



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JULES KIMMETT,

Complainant,

v.

LOS ANGELES COMMUNITY COLLEGE
DISTRICT,

Respondent,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION, CHAPTER 507,

Respondent.

Case No. LA-PN-8

PERB Decision No. 158

March 3, 1981

Appearances: Jules Kimmett representing himself; Daniel Means, Director, Staff Relations Branch, for Los Angeles Community College District; Julius Jefferson, Field Representative, for California School Employees Association, Chapter 507.

Before Gluck, Chairperson; Jaeger, Moore, Tovar, Members.

DECISION

The California School Employees Association and its Chapter No. 507 (hereafter CSEA) excepts to the attached hearing officer's proposed decision which holds that CSEA violated sections 3547(a) and (b) of the Educational Employment Relations Act (hereafter Act or EERA)¹ by meeting and

¹All statutory references are to the California Government Code unless otherwise specified.

Section 3547 provides:

negotiating with the Los Angeles Community College District (hereafter District) regarding wage reopeners and other amendments to the existing agreement before those proposals were sunshined.

(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.

(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.

Specifically, CSEA excepts to the hearing officer's determination that proposals for wage reopeners and proposals for other amendments to an existing agreement are "initial proposals" within the meaning of section 3547(a), and to his conclusion that the failure to sunshine such proposals in this case constituted a violation of the Act by CSEA as well as by the District.² CSEA contends that the negotiations were actually a continuation of the original negotiations which resulted in the written agreement, that the salary and other proposals were not initial proposals but were merely amendments to the original agreement, and that the original proposals were properly sunshined. CSEA also excepts to the hearing officer's determination that it violated section 3547(b) by meeting and negotiating with the District regarding proposals that had not been sunshined.

The hearing officer's findings of fact are substantially correct and are adopted by the Public Employment Relations Board (hereafter Board).

The Board AFFIRMS the hearing officer's determination that proposals regarding salary reopeners and other amendments to an agreement must be presented at a public meeting. However, we REVERSE the hearing officer's conclusion that CSEA violated section 3547(a). The preparation of the agenda for public

²The District has filed no exceptions to the proposed decision.

meetings and the conduct of such meetings are the province of the District Board of Trustees and under its control. While an employee organization may request that its proposals be placed on the agenda of the public meeting, it is the District's obligation and responsibility to provide proper public notice and to present all initial proposals--its own as well as those of the exclusive representative--to the public at an appropriate meeting.

Unlike the responsibility for the conduct of public meetings, the mandate of section 3547(b) that meeting and negotiating not take place until the public has been informed of the proposals and has had the opportunity to express itself applies to all parties to the negotiations. We agree with the hearing officer's conclusion that CSEA, as well as the District, violated section 3547(b) by conducting negotiations before the public notice requirement had been fulfilled.

Board rule 37000³ was undoubtedly adopted, at least in part, in recognition of the fact that the public interest in the continuity of the educational process is enhanced by the

³Board rule 37000 (Cal. Admin. Code, tit. 8, sec. 37000) reads in pertinent part:

. . . It is the policy of the Board to permit the parties to continue the negotiation process pending the resolution of any complaint filed pursuant to this Chapter. . .

stabilizing value of collective negotiations as a means of resolving disputes between school employers and their employees. In the instant case, the amended agreement has been in effect since April 11, 1979. The educational process has proceeded without interruption. To void that agreement now would seriously disrupt employment relations in the District and likely lead to a confrontation potentially more damaging to the public interest than the violation complained of. The District has not excepted to the hearing officer's recommendation and seems to acknowledge its error. Our ruling here should suffice to alert both parties to their respective obligations and assure their voluntary future compliance with the Act's requirements.

ORDER

Based on the foregoing decision and the entire record in this case, the Public Employment Relations Board finds that the Los Angeles Community College District has violated Government Code section 3547(a), (b), and (c) and that the California School Employees Association, Chapter 507 has violated Government Code section 3547(b). Pursuant to Government Code section 3547(e), it is hereby ORDERED:

(1) THE LOS ANGELES COMMUNITY COLLEGE DISTRICT SHALL CEASE AND DESIST FROM:

Failing to present at a public meeting any initial proposal or any amendment to an existing agreement constituting

an initial proposal and from failing to provide a reasonable time thereafter to enable the public to become informed and have an opportunity to express itself regarding such a proposal at a meeting of the District.

