

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD WATTS,	)	
	)	
Complainant,	)	Case No. LA-PN-20
	)	
v.	)	
	)	
LOS ANGELES COMMUNITY COLLEGE	)	PERB Decision No. 153
DISTRICT,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
AMERICAN FEDERATION OF TEACHERS	)	December 31, 1980
COLLEGE GUILD, LOCAL 1521, AFL-CIO,	)	
	)	
Respondent.	)	
	)	

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Appearances: Howard Watts, representing himself;  
Mary L. Dowell, Associate General Counsel, representing the  
District.

Before Gluck, Chairperson; Moore, Member.

DECISION

Howard Watts excepts to the attached administrative  
determination issued by the Los Angeles Regional Director  
dismissing his public notice complaint without leave to amend.

In his appeal, complainant correctly alleges that the  
Regional Director failed to attach a proof of service to the

notice of dismissal as required by California Administrative Code, section 32140.<sup>1</sup>

The Board's proof of service regulations are modeled after service requirements of the California Code of Civil Procedure and are designed to inform the Board that all parties to a proceeding received all documents filed before or by the Board regarding that case. M. Lowenstein & Sons, Inc. v. Superior Court (1978) 80 Cal.App.3d 762, 770, 145 Cal.Rptr. 814. The Board's jurisdiction to hear an appeal depends on the fact of service rather than the proof thereof. Herman v. Santee (1894) 103 Cal. 519, 523, 37 P. 509.

The Regional Director's notice of dismissal was filed on June 13, 1980. Mr. Watts filed his appeal from that dismissal the next day noting that a proper proof of service form was not attached. The complainant specifically referred to portions of the notice of dismissal and it is clear that he had actual

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<sup>1</sup>PERB rules are codified at California Administrative Code, title 8, section 31000 et seq.

Section 32140 provides in relevant part:

(a) All documents referred to in these regulations requiring "service" or required to be accompanied by "proof of service," except subpoenas, shall be considered "served" by the Board or a party when personally delivered or deposited in the first-class mail properly addressed. All documents required to be served shall include a "proof of service" affidavit or declaration signed under penalty of perjury . . .

notice of its contents. The Board finds that service was in fact effected and that the lack of proof of service is not fatal.

After considering the entire record in light of the exceptions, the Board affirms the Regional Director's findings and conclusions<sup>2</sup> and administrative determination.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The public notice complaint, LA-PN-20, filed by Howard Watts against the Los Angeles Community College District and the AFT College Guild, Local 1521 is hereby DISMISSED in its entirety without leave to amend.

PER CURIAM

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<sup>2</sup>In complainant's fifth allegation, he contends that the District failed to post copies of his public notice complaint at the district office of the LACCD as then required under PERB regulation 37040 (subsequently repealed). The regional director found that a violation of regulation 37040 was not actionable under section 3547 and thus dismissed the allegation. We disagree. Rule 37040 was adopted pursuant to section 3547(e) and a purported violation of rule 37040 could properly be a basis for a section 3547(e) charge. The Board, however, finds the District complied with this regulation by posting copies of the complaint on a clipboard available to the public at the district office. The Board thus affirms the regional director's dismissal of this allegation.

PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF CALIFORNIA



HOWARD WATTS,	)	
	)	
Complainant,	)	Case No. LA-PN-20
	)	
v.	)	NOTICE OF DISMISSAL
	)	WITHOUT LEAVE TO
LOS ANGELES COMMUNITY COLLEGE	)	AMEND PUBLIC
DISTRICT,	)	NOTICE COMPLAINT
	)	
Respondent,	)	
	)	
and	)	
	)	
AFT COLLEGE GUILD, LOCAL 1521,	)	
	)	
Respondent.	)	
<hr/>		

NOTICE IS HEREBY GIVEN That the above-captioned Public Notice Complaint<sup>1</sup> alleging violation of Government Code section 3547<sup>2</sup> is dismissed without leave to amend on the following grounds:

(1) The conditions set forth in PERB Regulation 37060 have been satisfied as to the portion of the complaint alleging violation of section 3547(a).

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<sup>1</sup>The original complaint included two other employee organizations as respondents. Separate files were established for processing, and the other organizations appear as respondents in LA-PN-21 and LA-PN-22.

<sup>2</sup>Statutory references are to the Government Code unless otherwise noted. Section 3547 provides:

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

(2) Complainant has failed to allege facts which constitute a prima facie violation of section 3547(b),(c), (d) and (e).

#### PROCEDURAL HISTORY

On February 22, 1980 Mr. Howard Watts (hereafter Complainant) filed a public notice complaint against the Los Angeles Community College District (hereafter LACCD) and AFT College Guild, Local 1521 (hereafter AFT) alleging violations of section 3547 (a), (b), (c), (d), and (e).

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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.

(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.

(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.

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

On March 31, 1980 the complaint was served on LACCD and AFT pursuant to PERB Regulation 37030(f). An informal conference was scheduled for April 16, 1980 and a formal hearing was noticed for May 8, 1980.

