

IN THE SUPERIOE COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

* * * * *

PUBLIC EMPLOYMENT RELATIONS BOARD,

Plaintiff,

v.

VINELAND ELEMENTARY SCHOOL DISTRICT BOARD
OF TRUSTEES, ET AL.,,

Defendants.

No. 210424

ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION

This suit was brought by the Public Employment Relations Board (PERB) against the Vineland Elementary School District Board of Trustees ("District"), its individual members, and Mr. Glen Worrell in his capacity as the superintendent of the Vineland School Distrat. The action seeks against each defendant injunctive relief under the Educational Employment Relations Act ("Act") found at Government Code sections 3450, et seq. A temporary restraining order issued ex parte on April 20, 1990. By stipulation between PERB and the District, the hearing on PERB's application for injunctive relief was set and heard on May 10, 1990.

In support of the relief requested, PERB offered its Complaint, several declarations and points and authorities. Declarations were attached to and incorporated into the complaint. Other exhibits included copies of reported opinions and select portions of the Act.

The District answered, supporting its opposition with counter-declarations and points and authorities. It additionally brought a motion to strike which attacked the Complaint's exhibits and PERB's joinder of the individually named defendants. The District also sought judicial notice o a declaration and a written argument it had previously filed before the Board. PERB subsequently indicated it had no objection to the taking of judicial notice and notice was accordingly taken.

STATEMENT OF FACTS

Since approximately May, 1976, the Vineland Teachers Association ("Association") has been recognized by the District as the exclusive representative for purposes of collective bargaining. In early 1989, negotiations between the District and the Association toward a contract for the 1990-1991 school year had begun. In mid-April, 1989, the Association submitted a proposal to the District which included health care benefits. PERB alleges and the District admits that in June, 1989, the District submitted its initial bargaining proposals to the Association. This included a provision for health and welfare benefits, including an annual District contribution of 83,750.00 for medical, dental and vision insurance for the 1989-1990 fiscal year. The District had paid \$2,826.00 per bargaining unit member per year for the coverage period. Agreement was not reached.

On or about July 20, 1989, the District was informed by its health insurance carrier that premiums for coverage would increase. The District felt it could not absorb the additional payments. Accordingly, on August 17, 1989, Mr. Tony Leonis, the District's designated representative for all matters relating to collective bargaining with the exclusive representatives of the certificated and classified bargaining unit, orally informed the Association that "Jill we do not , reach an agreement and we are going to exceed the District's currently required contribution of \$2,826.00, the District would have to require that employees pay the difference." The Association considered this and other similar comments to be "an idle threat." Negotiations concerning health care coverage and other issues continued.

On March 26, 1990, after the dispute was certified for factfinding, Mr. Leonis orally informed the Association the District would deduct \$503.44 from the pay warrant of each bargaining unit member. The purpose of the deduction was to cover the difference between the increased premium and the amount the District had previously paid. The deductions would continue until the difference, an amount totaling \$1,510.32, was paid.

In a letter dated March 27, 1990 to Mr. Glen Worrell, Mr. Gary Randall, the Association's President, protested what he characterized as the "threatened action of March 26, 1990 . . . to deduct money from bargaining unit members' paychecks toward the payment of fringe benefit costs [.]" In a letter dated March 27, 1990, Mr. Worrell informed each member of the bargaining unit that the annual premium had increased to \$4,336.32, making it "necessary to deduct \$64.88 from your April paycheck which would leave four payments of \$361.36. Since there are no paychecks for July and August, the entire \$1,510.32 must be deducted by June 30, 1990." The letter was placed in the mailbox of each bargaining unit member.

By April 5, 1990, a petition was being circulated among teachers. The petition evidently sought the opportunity to bargain individually with the District, thus sidestepping the Association. According to PERB, the petition was motivated by "the teachers' loss of faith in the Association and the financial hardship the deductions would create.

Two weeks later PERB issued an unfair practice complaint, alleging violations of Government Code sections 3543.5(a), (b) and (c). On April 20, 1990, PERB made application to this court for a temporary restraining order. The order issued. The instant complaint was filed on April 23, 1990.

For the purpose of this order only, the court has concluded that the District had and continues to have the power to deduct funds from bargaining unit members' pay warrants to cover increased premium costs. That power, however, has been rarely exercised. There is no evidence that it was ever used either to pay increased insurance premium costs or during any previous negotiation periods.

