

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA



MARYSVILLE UNIFIED TEACHERS ASSOCIATION,)
Charging Party, Petitioner,) Case No. S-CE-133
v.) PERB Order No. IR-6
MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT,) Administrative Appeal
Respondent.) September 29, 1978
_____)

Appearances: James F. Dawson, Attorney for Marysville Unified Teachers Association; W. Craig Biddle, Attorney (Biddle, Walters & Bukey) for Marysville Joint Unified School District.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

DECISION

The Marysville Unified Teachers Association (hereafter MUTA) has requested the Public Employment Relations Board (hereafter PERB or Board) to seek an order restraining the Marysville Joint Unified School District (hereafter District) from deducting any sum from the salaries of certificated employees of the District, pursuant to increases in premiums for health care coverage for employees and their dependents.

FACTS

It is alleged by MUTA that the District intends to pass on to the employees increases in premium costs for health coverage upon expiration of a collectively negotiated agreement on June 30, 1978. That agreement, in pertinent part, stated:

Section 12.2. ...The District shall assume full payment for employee coverage only (unless new monies are applied pursuant to

Article 14.3 of this Agreement), when this Agreement becomes effective and shall continue until the expiration of this Agreement.

Section 14.3 referred to, gives the Association an option in determining how to allocate certain new monies derived from specific legislation. It states:

...After the allocation to fund the increase on the salary schedule from 5.9% to 6.5%, any additional funds shall be used to fund the Blue Cross/CDS family plan. MUTA shall make the determination as to the preferred plan to be funded.

The Board has been presented with no evidence that any money was, in fact, applied to dependent coverage. While the District indicates that such application did occur, it argues in its response to the request for injunctive relief, that such coverage was to continue only for the term of the contract.

MUTA and the District commenced negotiations on or about April 1, 1978, for a successor agreement. Proposals included provisions for health insurance policies and premiums and coverage for employees and dependents.

On June 7, 1978, the District circulated a memorandum stating that it would continue to pay the full premium, including a \$5 increase imposed by the carrier, for employee-only coverage for the summer months, but that the employees would be required to pay for dependent coverage.

The District in its response does not deny the negotiability of health insurance coverage and respective premium contributions. The District's contention is that an increase in premiums above its contractual obligations may be

passed on to its employees without disturbing the status quo, and it further indicates its willingness to continue negotiations on the subject.

DISCUSSION

Under section 3541.3(j) of the Educational Employment Relations Act (hereafter EERA)¹ PERB has discretionary authority to petition the court for appropriate injunctive relief. On July 5, 1978, PERB adopted a policy for the guidance of the parties in requesting that PERB exercise its discretion and seek injunctive relief.²

¹The Educational Employment Relations Act is codified at Government Code section 3540 et seq.

Gov. Code sec. 3541.3(j) provides:

3541.3. The board shall have all of the following duties:

.....

(j) To bring an action in a court of competent jurisdiction to enforce any of its orders decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

²Procedure for Filing Requests for Injunctive Relief, stating:

(a) A party who wishes the Board to seek injunctive relief pursuant to section 3541.3 (j) shall file an original and four copies of such request for injunctive relief with the Board itself at the headquarters office. The request shall contain the following:

(1) A copy of the underlying unfair practice charge;

(2) The date the unfair practice charge was filed;

(cont.)

MUTA has requested that PERB seek a court order restraining the District from making payroll deductions for two purposes. The first purpose is for payment of increased premiums for

(3) Affidavits and other appropriate evidence setting forth the specific facts upon which the request is based;

(4) A full description of the irreparable injury which the requesting party alleges it will suffer if the request is not granted;

(5) The basis for contending that the Board's normal processes and remedies are inadequate;

(6) The legal theory which supports the requesting party's belief that it will likely prevail on the merits of the underlying unfair practice charge; and

(7) A statement of the relief sought.

(b) In order to be considered filed, a copy of the request must have been actually served upon the charged party or parties prior to filing the request, and a statement of such service shall accompany the request. "Actual service" as used in this section means actual receipt by the party or its agent.

(c) The Executive Assistant to the Board will notify the respondent of their right to file with the Board itself such evidence, including affidavits, as it may deem proper to rebut the request and the final date for said response to be actually received by the Executive Assistant to the Board at the Headquarters Office in Sacramento.

(d) The Board itself with the advice of its General Counsel shall, immediately upon expiration of the charged party's rebuttal period, consider the request for the injunctive relief and shall determine whether or not to issue a complaint and seek injunctive relief. If the Board itself determines the request should be denied, it will so notify all parties in writing.

employee health benefits after the summer. The second purpose is payment of premiums for dependents' health benefits.

Two of the prerequisites for the issuance of an injunction are the likelihood of irreparable harm and the inadequacy of the normal legal remedy.³ The Association has satisfied neither.

As to the increased premium for employee health benefits, no evidence has been presented PERB that there are District employees who cannot afford the \$5 increase and will be forced to terminate their coverage. Without passing on the merits of **the** underlying charge, PERB can, if the charge is sustained, fashion an order sufficient to remedy the financial loss suffered by the affected employees.

As to the prospective deductions for dependent coverage, the Association provided no evidence concerning whether dependent coverage had begun, what the deductions would constitute, or whether District employees would be able to afford the deductions.

MUTA has thus failed to demonstrate to the Board the probability that the employees will suffer irreparable harm or that PERB's normal processes and remedies would prove to be inadequate.

ORDER

On the basis of the foregoing Decision, the request for injunctive relief, supporting affidavits and the attached unfair practice charge before it, the Public Employment

³San Ysidro School District (.8/8/78) PERB Order No. IR-4; Weingard v. Atlantic Savings & Loan Association (1970) 1 Cal.3d 806,

Relations Board denies the request by the Marysville Unified Teachers Association for injunctive relief against the Marysville Joint Unified School District.

By: Harry Gluck, Chairperson Jerilou Cossack Twohey, Member
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