

SCHOOL AND COLLEGE LEGAL SERVICES

Sonoma County Office of Education

Sonoma County Office of Education
5340 Skyline Boulevard
Santa Rosa, California 95403
(707) 524-2690
Fax (707) 578-0517

Robert J. Henry
General Counsel

Margaret M. Merchat
Susanne K. Reed
Assistant General Counsels
Noel J. Shumway,
Coordinator of Employer/
Employee Relations

Humboldt County Office of Education
901 Myrtle Avenue
Eureka, California 95501
(707) 445-7058
Fax (707) 445-7143

Patrick D. Sisneros
Associate General Counsel

THE LEGAL UPDATE

February 3, 1993

To: Superintendents, Member School Districts (K-14)

From: Noel J. Shumway, ^{NJS} Coordinator of Employer/Employee Relations

Re: Sunshining Collective Bargaining Proposals in a Collaborative Bargaining Setting
Memo No. 3-93

As you are aware, the Educational Employment Relations Act ("EERA") requires that the initial proposals of both the exclusive representative and the district be presented to the public at a public meeting and be made available for public comment. As a growing number of school districts are moving from traditional adversarial collective bargaining processes, toward collaborative or interest-based approaches, inquiries are being made concerning what constitutes sufficient information to adequately inform the public of the issues to be negotiated (i.e. Sunshining of Proposals).

A case on this very issue has been recently decided by the Public Employment Relations Board (PERB), Decision No. 964, Case No. LA-PN-121, December 8, 1992. In this case a member of the public challenged the initial proposal that the Los Angeles Unified School District made to the United Teachers - Los Angeles as not adequately informing the public of the issues to be negotiated. The proposal was presented in a format consistent with the interest-based bargaining approach the parties had been utilizing.

The Administrative Law Judge found a violation of EERA regarding sunshining requirements and the District appealed. The Board reversed the ALJ's determination and ruled in favor of the District.

The Public Employment Relations Board concluded the following:

1. The use of the collaborative bargaining approach does not relieve the parties of the burden to provide public notice of the bargaining proposals.

2. EERA'S public notice statute contains no express provision stating that the initial proposals which it requires be made public must be "specific" in nature. Initial proposals presented to the public must be sufficiently developed to permit the public to comprehend them.
3. The public must be informed of issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer.
4. A proposal which simply states a subject matter such as "Wages", does not adequately inform the public of the issues to be negotiated. However, a proposal for a cost of living adjustment based on the Consumer Price Index is sufficiently developed to inform the public what issue will be placed on the table at negotiations.
5. An initial proposal entitled "Balancing the Budget" in which the District indicated it wanted to discuss possible reductions in employee staffing, pay, and benefits based on anticipated cuts in the resources available to the District fulfilled the EERA's public notice requirements.

Thus, from this PERB decision, each District needs to ensure that initial bargaining proposals are sufficiently developed to adequately inform the public of the "issues" which will be the subject of negotiations. While this does not require complete specificity of the issues, it does mandate that the proposals presented to the public address the issues to be negotiated which will permit the public to understand them.

Should you have any further questions concerning this matter, please don't hesitate to contact us.

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