



Maryland State Board of Education

200 W. BALTIMORE STREET / BALTIMORE, MARYLAND 21201-2595 / (410) 767-0467

MEMORANDUM

February 28, 2007

TO: Judith S. Bresler, Esq.
Jack R. Smith
Damon R. Felton, Esq.

FROM: Elizabeth M. Kameen, Principal Counsel
Maryland State Department of Education

SUBJECT: Calvert County Board of Education v. Calvert Education Asso.

Enclosed is a copy of **Opinion No. 07-5** for the above named case which was rendered by the Maryland State Board of Education at its February meeting.

Enclosure

c: State Board File

Affirming Equal Opportunity in Principle and Practice

CALVERT COUNTY BOARD
OF EDUCATION

Appellant

v.

CALVERT EDUCATION ASSOCIATION
AND CALVERT ASSOCIATION OF
EDUCATION SUPPORT STAFF

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 07-5

Declaratory Ruling

The Calvert County Board of Education (local board) has filed a Petition for Declaratory Ruling requesting that the State Board determine whether a provision in the local board's collective bargaining agreements with the Calvert Education Association and the Calvert Association of Educational Support Staff pertains to a legal subject of collective bargaining. Specifically, the local board asks "[w]hether the financial method used by a county board of education to provide benefits promised in a collective bargaining agreement is a lawful subject of bargaining under the statutory and case law developed in this area." (See Petition). The local board asserts that the provision concerns a matter precluded from negotiation by statute, thus rendering it an illegal subject of collective bargaining. On the other hand, the Unions maintain that, because the provision relates to wages and the resulting benefit of those wages, it is a mandatory subject of collective bargaining. This Board heard oral argument on this matter on January 27, 2007.

FACTUAL BACKGROUND¹

The local board provides health insurance for its employees through a self-insurance plan administered by Blue Cross-Blue Shield CareFirst. (See Petition Attachment A, Agreement between local board and CareFirst). Health insurance is a fringe benefit which is part of the local board's Collective Bargaining Agreements (Agreements) with the Calvert Education Association ("CEA"), representing professional employees, and the Calvert Association of Educational Support Staff ("CAESS")(collectively referred to as the "Unions"), representing non-certificated employees. (See Petition Attachments E and F, Agreements). The local board shares the cost of premiums for employees participating in the health insurance plans, including dental and vision plans. (See Petition Attachment D).

In 1999, the Agreement between the local school system and Blue Cross-Blue Shield CareFirst established a Rate Stabilization Reserve Fund (RSRF). Under the terms of that Agreement, the RSRF is "an interest bearing 'reserve' which may be used to offset deficits and subscription charge payments." (Petition, Ex. A at 2). The agreement also describes how the reserve funds will be financed. It states, in full:

Financial statements will be provided on a quarterly basis showing interest credited and the balance in the *reserve fund*.

1. Financing the *reserve fund*:
 - a. the *sponsor* may pre-fund the *reserve fund*; and or,
 - b. CareFirst will credit *surplus* in excess of the *deficit carried-forward* to the *reserve fund* at the discretion of the *sponsor*, and or,
 - c. the *sponsor* may pay more than the *subscription charges* due, the excess of

¹The parties essentially agree to this rendition of the facts in this case.

which shall fund the *reserve fund*.

2. Interest:
 - a. interest calculation: interest on the minimum balance on deposit in the *reserve fund* will be calculated monthly.
 - b. interest rate: the average bond equivalent yield auction sales for the 3 month Treasury bill calculated monthly.
 - c. interest frequency: interest will be credited to the *reserve fund* on a quarterly basis and become part of the settlement procedure of this *contract*.

If *subscription charges* increase upon renewal at the end of the *contract year*, the sponsor, upon written request to *CareFirst*, can use the *reserve fund* to offset such increase to the *subscription charges*.

The *reserve fund*, or any portion thereof, is refundable to the *sponsor* provided *CareFirst* receives written notice at least 30 days prior to withdrawal of the *reserve fund*. The amount refundable shall not exceed the balance on hand as of the most recent financials statement.

(Petition, Ex. A. at 4-5).

