STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SEIU LOCAL 1021, Charging Party, v. SONOMA COUNTY OFFICE OF EDUCATION, Respondent.	Case No. SF-CE-2813-E PERB Decision No. 2160 February 1, 2011

Appearances: Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for SEIU Local 1021; School and College Legal Services of California by Margaret M. Merchat, General Counsel, for Sonoma County Office of Education.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by SEIU Local 1021 (SEIU) of a Board agent's dismissal of its unfair practice charge. The charge alleged that the Sonoma County Office of Education (SCOE) violated the Educational Employment Relations Act (EERA)[1] when it deducted from employees' paychecks the amount of a health benefits premium increase. The Board agent dismissed the charge for failure to state a prima facie case of unlawful unilateral change.

The Board has reviewed the dismissal and the record in light of SEIU's appeal, SCOE's response, and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

BACKGROUND

SEIU and SCOE were parties to a collective bargaining agreement (CBA) effective July 1, 2004 through June 30, 2009. Article X, Benefits, of the CBA provided, in relevant part:

[1] EERA is codified at Government Code section 3540 et seq.

1. Health Insurance;

a. Active Full-Time and 3/4 Time Employees: Effective July 1, 2008 all active, full-time and 3/4 time bargaining unit employees will be provided access to Health Insurance coverage through their choice of the following providers:

(1) Blue Shield
(2) Kaiser Health Plan

Chiropractic care coverage is included under Kaiser and Blue Shield health plans.

For fiscal year 2005-2006, for employees hired prior to July 1, 2005, the County Office shall pay the full cost of Kaiser Hi Option for employee and eligible dependents for those employees working thirty (30) hours or more per week. For the fiscal year 2005-2006 SCOE will contribute the same amount as was contributed in 2004-2005 for the cost of Pacificare premiums. Employees are responsible for the premium costs above the SCOE contributions. Employees working less than thirty (30) hours per week will be prorated per Appendix E.

For fiscal year 2006-2007, for employees hired prior to July 1, 2005, the County Office will make the following contributions:

1. 100% of the premium for the least expensive HMO for employee and eligible dependents.
2. For plans costing more than the least expensive HMO, the County office will contribute the 2004-2005 SCOE contribution for PacifiCare Hi Option or the 2006-07 Kaiser rate, whichever is higher.

Effective September 1, 2007, for the 2007-08 fiscal year, SCOE will contribute towards health benefits for full time employees at 100% of the cost of Kaiser High Option at the 2007-2008 rate at each of the enrollment levels, i.e. employee only, employee plus one and family coverage.

Effective July 1, 2008, for the 2008-09 fiscal year, SCOE will contribute towards health benefits for full time employees at 100% of the cost of Kaiser High Option at the 2008-2009 rate at each of the enrollment levels, i.e. employee only, employee plus one and family coverage.

Employees hired on or after July 1, 2005, who work six (6) hours per day or more but less than eight (8) hours per day, shall be eligible for the least expensive HMO employee only coverage

> paid by SCOE. Employees selecting more expensive coverage shall pay the difference in cost pay [*sic*] payroll deduction. Upon completion of three (3) years of employment, employees shall be provided benefit coverage as provided above.[2]

The CBA expired on July 1, 2009 while the parties were negotiating a successor agreement. During negotiations, SEIU proposed that SCOE pay 100 percent of the cost of health benefits, while SCOE proposed to cap its health benefit contributions at the 2008-2009 rates. The parties had not reached agreement on this issue when Kaiser rates increased on October 1, 2009. For the October and November 2009 pay periods, SCOE deducted from employees' paychecks the premium amount above the 2008-2009 rate.

DISCUSSION

The charge alleged that SCOE made an unlawful unilateral change when it deducted the cost of the premium increase from employees' paychecks. An employer's unilateral change in terms and conditions of employment constitutes a "per se" violation of its duty to bargain in good faith when: (1) the employer breached or altered the parties' written agreement or its own established past practice; (2) such action was taken without giving the other party notice or an opportunity to bargain over the change; (3) the change was not merely an isolated breach of the contract, but amounts to a change in policy (i.e., it has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*Grant Joint Union High School District* (1982) PERB Decision No. 196; *Walnut Valley Unified School District* (1981) PERB Decision No. 160.)