ISSUES

PERB argues injunctive relief is required in order to maintain the status quo and thus assure a climate for negotiations as the Act contemplates. The District contends alternatively that PERB's complaint is barred by the Statute of Limitations, that the factual constituents of the status quo differ markedly from that PERB perceives and alleges, and that any injunctive

relief should be narrowly tailored and not require the District to pay any amount greater than the \$2,826.00 it has already paid. The District also contends the motion to strike in all particulars should be granted.

MOTION TO STRIKE

A. EXHIBITS AND DECLARATIONS ATTACHED TO THE COMPLAINT.

The District is correct in its contention that the declarations incorporated into the complaint should be struck. Code of Civil Procedure, section 436(b) permits the court to "[s]trike out all or any part of any pleading not drawn ... in conformity with the laws of this State[.]" "Evidentiary matters may not be included in the complaint, as such does not constitute ultimate facts." (4 Witkin, California Procedure (3d ed. 1985), "Pleading," section 346, pp. 398-400.) The same can be said of the judicial opinions. These, although subject to mandatory judicial notice (Evidence Code, section 451(a)), are not ultimate facts and thus not *properly* part of a complaint. *Accordingly*, the motion to strike, to the extent it is directed to the declarations and exhibits as components to the complaint, is *granted*. :

B. JOINDER OF INDIVIDUAL DEFENDANTS/THE ASSOCIATION AS A REAL PARTY IN INTEREST.

PERB joined the individual members of the District as well as Glen Worrell. The District objected, arguing they were not proper parties. Essentially the District relied upon definitions the Act codifies.

Joinder of defendants is controlled by Code of Civil , Procedure section 379. In part, it provides:

"(a) All persons may be joined in one action as defendants if there is asserted against them:

(1) Any right to relieve jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

(2) A claim, right or interest adverse to them in the property or controversy which is the subject of the action.

(b) It is not necessary that each defendant be interested as to every cause of action or as to all relief prayed for. Judgment may be given against one or more defendants according to their respective liabilities."

The liberality of the rule is confirmed by the cases; party defendants "should normally be joined, and the court, following the equity rule, will usually require them to be joined, in order to carry out the policy of complete determination and avoidance of multiplicity of suits." (Johnson v. Threats (1983) 140 Cal.App.3d 287, 290, quoting Peabody: Seating Co. v. Superior Court (1962) 202 Cal.App.2d 537, 544.) The definitions codified in the Act do not purport to be exhaustive (for example, "status quo" is not defined), nor does the Act address joinder. Under the present circumstances of this case, the court is not satisfied that a complete determination of the controversy can be had absent each named person remaining a party. Accordingly, the motion to strike, to the extent it seeks to eliminate defendants other than the District, is denied without prejudice.

The question of misjoinder suggests a related but distinct issue, namely, whether the Association is a "real party in interest." During the unrecorded discussions leading to the issuance of a temporary restraining order, this court speculated the Association might be a real party. The District, not surprisingly, used the term in its opposition papers, asserted equitable defenses against the Association in its answer, and orally argued on May 10 that in fairness PERB should be considered the equivalent of the Association. The court disagrees.

The general rule is that "[t]he person who has the right to sue under the substantive law is the real party in interest[.]" (4 Witkin, California Procedure (3d ed. 1985), "Pleading," section 103, p. 138.) Under the Act only PERB could bring this action. (Government Code section 3541.3(j).) The Association is not a real party in interest.

With respect to the assertion that PERB and the Association are equitable equals, the District asserts that the Association is the true beneficiary of any injunctive relief and that, since this action sounds in equity, laches or unclean hands should apply. The District offers no authority for this proposition, and there is nothing in the Act which permits such a

construction. Further, PERB is acting in the public interest, without a legitimate concern as to the terms and conditions of any contract that may ultimately result from the negotiations. The Association, on the other hand, is interested in obtaining the best terms for its members. Legally and "equitably" PERB and the Association are distinct entities charged with distinct responsibilities. Neither reason nor policy requires that they be treated as equals, however harmonious their particular interest in the outcome of this litigation might be.

C. THE STATUTE OF LIMITATIONS IS NOT A BAR.

Time limitations on PERB are prescribed by Government Code section 3541.5(a)(I). In full it provides:

"(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:

(1) Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge."

