

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



OAKLAND EDUCATION ASSOCIATION,)
CTA/NEA,)
)
Charging Party,) Case No. SF-CE-143
)
v.) PERB Decision No. 126
)
OAKLAND UNIFIED SCHOOL DISTRICT,)
)
Respondent,) April 23, 1980
)
APPELLANT.)
)
_____)

Appearances: Francis R. Giambroni, Attorney (White, Giambroni, and Walters) for Oakland Education Association, CTA/NEA; Michael S. Sorgen, Legal Adviser for Oakland Unified School District.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on exceptions filed by the Oakland Unified School District (hereafter District) to the attached hearing officer's proposed decision. The hearing officer found that the District's unilateral change in the administrator of its health insurance plan from Blue Cross to Western Administration Company resulted in a change in negotiable employee benefits so that the District's failure to negotiate with the Oakland Education Association (hereafter Association), the exclusive representative of the District's certificated employees, constituted a violation of section 3543.5(c) of the

Educational Employment Relations Act.¹ He also found that a collective negotiations agreement between the parties which was reached after the hearing in the present case did not render this case moot. The District has excepted to both findings. For the reasons that follow, the Board affirms the hearing officer's findings, and further finds that the District's action violated sections 3543.5(a) and (b).²

¹The Educational Employment Relations Act (hereafter EERA) is codified at Government Code section 3540 et seq. Unless otherwise noted, all subsequent statutory references are to the Government Code.

Section 3543.5(c) provides:

It shall be unlawful for a public school employer to:

.....

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

²Sections 3543.5(a) and (b) provide:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

Based on previous Board decisions, the hearing officer dismissed those parts of the Association's unfair practice charge alleging that the District's unilateral change violated

FACTS

The procedural history and findings of fact stated in the hearing officer's proposed decision are free from prejudicial error and are adopted as the findings of the Board itself.

DISCUSSION

Mootness

After the original unfair practice hearing in this case, the parties entered into two agreements covering terms and conditions of employment for regular certificated employees and children's center certificated employees.

The District argues that the contract did not expressly reserve the Association's rights with respect to the change in health plan administrators, and that, in the absence of such an express reservation of rights, the agreements show that the

sections 3543.5(a) and (b). We would normally not consider this issue because the Association did not file exceptions to this part of the hearing officer's proposed decision. But the cases the hearing officer relied on have since been overruled, and the Association had no opportunity to file exceptions in light of the Board's current decisional law. In San Francisco Community College District (10/12/79) PERB Decision No. 105, the majority of the Board found that a unilateral change in violation of section 3543.5(c) necessarily constitutes a concurrent interference with employees' representational rights in violation of section 3543.5(a). It further found that such a unilateral change also denies an exclusive representative its right to represent unit members in their employment relationship with the public school employer in violation of section 3543.5(b). The majority therefore finds it appropriate to overrule the hearing officer's dismissal with respect to section 3543.5(a) and (b). Member Gonzales disagrees with this decision of the majority, and refers to his dissent in San Francisco, supra.

parties reached a settlement on the health plan issues, rendering the unfair practice case moot.³

We disagree. The Board addressed this issue in Amador Valley Joint Union High School District (10/2/78) PERB Decision No. 74, in which it found that a collective negotiations agreement between the parties did not settle or moot charges of unlawful conduct during the negotiations process.

A case is moot when no material questions remain to be answered. In this case, the agreement between the parties did

³The Association initially proposed to maintain the previously existing health plan agreement: "Full-time teachers and their eligible dependents are covered by one of two available group health plans at no cost to the employee. Each employee may select coverage for himself and eligible dependents under a Blue Cross or Kaiser Foundation health plan." The agreement negotiated by the parties provides: "Full-time teachers and their eligible dependents are covered by one of two available group health plans, one of which is Kaiser Foundation Health Plan."

The agreement also provides:

If any item in the initial proposal of the Association as presented to the employer on or about June, 1977, is determined by [PERB] to be within the scope of representation, the District agrees to negotiate these subjects upon request of the organization. The District will meet and negotiate within 15 days of such request.

