STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION & ITS CHAPTER 169, Charging Party, v. MADERA UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SA-CE-2333-E PERB Decision No. 1907 May 24, 2007

Appearances: California School Employees Association by Madalyn J. Frazzini, Attorney, for California School Employees Association & its Chapter 169; Atkinson, Andelson, Loya, Ruud & Romo by Todd A. Goluba and Elizabeth P. Lind, Attorneys, for Madera Unified School District.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by California School Employees Association & its Chapter 169 (CSEA) of a dismissal (attached) of its unfair practice charge. The charge alleged that the Madera Unified School District (District) violated the Educational Employment Relations Act (EERA)[1] by unilaterally changing the District's contribution to health care benefits for current employees and retirees. CSEA alleged that this conduct violated the collective bargaining agreement, and thus constituted a violation of section 3543.5(a), (b), (c) and (d) of EERA.

The Board has reviewed the entire record in this matter, including but not limited to CSEA's unfair practice charge, the District's position statement, the warning letter, CSEA's first amended unfair practice charge, the dismissal letter, CSEA's appeal and the District's

[1]EERA is codified at Government Code section 3540, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

opposition to the appeal. Based upon this review, the Board affirms the dismissal of the unfair practice charge subject to the following discussion.

DISCUSSION

We first address the issue of whether future retirement health benefits for current employees are within the scope of bargaining. While retirees are not protected under EERA,[2] PERB decisions have held that future retirement benefits for employees are within the scope of bargaining because they are part of an employee's compensation package and therefore related to "wages." Temple City held that the "future benefits of those still employed are unquestionably within the scope of representation." (See also, Jefferson School District (1980) PERB Decision No. 133.) Employees can take their compensation as current wages, present health benefits, or future health/pension benefits. "Health and welfare benefits" are a specifically enumerated term and condition of employment under EERA section 3543.2. Thus, the Board finds that future retirement health benefits for current employees are within the scope of bargaining.

Moreover, National Labor Relations Board (NLRB) decisions have relied upon the United States Supreme Court case, Pittsburgh Plate Glass, to hold that retirement health and life insurance benefits for current employees are within the scope of bargaining. The NLRB stated that life insurance for retired employees "was as much a prospective benefit for active employees who would retire in the future as it was for those employees who had already retired." (Titmus Optical Co., Inc. (1973) 205 NLRB 974, 979 [84 LRRM 1245].) The NLRB

[2]EERA section 3540.1 (j) defines an employee as "any person employed by any public school employer," with certain exceptions. Board precedent exempts from EERA those who have already retired or separated from employment. (Temple City Unified School District (1989) PERB Decision No. 782 (Temple City).) See also, Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co. (1971) 404 U.S. 157, 175-178 [78 LRRM 2974] (Pittsburgh Plate Glass).

quoted the following statement in Pittsburgh Plate Glass, "the future retirement benefits of active workers are part and parcel of their overall compensation and hence a well-established statutory subject of bargaining," and found that future retirement medical and life insurance benefits for current employees were within the scope of bargaining. (Midwest Power Sys. (1997) 323 NLRB 404, 406 [155 LRRM 1001].) The NLRB also upheld a determination that "the future retirement benefits of currently active unit employees were mandatory bargaining subjects." (Georgia Power Co. (1998) 325 NLRB 420 [157 LRRM 1245].) The NLRB found no merit in the employer's attempt to exclude employees from coverage for post retirement medical and life insurance benefits on the grounds that employees were "future retirees," and that the Supreme Court in Pittsburgh Plate Glass expressly rejected this contention. (Mississippi Power Co. (2000) 332 NLRB 530, 531 [165 LRRM 1225], enforced by Mississippi Power Co. v. NLRB (2002) 284 F.3d 605 [169 LRRM 2840].) PERB may look to federal decisions to aid in interpreting the identical or analogous California legislation where provisions of California and federal labor legislation are parallel.[3] Thus, the Board finds this line of precedent to be persuasive, and holds that the retirement health insurance provisions in the present case are within the scope of bargaining insofar as they affect the future retirement benefits of current employees.

In this case, there is a dispute over whether there was a change in the District's policy or practice with regard to contributions to medical insurance premiums for retirees insofar as they affect the future retirement benefits of current employees. Both CSEA and the District agree that the District's past practice, as stated in the Collective Bargaining Agreement (CBA) between the District and CSEA for the period of July 1, 2003 through June 30, 2004, was to

[3] Lompoc Unified School District (1977) EERB Decision No. 13, at p. 10 (prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB); San Mateo County Community College District (1979) PERB Decision No. 94.

pay 90 percent of the cost of Plan 3 for active employees and retirees. After Central Valley Trust (CVT) began charging higher premiums for retirees than for active employees, however, CSEA alleges that the District was required to pay more for retirees. On the other hand, the District alleges that its past practice under section 7.4.3 of the CBA was to pay to retirees a fixed amount of money equal to 90 percent of the premiums under CVT Plan 3 for active employees, so that its contribution to retirees should be the same monetary amount as that to active employees.

