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## LEGAL UPDATE

March 3, 2023

**To:** Superintendents, Member School Districts (K-12)

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**Subject:** Sunshining: Public Presentation of Collective Bargaining Proposals  
Memo No. 03-2023

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The purpose of this Legal Update is to provide background and information regarding the requirement to “sunshine” initial proposals for negotiations with employee bargaining units pursuant to the procedures set forth under the Educational Employment Relations Act (“EERA”).

### Sunshining: General Requirements

The EERA applies to school districts, county offices of education and community college districts. It requires that both the employer and the bargaining unit present their initial proposals at a public meeting of the public school employer.<sup>1</sup> Negotiations may not begin until a “reasonable” period of time has passed after initial presentation of the proposals.<sup>2</sup> After the public has had an opportunity to express itself, the employer shall adopt its negotiations proposal at a subsequent meeting.<sup>3</sup>

Note that the EERA contemplates that the employer will engage in this two-step process; however it does not contemplate that the union do so. Rather, the union appears to only be required to present its proposals to the public, and is not required to allow for public comment prior to adoption.

The purposes of the sunshine provisions are to ensure that the public is informed of the issues being negotiated, has full opportunity to express their views to the

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<sup>1</sup> Gov’t Code § 3547(a).

<sup>2</sup> Gov’t Code § 3547(b).

<sup>3</sup> Gov’t Code § 3547(c).



public-school employer on these issues, and knows the positions of elected representatives on the public school’s governing board.<sup>4</sup>

**Sunshining: The Meaning of “Reasonably Informed and Full Opportunity”**

The language of the statute requires the public be “informed” of the issues that are being negotiated.<sup>5</sup> The Public Employees Relations Board (“PERB”) has found that this requires the initial proposals to be presented in a manner sufficiently developed to permit the public to comprehend the issues that are being negotiated and have full opportunity to express their views on the issues.<sup>6</sup> PERB has found that the initial proposal requires more than a simple statement of the subject matter and requires more than merely identifying the articles of the collective bargaining agreement to be negotiated. Rather, the initial proposal that is presented to the public for review and comment must sufficiently state the issues to be negotiated. (*Id.*)

The EERA does not define how much time must elapse between the presentation of an initial proposal and the public’s opportunity to comment. However, the law provides that the initial proposal does not become a public record until after it has been presented at a public meeting.<sup>7</sup> Therefore, presentation of the initial proposal and opportunity for comment should not occur at the same meeting. It is best practice to present the initial proposal in public session as an agenda item along with an announcement of where a copy of the proposal may be obtained and inspected and then, at a subsequent public meeting, provide an opportunity for public comment on the initial proposals as an open session agenda item. Both steps should occur prior to the Board taking action to adopt the proposals.

There is no requirement in the EERA that the public’s opportunity to comment on the initial proposal be heard via a “public hearing.”

**Sunshining: Brown Act Board Agenda Requirements**

Boards who wish to discuss the sunshine prior to bringing it to the public may discuss it, along with other items of negotiation, under the closed session agenda item:

CONFERENCE WITH LABOR NEGOTIATORS (Gov’t Code §54957.6)

Agency Designated Representative: \_\_\_\_\_

Employee Organization: \_\_\_\_\_ Association

Public disclosure and adoption of the sunshine document must occur on the open session agenda. Neither the EERA nor the Brown Act requires any specific language for this action, however our office recommends something to the effect of:

- *First Meeting – Public Disclosure (information only):* “Consideration of initial proposals of the LEA to the \_\_\_\_\_ Association for initial contract negotiations.”

<sup>4</sup> Gov’t Code § 3547(e); Standard School District (2012) PERB Dec. No. 2273, p.9.

<sup>5</sup> Gov’t Code § 3547(e).

<sup>6</sup> Los Angeles Unified School District (“Watts”) (1992) PERB Dec. No. 964.



- *Second Meeting – Adoption:* “Consideration and possible approval of initial proposals of the LEA to the \_\_\_\_\_ Association for initial contract negotiations.”

For purposes of agendaizing a union’s sunshine document, it should be added as an information only item, as the Board is not required to take action:

- “Disclosure of the initial proposals of \_\_\_\_\_ Association to LEA for initial contract negotiations.”

Common practice is for a school board to present the union’s sunshining document in open session for discussion and discuss which articles it wants to open in closed session at the same meeting. This is legally permissible. However, the school board must ensure that it presents its own initial proposals on the open session agenda of two separate meetings (one of which may be the same meeting at which the union sunshine is presented).

None of these actions are required to occur at a regular meeting. Best practice is to have at least one opportunity for public comment occur at a regular meeting.

### **Sunshining: County Offices of Education**

Although the EERA explicitly applies to County Offices of Education, the language of the statute does not contemplate the differences between a County Office and school and community college districts with regard to how a County Superintendent differs from an elected school board. Therefore, the guidance included below is a recommendation of best practice.

For County Offices of Education, the sunshining process is similar to school districts. County Superintendents should provide reasonable notice of initial proposals. This can be done by posting a memo where the County Board of Education agendas are typically posted (such as a physical bulletin board or the County Office’s website), stating that the County Superintendent is considering the following initial proposal or proposals for negotiations with the bargaining unit(s). We recommend that the memo also state that the County Superintendent will take public comments on X date at Y time and Z location, and inform the public where copies of the initial proposal are available for review.

After the designated public comment time, the County Superintendent should post a subsequent memo stating that, after reviewing the draft initial proposals and providing an opportunity for public comment, the County Superintendent will be reopening the following identified articles for negotiations with the applicable bargaining unit.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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