The hearing officer found that this provision covered the health plan administrator issue. The District argues that this language was never intended to apply to that issue. Our finding that the agreements do not render the present unfair practice charge moot does not rest on this contract provision; therefore we need not decide whether the parties intended the provision to apply to the health plan administrator issue.

not settle the issue of whether the District's unilateral change of health plan administrators during negotiations was unlawful. Nor was there any clear and unmistakable language indicating that the Association waived its right to continue to press its charge against the District. Thus the agreements did not render this case moot.

Unilateral Change

It is settled law under the EERA that an employer, absent compelling justification, cannot change matters within the scope of representation without providing the exclusive representative of the employees affected by the change with notice and an opportunity to negotiate. San Francisco Community College District (10/12/79) PERB Decision No. 105; San Mateo County Community College District (6/8/79) PERB Decision No. 94; Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51; cf. NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177]. The question in this case is whether the District's action in changing the administrator and claims processor of its self-insured health plan⁴ resulted in a change in a matter within the scope of representation under section 3543.2. This section provides, in pertinent part:

⁴Before July 5, 1975, District employees were insured by Blue Cross. After that date, Blue Cross no longer provided insurance coverage, but administered the District's self-insured health plan, which provided benefits identical to those provided by the Blue Cross plan.

The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200,⁵
[Emphasis added.]

The District argues that its change in administrators was not negotiable since the change did not affect the benefits available to employees. We disagree. While the change did not affect the coverage provided by the insurance plan, Blue Cross administration of the plan resulted in certain benefits which were lost when the District changed to Western Administration. Because these benefits are linked to the identity of the administrator, the District's change in administrators is negotiable in this case.

One result of the change in administrators is that employees no longer have a Blue Cross identification card, which is nationally recognized and provides guaranteed payment for admission to any of Blue Cross' 7,000 member hospitals

⁵Section 53200(d) provides:

"Health and welfare benefit" means any one or more of the following: hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or a service basis, and includes group life insurance as defined in subdivision (b) of this section.

through Blue Cross' inter-plan bank system. Western Administration is part of no similar system outside of Northern California. Possession of a Blue Cross card virtually guarantees hospital admission with no problems. Possession of a card issued by the District may allow admission to out-of-state hospitals but provides no assurance that the admission will be quick and relatively problem free. This loss of a nationally recognized health plan card is a change in employee benefits caused by the District's action.

A second result of the change in administrators is that employees who terminate their employment with the District are no longer able to convert to Blue Cross health insurance. Under Western Administration, there is no written conversion privilege, although the District stated that former employees would remain covered, at their own expense, by the District's plan until a carrier for individual insurance policies could be found. The loss of a conversion privilege to Blue Cross, a nationally recognized insurance carrier, is a change in benefits, particularly for employees who may leave the District's employ and move to other parts of the country.⁶

⁶Future benefits, even after separation from employment, of current employees are negotiable as part of their overall benefits package. See, e.g., Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co. (1971) 404 U.S. 157 [78 LRRM 2974], where the United States Supreme Court, while finding that an employer had no duty to negotiate changes in the benefits of already retired employees, stated that the future retirement

Thus, in this case, certain health benefits were reduced by the change in the health plan administrator, so that the identity of the administrator is negotiable.⁷ Therefore, the District violated section 3543.5(c) when it refused to negotiate this issue with the Association.

REMEDY

Section 3541.5(c)⁸ gives PERB broad powers to remedy unfair practices. In this case, the District violated

benefits of active workers are a well-established subject of bargaining.

⁷In cases arising under the National Labor Relations Act (hereafter NLRA) (29 U.S.C. sec. 151 et seq.), courts have found that a change in the identity of the carrier or administrator of a health insurance plan is negotiable if that change affects the benefits received by employees. E.g., Keystone Consolidated Industries v. NLRB (7th Cir. 1979) 606 F.2d 171 [102 LRRM 2664]; Oil Workers (OCAW) v. NLRB (D.C. Cir. 1976) 547 F.2d 575 [92 LRRM 3059]; Connecticut Light & Power Co. v. NLRB (2d Cir. 1973) 476 F.2d 1079 [82 LRRM 3121]; Bastian-Blessing v. NLRB (6th Cir. 1973) 474 F.2d 49 [82 LRRM 2689]. The Michigan Court of Appeals, following NLRA cases, found the identity of an insurance carrier to be a mandatory subject of bargaining under the Michigan Public Employment Relations Statute (Mich. Comp. Laws sec. 423.201 et seq.) when the identity of the carrier has an effect on the benefits. Roseville v. Firefighters (1974) 220 N.W.2d 147 [88 LRRM 2315].