In determining whether a party has violated EERA section 3543.5(c) by making a unilateral change, PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) This case involves an allegation of a per se violation. Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation; and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

Our analysis of the fundamental issues here is based on the pertinent provisions under Article VII, entitled, "Health and Welfare Benefits" of the CBA, stated below:

> 7.1 Medical Insurance
>
> 7.1.2 The District agrees to pay ninety percent (90%) of the total insurance premiums (tenthly) for the CVT Plan 3 Health & Welfare package. The employees' contributions shall be based upon the Health Plan selected.
>
> 7.4 Retiree Insurance

7.4.1 A classified employee who elects to retire is eligible for continued medical insurance equivalent to the current medical plan in effect for all classified personnel.

7.4.3 District Contribution

The District's contribution toward retirees medical insurance will be in the same amount as that for the current classified employees coverage.

7.4.4.1 Retirees Responsibilities

The retirees shall be responsible for the same amount of cost for maintaining medical insurance coverage as other classified District employees.

Section 7.1.2 stated above establishes that the amount of the employer's obligation for current employees is calculated based on the rate of 90 percent of the total insurance premiums (tenthly) for the CVT Plan 3. Under the same section, the employees' contribution shall be contingent on the selected health plan.[4]

Employees' rights to future retirement health benefits are set forth under Section 7.4.1. Pursuant to Section 7.4.3, the District is required to contribute the "same amount as that for the current classified employees coverage" to retirees. Section 7.4.4.1 states that retirees shall be "responsible for[5] the same amount of cost for maintaining medical insurance coverage as other classified District employees."

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[4]This provision plainly means that the employees are responsible for contributing the remainder of the premiums for the plans chosen, or any amounts in excess of 90 percent of the total insurance premiums (tenthly) for the CVT Plan 3. Accordingly, if employees were to select the CVT Plan 3, the amounts of their contributions would be 10 percent of the total premiums. If employees were to select health plans with premiums higher than those of CVT Plan 3, the amounts of their contributions would be more than those of the employees who choose the CVT Plan 3. Conversely, if employees were to select health plans with premiums lower than those of CVT Plan 3, the amounts of their contributions would be less.

[5]"Responsible" means "liable," or "legally accountable," such as being able to pay a sum for which a person may become liable, or to discharge an obligation which he/she may be under. (Black's Law Diet. (6th ed. 1990) p. 1312, col. 2.) It does not mean being conferred a right or entitlement to benefits.

The parties dispute whether there was a change in the District's policy or practice with regard to contributions to medical insurance premiums for retirees insofar as they affect the future retirement benefits of current employees. The question is whether the term "same amount" as stated in 7.4.3 refers to a fixed monetary sum, as the District alleges, or to 90 percent of CVT Plan 3 at the retiree rate, as CSEA alleges. In resolving the dispute, we review the pertinent contractual provisions within the context of the entire "Article VII, Health and Welfare Benefits" of the CBA and the parties' past practice.

In Section 7.1, which is the portion of the CBA dealing with medical insurance for employees, the amount of the District's contribution is established at the rate of 90 percent of the current employees' total insurance premiums for the CVT Plan 3 coverage. (Sec. 7.1.2.) Conversely, the employees' contributions are variables that are contingent upon the different employees-selected health plans. (Sec. 7.1.2.) Pursuant to the second sentence of Section 7.1.2, employees are responsible for paying any and all amounts that exceed 90 percent of the total insurance premiums (tenthly) for the CVT Plan 3 for employees.

The provisions for retiree insurance state that the District's contribution for premiums will be "in the same amount as that for the current" employees. (Sec. 7.4.3.) Within Article VII of the CBA, Section 7.1.2 is the only formula setting forth the computation of the amount of the District's obligation for current employees' health insurance premiums. Deriving from the plain language of Section 7.4.3 is the understanding that the District's contribution provision under Section 7.1.2 is applicable to both employees and retirees. Thus, the amount of the District's contribution to the retirees' health insurance benefits is computed based on the rate of 90 percent of the total insurance premiums for the CVT Plan 3 package for employees.