(2) THAT THE LOS ANGELES COMMUNITY COLLEGE DISTRICT AND THE CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 507 SHALL CEASE AND DESIST FROM:

Meeting and negotiating on any initial proposal or amendment to an existing agreement constituting an initial proposal until such proposal has been presented at a public meeting and until a reasonable time has elapsed enabling the public to become informed and the public has had an opportunity to express itself regarding such a proposal at a meeting of the District.

(3) IT IS FURTHER ORDERED THAT THE LOS ANGELES COMMUNITY COLLEGE DISTRICT AND THE CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 507 SHALL TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

(a) Post copies of the NOTICE attached hereto for thirty (30) working days after this Order is received at all locations normally used for posting public notices regarding regular meetings of the District and in conspicuous places at the location(s) where notices to classified employees are customarily posted and shall indicate the times and places

where the public and employees may inspect a copy of this decision.

(b) Within five (5) days after the expiration of the posting period, each party shall notify the Los Angeles Regional Director of the Public Employment Relations Board, in writing, of the actions they have taken to comply with this ORDER.

(4) THE CHARGE THAT CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER NO. 507 VIOLATED SECTION 3547(a) IS HEREBY DISMISSED.

This ORDER shall become effective immediately upon service of a true copy thereof on the parties.

By: Harry Gluck, Chairperson

John W. Jaeger, Member

Barbara D. Moore, Member

Irene Tovar, Member

NOTICE

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Public Notice Case No. LA-PN-8, Jules Kimmett v. Los Angeles Community College District and California School Employees Association, Chapter 507, in which all parties had the right to participate, it has been found that the Los Angeles Community College District has violated Government Code section 3547(a), (b), and (c) and that the California School Employees Association, Chapter 507 has violated Government Code section 3547(b). As a result of this conduct, we have been ordered to post this Notice, and we will abide by the following:

(1) THE LOS ANGELES COMMUNITY COLLEGE DISTRICT SHALL CEASE AND DESIST FROM:

Failing to provide public notice of any initial proposal and/or amendment to an existing agreement constituting an initial proposal from failing to provide a reasonable time thereafter to enable the public to become informed and have an opportunity to express itself regarding such a proposal at a meeting of the District.

(2) THE LOS ANGELES COMMUNITY COLLEGE DISTRICT AND THE CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 507 SHALL CEASE AND DESIST FROM:

Meeting and negotiating on any initial proposal or amendment to an existing agreement constituting an initial proposal until a reasonable time has elapsed enabling the

public to become informed and have an opportunity to express
itself regarding such a proposal at a meeting of the District.

LOS ANGELES COMMUNITY COLLEGE
DISTRICT

Dated: _____

By: _____
Authorized Agent of the District

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION CHAPTER 507

Dated: _____

By: _____
Authorized Agent of Employee
Organization

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR THIRTY
(30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT
BE REDUCED IN SIZE, DEFACED, ALTERED, OR COVERED BY ANY
MATERIAL.

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA



JULES KIMMETT,)	
)	
Complainant,)	Public Notice
)	Case No. LA-PN-8
v.)	
)	
LOS ANGELES COMMUNITY COLLEGE)	
DISTRICT,)	
)	
Respondent,)	PROPOSED DECISION
)	(10/24/79)
and)	
)	
CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION, CHAPTER 507,)	
)	
Respondent.)	

Appearances: Jules Kimmett representing himself; Daniel Means, Director, Staff Relations Branch, for Los Angeles Community College District; Julius Jefferson, Field Representative, for California School Employees Association, Chapter 507.

Before Bruce Barsook, Hearing Officer.

INTRODUCTION

On April 25, 1979, Complainant Jules Kimmett filed a public notice complaint against the Los Angeles Community College District (hereafter District) and the California School Employees Association, Chapter 507 (hereafter C.S.E.A.) alleging a violation of section 3547(a), (b), (c), (d) and (e) of the Educational Employment Relations Act (hereafter Act).¹

¹The EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise specified.

On May 30, 1979 Mr. Kimmett filed an amended complaint alleging a violation of section 3547(a), (b) and (c) only.

The District filed its response to the complaint on October 10, 1979. C.S.E.A. filed its response on October 12, 1979. A hearing in this matter was held on October 17, 1979.