In these actions, "[t]he statute of limitations does not begin to run until the *charging* party has actual or constructive knowledge of the allegedly illegal act." (Los Rios Classified Employees Association v. Los Rios Community College District (May 23, 1988), PERB Decision No. 684, p. 10.) Where the act in question is not yet undertaken, actual or constructive notice appears to hinge on an unequivocal communication of an intent to engage in an unlawful practice. (See e.g., Victor Valley Community College CTA/NEA, Chapter No. 375 v. Victor Valley Community College District (May 2, 1986), PERB Decision No. 570, p. 11.) ["Thus, the limitations period began from the time the Association is deemed to have had knowledge of the District's intent"]; Healdsburg Area Teachers Association, CTA/NEA v. Healdsburg Union High School District (December 20, 1984), PERB Decision No. 467, p. 3 ["In sum, the District indicated its intent ... and clearly advised CTA of its intention"].)

Here the allegedly illegal act is the deduction of the premium differential from the

members' pay warrants. Although Mr. Leonis repeatedly indicated that the District did not believe itself obligated to pay any more than it has and that the members would have to make up the difference, the District did not clearly signal its intention to actually deduct any earlier than March 26, 1990. That action was thus timely filed, as it was commenced within four weeks of that date.

The conclusion that PERB's action is not time-barred, accords with the manifest remedial purposes of the Act. The Act is animated, among other goals, by a legislative desire "to promote the improvement of personnel management and employer-employee relations within the public school systems" (Government Code section 3540) and "to minimize interruptions of educational services." (San Diego Teachers Association v. Superior Court (1979) 24 Cal.3d 1, 11.) Remedial legislation in the labor arena is given a broad construction to achieve its objects. (See e.g., Industrial Welfare Com. v. Superior Court (1980) 27 Cal.3d 690, 702; Skyline Homes, Inc. v. Department of Industrial Relations (1985) 165 Cal.App.3d 239, 250.) The Act's goals, as legislatively set and judicially understood, would be defeated if the District's first communication of its view that it need not pay the increased premium is said to commence the running of the statute. An unconditional intent to deduct, communicated in writing by a superintendent in a position to actualize that intent, is not the same as a negotiator's oral expression that his employer believes it has no obligation to pay.

D. REASONABLE CAUSE AND JUST AND PROPER RELIEF.

The parties agree that "[b]efore injunctive relief may be granted on request of [PERB], the trial court must determine that there exists reasonable cause to believe an unfair labor practice has been committed and that the relief sought is just and proper." (Public Employment Relations Board v. Modesto City Schools District (1982) 136 Cal.App.3d 881, 896.) "[T]raditional equitable considerations come into play" when determining whether the

relief requested is "just and proper." (Id.) The determination of reasonable cause, however, differs.

"In construing whether there is reasonable cause to believe an unfair labor practice has been committed . . . , it has been stated that PERB is required to sustain a minimal burden of proof. 'It need not establish an unfair labor practice has in fact been committed. Rather, the reasonable cause aspect of the two-prong test is met if [PERB's] theory is neither insubstantial nor frivolous.

(Id., at 896) In this regard, "the key question is not whether PERB's theory would eventually prevail" (Id., at 897), but whether there is colorable merit to PERB's claim that an unfair labor practice has occurred.

PERB contends the District's letter of March 26, 1990, constitutes unilateral action, upsetting the status quo and designed, at least in part, to bring economic pressure upon the Association. Although the District appears to have always had the power to make the announced deductions, it is conceded that the power has at best been sporadically exercised. Neither the papers submitted nor argument revealed precisely when such deductions were undertaken. There is evidence, submitted by PERB in the form of declarations, that increases in premiums were not unprecedented, that they had occurred since 1981, and that the District did not, at least since then, deduct amounts to cover any differential. Indeed, despite the increases, the District appears to have continued to provide health care benefits.

A similar situation confronted the court in San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813. There the Employees Association and the City were negotiating when the City's insurer raised premiums. The City informed the employees it would withhold \$19.00 from each paycheck in order to cover" the difference. The Association obtained a Writ requiring the City to pay the premiums until the negotiation process was complete. The appellate court affirmed, holding that the City's withholding evidenced its lack of good faith and altered the status quo.

Although City of Stockton was decided under a different statutory scheme, it shares principles with this case. PERB's theory here is identical, and the circumstances giving rise to the instant complaint are not materially distinguishable from City of Stockton's factual setting. The court accordingly finds that PERB's conclusion that the District's announcement to begin immediate deductions to cover the insurance premium differential constitutes an unfair labor practice pursuant to Government Code sections 3543.5(a), (b) and (c), is neither frivolous nor insubstantial.

