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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

VENTURA COUNTY COMMUNITY COLLEGE RETIREES ASSOCIATION; RENE G. RODRIGUEZ; GARY JOHNSON, ROBERT LONG; ROBERT LOPEZ; BARBARA HOFFMAN; DAVID THOMAS; VIVIAN LOCKARD; EURSELL JETT; CHARLENE BLALOCK-CARLSON; DONALD MEDLEY; HARRY KORN; individually and for and on behalf of a class of persons similarly situated,

Petitioners and Plaintiffs,

v.

VENTURA COUNTY COMMUNITY COLLEGE DISTRICT; BOARD OF TRUSTEES OF VENTURA COUNTY COMMUNITY COLLEGE DISTRICT; DOES 1 through 50, inclusive,

Respondents and Defendants.

CASE NO. 56-2007-00303058-CU-WM-VTA

Assigned to: Judge Ken W. Riley
Dept. 43

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO VERIFIED PETITION FOR WRIT OF MANDAMUS & COMPLAINT

[Fee Exemption: Gov. Code § 6103]

Date: November 15, 2007
Time: 8:30 a.m.
Location: Dept. 43

Petition Filed: August 31, 2007

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I.

INTRODUCTION

Petitioners and Plaintiffs (hereinafter "Petitioners"), consisting of retired employees of Respondents and Defendants (hereinafter "Respondent"), contend they are entitled to receive from Respondent a post-retirement health benefit plan containing equivalent co-payments, deductibles, annual out-of-pocket maximums, and scope of benefits as were in place on Petitioners' date(s) of retirement.

These contentions, however, are premised on written documents which fail to support Petitioners' claims. Rather, such documents establish that Respondent is fully honoring its obligation to Petitioners by its present practice of maintaining eligible Petitioners on the same health benefit plan currently provided to active employees, while absorbing the entire cost of Petitioners' premium payments. As such, each of Petitioners' Causes of Action is subject to demurrer for failure to state a cause of action.

II.

STATEMENT OF THE CASE

Petitioners purport to represent certain retired employees ("the retirees") of the Ventura County Community College District ("VCCCD" or "District").

Each of the retirees falls within one of the following classifications: (1) retired academic (i.e. faculty) employees hired on or before June 30, 1990, into the collective bargaining unit represented by the Ventura County Federation of College Teachers ("VCFCT"); (2) retired classified (i.e. non-academic) non-supervisory employees hired on or before July 24, 1990, into the collective bargaining unit represented by California School Employees Association ("CSEA") and/or Service Employees International Union, Locals 690 and 535 ("SEIU"); (3) retired classified supervisory employees hired on or before August 7, 1990, into the collective bargaining unit represented by the Classified Supervisors Association; and (4) retired management employees who were not members of a labor organization. [Petition, p. 3:9-21].

Petitioners contend that, upon satisfaction of "certain eligibility criteria," the retirees became entitled to receive "certain paid [post-retirement] health benefits" consisting specifically

of "the 'Blue Cross' [health benefit] plan in effect on their retirement date or 'equivalent benefits.'" [Petition, p. 2:7-10].

Petitioners contend, specifically, that the District was obligated to provide the retirees with a post-retirement health benefit plan containing equivalent "co-payments, deductibles and annual out-of-pocket maximums . . . [and] scope of benefits" as were contained in the health benefit plan provided to retirees on their date of retirement. [Petition, p. 16:14-18; p. 22:5-7].

Petitioners further contend that, commencing July 1, 2005, and continuing to the present, the District has failed to provide the retirees with the post-retirement health benefits to which they are entitled, and that retirees, as a result, "have incurred and continue to incur significant out-of-pocket expenses due to higher deductibles, co-payments and out-of-pocket maximums." [Petition, p. 21:24 – 22:3]. The Petition seeks recovery of those expenses.

As set forth in Section III.C.1, *infra*, the Petition, and each Cause of Action, is premised on an alleged breach of a written contract. As set forth in Section III.C.5, *infra*, however, the Petitioners have not and cannot establish that the retirees have any entitlement under any written contract to the retirement health benefits claimed by Petitioners, i.e. a health benefit plan providing the same deductibles, co-payments and out-of-pocket maximums in place at each retiree's time of retirement.

Accordingly, and pursuant to Code of Civil Procedure §§ 430.30 (a) and (c) and 1109, Respondent's Demurrer must be sustained without leave to amend and the Petition must be dismissed with prejudice.

III.

