

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)	
)	
Complainant,)	Case No. LA-PN-59-H
)	
v.)	PERB Decision No. 493-H
)	
CALIFORNIA STATE UNIVERSITY,)	March 14, 1985
)	
Respondent.)	
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Appearance: Howard O. Watts, on his own behalf.

Before Hesse, Chairperson; Jaeger, Morgenstern and Burt,
Members.

DECISION

This case is before the Public Employment Relations Board on an appeal by Howard O. Watts of the Board agent's dismissal, attached hereto, of his public notice complaint alleging that the California State University violated section 3595(c) of the Higher Education Employer-Employee Relations Act (Gov. Code sec. 3560 et seq.).

We have reviewed the Board agent's dismissal in light of the appeal and, finding it free from error, adopt it as the Decision of the Board itself.

ORDER

The public notice complaint in Case No. LA-PN-59-H is
DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

PUBLIC EMPLOYMENT RELATIONS BOARD**LOS ANGELES REGIONAL OFFICE**

3470 WILSHIRE BLVD., SUITE 1001

LOS ANGELES, CALIFORNIA 90010

(213) 736-3127



October 26, 1984

Mr. Howard O. Watts

Los Angeles, CA 90029

William B. Haughton, Esq.
California State University
400 Golden Shore, Suite 350
Long Beach, CA 90802

Re: Notice of Dismissal

Watts v. California State University, LA-PN-59-H

Dear Interested Parties:

The above-referenced public notice complaint was filed with our office on April 19, 1983. A First Amended Complaint was filed May 23, 1983. A Second Amended Complaint was filed August 29, 1984. The complaint alleges a violation of HEERA subsection, 3595(c), based upon the failure (of a quorum) of the respondent's board of trustees to adopt the initial proposals of the California State University for its Unit 4 ("academic support"). For the following reasons, the complaint fails to state a prima facie violation of Government Code subsection 3595(c) and cannot be amended to do so. The complaint is, therefore DISMISSED.

The complaint alleges that the respondent, California State University (CSU), violated subsection 3595(c) by having the committee on collective bargaining adopt the initial proposals for the its academic support unit. This action was taken on March 21, 1983. The board of trustees subsequently received a report of these activities at its March 22, 1983 meeting.

Subsection 3595(c) states:

After the public has had the opportunity to express itself, the higher education employer shall, at a meeting which is open to the public, adopt a proposal, including any changes to its initial proposal which the higher education employer deems appropriate based on the public's comments.

As defined in Section 3562 of HEERA "higher education employer" includes "... any person acting as an agent of an employer." Accordingly, the definition of "agent" specifies a broad list of functions which encompasses those of the committee on collective bargaining. In addition, Section 89035 of the Education Code provides:

Whenever in this code a power is vested in the trustees, the trustees by majority vote may adopt a rule delegating such power to any officer employee or committee as the trustees may delegate. (Emphasis added).

Hence, there is clear statutory authority allowing the board of trustees to establish its committee on collective bargaining. Pursuant to that authority, subsection 5(h) of article VI of the board's Rules of Procedure provides as follows:

- h. Committee on Collective Bargaining - The committee on collective bargaining shall have delegated authority to act for the board of trustees in order to comply with the requirements of the Higher Education Employer-Employee Relations Act (HEERA) and implement the collective bargaining policy of the board of trustees. The delegation to the committee on collective bargaining includes, but is not limited to, authority to negotiate memoranda of understanding pursuant to the policies of the board of trustees. The committee on collective bargaining shall submit periodic progress reports to the board of trustees on matters pertaining to collective bargaining and actions which it has taken. (Emphasis added).

In compliance with this rule, the chairman of the committee on collective bargaining reported to the board of trustees at its meeting on March 22, 1983 the actions taken by the committee the previous day.

Thus, the committee on collective bargaining, as an agent of the higher education employer, has the authority to adopt the initial CSU bargaining proposals in open meetings based on lawful delegation of authority pursuant to subsection 5(h) of the board's Rules of Procedure.

