STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| BURBANK TEACHERS ASSOCIATION, CTA/NEA,<br><br>Charging Party,<br><br>v.<br><br>BURBANK UNIFIED SCHOOL DISTRICT,<br><br>Respondent. | ) | Case No. LA-CE-2341<br><br>PERB Decision No. 589<br><br>September 25, 1986 |

Appearances: Reich, Adell & Crost by Anthony R. Segall for Burbank Teachers Association CTA/NEA; Littler, Mendelson, Fastiff & Tichy by Richard J. Currier and Carolyn Anne Hudson for Burbank Unified School District.

Before Hesse, Chairperson; Morgenstern, Burt, Porter and Craib, Members.

## DECISION

This case is before the Public Employment Relations Board (Board) on appeal by the charging party of the Board agent's partial dismissal, attached hereto, of its charge alleging that the Burbank Unified School District violated section 3543.5 of the Educational Employment Relations Act (Gov. Code sec. 3540 et seq.).

We have reviewed the partial dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

## ORDER

That portion of the unfair practice charge in Case No. LA-CE-2341 concerning the alleged concealment during

negotiations in the Spring of 1985 of information pertinent to the projected cost of Blue Cross health insurance is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD
LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127

June 18, 1986

Anthony R. Segall, Esq.
Reich, Adell & Crost
501 Shatto Place, Suite 100
Los Angeles, California 9 0020

Re: LA-CE-2341, Burbank Teachers Association/CTA/NEA v. Burbank Unified School District
PARTIAL DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Segall:

The original charge in the above-referenced case alleges that the Burbank Unified School District unilaterally increased monthly employee contributions to the Blue Cross health insurance plan from the "billed rate" actually paid by the District ten times annually to the projected "contracted rate" based on claims experience. The first amended charge additionally alleges that the District failed to meet and negotiate with the Burbank Teachers Association by failing to disclose information pertinent to the projected cost of the Blue Cross health insurance. This conduct is alleged to violate Government Code section 3543.5(b) and (c) of the Educational Employment Relations Act (EERA).

I indicated to you in my attached letter dated June 10, 1986 that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to June 17, 1986, it would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing the charge based on the facts and reasons contained in my June 10, 1986 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days

after service of this dismissal (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on July 8, 1986, or sent by telegraph, certified or Express United States mail postmarked not later than July 8, 1986 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See section 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JEFFREY SLOAN
Acting General Counsel

By
"Barbara T. Stuart
Regional Attorney

Attachment

cc: Richard J. Currier, Esq.

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD.. SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127

June 10,1986

Anthony R. Segall, Esq.
Reich, Adell & Crost
501 Shatto Place, Suite 100
Los Angeles, California 90020

Re: LA-CE-2341, Burbank Teachers Association/CTA/NEA v. Burbank. Unified School District

Dear Mr. Segall:

The original charge in the above-referenced case alleges that the Burbank Unified School District unilaterally increased monthly employee contributions to the Blue Cross health insurance plan from the "billed rate" actually paid by the District ten times annually to the projected "contracted rate" based on claims experience. The first amended charge additionally alleges that the District failed to meet and negotiate with the Burbank Teachers Association by failing to disclose information pertinent to the projected cost of the Blue Cross health insurance. This conduct is alleged to violate Government Code section 3543.5 (b) and (c) of the Educational Employment Relations Act (EERA).

My investigation revealed the following facts. The Association *and* District are parties to a collective bargaining agreement effective January 19, 1984 through June 30, 1986. The agreement provides in Article 8 for health and welfare benefits, and gives each covered employee the option of selecting one of three health plans. One of those plans is the health insurance plan administered by Blue Cross.

For employees selecting Blue Cross coverage, the District makes a "tenthly" (ten times per year) premium payment. The premium payment comes from two sources: the "District contribution" specified in the agreement and "employee contribution" deducted from the employees' wages.