⁸Section 3541.5(c) provides:

The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

sections 3543.5(a), (b), and (c) by changing its health plan administrator from Blue Cross to Western Administration Company without first meeting and negotiating with the Association. It would therefore be appropriate to order the District to return to the status quo by reinstating Blue Cross as the administrator of its health plan. However, since the District may have certain contractual obligations to Western Administration Company, we order the District either (1) to terminate any agreement with Western Administration Company as soon as possible under the terms of such agreement and to reinstate Blue Cross as its administrator at that time; or (2) to negotiate with Western Administration Company a modification in the District's existing agreement with that company which would provide the benefits lost when the District unilaterally changed administrators. Such a modification must take effect before or at the time when the District would be able to terminate its agreement with Western Administration Company. If, before the District is able to terminate or modify its contract with Western Administration Company, the parties negotiate and reach an agreement on this issue, such agreement, reduced to writing, may be submitted to the regional director as proof of compliance with this portion of our order.

We also order the District to reimburse its employees, upon proof, for any directly related, unrecoverable out-of-pocket expenses they incurred because Blue Cross no longer administers

their health plan. In the event that the parties are unable to settle among themselves questions relating to reimbursement of such expenses, PERB retains jurisdiction over this matter and upon the Association's request will conduct an additional hearing limited to the proof of such expenses. Employees must submit claims for reimbursement of expenses incurred to date within three months of the date of this decision. In the future, such claims must be submitted within three months after the expenses are incurred. In no event may claims for expenses be submitted later than three months after the date when the District reinstates Blue Cross as administrator or modifies its agreement with Western Administration to provide the lost benefits, or the Association and the District reach an agreement on another health plan administrator, whichever occurs first.

PERB finds that personal delivery to current employees and employees who have left the District's employ since the District's change from Blue Cross to Western Administration Company of the order and notice of violation is necessary to effectuate the purposes and policies of the EERA. (See Santa Monica Community College District (9/21/79) PERB Decision No. 103.) It is possible that some employees who may have been forced to incur expenses because of the District's actions are no longer employed by the District. These former employees must be notified of their opportunity to assert a claim

pursuant to our decision in this case. Personal delivery to current employees will facilitate filing claims by those employees who have incurred compensable expenses.

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, the Public Employment Relations Board ORDERS that the Oakland Unified School District shall:

(1) Cease and desist from failing and refusing to meet and negotiate in good faith with the Oakland Education Association by unilaterally changing insurance administrators when such action changes matters within the scope of representation as defined by section 3543.2.

(2) Cease and desist from denying the Association its right to represent unit members by failing and refusing to meet and negotiate about changing insurance administrators when such action changes matters within the scope of representation.

(3) Cease and desist from interfering with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing insurance administrators when such action changes matters within the scope of representation without meeting and negotiating with the exclusive representative.

(4) Take the following affirmative action which is necessary to effectuate the policies of the Educational Employment Relations Act:

(a) Either (1) reinstate Blue Cross as the administrator of the health insurance plan as soon as the District is able to terminate any contract it may have with Western Administration Company; or (2) negotiate a modification in the District's agreement with Western Administration Company which will provide the benefits lost by the District's unilateral change and which will take effect no later than the District would be able to terminate its agreement with Western Administration Company under option (1) above.

(b) Upon proof, reimburse employees for directly related, unrecoverable, out-of-pocket expenses incurred because of the District's termination of Blue Cross as the administrator of its health insurance plan.

(c) Distribute a copy of this Order and the attached Notice to each employee, including persons employed on or after November 1, 1977, who are no longer employed by the District, with a cover letter notifying employees of the reimbursement procedures.

