



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,)
)
 Complainant,) Case No. LA-PN-130
)
 v.) PERB Decision No. 1018
)
 UNITED TEACHERS OF LOS ANGELES,) October 20, 1993
)
 Respondent.)
)
 _____)

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

Before Caffrey, Carlyle and Garcia, Members.

DECISION

GARCIA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Howard O. Watts (Watts) of a dismissal of a public notice complaint (attached) by a Board agent. The basis of Watts' appeal is that the Board agent did not receive input from the complainant. A review of the case reveals no identifiable error on the part of the Board agent, so we will limit our discussion to whether Watts' reason for appeal is well founded.

DISCUSSION

In his appeal Watts simply states, "the specialist cannot take it upon herself to decide any case without input from the Complainant [sic], there was no input given in this case." On the five pages that follow, Watts does not state that he offered information to the Board agent under PERB Regulation 32920¹ or

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

does he identify how any statute or regulation was violated. No proof is offered by statement or otherwise.

In Los Angeles Unified School District, et al. (1984) PERB Decision No. 396-H, the Board took judicial notice that Watts is an expert complainant and not in need of technical assistance. We now find it unlikely that he would fail to substantiate the basis of his appeal if he could.

ORDER

The public notice complaint in Case No. LA-PN-130 is hereby DISMISSED WITHOUT LEAVE TO AMEND. The Board agent's order for reimbursement to the United Teachers of Los Angeles for any litigation expenses, including reasonable attorney fees by Watts, and order for Watts to make written notification of his actions in complying with such reimbursement is hereby REVERSED.²

Members Caffrey and Carlyle joined in this Decision.

²Notwithstanding the dismissal without leave to amend of the public notice complaint, the Board does not find that said complaint 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.)

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

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| HOWARD WATTS, |) | |
| |) | |
| Complainant, |) | Case No. LA-PN-130 |
| |) | |
| v. |) | ADMINISTRATIVE |
| |) | DETERMINATION |
| UNITED TEACHERS OF LOS ANGELES, |) | |
| |) | May 19, 1993 |
| Respondent. |) | |
| <hr/> | | |

This administrative determination dismisses the above-captioned public notice complaint filed by Howard Watts (Complainant or Watts) alleging that the United Teachers of Los Angeles (Association or UTLA) violated Government Code Section 3547(b)¹ by presenting proposals that lacked specificity, and by not making its proposals available to the public in a timely manner.

BACKGROUND

Watts filed the instant public notice complaint with the Los Angeles Regional Office of the Public Employment Relations Board

¹The Educational Employment Relations Act (EERA) is codified at Government Code section 3540 et seq. 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.

(PERB or Board) pursuant to PERB regulation 32190² on July 5, 1992.³ UTLA represents the Los Angeles Unified School District's (District) certificated bargaining unit.

Mr. Watts first asserts that UTLA violated the EERA public notice requirement because it submitted proposals that lack specificity.

The Association's proposals consisted of 70 pages including a cover memo and a title page.⁴ The cover memo read as follows:

United Teachers Los Angeles proposes the attached additions, amendments and/or corrections to the current UTLA-LAUSD Collective Bargaining Agreement. These are presented in the spirit of working together to face the financial and social crises that threaten LAUSD employees, students, parents, and community. It is UTLA's desire, throughout the upcoming negotiations, to attempt to reach agreement that will impact significantly on:

1. District organization restructuring,
2. identifying cost savings that will contribute to improving the District's financial conditions.
3. protecting the members of our bargaining unit's working conditions, salaries and benefits, and,

²A 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 school district or is an adult 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. Any period of time used by the complainant in first exhausting a complaint procedure adopted by an EERA employer shall not be included in the 30-day limitation.

³All dates referenced herein are calendar year 1992.

⁴The Complainant provided PERB with a copy of UTLA's proposals, which included the cover memo.

4. providing a basic education program for Los Angeles students.

Attached to the memo were a number of specific proposals for changes to the then current agreement, including additions, deletions or corrections of 22 articles, covering issues such as personal leave, salary and grievance procedure.

The District's public notice policy⁵ 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 UTLA's initial proposals. Complainant affirms that he attended the June 15 meeting and received a copy of UTLA's proposals. He further states that he addressed the District's School Board at two separate public comment meetings which were held on June 25 and July 6.

Mr. Watts alleges that on June 25 UTLA violated the public

⁵The Complainant provided PERB with copy of the District's Public Notice policy, Bulletin No 18 (Rev) September 26, 1988, section V (A).

notice requirements because it failed to make its proposals available to the public in a timely manner. Specifically, he received a copy of UTLA's proposals approximately one and one-half hours after he addressed the Board.