The essence of Mr. Kimmett's charge is that the District by negotiating changes in its agreement with C.S.E.A. and later amending the agreement (April 11, 1979) without presenting the initial proposals regarding the proposed changes in the agreement at a public meeting violated the public notice provisions of the EERA.² Thus, the issue presented in this case is whether initial proposals made during negotiations on amendments to an existing agreement must be "sunshined" pursuant to section 3547 of the EERA.

DISCUSSION

C.S.E.A. was certified by the Public Employment Relations Board (hereafter PERB) as exclusive representative of the

²In his complaint, Mr. Kimmett also alleged as a violation of section 3547(b) the District's refusal to let him speak at its April 11, 1979 board meeting for more than one minute regarding the District's adoption of the amendment. However, whether or not an individual is accorded a reasonable amount of time to comment on the adoption of a contract or an amendment to a contract is not within the purview of section 3547. Section 3547 is concerned with the right of public input on contract proposals not with the ratification process.

"clerical-technical" classified employees unit on May 27, 1977. Soon thereafter, the District and C.S.E.A commenced negotiations on an initial agreement. On December 12, 1978, the District and C.S.E.A. entered into an Agreement for the term December 12, 1978 to June 30, 1980. In pertinent part the Agreement provides in Article IX section A that:

This Agreement may be altered, changed, added to, deleted from, or modified only through the voluntary and mutual consent of the parties in a written and signed amendment to this Agreement.

Article XXXIV, section C, provides that:

C.S.E.A. and the District agree to reopen salary negotiations for the 1979-80 fiscal year no later than March 15, 1979, upon the request of either party.

On February 23, 1979, C.S.E.A. mailed to the District two separate requests for negotiations. The first request cited Article IX, section A, and the then recent California Supreme Court decision invalidating salary freezes³ and requested negotiations on a salary increase for the 1978-79 school

³Sonoma County Organization of Public Employees v. County of Sonoma (February 15, 1979) 23 Cal.3d 296 [152 Cal.Rptr. 903].

year.⁴ The second request sought negotiations on Article XXXIV, section C, the salary reopener provision for the 1979-80 school year.

Meetings were held during the month of March.

After agreement was reached by C.S.E.A. and the District, the District announced a proposed amendment to the agreement at its April 11 board meeting. C.S.E.A. and the District agreed to five changes in the agreement. The first change was the deletion of Article V relating to a contingency if the Education Code or the Personnel Commission were abolished. The second change was the amendment of section B of Article XXXIV to provide for a 5-1/2 percent salary increase for the 1978-79 school year. Article XXXIV, section C was amended to provide for a 5-1/2 percent salary increase for the 1979-80 school year. The fourth change was to add an effective date of January 7, 1979

⁴Although the subsection was not specified, C.S.E.A. was apparently seeking to renegotiate Article XXXIV, section B, which provided:

B. Effective the beginning of the pay period after the California State Legislature and the Governor approves a cost of living wages and salary increase to State employees, the Los Angeles Community College District shall grant a cost of living wage and salary increase to all classifications assigned to Unit 1 equal to the average increase granted to State employees assigned to clerical positions, but not to exceed seven percent (7%).

to Article XXXI, relating to vacations. And the fifth change added an Appendix B, Master Salary Schedule for Classified Employees, to the agreement.

The District and C.S.E.A. admit that the District's "initial" proposal regarding these amendments to the agreement was not sunshined.⁵

Analysis

Section 3547 provides in relevant 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.

(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.

.

⁵There was no evidence that C.S.E.A. made any proposals of its own.

(e) The board may adopt regulations⁶ 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.

Mr. Kimmett argues that proposals made during negotiations to amend existing provisions of an agreement (including reopeners) must be presented at a public meeting of the public school employer (i.e. they are "initial proposals" within the meaning of section 3547(a)).

The District and C.S.E.A. argue that proposals made during such negotiations are not within the purview of section 3547. According to them, the term "initial proposal" should be given a narrow and restrictive interpretation. They argue that negotiations to amend an agreement are a continuation of the initial negotiation process. Thus, the public is already on notice because the bargaining issues have already been discussed at an earlier time.

Determining whether "initial" proposals made during negotiations on possible amendments to an existing agreement

⁶Rules and regulations regarding public notice can be found at California Administrative Code, title 8, section 37000 et seq.

must be "sunshined" is not an easy task. Because California's public notice law is unique,⁷ there is no precedent to offer guidance. In addition, there is no statutory history to examine.