(d) Post at all school sites, and all other work locations where notices to employees customarily are placed, immediately upon receipt thereof, copies of the notice attached as an appendix hereto. Such posting shall be maintained for a period of 30 consecutive work days from receipt thereof. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the San Francisco Regional Director of the Public Employment Relations Board, in writing, within 20 calendar days from the date of this

Decision, of what steps the District
has taken to comply herewith.

This Order shall become effective immediately upon service
of a true copy thereof on the Oakland Unified School
District.⁹

~~By: Raymond J. Gonzales, Member~~

~~Harry Gluck, (Chairperson~~

Barbara D. Moore, Member

⁹Member Gonzales does not concur with paragraphs (2) and (3) of the Order for the reasons set forth in his dissent in San Francisco Community College District, supra, PERB Decision No. 105. He also does not agree with that portion of paragraph 4(c) that requires the District to distribute copies of the Order and Notice to current employees. While it may be necessary to order the District to mail copies to persons who might have been damaged by the District's action but who are no longer employed by the District so that they may be notified of their potential claim, current employees may be effectively notified through our normal posting remedy. Individual distribution should be reserved for situations in which the employer's unlawful conduct has been so pervasive as to require individual reassurance to employees that their statutory rights are protected. (See, e.g., Boston University (1977) 228 NLRB No. 120 [96 LRRM 1408].) In this case, the employer's unlawful conduct does not warrant such an extraordinary remedy.

Appendix: Notice

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in unfair practice case no. SF-CE-143, in which all parties had the right to participate, it has been found that the Oakland Unified School District violated the Educational Employment Relations Act by taking unilateral action changing the administrator of the employees' health insurance plan without meeting and negotiating with the exclusive representative, the Oakland Education Association, CTA/NEA. It has further been found that this same course of action interfered with Oakland Unified School District employees because of their exercise of rights protected by the Educational Employment Relations Act. As a result of this conduct, we have been ordered to post this notice. We will abide by the following:

- (1) WE WILL NOT unilaterally change insurance administrators when such action changes matters within the scope of representation without providing the exclusive representative with notice and an opportunity to negotiate.
- (2) WE WILL NOT interfere with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing insurance administrators when such action changes matters within the scope of representation without meeting and negotiating with the exclusive representative.
- (3) WE WILL either reinstate Blue Cross as the administrator of the health insurance plan as soon as the District is able to terminate any contract it may have with Western Administration Company; or negotiate a modification in the District's agreement with Western Administration Company which will provide the benefits lost by the District's unilateral change and which will take effect no later than the District would be able to terminate its contract with Western Administration Company under the first option in this paragraph.

(4) WE WILL, upon proof, reimburse employees for directly related, unrecoverable, out-of-pocket expenses incurred because of the District's termination of Blue Cross as the administrator of its health insurance plan. Employees must submit claims for reimbursement of expenses incurred to date within three months of the date of this decision. In the future, such claims must be submitted within three months after the expenses are incurred. In no event may claims for expenses be submitted later than three months after the date when the District complies with paragraph (3) of this Notice.

OAKLAND UNIFIED SCHOOL DISTRICT

By: _____
Superintendent

Dated:

This is an official notice. It must remain posted for 30 consecutive work days from the date of posting and must not be defaced, altered or covered by any material.

only the claims processor for the District's self-insured health plan. The District further alleged that there was no change in benefits or carrier by reason of its change to a different claims processor, and therefore the change was non-negotiable.

The formal hearing was held before this hearing officer on November 7 and 8, 1977. On the District's motion, the record was reopened on March 8, 1978 to take evidence on the issue raised by the District of whether the charge was mooted by the collective negotiations agreement entered into by the parties after the November 7, 1977 hearing.

ISSUES

1. Is the unfair practice charge mooted by the parties' subsequent collective negotiations agreement?
2. Did the District unilaterally change the claims processor for its employee health plan in violation of Government Code section 3543.5(a), (b), and (c)?¹

FINDINGS OF FACT

1. Collective Negotiations Agreement.

In January 1978, after the original hearing in this matter, the parties entered into two collective negotiations agreements:

¹All references are to the Government Code unless otherwise specified.

one for "Unit A", the other for "Unit B" (children's center employees).