After considerable discussion at the informal conference concerning that portion of the complaint alleging a violation of section 3547(a), LACCD expressed its desire to comply voluntarily and agreed to post a notice regarding the future processing of amendments to initial proposals. With respect to the remaining allegations, respondents LACCD and AFT indicated there were no violations of the public notice requirements and agreed to provide declarations, board minutes and statements to demonstrate that the public notice requirements had been met.

In order to allow submission of documents and evidence of LACCD's voluntary compliance, a Notice of Cancellation of Formal Hearing was issued on April 25, 1980, placing the hearing in abeyance.

#### ALLEGATIONS

The public notice complaint alleges the following violations:

- (1) LACCD amended its certificated initial proposal on February 13, 1980 without properly noticing the amendment.
- (2) LACCD failed to provide the public full opportunity on January 23, 1980 to express itself on the District's certificated initial proposal.

(3) AFT met and negotiated with LACCD at the January 23 and February 13, 1980 Board of Trustees' meetings.

(4) Copies of LACCD's certificated initial proposals were not available in the board room on January 23, 1980, the date set for public response and on February 13, 1980, the date scheduled to adopt the proposal.

(5) LACCD failed to post public notice complaints on a bulletin board, instead complaints were placed on a clipboard and laid on a table.

(6) AFT addressed the Board of Trustees without appearing on a speakers list and for a longer period of time than is allowed by a rule governing oral communications to the board.

#### DISCUSSION

##### Allegation 1

Complainant alleges that LACCD amended its certificated proposal without properly noticing the amendment.

On February 13, 1980 LACCD was scheduled to adopt its certificated proposal. The minutes of the February 13, 1980 board meeting reflect that AFT viewed the proposal as lacking numerous items, two of which were academic freedom and non-discrimination. After a presentation by AFT requesting that the board amend its initial proposal to include these items, the board recessed into executive session. When the

board reconvened, it made the following announcement after which it adopted its proposal:

Tomorrow at 1:30 p.m. the first negotiation session on the new certificated contract is scheduled, provided that public notice provisions of the law are met. The law with respect to making initial proposals public would require that the Board 'sunshine' any amendments to its initial proposal. Accordingly, any amendment to the initial proposal could delay the start of negotiations. Therefore, the Board endorses inclusion of a statement with respect to academic freedom and non-discrimination in the final contract but believes that these two items should be negotiated by its designated representatives and that its designated representatives will reflect the will of the board.<sup>3</sup>

In the above announcement, the board endorsed the inclusion of a statement on academic freedom and non-discrimination in the final contract.

The intent of section 3547 as stated by the legislature in subsection (e) and as held by the PERB in Kimmett v. Los Angeles Unified School District, PERB Decision No. AD-53, is that:

The public be informed of the issues that are being negotiated upon and have full opportunity to express their view on the issues to the public school employer, and to know of the positions of their elected representatives.

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<sup>3</sup>See LACCD Board of Trustees' minutes for February 13, 1980, p. 6.



The intent of section 3547 would be frustrated if parties were allowed to circumvent the public notice requirements by "endorsing" inclusion of items in the final contract without proper notice.

An initial proposal presumably proposes, plans or intends to put forth the position of a school board with respect to the issues to be negotiated on. The public then comments on the issues set forth as well as on the positions of the school board. By its endorsement the board, in essence, altered its original proposal which did not include academic freedom and non-discrimination. And, the board failed to allow the public the opportunity to comment on the issues.

In an effort to achieve voluntary compliance, LACCD posted a notice (Exhibit A attached) indicating that in the future, amendments to initial proposals would be publicly noticed in accordance with section 3547. The undersigned is satisfied with a prospective remedy because the subjects in question had been negotiated and tentatively agreed to at the time of the informal conference. It is the policy of the Board, as expressed in PERB Regulation 37000, to permit the parties to continue the negotiation process pending the resolution of any complaint filed.

It is determined that pursuant to PERB Regulation 37060, LACCD has voluntarily complied with section 3547(a), and that portion of the complaint is dismissed.

## Allegation 2

Complainant states that LACCD failed to provide the public full opportunity on January 23, 1980 to express itself on its certificated proposal.

On January 23, 1980, LACCD held a meeting at which it provided for public response to its initial proposal. Complainant and LACCD agree that the meeting was regulated pursuant to Article V, "Communications to the Board," a rule of the Board of Trustees. The rule was adopted and has been in operation since April, 1970. Section 2501.10(b) of the rule reads as follows:

Five minutes shall be allotted per speaker, with 20 minutes maximum time allotment for any one subject. At the discretion of a majority of the Board Members present, time may be extended. If there is not a majority to extend the time, the five minute rule will operate.

LACCD has indicated that any member of the public who desired to speak to its proposal was allowed at least five minutes to do so pursuant to Article V, Section 2501.10(b).

The board minutes of the January 23, 1980 meeting were submitted by the Complainant as well as by LACCD. Both Complainant and LACCD indicated at the informal conference that the minutes are accurate. The minutes reflect that five people addressed the Board of Trustees on its initial proposal. One of those individuals was Complainant. The minutes also indicate that substantive comments were made within the time allotted these individuals.