Section 8.1.1.3 of the agreement provides:

> Effective April 1, 1985, the maximum amounts to be contributed by the District tenthly for Blue Cross (Employee, Two Party or Family) shall be no greater than the higher of the full premium for family for either the Ross Loos Health Care Plan under 8.1.1.1. or the Kaiser Health Care Plan under 8.1.1.2. ($297.62 in 1984-85)

This section was amended effective April 1, 1985. It previously provided from January 19, 1984 through April 1, 1985:

> Effective October 1, 1983, the maximum amounts to be contributed by the District tenthly for Blue Cross are as follows:

| | Full Premium | District Contributions | Employee Contributions |
|---|---|---|---|
| Employee | $154.73 | $154.73 | - 0 - |
| Two Party | 265.66 | 242.16 | $23.50 |
| Family | 355.16 | 314.36 | 40.80 |

Under this previous section 8.1.1.3 and from April to September 1985 under the new version, the District deducted from employees' paychecks the tenthly billed rate. In September 1985 the District increased the employees' contribution to the projected contracted rate. The District states that if employee claims do not exceed the billed rate the excess cost will be refunded to the employees.

The District's claimed authority for its action is the new section 8.1.1.3 which arguably does not set a maximum for employee contributions. According to the District, when the parties were negotiating the current version of section 8.1.1.3,. the District advised the Association that insurance premiums were substantially increasing and that the District did not intend to absorb all increased costs. For this reason the District specifically negotiated chat the "maximum amounts to be contributed by the District tenthly for Blue Cross . . . shall be no greater than" the specified amounts. No maximum on employee contributions was purposely negotiated with the intent that the employees would absorb the unknown increased costs of insurance coverage.

According to the District, after this language was negotiated, on or about June 26, 1985, the District received a letter informing it that the District owed Blue Cross the total of $172,285 for the contract year 1983-84 because the claims for that fiscal year had exceeded the "billed rate." The District paid this entire "contracted rate" because the parties* agreement limited enployee contributions to a specified amount.

The Association first learned of the District's contracted rate liability when this change occurred in September 1985. At the same time the Association learned that in the Spring 1985 negotiations the District knew of the potential June 1985 liability, and anticipated total health plan costs to employees to exceed the billed rate in subsequent contract years as well.

The District argues that the bad faith bargaining allegation is beyond the statute of limitations contained in Government Code section 3541.5(a), even counting from September 1985, since the first amended charge was filed on May 8, 1986. The District also argues that a prima facie case is not stated. For the reasons that follow, it is concluded that the statute of limitations argument has merit.

The first amended charge was filed six months after the Association had knowledge of the District*s bargaining conduct since it knew in September 1985 that the District had information regarding the expected health plan liability during the prior negotiations. An exception to the section 3541.5(a) limitations period may be made where an amended charge is found to "relate back" to the original charge. Gonzales Union High School District (1984) PERB Decision No. 410.

In the Gonzales case an amendment was allowed because it merely added another theory based on the same events already at issue in the case. In Monrovia Unified School District (1984) PERB Decision No. 460, the Board also discussed the relation-back doctrine but did not allow an amendment. The original charge alleged a unilateral change of the employer's policy on discipline. The amendment alleged that the employer refused the employee representation at the parent conference which led to the disciplinary action against the employee. The Board stated that the issue had not been raised by the initial charge, notwithstanding that some mention of it was buried in the attachments to the charge.

The instant case is similar to the Monrovia case. The original charge alleged a pure unilateral change in employee health insurance deductions. Even broadly read, it did not raise the issue that the District bargained in bad faith by withholding information during bargaining pertinent to projected health insurance costs, although the Association was in possession of the pertinent facts by September 1985.

For these reasons, the allegation of the first amended charge that the District bargained in bad faith, as presently written.

does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before June 17, 1986, I shall dismiss the above-described allegation from your charge. If you have any questions on how to proceed, please call me at (213) 736-3127-

Sincerely,

Barbara T. Stuart
Regional Attorney

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