Article 1, section 5 of both agreements provides as follows:

5. If any item in the initial proposal of the Association as presented to the employer on or about June, 1977, is determined by the California Education Employment Relations Board (EERB) to be within the scope of representation, the District agrees to negotiate these subjects upon request of the organization. The District will meet and negotiate within 15 days of such request.

Article 1, section 1 provides in pertinent part that the agreement "constitutes the entire agreement between the parties"

In December 1977, Jan Mendelsohn, the Association president and a member of its negotiating team, discussed proposed Article 1, section 5 with James Wilson, the District coordinator of staff relations and head of the District's negotiating team.

Ms. Mendelsohn asked Mr. Wilson whether the "Blue Cross issue" would come under Article 1, section 5. Mr. Wilson said "yes."

The health plan provision of the collective negotiations agreements specifically mentions only the Kaiser plan as one of the two available health plans for employees. The Kaiser Plan was mentioned as a result of two further conversations Ms. Mendelsohn had with Mr. Wilson in December, 1977. Previously, the draft health plan proposal did not mention either the Kaiser or Blue Cross plan. Ms. Mendelsohn said to Mr. Wilson that she knew that the Blue Cross issue was the subject of this unfair practice

charge, but why could not the Kaiser plan be specifically included. After further discussions, Mr. Wilson agreed to include the Kaiser plan in the agreements.

In October, 1977, the District prepared an unfair practice charge, which was never filed, to clarify disputed scope issues between the parties. By letter to the District dated December 28, 1977, the Association listed items in its negotiations proposals which the District considered to be outside of scope. Neither this letter nor the District's proposed unfair practice charge included the Blue Cross issue.

After the Association ratified the Unit A agreement, the District, before its ratification, moved one item from one provision of the agreement to another. By letter dated January 23, 1978, the Association "reserve[d] the right to take additional appropriate action to court or before the Educational Employee (sic) Relations Board to ratify and/or clarify the unilateral amendment"

When the Unit B agreement covering children's center employees was ratified shortly thereafter, the Association similarly reserved its rights with respect to the unilateral amendment and further reserved its right to pursue this unfair practice charge. The reason for specifically reserving the unfair practice charge was that in the period between ratification of the Unit A and the Unit B agreements, the District had raised the defense that the Unit A agreement mooted the unfair practice charge.

2. Unilateral Change in the Health Plan Claims Processor.

On July 5, 1975, the District became self-insured with respect to its "Blue Cross" health plan. After that date, Blue Cross was no longer the insurance carrier but was retained on a contract basis to administer the plan and process claims. Other than this change in liability for claims made under the plan, the benefits provided remained exactly the same as when Blue Cross had been the insurance carrier.

On June 14, 1977 the Association presented its initial negotiations proposal to the District.² The proposal included a provision that employees could be covered under either Kaiser or Blue Cross health plans. Although the Association representatives who prepared the proposal were unaware at the time that the District had become self-insured with respect to the Blue Cross plan, the proposal in any event was understood by both parties to mean the plan with the "Blue Cross" benefits.

Beginning July 1977, the District began investigating switching to a claims processor other than Blue Cross. On August 24, 1977, a school board work session was scheduled on the matter. At the work session, as well as previously, the Association protested the proposed switch in claims processors and stated that it was subject to negotiations between the parties.

²The Association is the exclusive representative of two certificated employee units in the District: Unit A and Unit B, the latter including children's center employees. Its initial negotiations proposal included matters in common to both negotiating units.

At all times, the District refused to negotiate the change in the health plan claims processor. On September 22, 1977, the District retained Western Administration Company as the administrator/claims processor for the District's self-insured health plan for a one year period effective November 1, 1977. At the time of the hearing, the District and Western Administration Company had not yet entered into a written contract.

The District expected to save about \$140,000 a year by the change from Blue Cross to Western Administration Company. To serve its new account, Western Administration hired new personnel, purchased new equipment and incurred other expenses.

With Western Administration as administrator and claims processor, the benefits under the District's self-insured health plan remain exactly the same as they had been with Blue Cross. In "gray areas" involving payment of claims, claims will be paid in accordance with the past practices under Blue Cross. As under Blue Cross, disputes will continue to be referred to a local medical society for resolution.

