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THE LEGAL UPDATE

October 3, 1989

TO: Superintendents, Member School Districts
FROM: Margaret M. Merchat, Assistant General Counsel
RE: Teachers - No Right to Strike
Memo #22-89

M. Merchat

In April of 1987 our Office sent out a newsletter regarding a "Rolling Strike" by the Teachers' Association in the Compton Unified School District. The Public Employment Relations Board (PERB) issued a 2 to 1 decision indicating that public school employees do not have a statutory right to strike. The Board further indicated that a post-impasse (after completion of factfinding) economic strike for purposes of collective bargaining is not a protected activity under EERA.

We indicated in our April 1987 opinion that the decision authored by PERB member Steve Porter was extremely detailed, thorough, and no doubt prepared to withstand the appellate process. We certainly anticipated that CTA would appeal this case. It is interesting to note that, in fact, CTA did not appeal this case (or the related Sacramento City Unified teacher strike case). The decision, therefore, stands and is a key decision for districts throughout the state. We have attached a copy of our April 1987 newsletter for your convenient reference.

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Enclosure



School and College Legal Services

Sonoma County Office of Education

Robert J. Henry
General Counsel


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LEGAL UPDATE

April 8, 1987

TO: Superintendents, Member School Districts

FROM: Margaret M. Merchat 
Assistant General Counsel

SUBJECT: No Right to Strike

In a two to one vote, the Public Employment Relations Board has ruled that public school employees do not have the statutory right to strike. The Board further ruled that a post-impasse economic strike for purposes of collective bargaining is not a protected activity under EERA.

This far reaching decision was issued in response to a request by the Compton Unified School District to enjoin a series of "rolling strikes" by the Teachers' Association. As part of this decision, PERB agreed to seek an injunction in Superior Court to prevent further one day strikes.

There is no doubt that this decision will be appealed by CTA and that they will be joined and supported by all other unions representing school employees. The decision, authored by PERB member Steve Porter, provides a detailed analysis of the role of education in the U.S. and in California and the evolution of collective bargaining in California. The decision is thorough and no doubt prepared to withstand the appellate process.

Below we have set forth some highlights from the decision:

"Our school system is established not to provide jobs for teachers but rather to educate the young"....(p.36)

"Consequently, in construing any legislation which could affect the operation of the public schools, a lodestar which we must keep in view is the affording of educational services to, and the welfare of, the children."....(p.36)

"And we must bear in mind that it is the shining star of the children's education which is the apex of the statutory educational pyramid formed by Article IX (of the California Constitution) and the Education Code, and that any and all statutes affecting the public schools must be in support of and subservient thereto."....(p.38)

"Conspicuously absent and intentionally omitted by the Legislature from the rights granted to public school employees in Section 3543 is the right to engage "in other concerted activities for the purpose of collective bargaining or other mutual aid or protection". Keeping in mind the Legislature's knowledge of the California Constitution, of existing and related statutes, and judicial decisions construing those statutes, in addition to the governing rules of statutory construction, it is patently clear that the Legislature withheld and did not grant to public school employees the right to engage "in other concerted activities for the purpose of collective bargaining or other mutual aid or protection", which includes, of course, the right to strike."....(p.87)

"The statutory evidence is overwhelming that the Legislature did not grant to public school employees the right to strike."

"Furthermore, any attempt to otherwise interpret or read into EERA a right of public school employees to strike or engage in other concerted activities interfering with or having a disruptive effect on the operation of the public schools would bring EERA into direct conflict with the California Constitution and the Education Code."....(p.90)

"When public school employees engage in work stoppages to obtain their bargaining demands, they are using the disruption and interference in the operation of the public schools as a coercive pressure tactic to force the public school employer to come to the bargaining table and capitulate to their demands.

Such bargaining pressure tactics not only detrimentally affect the negotiating process between the parties, but they are also antithetical to another basic underlying concern of EERA as well as a recognized responsibility of this Board: "(To) further the public interest in maintaining the

continuity and quality of educational services."....(p.128)

"Such coercive tactics, which necessarily compromise the children's right to an education by interfering with the continuity and quality of educational services, for the purpose of forcing the public school employer's surrender to the employees' demands, are unfair, in bad faith, repugnant to the purposes of EERA, and constitute a failure to negotiate in good faith, thereby violating EERA section 3543.6(c)"....(p.131)

"In the absence of a negotiated, agreed change in their hours, duties, and/or other terms and conditions of their employment, public school employees may not change or refuse to abide by the status quo in their hours, duties, and terms and conditions of employment (Gov. Code, sec. 3543.6(c)), any more than the public school employer may unilaterally change the status quo (other than by post-impasse adoption of its last best offer). (Gov. Code, sec. 3543.6(c).) Unilateral changes in the status quo by the public school employees engaging in work stoppages are just as destabilizing and disorienting to employer-employee affairs as are unilateral changes in the status quo committed by the public school employer."....(p.141)

We shall certainly keep you informed as this case is appealed.

MMM/pc

