

PUBLIC EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

JULES KIMMETT,)	
)	
Complainant,)	Case No. LA-PN-5
)	
v.)	
)	
LOS ANGELES COMMUNITY COLLEGE)	<u>ORDER OF DISMISSAL</u>
DISTRICT,)	<u>WITH PREJUDICE</u>
)	<u>NOTICE OF RIGHT TO</u>
Respondent.)	<u>APPEAL</u>
)	

PROCEDURAL HISTORY

On September 20, 1978 a letter was received from Mr. Jules Kimmett which purported to complain of alleged violations of California Government Code section 3547 et. seq.¹ by the Los Angeles Community College District. On October 6, 1978, the Los Angeles Regional Director, Public Employment Relations Board (hereafter PERB), verbally informed the Complainant that his complaint did not state a claim under EERA section 3547 and did not comply with the requirements of California Administrative Code, title 8, section 37020.² On October 23, 1978, Mr. Kimmett filed another document incorporating his first letter and setting forth certain facts required by PERB Regulation section 37020.

¹Hereafter referred to as "EERA", Educational Employment Relations Act or "the Act."

²Hereafter all references to California Administrative Code are referred to as "PERB Regulation section ____."

STATEMENT OF THE CASE

Mr. Kimmett complains that the Los Angeles Community College District violated EERA Article 8, section 3547(e) by adopting its 1978-1979 budget at a meeting on August 30, 1978, at 1:30 P.M. when only 18 persons were present.

EERA section 3547 et. seq. provides in relevant part:

3547. (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. . . .

.
(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 a full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

PERB regulations provide a procedure for filing, processing and review of complaints which allege violation of EERA, section 3547. In relevant part the regulations state:

37010. Filing of Complaint. A complaint alleging that an employer or an exclusive representative has failed to comply with Government Code section 3547 may be filed in the appropriate regional office by any 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. . . .

37070. Obligations of the Regional Director.

(e) If the complaint fails to state a prima facie violation of Government Code section 3547 and cannot be amended to state a prima facie violation, the Regional Director shall dismiss the complaint. A copy of the complaint and the letter of dismissal shall be served on the employer and the exclusive representative by the Regional Director. . . .

DISCUSSION

The complaint alleges that Los Angeles Community College District adopted an annual budget without complying with the requirements of EERA subsection 3547(e). Subsection 3547(e), however, is not a section which sets forth rights and obligations of persons or entities covered by the Act. Rather, this subsection merely permits PERB to adopt rules and regulations to implement the public notice provisions of the EERA. Subsection 3547(e) further sets forth the intent of the Legislature in adopting section 3547, namely: "that the public be informed of the issues that are being negotiated upon and have a full opportunity to express their views. . . ." [Emphasis supplied.]

Assuming that the complaint had been filed under a subsection of section 3547 which governs public school employer conduct and assuming that the Los Angeles Community College District had adopted its budget without following the

procedures outlined in this section of the Act, still no prima facie violation could be found.³

The EERA is limited in scope. The purpose of the Act is to "improve personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy." (California Government Code section 3540.)

Thus, the Act does not purport to regulate every aspect of the public school employer's conduct. Rather, the EERA regulates certain conduct by public school employers and exclusive representatives concerning employer-employee relations.

³The complaint in this matter is technically deficient in some particulars. However, as shown below, the complaint does not state a prima facie case and cannot be amended to do so. Therefore, the Complainant will not be asked to go through an exercise of futility in amending the complaint.

Article 8, section 3547 of the EERA entitled "Public Notice" requires that public school employers and exclusive representatives ensure that the public be informed of "initial contract proposals" and "new subjects of meeting and negotiating arising after the presentation of initial proposals. . . ." (California Government Code section 3547(a) and (d)).

Except for initial contract proposals and new subjects of meeting and negotiating, the EERA does not require that the public be informed of subsequent contract proposals or even final agreements let alone unspecified matters which may be considered at a public school board meeting. The Legislature was careful to limit the degree to which government would intrude into the affairs of the public school employer especially at its public board meetings.

By his complaint, the Complainant seeks to have the public notice requirements of the EERA apply to the adoption of an annual budget by a school district. Arguably, the Complainant would have the public notice provisions apply to every deliberation of the school district. This is simply not the law. The Act is clear and unambiguous. The only business of a public school employer subject to the public notice provisions of EERA, section 3547 and the scrutiny of this agency relates to initial contract proposals or initial proposals on new subjects of meeting and negotiating. While an annual budget might relate in some tangential way to an employer's position in bargaining, so might a plethora of other items of discussion

throughout the year. The Legislature did not intend to open to public debate and PERB review every item of business which might relate to collective bargaining agreements. To do so would transform this agency from one entrusted with limited jurisdiction over employer-employee relations into the conscience of public school employers and exclusive representatives.