According to the local board, that provision means that any year in which insurance claims exceed the monies available from premium payments, the money in the RSRF is available to pay off or reduce the deficit instead of passing that entire cost on to the participating employees by increasing premiums. Money in the RSRF comes from two sources: (a) allocations from the school system's general budget, and (2) "settlements" from *CareFirst* based on a formula that calculates the health insurance's "experience" with (or use of) school system plans. (See Petition Attachments B and C). Those monies are reflected in the local board's "Fixed Charges" budget category.

A provision concerning the RSRF became a part of the Collective Bargaining Agreements in 2004. The three year FY 2005-2007 Collective Bargaining Agreements stated:

If the cost of health care policies provided by the Board decreases and the Board is refunded or credited monies by the providers, the refunded or credited monies will be applied to the Rate Stabilization Fund within 30 days of the refund or credit.

(See Petition Attachment E, p. 32, Article XXI; Attachment F, pp. 26-27, Article XIV).

The Collective Bargaining Agreements also set forth the health insurance premiums that school employees and the Board would pay over the term of the Agreement. Specifically,

for FY 2005, the employee shall pay \$286 for the Traditional, \$156 for the PPN, and \$156 for the HMO prorated over 26 pay periods for the individuals coverage. For FY 2005, the Board will pay 100% of the remaining cost of the individual plan and 50% of the remaining cost of the family plan. For FY 2005, the Board will pay 100% of the individual plan cost and 50% of the dependant for the vision care, prescription drug, and dental plans specified in this article.

(See Petition Attachment D; Attachment E, p. 32, Article XXI; and Attachment F, p. 26, Article XIV). For FY 2005, under the Agreements, the employee's cost is a fixed dollar amount, while the local board picks up the entire remaining premium cost. In FY 2006 and FY 2007, an employee will pay 8% of the cost for an individual plan, 20% of the Family 2-Employees Plan, and 28% of the Parent/One Child, Husband/Wife, and Family Plan. (See Petition Attachments D, E, and F). Although premiums have increased every year from 2001 to 2006, there was no premium increase in 2007. (See Petition Attachments C and D).

As of January 31, 2006, the RSRF contained almost \$2 million dollars. (Petition, Ex. B). In January 2006 and May 2006, the local superintendent requested that the local board transfer a total of \$973,400 from the health insurance Fixed Charges category of the budget to categories

running a deficit. (Petition Ex. H1 and H2). The funds to be transferred between categories came from the portion of the FY 2005 settlement attributable to the local board's payments (\$1,361,662). The portion of the FY 2005 settlement attributable to employee payments (\$413,415) remained in the Rate Stabilization Reserve Fund.

The Unions attempted to convince the County Commissioners to stop approval of the category transfer, but they were unsuccessful. The Unions also sought an injunction in the Calvert County Circuit Court to stop the transfer of funds based on a violation of the RSRF provision in the Agreements, but were unsuccessful as well. The Unions then filed a request for arbitration with the American Arbitration Association alleging that the local board violated the Agreements' provisions regarding application of "refunded or credited monies" when it transferred money from the RSRF to other budget categories. (See Petition Attachment N1 and N2). The arbitration will proceed or not depending on our decision here.

APPLICABLE LAW

Title 6, Subtitles 4 & 5 of the Education Article set forth the collective bargaining statutes for the public school systems in Maryland applicable to certificated and non-certificated employees, respectively. Sections 6-408(b)(1) – (4) and 6-510(b)(1) – (4) set forth mandatory, permissive, and illegal topics of collective bargaining, as follows:

(b) *Representatives to negotiate.* – (1) On request, a public school employer or at least two of its designated representatives shall meet and negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on all matters that relate to salaries, wages, hours, and other working conditions.

(2) Except as provided in paragraph (3) of this subsection, a public school employer or at least two of its designated representatives *may* negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on other matters, including due process for discipline and discharge, that are mutually agreed to by the employer and the employee organization.

(3) A public school employer *may not* negotiate the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law.

(4) A matter that is not subject to negotiation under paragraph (2) of this subsection because it has not been mutually agreed to by the employer and the employee organization may not be raised in any action taken to resolve an impasse under subsection (d) of this section. (Emphasis added).

The issue before this Board is whether the Rate Stabilization Reserve Fund provision in the Agreements pertains to a mandatory or illegal subject of collective bargaining.² If we determine that it pertains to a mandatory topic, the Unions' pursuit of arbitration of its grievances is appropriate. If we determine that it pertains to an illegal topic of collective bargaining, arbitration of the Unions' grievances is inappropriate.

