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 school district or is an adult student in the district.

³ The EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3547 (a), (b) and (c) state:

amendments to initial proposals for negotiations with the United Teachers of Los Angeles (UTLA) without making the amendments available for adequate review by the public. Mr. Watts asserts in this complaint that the unavailability of the amendments for public comment prior to the adoption of the proposals was a violation of EERA section 3547.

FACTS

Mr. Watts is a resident of the District for the purposes of filing this complaint under EERA section 32910. UTLA is the exclusive representative of a bargaining unit of certificated employees. The District is a public school employer which must present all initial bargaining proposals that relate to matters within the scope of representation at a public meeting pursuant to EERA section 3547.

The District Board of Education meets in public session on a bi-weekly basis. The District has a written policy concerning public comment on initial proposals. This policy, dated November 6, 1998, states in pertinent part:

Absent an emergency or other compelling circumstances, the District will allow at least two opportunities for public expression

(a) All initial proposals of exclusive representatives and of public school employees, 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.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

on initial proposals following the presentation of the proposals at a public meeting (regular or special) of the Board. Such opportunity shall be prior to the time the Board adopts the proposals, but may occur at the same meeting during which the adoption occurs.⁴

In the same document, the District established a Sunshine Committee and described the relationship between the committee and the District as follows:

The primary purpose of the Sunshine Committee shall be to convene meetings to provide for an exchange of information, questions and answers among the committee members regarding initial and subsequent certified proposals by the parties.

The Sunshine Committee shall have access to any written material distributed at negotiations by the District or the certificated exclusive representative. The Sunshine Committee shall report to the Board as needed.⁵

The District presented an initial proposal for the purposes of negotiation with UTLA at the regular Board meeting on March 14. The minutes of the March 14 and March 28 meetings reflect that the public was allowed to comment on the proposal at those meetings.⁶ The Sunshine Committee had the opportunity to review the proposal and gave comment to the Board concerning the initial proposal.⁷

On April 11, at a scheduled Board meeting, it was moved that the initial proposals be adopted for the purposes of upcoming negotiations with UTLA. It was moved three times at

⁴ Bulletin No. AJ-1, November 6, 1998, identified in complaint as, "Copy of Result of LA-PN-140."

⁵ Ibid.

⁶ Regular Meeting Order of Business, March 14, 2000 and Regular Meeting Order of Business, March 28, 2000. Identified in complaint as "Exhibit No. 7" and "Official Minutes."

⁷ March 28, 2000, Report to the Board of Education From the District Sunshine Committee, Re: "LAUSD-UTLA/AALA Initial Bargaining Proposals". Identified in complaint as "Exhibit No. 11."

the April 11 meeting that the initial proposal be amended and each motion failed.⁸ The April 11 meeting minutes read in pertinent part:

Mr. Lansing moved that the report be adopted. Ms. Castro seconded the motion.

Ms. Fields moved the following amendment:

Strike all language that indicates an "individual" teacher incentive plan.

Ms. Korenstein seconded the motion. After discussion Ms. Fields withdrew her amendment.

Ms. Korenstein moved the following amendment:

To substitute the original bargaining proposal with the Superintendent's recommendation, identified as Attachment A.

Ms. Fields seconded the motion. At Mr. Tokofsky's request for legal opinion, Mr. Richard Sheenan, General Counsel, indicated that the sunshining changes to the proposal would not be necessary if items were deleted; however, any language addition would have to be available for comment over a two Board meeting period. Ms. Fields withdrew her second. The motion failed for lack of a second.

Ms. Fields again moved the following amendment:

Strike all language that references "individual" incentives.

Ms. Korenstein seconded the amendment, which on roll call failed 5 noes 2 ayes, Ms. Fields and Ms. Korenstein.

On roll call, the report was adopted 6 ayes, 1 no, Ms. Korenstein.

⁸ Regular Meeting Minutes, April 11.