ISSUES

Did the Association's proposals lack specificity? Did the Association fail to make available its proposals to the public?

DISCUSSION

Specificity of Proposals

The intent of the public notice requirements is set forth in Government Code section 3547 (e).⁶ 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.)

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(a). The Board found that "the initial proposals presented to the public must be sufficiently developed to permit the public to comprehend

⁶EERA section 3547(e) states:

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of section; namely 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.

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." 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.)

The format of UTLA's initial proposals is unmistakably traditional in nature. It clearly identifies the issues and detailed positions concerning each and every proposal. The initial proposals were presented in terms of proposed changes to articles in the then current collective bargaining agreement. A single line has been drawn through the existing language, followed by the proposed language. The proposed language is typed in bold letters and preceded by the word "NEW". Even if there was a tendency to peruse rather than to study these proposals it would be noted that each section has been specifically developed to allow the public to comprehend which issues will be on the table during negotiations.

Following are several representative examples of UTLA's proposals:

Article XI -- Adult & Occupational Education

Section 4.2 Delete first sentence: "Current personnel in either Adult Education or categorically funded position do not have an implied right to employment beyond their assigned term." **Replace with: "All personnel in**

Adult and Occupational Education have an implied right to continued employment with satisfactory service, barring reductions in force or funding."

Section 4.3b(1) Add to first sentence (as indicated here in bold): "Longevity is measured by the number of consecutive uninterrupted years of satisfactory service in the subject field in the Division, **regardless of the source of funding or calls code.**"

ARTICLE XVIII - Class Size (page 145)

2.2 Junior high school (including 6th grade junior high school students): all classes at a schools are to average 36.25 students

- a. **NEW** At K-8 sites, bargaining unit members, without classes assigned to them, shall not be counted in the pupil:teacher staffing formula.
- b. **NEW** The class size average per bargaining unit member in Physical Education settings, based upon a six (6) period day, shall not exceed forty (40) students. No bargaining unit member shall have more than one class in excess of forty (40) students, unless additional students are requested by the affected bargaining unit member.

ARTICLE IX - Hours and Work Year

6.0 Secondary Preparation Period

ADD: Each regular full-time secondary classroom teacher (or librarian, nurse) shall be assigned to five (5) scheduled periods....

The Complainant argues that because the statements contained in the cover memo lack specificity, UTLA's proposals were inadequate to inform the public of the issues that were going to be negotiated. The Complainant fails to acknowledge or mention the existence of the 70 page document, with its 22 detailed proposals, notwithstanding the fact that this document accompanied the filing of his complaint.

A review of the initial proposals in this case reveals that UTLA has adequately complied with EERA's public notice

requirement regarding specificity.

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.

UTLA 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, UTLA 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.

CONCLUSION AND ORDER

Based on the facts, law and precedent discussed above, the following conclusions have been reached. The initial proposals for 1992-93 presented by UTLA to the District were sufficiently developed to allow the public to understand the issues to be negotiated. Further, the manner in which UTLA presented its proposals was consistent with EERA's public notice requirement. It is determined that the instant public notice complaint fails to state a prima facie violation of Government Code section 3547(a).

In addition, it is concluded that Watts' complaint in this matter was so meritless as to constitute "vexatious and frivolous" conduct which abuses the processes of the Board and which Watts previously has been ordered by the Board to cease and desist from pursuing. (United Professors of California (Watts) (1984) PERB Decision No. 398-H, citing Los Angeles Unified School District (Watts) (1982) PERB Decision No. 181a (181a).) As noted earlier by the Board,

Mr. Watts' repeated raising of such nonmeritorious complaints abuses Board processes and wastes State resources. Further, respondents must necessarily incur expenses in time, effort and money in continually defending against the same charges. (181a; see also Los Angeles Unified School District (Watts) (1984) PERB Decision No. 405.)

In this case, Watts' complaint regarding specificity defies any rational basis in law or logic to term it a legitimate complaint

regarding the adequacy of the proposals submitted by UTLA. The other issue -- availability of proposals at subsequent meetings -- is not only an issue decided often and consistently by the Board but was also a substantive issue addressed in 181a. Under these circumstances, it is appropriate to assess litigation expenses against a complainant. (United Professors of California (Watts), supra.)

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 UTLA 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 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 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 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 Regulation, title 8, section 32140 for

the required contents and 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 Regulations, title 8, section 32132).

DATE:

May 19, 1993

Nora M. Baltierrez
Labor Relations Specialist