The bid specifications which will form the basis for the contract with Western Administration provide that rejected and doubtful claims are to be referred to the District for decision. However, the purpose of this provision is for the District to provide Western Administration with information concerning how similar claims were handled under Blue Cross so that similar claims will be handled in the same manner. The District itself will not make claims eligibility determinations.

The bid specifications also provide that claims files are the District's property, whereas they previously belonged to Blue Cross. However, the sole purpose of this provision is to allow the claims files to be transferred to a new claims processor in the future. The District itself does not intend to take physical possession of the claims files.

Although not specifically provided for in the contract between the District and Blue Cross, under Blue Cross an employee who terminated his District employment could obtain Blue Cross conversion coverage without proof of insurability. Under Western Administration, the District has not yet added a conversion plan. However, until it finds a carrier for a conversion plan, it will allow the employee to continue in the District's self-insured health plan.

Under Blue Cross administration, the employees in the health plan received a regular Blue Cross identification card which has national recognition and acceptability. After November 1, 1977, under Western Administration, the employees received an identification card issued by the District itself. Blue Cross also has an "Inter-Plan Service Benefit Bank" system whereby payment for admission to one of its 7,000 member hospitals in other areas of the country is guaranteed and paid directly by the local Blue Cross franchise, which then bills Blue Cross of Northern California. Under Western Administration, the District's health plan belongs to the Hospital Council of Northern California, a group hospital admission program. Under this

program, if a hospital in the area verifies coverage, payment is guaranteed and the hospital will send the bill directly to Western Administration and will not require a down payment from the patient. But outside of northern California, there is no such requirement that a hospital bill Western Administration directly. The hospital could, at its discretion, require full payment from the employee who then would have to submit the paid bill to Western Administration for reimbursement.

During summer vacations, teachers as a group travel outside of northern California quite often.

Blue Cross is regulated by the State Insurance Commissioner in such areas as contracts, certificates, brochures, advertising and consumer protection. Neither Western Administration nor the District is regulated; however, the State Corporations Commissioner presently is considering whether the District must register its health plan under the Knox-Keene Health Care Service Plan Act of 1975 (Health and Safety Code section 1340 et seq.).

The District pays the full cost of the health plan for employees working three-fourths time or more, and prorates the cost for those employees who work less. There is no evidence in the record as to the difference, if any, charged to these employees under Blue Cross and Western Administration.

DISCUSSION AND CONCLUSIONS OF LAW

1. The negotiations agreements do not moot this unfair practice charge.

The District argues that this unfair practice charge is moot in that the parties have entered into collective negotiations agreements which do not specifically reserve the issue herein. To support its position, the District points to the Association's specific reservations, both before and after ratification of the agreements, which reservations do not include the health plan claims processor issue.

However, the plain meaning of Article 1, section 5 of the agreements, as set forth at page 2 in the Findings of Fact, appears to include this issue. Both Ms. Mendelsohn and Mr. Wilson, respectively the Association and the District negotiators, testified that Ms. Mendelsohn asked him whether Article 1, section 5 included the present unfair practice charge. While Mr. Wilson testified that he did not recall replying to this question, Ms. Mendelsohn said Mr. Wilson replied "yes." Because Ms. Mendelsohn's recollection of related matters was much better (she remembered times and places whereas Mr. Wilson could not), the hearing officer credits her version of this conversation. Furthermore, the Association specifically reserved this issue upon ratification of the Unit B agreement.

Therefore, under the circumstances, it would be unjust to find that the parties' negotiations agreements mooted the unfair practice charge.

2. The change in administrator and claims processor of the District's self-insured health plan affected the health plan benefits and therefore is negotiable.

It is clear that the benefits of the District's group health plan are within the scope of representation under section 3543.2. However, in this case, the benefits themselves remain the same, and the District remains its own carrier of its self-insured plan.³ The sole, unilateral change by the District was in the administrator and claims processor of the health plan.

There is a strong presumption that unilateral action by an employer to change benefits under negotiation is per se an unlawful refusal to negotiate in good faith. Absent compelling justification, an employer is obligated to maintain the status quo and not change existing working conditions or benefits pending negotiation of a collective negotiations agreement. NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177]; Borden, Inc. (1972) 196 NLRB 1170 [80 LRRM 1240, 1244].

