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March 3, 2020

Coleen Parker
Del Norte Unified School District
301 W. Washington Blvd.
Crescent City, CA 95531

Sent Via E-Mail
cparker@delnorte.k12.ca.us

Re: "Sunshining" Initial Proposals under the Educational Employment
Relations Act

Dear Coleen:

The Educational Employment Relations Act ("EERA") requires that the public be informed of the initial proposals of the exclusive representatives and public school employers and be given an opportunity to comment on the proposals at a public board meeting. (Gov. Code sec. 3547(a) and (b).) No negotiations on a proposal are permitted until the public has had an opportunity to comment because the purpose of the separate presentation and public comment steps is to ensure that "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." (Gov. Code sec. 3547, (a) and (d))

(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.

...

(Gov. Code sec. 3547)(Emphasis added)



Initial Proposals Must Sufficiently State the Issues to be Negotiated

The initial proposal must be sufficiently “developed” for the public to understand the issues to be negotiated. (*Watts v. Los Angeles USD* (1992) PERB Dec. No. 964) The Public Employees Relations Board (“PERB”) has clarified the requirement that initial proposals be made public, a process often referred to as “sunshining,” as follows:

[P]roposals must satisfy the intent expressed in [EERA]...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.” (*Watts v. LAUSD*, p. 8, quoting *LAUSD* (1981) PERB Dec. No. 184)

PERB has found that a proposal “which is simply a statement of the subject matter such as ‘wages’ does not adequately inform the public of the issue that will be negotiated.” *Id.* A proposal that simply identifies the articles of the collective bargaining agreement likewise would be inadequate to inform the public of the issues.

Exclusive Representative’s Initial Proposals

If an exclusive representative submits an initial proposal that does not inform the public of the issues to be negotiated, the representative should be notified of the requirements of section 3547. No negotiations may proceed until after an initial proposal that complies with the EERA has been submitted and “a reasonable time has elapsed...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.” (Gov. Code sec. 3547(b))

After submittal of a compliant initial proposal, the matter should be placed on the Governing Board’s agenda, for presentation pursuant to Government Code section 3547, subdivision (a).

Public presentation of initial proposal of [*name of exclusive representative*].
(Gov. Code sec. 3547(a))

The EERA does not define how much time must elapse between presentation of an initial proposal and the public’s opportunity to comment, but the two steps should not occur at the same meeting because section 3547, subdivision (a), provides that an initial proposal does not become a public record until *after* it has been presented at a public meeting. The best practice is for presentation of the initial proposal to occur at a board meeting along with an announcement of where a copy may be inspected or obtained by the public. For a subsequent meeting, place the following on the open session agenda to provide an opportunity for public comment.

Public comment regarding initial proposal of [*name of exclusive representative*].
(Gov. Code sec. 3547(b))



District's Initial Proposals

The District's initial proposal can be formulated in closed session with the District's designated representative under the closed session item below.

CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code sec. 54957.6)
Agency Designated Representative: Coleen Parker, Human Resources Director
Employee Organization: _____

At the same or a later meeting, depending on whether the District has its initial proposals ready for public disclosure, the District can present its initial proposals in public session under the following agenda item:

Public presentation of Del Norte Unified School District's initial proposals for negotiations with [*name of exclusive representative*]. (Gov. Code sec. 3547(a))

At a subsequent meeting, the public must be given an opportunity to comment on the District's initial proposal, which can be followed by the Governing Board's adoption of the same.

Public comment regarding District's initial proposal for negotiations with [*name of exclusive representative*]. (Gov. Code sec. 3547(c))

Consideration and possible adoption of District's initial proposal for negotiations with [*name of exclusive representative*]. (Gov. Code sec. 3547(c))

Summary

The EERA requires that initial proposals be sufficiently developed to inform the public of the issues to be negotiated. Initial proposals must be presented at a public meeting of the Governing Board, and after the elapse of a reasonable time, the public must be given an opportunity to comment on the proposals. The District's initial proposals must, in addition, be adopted after public presentation and public comment.

Please contact me if you have any remaining questions regarding the "sunshining" process.

Very truly yours,

A handwritten signature in cursive script, reading "Nancy L. Klein", is positioned above the typed name.

Nancy L. Klein, Senior Associate General Counsel
School & College Legal Services of California