What guidance there is may be found in the language of the EERA. An examination of the EERA discloses that the Legislature has sought to fashion a balance between competing interests. On the one side is the interest of the public to be kept informed of the issues (i.e., wages, class size, educational policy) being negotiated, to have the opportunity to express their views on the issues to the public school employer, and to know the positions of their elected representatives (section 3547). On the other side, is the interest of the public school employer and the exclusive representative to meet and negotiate in private without interference from outside forces (section 3547 and 3549.1(a)).

The public's right to know and to have input in the negotiation process is thus not absolute. The EERA limits the public's role to being informed of the initial proposals presented and to the right of input on the issues presented by

⁷Public notice provisions can also be found in the other two laws which PERB administers: sec. 3595 of the Higher Education Employer-Employee Relations Act; and sec. 3523 of the State Employer-Employee Relations Act.

the initial proposals. Correspondingly, the public school employer and the exclusive representative do not have an absolute right to negotiate in secret--they must make their initial proposals public and provide the public with a reasonable opportunity to provide input.

Thus, one of the dominant themes in the law is the public's right to be informed of the issues between the negotiating parties and its right to give input on those issues. An overly restrictive interpretation of the term "initial proposal" would frustrate this theme by ignoring the public's interest in the issues being negotiated. The public's interest in a bargaining issue is no less keen during amendment negotiations than it is when the principals are negotiating a new agreement. The public's interest in a provision being negotiated during the second year of a three-year contract can be just as great as it would be if the contract had expired after the second year and negotiations were commencing on a new agreement involving that same issue. In both examples, time has elapsed, circumstances have changed and the public's opinion on an issue may have also changed.

It does not appear to be an unreasonable burden to require a public school employer and the exclusive representative to "sunshine" their initial proposals on possible amendments to their agreement. Nor does it seem to be unreasonable to permit

the public to provide input on the issue being negotiated. In either event, the public's role is limited and the parties are free to reject, modify or adopt the suggestions of the public.

Nor does this requirement require that every initial proposal regarding amendments to an agreement be "sunshined." Proposed technical changes do not necessitate public disclosure as they do not substantially affect the public interest. Examining the changes made in the agreement between the District and C.S.E.A, it appears that the provisions relating to Article XXXI, Vacations, and Appendix B, Master Salary Schedule, are technical changes only. The deletion of Article V, Abolishment of Education Code or Personnel Commission, may or may not be a technical change only--it is too difficult to tell. When in doubt, parties should sunshine a proposal. To do so is not onerous and it would protect them from a claim that substantive rights were being negotiated without public input.

In summary, initial proposals relating to non-technical amendments to an agreement must be presented at a public meeting in order to provide the public with knowledge of the issues, the opportunity to provide input on such issues and to know of the positions of their elected representatives. The District's failure to sunshine the proposed amendments to the agreement (with exceptions noted above) violates this rule and is consequently a violation of section 3547(a), (b) and (c).

Proposed Remedy

Section 37080 of PERB's rules and regulations indicates that after the issuance of the hearing officer's proposed decision, "the hearing officer may solicit the aid of the parties in fashioning a mutually satisfactory remedy of any violations found." [Emphasis added.] Under the circumstances of this case, a subsequent meeting with the parties is unnecessary. The District and C.S.E.A. amended the agreement in April 1979. To require that the amendment to the agreement be dissolved and the District ordered to sunshine its proposal would work undue hardship on the District and its employees (those in C.S.E.A.'s classified unit). The interests of the public can be adequately protected by a prospective application of this decision. Consequently, this decision shall have prospective effect only.

In addition, the District and the CSEA shall be ordered to post⁸ a copy of Appendix A in this case in the locations normally used for posting public notices regarding regular meetings of the District and in conspicuous places at the location(s) where notices to classified employees are customarily posted and shall indicate the times and places where the public and employees may inspect a copy of this decision.