The same reasoning leads to the conclusion that injunctive relief is "just and proper." Although the District's Answer denies on information and belief that any hardship would result if the amounts are deducted, it offered no proof in support of the denial. On the other hand, PERB presented declarations indicating that the deduction could be as much as 25% of net take-home pay, and coupled those with proof of incipient disaffection in the Association resulting primarily, if not exclusively, from Superintendent Worrell's letter. The Act's intent to order the negotiating process would be quickly--and here, perhaps, irremediably--defeated if an injunction preserving the status quo does not issue.

E. STATUS QUO.

The court understands the parties to agree that "appropriate" injunctive relief encompasses only those terms necessary to preserve the "status quo." The parties differ fundamentally, however, as to what constitutes the status quo. The District's position is the status quo consists of the District paying only the \$2,826.00 and it has paid. The District asserts it has no obligation to pay any more or, for that matter, to do anything to maintain the level of health care benefits beyond the life of the policy. PERB argues that the status quo includes the District's maintenance of the benefits, without regard to any increased financial burden that may result to the District.

In San Joaquin County Employees Association v. City of Stockton, *supra*, the City argued as the District does.

"City does not dispute its duty to maintain the status quo during negotiations respecting the insurance benefits in question but contends it did so by spending the same amount of money to provide the benefits after expiration of the MOU's."

(161 Cal.App.3d at 818.) The court rejected this contention.

"In the instant case the expired MOU's required City to provide a certain level of insurance benefits, not to make specific amounts of premium contributions. When City unilaterally began to extract monetary contributions from employees to pay the benefits it was obligated to supply under the expired MOU's, it disturbed the status quo."

(*Id.*, at 819.)

City of Stockton's rationale is applicable here. "The status quo has been defined as the last uncontested status which preceded the pending controversy." (Public Employment Relations Board v. Modesto School District, *supra*, 136 Cal.App.3d at 902.) The instant controversy centers on the District's intent to begin deductions at the first available moment. Preceding the expression of that intent, health benefits were provided without deduction. It is this status quo, then, and not that which the District contends, that exists. And it is to it alone that the injunction speaks.

CONCLUSION

In a letter brief dated May 13, 1990, the District marshaled several objections to PERB's proposed orders. Accompanying the letter was an alternative proposed order which included among its terms a requirement that, under certain circumstances, the Association or its members shall reimburse the District for any payments the District makes to maintain the benefits. Although several of the objections are well taken, this particular one the court expressly rejects, as it appears to the court that the reimbursement issue is one properly the subject of the bargaining process.

Having, then, read and considered the complaint, the answer, the moving and opposing

papers, the orders proposed by the parties and all objections thereto, and having heard and considered the oral arguments, the court now finds and

ORDERS

1. That the District's motion to strike the declarations and exhibits attached to and incorporated into PERB's complaint is granted, but in all other respects the motion to strike is denied without prejudice;

2. That PERB's. complaint states a cause of action;

3. That, until such time as impasse procedures are exhausted or a mutual resolution by the District and the Association of their contract negotiations occur, whichever first occurs, the District shall pay all premiums, including any additional premiums or premium differential, necessary to provide and maintain health care benefits equivalent to those provided to each Association member as of March 25, 1990;

4. That, reasonable cause existing therefor, a preliminary injunction shall issue restraining and enjoining the defendants, and each of them, and their agents, employees, representatives, and all others acting in concert with them, or any of them, .from directly or indirectly doing, attempting to . do, causing or attempting to cause, until such time as the impasse procedures are exhausted or a mutual resolution by the District and the Association of their contract negotiations occurs, whichever first occurs, any of the following acts:

(a) Deducting, withholding, or threatening to deduct or withhold, any amount from the salary warrants of any member of the Association, for the purpose of paying any premium due or to become due, in order to maintain and continue health care coverage existing as of March 25, 1990; and

(b) Refusing to participate in good faith in impasse procedures mandated by Government Code sections 3548, et seq.;

5. The District shall forthwith notify each' member of the Association in writing of the terms of this order, and no later than May 31, 1990, shall file with the court, or cause to be so

filed, written proof, in the form of a declaration executed by a defendant or the defendants, attorney of record, that such notification is accomplished; and

6. PERB, as a public agency, shall not be required to post bond.

DATED: May 17, 1990.

STEPHEN P. GILDNER
Judge of the Superior Court