Therefore, in this decision, we will address three questions: (1) Are health care benefits a mandatory subject of collective bargaining? (2) Are budgetary matters an illegal subject of collective bargaining? (3) Is the RSRF provision about health care benefits or about budgetary matters?

²The parties have not addressed the permissive category, and we believe it is not applicable here.

I. Mandatory Topics For Collective Bargaining Include Health Benefits

The law establishes specifically that salaries, wages, hours and other working conditions are mandatory subject of bargaining. Both parties agree, as does this Board, that health benefits are a fringe benefit that are a mandatory subject of bargaining. Indeed, the 2005-2007 Collective Bargaining Agreements set forth the health insurance benefit that employees will receive over the term of the Agreement, the school system's contribution to the premium payment and the employee's contribution. (See Petition, Ex. E. at 32-38). It is beyond doubt that the local board is bound by the terms of those Agreements to deliver the agreed upon health care benefits to the school system employees at the agreed upon cost.

II. Illegal Topics For Collective Bargaining Include Budgetary Matters

Illegal topics for collective bargaining are the "school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law." Md. Code Ann., Educ. §§ 6-408(b)(3) and 6-510(b)(3). We have looked to the Education Article to determine whether budgetary matters are "precluded" by law from collective bargaining. For the reasons set forth below, we conclude that budgetary matters are illegal topics for collective bargaining.

Sections 5-101 *et seq.* of the Education Article set forth a detailed statutory framework governing school system budgets and a local board's preparation and operation of such budget. In particular, §5-101(a) gives the sole authority to prepare a budget to the local board. That authority is limited only by the rules and regulations of the State Board. Md. Code Ann. Educ. § 5-101(a). The statute directs the local board to seek the advice of the county superintendent in

preparing the budget. *Id.* The statute also establishes the specific budgetary categories that must be used to develop the budget.

Section 5-102 of the statute directs each local board to submit the budget to the county commissioners, county council, or the county executive. Section 5-105(a) empowers each local board to spend all revenues received in accordance with the major categories of its annual budget.

Section 5-105(b) invests each local board with the power to transfer revenues within the major categories without recourse to the county commissioners or county council, and to transfer between major categories only with the approval of the county commissioners or county council.

Section 5-105(c) permits a local board to expend nonlocal funds received after adoption of the budget if the county fiscal authority is notified and approves of the source and amount of the funds and the manner of spending the funds.

It is our view that collectively those provisions go to the very core of a school system's fiscal operations. We believe that the statutes vest the local board with essentially exclusive powers over the preparation and operation of the school system budget, particularly the power to transfer funds between categories to cover categorical deficits. We agree with the local board that the statute precludes bargaining over budgetary matters. Therefore, the topic of budgetary matters is an illegal subject for collective bargaining.

Of course, the exclusive power to prepare and operate a budget does not imply that a local board may, without consequence, transfer to deficit categories funds designated to cover health care benefits. As we explained above, the obligation to provide the health care benefits

bargained for remains with the local board no matter how or where it transfers dollars between budget categories.

III. Is The RSRF Provision In The Collective Bargaining Agreements a "Health Benefit" Or a "Budgetary Matter"?

The Unions assert, correctly, that the RSRF exists to reduce the deficit which results if the cost of the insurance claims exceeds the monies available from premium payments. The Unions conclude, therefore, that the RSRF provision is a health benefit because it affects the cost of the premium that an employee must pay. That argument, while somewhat compelling on its face, is not supported by the actual facts.

It is a fact that the transfer of dollars in or out of the RSRF will not affect the cost of health insurance premium that the employees will pay under the 2005-2007 Collective Bargaining Agreements. If the amount of funds in the RSRF went down to zero, the employee should not pay more than the premiums negotiated for. If the RSRF went up to \$5 billion, the employees should not pay less than the premiums negotiated for. As we have said frequently in this Opinion, the local board and the employees agreed to a certain health benefit at a certain cost. The amount of funds in the RSRF does not affect the Agreement.