Section 7.4.4.1 has to be read in conjunction with and in reference to Section 7.1.2, since the second sentence in Section 7.1.2 sets forth the employees' contribution. Moreover,

the CBA is devoid of a separate provision describing a formula for computing the retirees' obligations. The retirees are responsible for the "same amount of cost for maintaining medical insurance coverage as other classified District employees." (Sec. 7.4.4.1.) As stated earlier, the employees' responsibilities are variables and are calculated based on the remainder of the costs after the District pays 90 percent of the total insurance premiums for CVT Plan 3 for employees. (Sec. 7.1.2.) Accordingly, the retirees' contributions equal the payment of any variable amounts that exceed 90 percent of the total insurance premiums of the CVT Plan 3 that the District pays for employees. To interpret Section 7.4.4.1 otherwise would result in the District making a greater premium contribution for retirees than for employees, thus contradicting Section 7.4.3.

The interpretation of contractual health and welfare benefits for the purpose of determining the issue of unilateral change depends upon the terms and provisions of each memorandum of understanding, and the parties' past practice. In this case, the charging party has not met its burden of establishing a change in policy.

Based upon the discussion above, the Board affirms the Board agent's dismissal.

ORDER

The unfair practice charge in Case No. SA-CE-2333-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8385
Fax:(916)327-6377

March 16, 2006

John G. Moseley, Labor Relations Representative
California School Employees Association
5375 West Lane ,
Stockton, CA 95210

Re: California School Employees Association & its Chapter 169 v. Madera Unified School District
Unfair Practice Charge No. SA-CE-2333-E
DISMISSAL LETTER

Dear Mr. Moseley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 20, 2005. The California School Employees Association & its Chapter 169 alleges that the Madera Unified School District violated the Educational Employment Relations Act (EERA)[1] by unilaterally changing the contribution level toward health benefit premiums for current and retired employees.

I indicated in the attached letter dated February 23, 2006, 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. You were further advised that unless you amended the charge to state a prima facie case or withdrew it prior to March 6, 2006, the charge would be dismissed. You requested an extension of time and an amended charge was timely filed on March 15, 2006.

As amended, the charge continues to allege that the District unilaterally changed the amount of the employees' and the retirees' contributions toward health benefit premiums. As discussed in the attached letter, the District's contribution level toward employee premiums was established by taking 90% of the cost of the CVT Plan 3 option. That dollar amount became the District's contribution level which employees could apply to any of the health plans offered by the District. The employees were then responsible for the remaining share of the insurance premiums of the health plan option they selected.

Concerning retirees' health premiums, the parties' CBA provides at section 7.4.3 that, "The District's contribution toward retirees medical insurance will be in the same amount as that for the current classified employees coverage."

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

I explained in the attached letter, that the charge did not provide evidence of a change in the formula for establishing the employees' share of the health insurance premiums. As the amended charge provides no further evidence on this allegation, it is dismissed.

The attached letter also addresses the alleged change in the District's contribution toward retirees' health premiums. As discussed, retirement benefits for retirees are a permissive subject of bargaining. (Temple City Unified School District (1989) PERB Decision No. 782.) As such, retiree benefits are not a matter within the scope of representation and an employer does not breach its duty to bargain in good faith under EERA when it unilaterally modifies retiree benefits. Accordingly, this allegation is also dismissed.

Finally, the amended charge alleges that based on the conduct described above, the District violated EERA section 3543.5(d).

To state a prima facie violation of EERA section 3543.5(d), the charging party must allege facts which demonstrate that the employer's conduct tends to interfere with the internal activities of an employee organization or tends to influence the choice between employee organizations. (Santa Monica Community College District (1979) PERB Decision No. 103, (Santa Monica CCD); Redwoods Community College District (1987) PERB Decision No. 650, (Redwoods CCD).) Proof that an employer intended to unlawfully dominate, assist or influence employees' free choice is not required. Nor is it necessary to prove that employees actually changed membership as a result of the employer's act. (Santa Monica CCD; Redwoods CCD.) The threshold test is "whether the employer's conduct tends to influence [free] choice or provide stimulus in one direction or the other." (Santa Monica CCD, p. 22.)

The charge does not provide evidence that the District interfered or attempted to interfere with the internal activities of the Union. Thus, this allegation is dismissed.

Right to Appeal

Pursuant to PERB Regulations,[2] 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original,

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 (20) calendar days following the date of service of the appeal. (Regulation 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 Regulation 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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 (3) 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. (Regulation 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,

ROBERT THOMPSON
General Counsel

By
Robin W. Wesley
Regional Attorney

Attachment

cc: Todd Goluba

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8385
Fax:(916)327-6377

February 23, 2006

John G. Moseley, Labor Relations Representative
California School Employees Association
5375 West Lane
Stockton, CA 95210

Re: California School Employees Association & its Chapter 169 v. Madera Unified School District
Unfair Practice Charge No. SA-CE-2333-E
WARNING LETTER

Dear Mr. Moseley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 20, 2005. The California School Employees Association & its Chapter 169 alleges that the Madera Unified School District violated the Educational Employment Relations Act (EERA)[1] by unilaterally changing the contribution level toward health benefit premiums for current and retired employees.