⁸Posting has been found to be an efficient method in effectuating the policies of the EERA. (Cf. Placerville Union School District (9/18/78) PERB Decision No. 69 [2 PERC 2185].)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that the Los Angeles Community College District has violated Government Code section 3547(a), (b) and (c) and that the California School Employees Association, Chapter 507 has violated Government Code section 3547(a) and (b). Pursuant to Government Code section 3547(e), it is hereby ordered that:

1. The Los Angeles Community College District and the California School Employees Association, Chapter 507 and their representatives shall CEASE AND DESIST FROM:

(a) Failing to present at a public meeting all initial proposals relating to non-technical amendments to an existing agreement;

(b) Meeting and negotiating on any proposal before a reasonable time has elapsed after the submission of the proposal enabling the public to become informed and having opportunity to express itself regarding the proposal at a meeting of the District.

2. IN ADDITION, THE LOS ANGELES COMMUNITY COLLEGE DISTRICT SHALL CEASE AND DESIST FROM:

Failing to adopt its initial proposal at a meeting which is open to the public after the public has had an opportunity to express itself.

3. The Los Angeles Community College District and the California School Employees Association, Chapter 507 shall TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

(a) Post copies of Appendix A for thirty (30) working days after this Proposed Order becomes final, at all locations normally used for posting public notices regarding regular meetings of the District and in conspicuous places at the location(s) where notices to classified employees are customarily posted and shall indicate the times and places where the public and employees may inspect a copy of this decision.

(b) At the end of the posting period, notify the Los Angeles Regional Director of the Public Employment Relations Board of the actions they have taken to comply with this Order.

Pursuant to California Administrative Code, title 8, part III, section 37090, this Proposed Decision and Order shall become final on November 5, 1979 unless a party files a timely statement of exceptions and supporting brief within ten (10) calendar days⁹ following the date of service of this decision. Such statement of exceptions and supporting brief must be actually received by the Executive Assistant to the

⁹California Administrative Code, title 8, section 37090 specifies a limit of ten (10) calendar days to appeal a public notice decision. However, because the tenth day falls on a Saturday, the parties are given until the following Monday, the twelfth day, in which to file their exceptions.

Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on November 5, 1979 in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300, 32305 and 37070.

Dated: October 24, 1979

Bruce Barsook
Hearing Officer

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD,
An Agency of the State of California

After a hearing on case no. LA-PN-8 in which all parties had the right to participate, it has been found that the Los Angeles Community College District has violated Government Code section 3547(a), (b) and (c) and that the California School Employees Association, Chapter 507 has violated Government Code section 3547(a) and (b). As a result of this conduct, we have been ordered to post this notice, and we will abide by the following:

1. CEASE AND DESIST FROM:
 - (a) Failing to present at a public meeting all initial proposals relating to non-technical amendments to an existing agreement;
 - (b) Meeting and negotiating on any proposal before a reasonable time has elapsed after the submission of the proposal enabling the public to become informed and having opportunity to express itself regarding the proposal at a meeting of the District.
2. IN ADDITION, THE LOS ANGELES COMMUNITY COLLEGE DISTRICT SHALL CEASE AND DESIST FROM:

Failing to adopt its initial proposal at a meeting which is open to the public after the public has had an opportunity to express itself.
3. The times and places where the public and employees may inspect a copy of this decision are as follows:

DATED: LOS ANGELES COMMUNITY COLLEGE DISTRICT

By:

Superintendent

DATED: CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,
CHAPTER 507

By:

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN
POSTED FOR 30 CONSECUTIVE WORK DAYS FROM THE
DATE OF POSTING AND MUST NOT BE DEFACED,
ALTERED OR COVERED BY ANY MATERIAL.



NOTICE TO EMPLOYEES
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After a hearing on case no. LA-PN-8 in which all parties had the right to participate, it has been found that the Los Angeles Community College District has violated Government Code section 3547(a), (b) and (c) and that the California School Employees Association, Chapter 507 has violated Government Code section 3547(a) and (b). As a result of this conduct, we have been ordered to post this notice, and we will abide by the following:

1. CEASE AND DESIST FROM:

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2. IN ADDITION, THE LOS ANGELES COMMUNITY COLLEGE DISTRICT SHALL CEASE AND DESIST FROM:

Failing to adopt its initial proposal at a meeting which is open to the public after the public has had an opportunity to express itself.

3. The times and places where the public and employees may inspect a copy of this decision are as follows:

DATED: LOS ANGELES COMMUNITY COLLEGE DISTRICT

By: _____
Superintendent

DATED: CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,
CHAPTER 507

By: _____

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN
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ALTERED OR COVERED BY ANY MATERIAL.