The complaint further alleges that the action taken by the committee at its March 21, 1983 meeting was precluded by the Bagley-Keene Open Meeting Act (Government Code section 11120 et seq.). PERB, however, does not adjudicate violations of this act. Assuming, arguendo, the relevance of the Bagley-Keene Open Meeting Act, that statute requires that meetings of "state bodies" as defined therein be open to the public except as otherwise provided in the act. With certain exceptions not material herein, the act essentially imposes its open meeting requirements upon state boards, commissions, committees or similar multimember bodies including advisory bodies. You argue that the committee on collective bargaining cannot take "official" action (presumably meaning legislative action) because pursuant to section 11122 of the open meeting act, only the full board of trustees has such authority (i.e. to adopt initial proposals). A closer reading of the statute however, indicates a different result. Section 11122 provides:

As used in this article "action taken" means a collective decision made by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution order or similar action. (Emphasis added).

Additionally, section 11121.2 provides that:

. . . state body also means any board, commission, committee, or committee or similar multimember body which exercises any authority of a state body delegated to it by that state body.

As stated in one formal opinion of the Attorney General [65 Ops. Cal. Atty. Gen. 638 (1982)]

. . . for purposes of the open meeting requirements of the Bagley-Keene Open Meeting Act, each committee must be analyzed individually with respect to its source of origin, its composition, and its functions and duties, and their source.

As previously noted, subsection 5(h) of article VI of the board's Rules of Procedure established the committee on collective bargaining. The functions of this committee as outlined in the above section deal primarily with implementing the collective bargaining policy of the board of trustees.

Section 11121.8 makes an "advisory committee" of a "state body" also a state body for purposes of the Bagley-Keene Open Meeting Act if the advisory committee is "created by formal action of a state body or of any member of a state body, and if the advisory body so created consists of three or more persons." The Legislature in enacting this provision, patterned after similar provisions contained in the Ralph M. Brown Act (Government Code section 549050 et seq.), wanted to preclude legislative and state bodies from evading the open meeting requirements of the two acts, consequently the definition of "body" is to be construed broadly. (Joiner v. City of Sebastopol (1981) 125 Cal. App. 3d 799, 805; [178 Cal Rptr. 299]). Similarly, there is no allegation that CSU's agent, the committee on collective bargaining, did not adopt the proposals in a public meeting. Hence, application of the criteria set forth in sections 11121.2 and 1112.8 leads to a conclusion that the committee on collective bargaining is a "state body" for purposes of the act. Thus any action it took at its March 21, 1983 meeting complied with the requirements of section 11122.

Even if, however, a contrary conclusion were reached (e.g. the meetings of the committee were not public, or another violation of some kind) it is doubtful that the subsequent action taken by the committee on collective bargaining would be invalidated. There have been no cases or opinions of the Attorney General which have determined the consequences of a failure to comply with the provisions of the Bagley-Keene Open Meeting Act. In one recent opinion, however, the Attorney General in 67 Ops. Ca. Atty. Gen. 84(1984) examined the legislative history of the Bagley-Keene Act against the background of the Brown Act and concluded:

... had the Legislature intended a violation of the Bagley-Keene Open Meeting Act or any of its specific provisions, ... to result in the invalidation of action taken, it would have specifically stated in unmistakable language.

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The procedures employed by both the board of trustees and the committee on collective bargaining comply with the requirements of subsection 3595(c) of HEERA. Based on the above rationale, it is determined that the complaint fails to state a prima facie violation of Government Code subsection 3595(c). Accordingly, the complaint is hereby DISMISSED WITHOUT FURTHER LEAVE TO AMEND.

You may obtain a review of this dismissal of the complaint by filing an appeal to the Board itself within 20 calendar days of the date of service of the dismissal. The appeal shall be filed in writing and with the Board itself in the headquarters office, and shall be signed by yourself or your agent. The Board's address is 1031 - 18th Street, Sacramento, CA 95814. You must serve the appeal and all supporting documents upon the respondent. Within 20 days of service, the respondent may file with the Board itself an opposition to the appeal of dismissal.

Very truly yours,

Frances A. Kreiling
Regional Director

Robert R. Bergeson
Labor Relations Specialist

RRB:gml