CSEA and the District were parties to a collective bargaining agreement effective July 1, 2003 through June 30, 2004. Article VII covers health and welfare benefits. Section 7.1.2 states:

> The District agrees to pay ninety percent (90%) of the total insurance premiums (tenthly) for the CVT Plan 3 Health & Welfare package. The employees' contributions shall be based upon the Health Plan selected.

Section 7.4 sets forth the terms of retiree health insurance. Section 7.4.3 states:

> The District's contribution toward retirees medical insurance will be in the same amount as that for the current classified employees coverage.

The District's contribution level toward employee premiums was established by taking 90% of the cost of the CVT Plan 3 option. That dollar amount became the District's contribution level which employees could apply to any of the three health plans offered by the District. The

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

employees were then responsible for the remaining share of the insurance premiums of the health plan option they selected.

In the spring of 2005, the parties were engaged in successor agreement negotiations. On May 1, 2005, District and union officials received a letter from Central Valley Trust (CVT), the provider of health insurance for the District's employees, announcing a change in the way it priced healthcare plans offered to employees and retirees. CVT stated that effective October 1, 2005, it would charge school districts different premiums for current and retired employees. The rate increases proposed for October 1, were 8.4% for current employees and 24% for retirees.

During successor agreement negotiations, the District proposed to change the contribution level it applied toward premiums for current and retired employees. CSEA was opposed to any change in the contribution level. Eventually, the District withdrew its proposal. Thereafter, on August 11, 2005, the parties reached a tentative agreement for the 2004-2005 school year. The parties agreed to modify health benefits by expanding from three to six health plan choices, substituting the less expensive Prescription B coverage, and changing the co-pay for Vision Plan B. All other provisions of Article VII remained the same.

On August 28, 2005, CSEA and the Madera Board of Trustees each ratified the tentative agreement. Also on August 28, CSEA Chapter President Anne Lozano signed the tables setting forth the terms of the health benefits provided and the costs of each of the six health plans for current and retired employees.[2] The tables show that the District's contribution level for employee premiums is $1143.07,[3] while the contribution level for retirees is $1043.28.[4] The tables show that the overall costs of the retiree health plan premiums were higher than those for current employees.

The charge alleges that the District unilaterally changed the contribution level for health insurance premiums for current and retired employees.

In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request

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[2] Arguably, this action signifies that CSEA approved any changes to the District's contribution levels for employee and retiree health premiums on August 28. However, as discussed below, it is unnecessary to address this issue.

[3] The District's contribution level is provided over 10 months. The amount is 90% of the total cost of health, vision and dental benefits provided under Plan 3.

[4] The table shows the District's contribution level is $869.40, provided over a 12 month period. For comparison purposes, the equivalent amount over a 10 month period is $1043.28.

negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

Current Employees

The charge does not demonstrate a change in policy involving current employees. Section 7.1.2 sets the District's contribution level at 90% of the Plan 3 health premiums. The tables attached to the charge show that the District's contribution level for the 2004-2005 school year is 90% of the Plan 3 health insurance premiums. Thus, this allegation does not state a prima facie case of an unlawful unilateral change in policy and must be dismissed.

Retired Employees

The charge also alleges that the District changed the health benefit contribution level for retirees. Section 7.4.3 provides that the District's contribution toward retirees' health insurance "will be in the same amount" as that for current employees.

First, retirees are not covered by EERA. Section 3540.l(j) defines an employee as "any person employed by a public school employer." Thus, PERB does not have authority to resolve the complaints of former school employees under EERA. (Hacienda La Puente Unified School District (1988) PERB Decision No. 685.)

Although retirees are not employees protected under EERA, the charge alleges that the District's change in the retirees' share of their health benefit premiums, nevertheless constitutes a unilateral change within PERB's jurisdiction.

PERB has held that while retirement benefits for current employees are a mandatory subject of bargaining (County of San Joaquin (2003) PERB Decision No. 1570-M; Temple City Unified School District (1989) PERB Decision No. 782), retirement benefits for retirees are a permissive subject of bargaining (Temple City USD.). The U.S. Supreme Court has reached the same conclusion in a case arising out of the NLRB. (Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co. (1971) 404 U.S. 157.)

Accordingly, as retiree benefits are not a subject within the scope of representation, an employer does not violate its duty to bargain in good faith under EERA when it unilaterally modifies retiree benefits. Thus, the allegation that the District unilaterally changed the contribution level for retirees' health insurance premiums does not state a prima facie case and must also be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. 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 have the case number written on the top right hand

corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 6, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robin W. Wesley
Regional Attorney