

Respondent.

December 10, 1980

Before Gluck, Chairperson; Moore, Member

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

The public notice complaint, LA-PN-18, filed by
Howard Watts against the Los Angeles Unified School District
and the United Teachers of Los Angeles is hereby DISMISSED
in its entirety without leave to amend.

PER CURIAM

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

HOWARD WATTS,)	
)	
Complainant,))	Case No. LA-PN-18
)	
v.)	DISMISSAL WITHOUT
)	LEAVE TO AMEND
LOS ANGELES UNIFIED SCHOOL DISTRICT,))	PUBLIC NOTICE COMPLAINT
)	
Respondent.))	
)	
and)	
)	
UNITED TEACHERS OF LOS ANGELES,)	
Respondent.))	
_____)	

NOTICE IS HEREBY GIVEN that the above-captioned public notice complaint is dismissed without leave to amend on the following ground:

Complainant has failed to allege facts which state a prima facie violation of the Educational Employment Relations Act, Government Code section 3547¹.

PROCEDURAL HISTORY

On December 13, 1979 Mr. Howard Watts (hereafter Complainant) filed a public notice complaint against the Los Angeles Unified School District (hereafter District) and the United Teachers of Los Angeles (hereafter UTLA) alleging violation of section 3457(a), (b), (c), (d) and (e). On January 7, 1980 Complainant filed an Amendment to the complaint. The Amendment also alleges violation of section 3547(a) through (e).

¹All statutory references are to the Government Code unless otherwise noted. (Cont'd. on page 2)

After careful review of the above-captioned public notice complaint and amendment, the Los Angeles Regional Director of the Public Employment Relations Board (hereafter PERB) has determined that said complaint and amendment does not state a prima facie violation of section 3547(a), (b), (c), (d) and (e). This dismissal without leave to amend accordingly follows.

(fn. 1 cont'd.)

Section 3547 provides:

- (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.

DISCUSSION

The essence of the complaint is that the District and UTLA held meetings to discuss "re-openers" provided for in Article XXI Section 3.0 of their 1979-80 contract, without first making said items public. The items discussed were (1) Adult Education Hours of Assignment and (2) Special Services Career Increments.

The amendment cites an additional meeting in which Special Services Career Increments, as well as a "new subject" of meeting and negotiating, were discussed. The new subject was Early Retirement.

As held by the PERB itself in Kimmett v. Los Angeles Unified School District, PERB Decision No. Ad-53 the intent of section 3547, as stated by the Legislature in section 3547(e), 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.

In order to effectuate the intent of the law, section 3547(a) and (d) specify what shall be made public. All initial proposals and new subjects of meeting and negotiating must be publicly noticed.

The public notice complaint indicates that Article XXI, Section 3.0 of the 1979-80 contract was invoked by the parties in order to discuss the "re-openers". Article XXI, Section 3.0 reads as follows:

Negotiations for Successor Agreement and Limited Open Items: Negotiations for a successor agreement shall commence upon request of either the District or UTLA at any time after April 15, 1980. However, negotiations relating to compensation (including additional conference period) of secondary department chairmen, Adult Education hours of assignment, and Special Services career increment shall remain open for negotiation throughout the 1979-80 school year in preparation for the 1980 agreement. UTLA may bring the issue of Special Services Career increment to factfinding after January 1, 1980. (Emphasis added)

Section 3.0 does not refer to re-openers. It clearly provides that specific items shall remain open. The effect of subjects remaining open after a contract has been signed is that the parties would continue to negotiate until settlement is reached. The subject matter does not change; negotiations proceed normally except that a contract is already in place. The subjects, therefore, need not be presented again at a public meeting. The public was informed concerning the issues to be negotiated on at the time initial proposals were presented. Moreover, subjects which are to remain open, as in this case, do not constitute initial proposals or new subjects of meeting and negotiating.

Adult Education Hours of Assignment and Special Services Career Increments were included in UTLA's initial proposals presented on June 25, 1979. Thus, the public notice requirements for the 1979-80 contract were met. The only question remaining has to do with the actual agreements reached on the items. If the parties intend the agreements or settlements to extend beyond the duration of the present contract, they must be presented at a public meeting again. In other words, while the parties have met the public notice requirements for the 1979-80 contract, they must also observe them for the 1980-81 contract.

With respect to the amendment, it appears Complainant is alleging that Early Retirement is a new subject of meeting and negotiating as well as a re-opener. The complaint indicates that on December 12, 1979 a meeting took place in which UTLA told the District it was not acting on Early Retirement as required by the master agreement. The District responded that the Board of Education needed more data on the subject

before acting. Based on this exchange, Complainant filed his amendment. Complainant states the exchange occurred pursuant to Article XX, Section 15.0 of the contract. It reads as follows:

Article XX Section 15.0. "Implementation of Education Code Section 24211: The Board of Education shall by Board rule implement the early retirement provisions to Education Code 24211, with such qualifications and requirements as the Board may in its discretion impose."

Section 15.0 states that the Board of Education shall by Board rule implement Early Retirement. Thus, UTLA was requesting implementation of a provision pursuant to the contract. Requests such as these are neither re-openers nor initial proposals as alleged by Complainant. Additionally, it is clear that under the Educational Employment Relations Act there is no requirement to present at a public meeting requests to administer contract provisions .

Complainant has failed to state a prima facie violation of section 3547. Items which are to remain open for negotiations and requests to implement provisions of a contract are not matters subject to section 3547. The complaint, therefore, cannot be amended to state a prima facie violation and is herewith dismissed without leave to amend.

ORDER

It is hereby ordered that the above-captioned public notice complaint is dismissed without leave to amend.

Pursuant to California Administrative Code, title 8, section 37030(e), Complainant may appeal this dismissal by filing written exceptions with the Executive Assistant to the Board 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 state the grounds upon which dismissal should be reversed and shall be accompanied by a proof of service of the document upon Respondents and the Regional Director.

Dated: February 27, 1980

Frances A. Kreiling
Regional Director