CONCLUSION

For the reasons set forth above, I find that the Public Employment Relations Board is without jurisdiction to hear a complaint based on the failure of a public school employer to comply with the provisions of EERA section 3547 when adopting an annual budget; and further, that the complaint fails to state a cause of action under section 3547 of the EERA.

ORDER

It is hereby ordered that the complaint in this matter is dismissed with prejudice.

Pursuant to California Administrative Code, title 8, section 37030(e), Complainant may appeal this dismissal by filing written exceptions with the Board itself at 923 12th Street, Suite 201, Sacramento, CA 95814 within seven (7) calendar days following the date of receipt of this order. The exceptions shall be accompanied by a proof of service of the document upon the public school employer and the Regional Director. The exceptions shall state the grounds upon which the dismissal should be reversed.

If no exceptions are filed, the dismissal shall become final at the end of seven (7) calendar days.

Dated: November 2, 1978

Frances A. Kreiling
Regional Director

Concerned Citizens Committee of Burbank, California

2344 Catalina Street, 91504

Jules Kimmett, Chairman & Melvin Perlitski, Secretary-Treasurer
848-6917 845-3386 or 845-5986

September 17, 1978

TO: FRAN KREILING

FROM: JULES KIMMETT

At the regular Board Meeting of the Los Angeles College Community District of August 30, 1978 THE ADOPTION OF THE 1978-79 BUDGET WAS HELD BEFORE THE GRAND AND COLOSSAL PRESENCE OF EIGHTEEN (18) PEOPLE.

On July 28, 1976 by a motion of the Trustees of 6 to 1 in favor of holding the annual budget hearings beginning at 7:00 P. M., at night so that a greater number of citizens could be involved to participate and express their views and feelings. On Monday August 2, 1976 a public hearing of the budget was held starting at 7:00 P. M., and ending at 12:10 A. M., with over forty-five (45) speakers proclaiming their views and opinions on the budget.

This year the Board saw fit to deliberately flout and flaunt the will of the people and violate their basic constitutional rights guaranteed by the First Amendment by holding the meeting of August 30, 1978 at 1:30 P. M.

This arrogant and arbitrary action was indicative of a callous indifference deliberately designed to ignore, blatantly disregard to render the will of the people impotent, ineffective and to strip them of their right to participate in the most important subject critical to the function of the colleges ----- OF SPENDING THEIR MONEY.

Article 8. 3547 Sub-Section E of the California Government Code,
"THE PUBLIC BE INFORMED AND HAVE FULL OPPORTUNITY TO EXPRESS THEIR
VIEWS."

JULES KIMMETT

"Write-In Candidate For Governor"

Chairman Concerned Citizens
Committee of Burbank

Shop Steward Local 99 SEIU
"C" Shift Custodians
Los Angeles Valley College

JK/ck

PLEASE REPLY TO ADDRESS BELOW

1106-D West Olive Avenue
Burbank, California 91506

Concerned Citizens Committee of Burbank, California

2344 Catalina Street, 91504

Jules Kimmett, Chairman & Melvin Perlitsch, Secretary-Treasurer
848-6917 845-3386 ~ 845-5986

October 20, 1978

TO: FRAN KREILING

FROM: JULES KIMMETT

In Re: September 17, 1978 LACCD violation and your return of same
Letter for Revision ¹⁸

1. LACCD, 2140 Olympic Boulevard, Los Angeles, California 90006.
2. Same as above in No. 1.
3. The Board of Trustees, Chancellor Koltai and the Administration of the Los Angeles College District all at the same address.
4. Article 8 Section 3547(e).
5. Body of letter enclosed.
6. There is no policy to resolve issues except to ignore and indulge in stonewalling, silence and the constant use of the Fifth Amendment.
7. Same as No. 6.
8. There is no pending litigation.

In conclusion and summing up the Powers to be at the PERB have been dragging their feet, and to those very Powers again I am delivering a stern admonition that the LAW MUST BE COMPLIED WITH. ¹¹⁻²

JULES KIMMETT

"Write-In Candidate for Governor"

Chairman Concerned Citizens
Committee of Burbank

Shop Steward Local 99 SEIU
"C" Shift Custodians
Los Angeles Valley College

JK/ck

PLEASE SEND RESPONSE TO ADDRESS SHOWN BELOW

1106-D West Olive Ave Burbank, CA. 91506