Although the 2005-2007 Agreements protect employees from paying premiums in excess of those negotiated for in those Agreements, the Unions are, in fact, attempting to use the RSRF provision to protect employees from future increases in premiums after the expiration of the 2005-2007 Agreements. It is in that regard that they believe the RSRF provision is a health benefit.

We might very well agree with the Unions that the RSRF provision was a health benefit if it clearly created a legally cognizable fund to be held in trust for school system employees for the purpose of reducing the employees' the cost of insurance premiums in future collective bargaining negotiations. If the RSRF provisions created a trust, the RSRF would bear the legal markings of a trust, such as a specific manifestation of intent on the part of the local board to create a trust, and an imposition of duties that are enforceable by a court. *See* Restatement of Law, Second, Trusts 2d §§ 2; 23; 25 (1959). The RSRF provision, in our view, does not create a trust. It bears none of the legal markings. It contains no specific words of intent to hold the RSRF funds in trust to reduce employee health benefit costs in the future, nor does it impose enforceable duties on the local board or CareFirst.

The RSRF provision in the Collective Bargaining Agreements states only that refunded or credited monies from the insurer will be "applied to" the RSRF. In our view, an agreement to put money in a particular "account" does not create a legally binding obligation to hold that money in trust for future collective bargaining over health benefit costs. Unlike a joint bank account which is held in trust for both parties, there is nothing in the RSRF provision that creates joint ownership of the RSRF account. Thus, we conclude, the RSRF provision does not create a legal obligation on the local board to hold the funds in the RSRF solely to reduce employee premium rates in the future. Therefore, the RSRF provision is not a "health benefit."

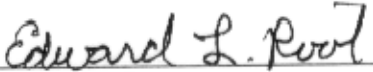
Instead, it is our opinion that the RSRF provision is a budgetary matter. It deals with a reserve fund. A reserve fund is simply a rainy day fund in the school system's budget. In this case, the rainy day fund can be a source of funding for health care benefit costs, albeit a small part of such funding. It is important to note that the school system budgeted over \$11 million for

group health insurance in FY 2005. The RSRF fluctuated between \$858,000 to \$1.8 million in FY 2005. (Petition, Ex. B). In our view, this reserve fund, like any rainy day fund even if it is earmarked for a particular purpose, is fungible. The dollars can be transferred to other budget categories and such transfers are purely budgetary matters. We have concluded that budgetary matters are precluded by statute from collective bargaining. Therefore, it is our opinion that the RSRF provision was an illegal topic for bargaining.

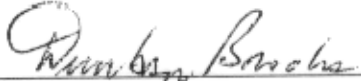
Therefore, on this ___ day of February, 2007. The Maryland State Board of Education declares that:

- (1) Health benefits are a mandatory topic for collective bargaining;
- (2) The RSRF provision in the 2005-2007 Collective Bargaining Agreements is not a health benefit because it did not create a legally cognizable obligation to use the funds in the RSRF solely to reduce employee cost of premiums in future collective bargaining agreements;
- (3) Budgetary matters are illegal topics of collective bargaining; and
- (4) The RSRF provision in the 2005-2007 Collective Bargaining Agreements is about a budgetary matter and thus is an illegal subject for collective bargaining.

It is so ordered.

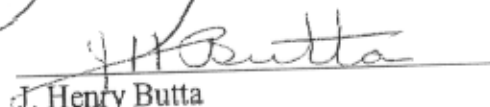


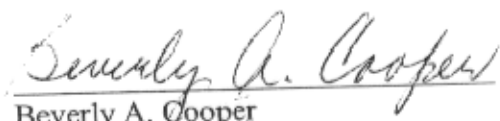
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President



Dunbar Brooks
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Lelia T. Allen

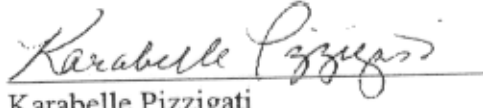

J. Henry Butta

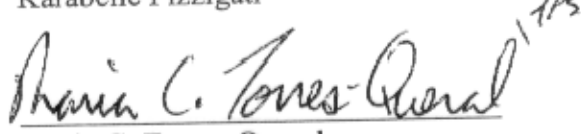

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Calvin D. Disney


Richard L. Goodall


Tonya Miles


Karabelle Pizzigati


Maria C. Torres-Queral


David F. Tufaro

February 27, 2007