Decisions under the Labor Management Relations Act, as amended, which serve as useful precedent on similar issues arising under the EERA,⁴ hold that administration of an employee health plan is one of the negotiable elements of an employee health plan.

³The change to self-insurance in July, 1975 is not at issue here.

⁴Firefighters v. City of Vallejo (1974) 12 C.3d 608, 615-17, [116 Cal. Rptr. 507]; Sweetwater Union School District (11/23/76) EERB Decision No. 4.

". . . [T]here is unanimity on the proposition that benefits, coverage, and administration of a health plan are mandatory bargaining items." (emphasis added; Ackerman-Chillingworth v. Pacific Electrical Contractors Assn'n. (1975) 405 F.Supp. 99, 90 LRRM 3244, 3256, citing Bastain-Blessing v. NLRB (6th Cir. 1973) 474 F.2d 49, 82 LRRM 2689; Conn. Light and Power Co. v. NLRB (2d Cir. 1973) 476 F.2d 1079, 82 LRRM 3121; Medical Manors, Inc. (1973) 201 NLRB 188, 82 LRRM 1222.)

Thus, if the change in administration from Blue Cross to Western Administration affected the health plan benefits, then the District's unilateral change in claims processors constituted a failure to negotiate in good faith.

In the present case, the hearing officer assigns little, if any, weight to the following factors which the Association argues are changes in health plan administration: referral of claims to the District for advice, ownership of claims files, lack of conversion plan and lack of state regulation. As indicated in the Findings of Fact, none of these factors significantly affects benefits so as to require negotiation since, as a practical matter, present practice will conform to that under Blue Cross.

However, the loss to the employees of the nationally-recognized Blue Cross card and related inter-plan bank system, by themselves, have a substantial effect on employees' health benefits. It is obvious that outside of northern California, because of its wide recognition and acceptability, a Blue Cross card facilitates admission in both member and non-member hospitals as compared to the District's own card. Additionally, when

outside of northern California, for the same reason, an employee with a Blue Cross card is less likely to have to pay a deposit upon admission to a hospital or pay in advance for a visit to a doctor and then seek reimbursement from the health plan.

Thus, the substitution of the District's own identification card for the Blue Cross card directly affects certain of the benefits under the health plan. Since teachers tend to travel outside of northern California during the summer, and since a hospital admission during such vacation travel is likely to be of an emergency nature, the affected benefits assume greater importance. Therefore, the change of claims processor affected health benefits and by making the change unilaterally, the District refused to negotiate in good faith in violation of section 3543.5(c).

The Association also alleges that the District's unilateral action violated section 3543.5(b). Meet and negotiate rights are specifically enforced under subdivision (c). It would be redundant for these same rights to be enforced under subdivision (b). Rather, the legislative purpose for subdivision (b) must have been to enforce other rights guaranteed to exclusive representatives and employee organizations by sections 3543 and 3543.1. Furthermore, having found a violation of subdivision (c), it would serve no useful purpose to find a derivative violation of subdivision (b) since such a finding would not afford additional relief to the Association. See Magnolia School District (6/27/77) EERB Decision No. 19, at 6.

As to the alleged section 3543.5(a) violation, there is no evidence that the District made the unilateral change for the purpose of discriminating against, interfering with, or coercing employees because of their exercise of protected rights. Nor is there evidence that the unilateral action had such natural or probable consequence. See San Dieguito Faculty Association v. San Dieguito Union High School District (9/2/77) EERB Decision No. 22. On the contrary, it is found that the District took the action to save money and attempted, as best as it could, not to change benefits. Under the circumstances, no section 3543.5(a) violation has been proved and this allegation will be dismissed.

REMEDY

In Article 1, section 5 of the parties' negotiations agreements, the parties themselves have agreed to negotiate any items in the Association's initial proposal found to be within the scope of representation by the PERB. This is, of course, an appropriate remedy in a case where the employer has refused to negotiate, and will be ordered as part of the remedy herein.

