

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,

Complainant,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-PN-152-E

PERB Decision No. 1465

October 29, 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

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Howard O. Watts (Watts) to a Board agent's dismissal (attached) of the public notice complaint. The complaint alleged that the Los Angeles Unified School District violated the Educational Employment Relations Act (EERA)¹ when it changed its policy regarding the time limit for public comment at Board of Education meetings. Watts alleged that this conduct constituted a violation of EERA section 3547(a), (b) and (c).²

¹EERA is codified at Government Code section 3540 et seq.

² EERA section 3547 provides, 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.

After reviewing the entire record, the Board finds the Board agent's dismissal to be free from prejudicial error and adopts it as the decision of the Board itself.

ORDER

The public notice complaint in Case No. LA-PN-152-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

(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.

Education meetings. The complaint states that the previous policy allowed three minutes for individuals to comment on initial bargaining proposals and three minutes on all other agenda items. This policy was changed to allow a total of three minutes for both.

After receiving an extension of time, the District responded to the complaint on January 11, 2001. The response asserts that the complaint should be dismissed as untimely and without merit.

FINDINGS OF FACT

Watts alleges that the District changed its policy regarding the time allotted for public comment regarding both initial proposals and other agenda items on June 15, when a new public notice policy was issued in Bulletin No. AJ-1 (*Revised*). He states that a member of the public announced the policy change at a July 11 Board of Education meeting, after having obtained a copy of the new bulletin. Watts claims that he became aware of the new policy on July 13, after visiting the Staff Relations Office and acquiring a copy of Bulletin AJ-1 (*Revised*).

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.

In support of his complaint, Watts submitted copies of the District's current and previous public notice policies as exhibits. Bulletin No. 18, effective from 1988-1998, provides that "each speaker shall be permitted to speak for three minutes at Board meetings during which [initial] proposals are reviewed or adopted."

Bulletin No. AJ-1 replaced Bulletin No. 18 on November 6, 1998. Bulletin AJ-1 provides that "each public speaker addressing [initial] proposals shall be permitted to speak for three minutes at Board meetings during which such proposals are reviewed and adopted."

Bulletin AJ-1 (*Revised*) was issued on June 15. This bulletin provides that:

"each speaker addressing the [initial] proposals shall be permitted to speak for three minutes at Board meetings during which such proposals are reviewed and/or adopted. . . . **Public speakers, who are limited by Board Rules to a single appearance before the Board at any meeting also may address other issues under the Board's purview during their three minute period if they have notified the Board Secretariat when signing up to speak.**"
(Emphasis added.)

All three bulletins also provide for at least two opportunities for public input on initial proposals.

ISSUE

Has the District violated the public notice provisions of the EERA by limiting speakers at public Board of Education meetings to three minutes to speak on initial bargaining proposals and all other agenda items?

DISCUSSION

Timeliness

PERB Regulation 32910 provides, in pertinent part:

The [public notice] 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.

In its argument that the complaint should be dismissed as untimely, the District points out that Bulletin AJ-1(*Revised*) was issued on June 15, almost two months prior to the filing of the public notice complaint on August 13. The District claims that Watts , "given his renowned vigilance over all District actions," could reasonably have discovered Bulletin AJ-1(*Revised*) well before he filed his complaint.

Watts states that the public was made aware of the new policy contained in Bulletin AJ-1(*Revised*) at a Board of Education meeting on July 11, by another member of the public. He asserts he became aware of it when he acquired a copy during a visit to the Staff Relations Office on July 13.

While it is possible that Watts knew of the substance of Bulletin AJ-1(*Revised*) at least by July 11, it appears that he did not have a copy of the bulletin to confirm his knowledge regarding the change in policy until July 13, thirty days prior to filing. Therefore, the public notice complaint is found to be timely.

Change in Policy

The intent of the public notice requirements is set forth in §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 of the positions of their elected representatives.

The District's policy is to allow speakers at a public Board of Education meeting three minutes to speak to initial proposals. There has been no change in this policy since at least 1988, as evidenced by the three bulletins submitted as exhibits in this case, including Bulletin AJ-1(*Revised*).⁴ PERB has consistently held that three minutes is an adequate period of time to address initial proposals. (Los Angeles Unified School District, supra, PERB Decision

⁴ In fact, the three minute rule has been in effect since 1977, as discussed in Los Angeles Unified School District (1984) PERB Decision 405.

No. 405; Los Angeles Unified School District (1985) PERB Decision No. 494; Los Angeles Community College District (1991) PERB Decision No. 908; Los Angeles Unified School District (1993) PERB Decision No. 1000.⁵)

The issue Watts complains of is that the District has limited public comment on all agenda items, including initial proposals, to three minutes. While this limitation may create a hardship for the complainant, PERB has no jurisdiction over the District's policy regarding public input on agenda items that are not related to public notice. As long as the District continues to permit speakers three minutes to address initial proposals, it continues to fulfill its public notice requirements under the EERA.

CONCLUSION

The District has not changed its policy of allowing the public three minutes to speak to initial proposals, a length of time which PERB has found to be sufficient to comply with its public notice requirements.⁶ For this reason, and since PERB lacks jurisdiction over the District's time limitations for public input regarding issues other than initial bargaining proposals, the public notice complaint filed in this case is DISMISSED.

Right to Appeal

Pursuant to PERB 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 (Cal. Code Regs., tit. 8, sec. 32925). The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814
FAX: (916) 327-7960

⁵ In all of the Los Angeles Unified School District cases cited here, as in the instant case, audio tapes of Board of Education meetings reveal that Watts has used his allotted time to criticize the three minute rule and to address other issues not relating to public notice.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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 (Cal. Code Regs., tit. 8, sec. 32625). If no timely appeal is filed, the aforementioned ruling shall become final upon the expiration of the specified time limits.

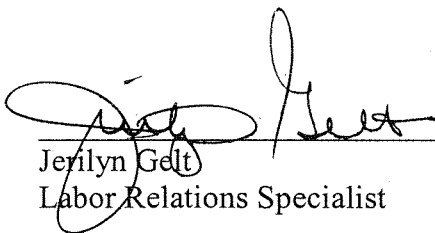
Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and the San Francisco Regional Office Regional Office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, sec. 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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 (Cal. Code Regs., tit. 8, sec. 32132).



Jerilyn Gelt
Labor Relations Specialist