The tapes of the April 11 Board meeting were consistent with the conclusions transcribed in the Regular Meeting Minutes from the April 11 Board meeting.⁹ The initial proposal was adopted for the purposes of meeting and negotiating without amendment.

A newspaper article submitted by Mr. Watts detailing the events of the April 11 Board meeting supports this conclusion. The article by David R. Baker was published on April 12 in the Daily News and falls under the headline *Merit Pay Supported by Board*. The article replays the events of the Board meeting in question and reads in pertinent part:

A divided Los Angeles school board voted Tuesday to offer teachers a contract tying pay to performance, despite a last minute effort to kill the proposal's most controversial part.

Board members voted six to one in favor of the contract offer, turning aside a recommendation from interim Superintendent Ramon Cortines to drop language that would reward individual teachers based on performance. Much of the plan focuses on rewarding the performance of entire schools, not individual teachers.

Board members Julie Korenstein and Valerie Fields argued against individual performance pay, saying it would turn teacher against teacher.

After lengthy discussion, only Korenstein voted against the proposal.¹⁰

ISSUES

1. Is the adoption of an initial proposal which has been made available for public comment on two occasions and which has not been amended prior to its adoption a violation of the public notice requirements under EERA?

⁹ Audio tapes of the April 11 District Board of Education meeting.

¹⁰ (Baker, *Merit Pay Supported by Board*, Daily News (April 12, 2000).) Identified in additional information concerning complaint as "Exhibit No. 7".

2. Does an employer have a responsibility to allow public comment on proposed amendments to initial proposals prior to the presentation of the amendments?

DISCUSSION

The intent of the public notice requirements are set forth in section 3547(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 the positions of their elected representatives.

PERB's regulations implementing the provisions of section 3547 were adopted to fully protect the public's right in this regard. (Los Angeles Community College District (1978) PERB Order No. Ad-41.) In Los Angeles Community College District (1980) PERB Decision No. 153, PERB held that:

The statute requires that all initial proposals be presented at a public meeting and, thereafter, become public records. Beyond this the statute is silent.

Mr. Watts alleges that the District adopted its initial proposal, which had been amended without allowing for public notice and comment on the amendments. The events on April 11 do not support this allegation. Further, the news article published on April 12 cited by Mr. Watts supports the conclusion that the Board did not adopt the proposed amendments. The initial proposal adopted at the April 11 meeting was the same proposal that was open to public comment at the March 14 and March 28 meetings. The initial proposal was made public, sent to the Sunshine Committee, and adequately commented upon to fulfill the public notice requirements as outlined in EERA. There were no approved amendments to the proposal, thus no need for further public comment. This allegation is therefore dismissed.

Mr. Watts also alleges that failure to allow public comment on proposed amendments to initial proposals prior to the proposing of the amendments violates EERA section 3547. Section 3547(a), (b), and (c) requires that public notice be given prior to the Board's adoption of a proposal to be used in meeting and negotiating. This section does not provide that proposed amendments be sunshined before they are proposed. However, if the proposed amendments were adopted and became part of the initial proposal, then section 3547(a), (b), and (c) would require that the amended initial proposal be sunshined to give the public an opportunity to comment on the new amendments.

Further, the intent of the public notice requirements is that the public be informed of the issues that are being negotiated, have full opportunity to express their views on the issues to the public school employer, and to know the positions of their elected representatives. If proposed amendments to the initial proposals are not adopted, then the issues presented in the amendments are irrelevant since they will not be negotiated. Thus, the employer is not required to sunshine proposed amendments to an initial proposal prior to discussion of these amendments. Therefore this allegation is dismissed.

CONCLUSION AND ORDER

Based on the law and precedent discussed above, it is determined that the District did not violate Government Code section 3547 (a), (b) or (c). Therefore, the instant public notice complaint is 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 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 Sacramento 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).

Dated: November 15, 2000

Robert Thompson
Deputy General Counsel