Although Complainant alleges LACCD failed to provide the public full opportunity to express itself, the minutes indicate otherwise and Complainant has failed to provide any information to support his contention. Nothing in the minutes reflects that the public was denied, restrained or unreasonably limited in the exercise of its right to express itself. Accordingly, no violation of section 3547 is found and allegation 2 is dismissed.

### Allegation 3

Complainant alleges AFT met and negotiated with LACCD at the January 23 and February 13, 1980 board meetings.

Section 3540.1(h) defines meeting and negotiating:

"Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements by the exclusive representative and the public school employer, become binding upon both parties....[Emphasis added.]

Thus, the objective in meeting and negotiating is to reach agreement and to execute a written document.

Complainant referred to the board minutes of January 23 and February 13, 1980 to show that meeting and negotiating took place. Conversely, Respondent AFT indicated the minutes accurately reflect that meeting and negotiating did not take

place. Respondent AFT also filed a declaration by Ms. Virginia Mulrooney, Executive Director of AFT, which refutes the allegation and states that AFT was merely requesting that the board defer action until it had an opportunity to research the impact, if any, on its members of any of the proposed subjects. The declaration indicates that the board adopted the items as scheduled.

The board minutes bear out that the board did, in fact, adopt the items as scheduled and that AFT was merely urging the board to delay action. Urging or requesting at a public meeting that something be delayed does not fall within the definition of meeting and negotiating as defined in the Government Code.

In her declaration Ms. Mulrooney, also described the specific manner in which AFT and LACCD conduct negotiations. Such negotiations do not occur at board meetings with the Board of Trustees.

Complainant has failed to demonstrate that meeting and negotiating occurred at board meetings as alleged, therefore no violation of section 3547 is found and allegation 3 is dismissed.

#### Allegation 4

Complainant alleges that copies of the LACCD certificated initial proposal were not available in the board room on January 23, 1980 the date set for public response and on

February 13, 1980, the date scheduled for adoption of the proposal.

The 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 board meetings. Complainant affirms that he received a copy of the proposal prior to its public presentation. Complainant also affirms he has never been denied a copy of any initial proposal.

LACCD's policy<sup>4</sup> is to have copies of its initial proposal available in its Office of Staff Relations. Additionally, LACCD indicated that anyone requesting a copy at those meetings would have been provided one. Complainant has failed to allege facts which state a prima facie violation of section 3547, therefore, allegation 4 is dismissed.

#### Allegation 5

Complainant alleges the public notice requirements were violated because LACCD failed to post two public notice complaints on a bulletin board; instead, complaints were attached to a clipboard and laid on a table at the district office.

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<sup>4</sup>"Collective Bargaining Initial Proposal Procedure" adopted by LACCD on September 12, 1979.

Public notice requirements of the statute concern initial proposals of exclusive representatives and of public school employers and not the posting of complaints filed pursuant to Chapter 7 of Division 2 of the PERB Regulations. Therefore, there is no violation of section 3547 and allegation 5 is dismissed.

#### Allegation 6

Complainant alleges AFT addressed the Board of Trustees without appearing on the speakers list and for a longer period of time than is allowed by Section 2501.10(b) of Article V, LACCD's rule governing oral communications to the board.

Section 3547 states that initial proposals shall be presented at a public meeting of the public school employer. The regulation of those meetings is left to the discretion of the local school boards. Nothing in the section 3547 or in the PERB Regulations defines how a school board meeting shall be regulated. The substance of allegation 6 is not a violation of section 3547, therefore, allegation 6 is dismissed.

#### ORDER

It is hereby ordered that: (1) since the LACCD is found to have achieved voluntary compliance with section 3547, as to that portion of the complaint that stated a prima facie violation, allegation 1 is dismissed; (2) allegations 2 through 6 inclusive are not found to be violations of section 3547 for

the reasons stated above and are dismissed; and (3) the formal hearing in this matter is cancelled.

Pursuant to PERB Regulation 37030(e) and 37060, Complainant may appeal this dismissal by filing written exceptions with the Executive Officer of the Board at 923 12th street, Suite 201, Sacramento, CA 95814 within seven (7) calendar days following the date of receipt of this order. Such appeal must contain facts and arguments upon which the appeal is based and must be signed. The appeal shall be accompanied by a proof of service of the document upon all parties and the Regional Director.

DATED: June 13, 1980

Frances A. Kreiling  
Regional Director

## NOTICE REGARDING INITIAL COLLECTIVE BARGAINING PROPOSALS

On February 14, 1980, the Los Angeles Community College District commenced negotiations with the certified exclusive representative of the certificated employees of the District. At its regularly scheduled meeting on February 13, 1980, the governing board of the District adopted its initial collective bargaining proposal to be presented in those negotiations. The initial proposal did not contain any language related to the subjects of "Nondiscrimination" or "Academic Freedom". However, on February 13, 1980, the Board expressed its endorsement of the inclusion of those items in the final contract negotiated by the parties. In the future if it is necessary to amend initial proposals, in a spirit of voluntary compliance with Government Code Section 3547, the amendments will be publicly noticed in accordance with the District's public notice procedure.

Exhibit A