The Association further requests that the District be ordered to reinstate Blue Cross as the administrator/claims processor of the District's self-insured health plan. However, it is only necessary to require the District to provide the same facilitated

hospital admission and guaranteed payment outside of northern California as were provided under Blue Cross administration.⁵

Western Administration was retained by the District for a one-year period which ends on October 31, 1978. Because the District made the unilateral change for economic reasons (cf. National Terminal Baking Corp. (1971) 190 NLRB 465 [77 LRRM 1339]), apparently with the good faith belief that it was non-negotiable, and because most of the plan benefits and administration remain unchanged, it is determined that an order requiring immediate provision of the disputed items is unwarranted.

Rather, the additional items will not be required to be provided until November, 1, 1978, upon expiration of Western Administration's initial one-year term. This will give the parties an opportunity to negotiate the matter and work out a solution between themselves which accommodates both the Association's negotiating rights and the District's legitimate cost-savings objectives. Such an arrangement effectuates PERB policy. (Cal. Admin. Code, tit. 8, sect. 35001)

If before November 1, 1978 the parties reach a mutually satisfactory agreement after negotiating this matter, such

⁵It very well may be that only Blue Cross can provide the required items, but this supposition need not affect the nature of the Proposed Order herein.

Furthermore, no order is made with respect to doctors' visits outside of northern California for the reason that although lack of a Blue Cross card certainly could make a difference, the health plan's present and previous levels of acceptance with doctors outside of northern California are difficult to quantify and there is insufficient evidence on this point.

agreement, reduced to writing, may be submitted to the Regional Director as proof of compliance with this portion of the Proposed Order in lieu of providing the disputed items.

Finally, the District will be ordered to post copies of the Proposed Order. A posting requirement effectuates the purposes of the EERA in that it informs employees of the disposition of the charge and announces the District's readiness to comply with the ordered remedy.⁶ In Pandol & Sons v. ALRB (1978) 77 Cal.App.3d 822, 827, Cal. Rptr., the court upheld an unfair labor practice remedy under the Agricultural Labor Relations Act⁷ which required the employer to post, mail and read a notice to employees. The mailing and reading are unnecessary here because we are dealing with a public school employer with a relatively stable work force, and which has bulletin boards on which employee notices traditionally are posted.

PROPOSED ORDER

Upon the foregoing findings of fact, conclusions of law and the entire record of this case, and pursuant to Government Code section 3541.5(c), it is hereby ordered as follows:

⁶Posting has been held to effectuate the purposes of the LMRA, as amended. Pennsylvania Greyhound Lines, Inc. v. NLRB, (1935) 1 NLRB 1, [1 LRRM 303], enforced (1938) 393 U.S. 261 [2 LRRM 600]; NLRB v. Empress Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

⁷Labor Code section 1140 et seq.

The Oakland Unified School District, its governing board, superintendent and other representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally taking action on matters affecting items within the scope of representation without meeting and negotiating upon request with the Oakland Education Association.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Upon request, meet and negotiate with the Association with regard to facilitated admission to, and guaranteed payment for, hospital services outside of northern California.

2. If the parties do not reach written agreement on the above matter by November 1, 1978, the District shall provide the same facilitated admission to, and guaranteed payment for, hospital services outside of northern California as were provided under the previous Blue Cross administration of the District's self-insured health plan.

3. Prepare and post a copy of this order until November 1, 1978 or until written agreement is reached with the Association on this matter, whichever is sooner, at its headquarters office and in each school at a conspicuous location where notices to certificated employees are customarily posted.

4. At the end of the posting period, notify the San Francisco Regional Director of the action taken to comply with this order.

IT IS FURTHER ORDERED that the unfair practice charge is DISMISSED with respect to the allegations that the District violated Government Code section 3543.5(a) and (b) by its unilateral change in the claims processor of its self-insured employees health plan.

Pursuant to California Administrative Code, title 8, section 32305, this Proposed Decision and Order shall become final on June 9, 1978, unless a party files a timely statement of exceptions and supporting brief within twenty (20) calendar days following the date of service of this decision. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, sections 32300 and 32305 (as amended).

Dated: May 17, 1978

GERALD A. BECKER
Hearing Officer