---

[2] A copy of this provision was attached to SCOE's position statement and the Board agent's warning letter quoted part of the provision. SEIU does not dispute the accuracy of the quoted language or the applicability of the provision to this case. Thus, PERB may consider the CBA language provided by SCOE in determining whether the charge stated a prima facie case. (*Kings In-Home Supportive Services Public Authority* (2009) PERB Decision No. 2009-M; *Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

When a CBA expires, the employer is obligated to maintain the status quo as established by the expired agreement pending the completion of negotiations. (*Temple City Unified School District* (1990) PERB Decision No. 841.) SEIU contends that the status quo at the time the CBA expired was that SCOE would pay 100 percent of the cost of health benefits for full time employees. Based on the plain language of CBA Article X, we disagree.

Traditional rules of contract law guide interpretation of a CBA. (*Grossmont Union High School District* (1983) PERB Decision No. 313.) When contractual language is clear and unambiguous, it is unnecessary to go beyond the plain language of the contract to ascertain its meaning. (*Marysville Joint Unified School District* (1983) PERB Decision No. 314.) When a charge alleges facts showing that contract language may be susceptible to an interpretation that varies from its ordinary meaning, it is proper to allow the parties to present evidence in support of their interpretations at a hearing. (*Glendora Unified School District* (1991) PERB Decision No. 876; *Saddleback Community College District* (1984) PERB Decision No. 433.)

The last paragraph of CBA Article X, Section 1 states that "for the 2008-09 fiscal year, SCOE will contribute towards health benefits for full time employees at 100% of the cost of Kaiser High Option at the 2008-2009 rate." Giving the contract terms their ordinary meaning, we find that Article X established the 2008-2009 Kaiser rate as the status quo at the time the CBA expired. Thus, SCOE was not required to pay any subsequent increases in health benefit premiums unless and until the parties agreed it would do so.

SEIU contends on appeal that the above-quoted language shows the parties' intent that SCOE would pay any rate increases. However, SEIU presented no factual allegations to support its interpretation of the contract language, such as bargaining history or the parties' past practice. Absent such allegations, we do not find that Article X is susceptible to SEIU's proffered interpretation.

Additionally, SEIU's allegations that during negotiations for a successor CBA it proposed that SCOE pay for any rate increases while SCOE proposed capping contributions at the 2008-2009 rate do not establish that SEIU's interpretation of Article X is correct. SEIU does not allege facts showing that SCOE proposed a change from the status quo. Thus, the alleged proposals do not aid in interpreting Article X of the CBA.

Finally, we note that this case is distinguishable from those in which an employer's failure to pay an increase in health benefit premiums during negotiations constituted an unlawful unilateral change. In *Temple City Unified School District*, *supra*, the parties' expired contract stated, in relevant part: "The District agrees to provide each eligible unit member with fully paid health and welfare benefits during the term of this Agreement." The Board held that this language obligated the employer to maintain a specific level of benefits. Thus, the employer's failure to pay an increase in health benefit premiums during negotiations constituted an unlawful unilateral change.

The court reached a similar conclusion in *San Joaquin County Employees Association v. City of Stockton* (1984) 161 Cal.App.3d 813. In that case, the parties' contract provided, in relevant part: "For the term of this Memorandum of Understanding, the City shall pay premiums that are necessary and sufficient to provide substantially equivalent benefits for hospitalization, medical, dental/orthodontic and vision benefits that were in effect January 1, 1981." (*Id.* at p. 817.) The court found that the contract required the employer "to provide a certain level of insurance benefits, not to make a specific amount of premium contributions." (*Id.* at p. 819.) Accordingly, the employer made an unlawful unilateral change when it deducted premium increases from employees' paychecks during negotiations. (*Ibid.*)

Unlike the contracts in the above cases, Article X of the CBA does not obligate SCOE to provide a certain level of benefits. Instead, it explicitly sets out SCOE's contribution

amount during particular years of the CBA. Indeed, the entirety of Article X shows that SCOE did not always pay 100 percent of the cost of health benefits because SCOE's contribution was stated as a percentage of a particular health plan's rate.

In sum, we conclude that CBA Article X established the 2008-2009 Kaiser High Option rate as the status quo for SCOE's health benefits contribution at the time the CBA expired. Thus, SCOE's deduction of the October 1, 2009 increase in premiums from employees' paychecks in October and November 2009 was not an unlawful unilateral change.

ORDER

The unfair practice charge in Case No. SF-CE-2813-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Wesley joined in this Decision.