ARGUMENT

A. The Petition/Complaint Is Subject To Demurrer

The instant matter consists of a complaint and a peremptory writ of mandate pursuant to Code of Civil Procedure § 1085. [Petition, p. 1:22]. A party may respond to such a pleading by filing an answer, demurrer, or both. Code of Civil Procedure §§ 430.30(c), 1104, 1109; *Carleson v. California Unemployment Insurance Appeals Board* (1976) 64 Cal.App.3d 145, 149 [134 Cal.Rptr. 278]. For the reasons set forth below, Respondent's demurrer must be sustained

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without leave to amend.

B. Writ Relief Is Inappropriate Because There Is No Clear, Ministerial Duty To Maintain the Copays and Deductibles for Retiree Drug Prescriptions or Health Benefits

A petition for a writ of mandate may be granted only where there exists a "clear, unequivocal, present and ministerial duty" on the part of the agency. *Orange County Emp. Assn. v. County of Orange* (1991) 234 Cal.App.3d 833 [285 Cal.Rptr.799, 837]. A "ministerial act" is one that does not require the exercise of judgment and discretion. *Jenkins v. Knight* (1956) 46 Cal.2d 220. Mandate cannot be used to compel an agency to exercise its discretion in a particular manner. *State v. Superior Court (Veta Co.)* (1974) 12 Cal.3d 237 [115 Cal.Rptr. 497] (California Coastal Zone Conservation Commission's denial of permit to petitioner to develop certain coastal land was not a ministerial act). The purpose of a writ of mandate is to enforce a clear right against one who has a legal duty to perform an act necessary to enjoyment of that right. *Farrington v. Fairfield* (1961) 194 Cal.App.2d 237 [16 Cal.Rptr. 119]. The right must be clear and certain. *Loder v. Municipal Court* (1976) 17 Cal.3d 859 [132 Cal.Rptr. 464]; *Baldwin-Lima Hamilton Corp. v. Superior Court* (1962) 208 Cal.App.2d 803 [75 Cal.Rptr. 798]. The party sought to be coerced must be bound to act under an obligation imposed by law. *Plum v. City of Healdsburg* (1965) 237 Cal.App.2d 308 [46 Cal.Rptr. 827]. As demonstrated below, Petitioners have no clear, present, and ministerial right to a post-retirement health benefit plan containing the same co-pays, deductibles, out-of-pocket maximums and scope of coverage as was provided on their date(s) of retirement.

C. Petitioners Fail To State A Cause Of Action For Breach Of Contract

Each of Petitioner's five (5) Causes of Action is premised on a violation of the same primary right, i.e. that the District has breached a written contract. As set forth below, however, Petitioners fail to and cannot allege that the District has breached any written contract, with respect to the retirees, or any of them.

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1. Each Cause Of Action Is Premised On An Alleged Breach Of A Written Contract

The Petition sets forth five (5) Causes of Action. As set forth below, however, each Cause of Action is premised on the same essential legal theory, i.e. that the District has breached a written contract to provide certain post-retirement health benefits to the retirees. As such, Petitioners' failure to adequately allege that the District has breached a written contract requires the dismissal of each Cause of Action.

a. First Cause Of Action

The First Cause of Action ("Impairment and Breach of Contract") is premised on an alleged "contractual relationship" between the District and Petitioners. [Petition, p. 21:5] Specifically, Petitioners' claims, as to retirees who were members of VCFCT, CSEA, SEIU, or the Classified Supervisors Association, are based on the "parties' collective bargaining agreements." [Petition, p. 20:13-23], consisting of Exhibits 3 through 11 to the Petition.

Additionally, Petitioners' claims, as to retirees who were "manager[s]," are based on "the policies and manuals described herein." [Petition, p. 20:24 – 21:3]. These consist exclusively of alleged policies of the District's Board, as reflected in Board minutes of August 7, 1973 (Exhibit 1) and August 20, 1974 (Exhibit 2) [Petition, p. 11:9-15], along with an alleged Manager's Policy and Procedure Manual dated December 10, 1991 (Exhibit 12). [Petition, p. 15:22-24].

Petitioners specifically allege that the District "breached its contractual obligations" and thereby "unconstitutionally impaired" Petitioners' rights under the Contract Clause of the California Constitution. [Petition, p. 22:6]. Thus, this cause of action is premised on an alleged breach of a written contract.

b. Second Cause Of Action

The Second Cause of Action ("Breach of Contract") is premised on "a contractual relationship . . . as recorded in the parties' collective bargaining agreements and other relevant documentation." [Petition, p. 22:18-20]. Petitioners allege that the District "violated its contractual obligations." [Petition, p. 23:10].

Thus, this cause of action is premised on the same alleged breach of a written contract as

the First Cause of Action.

c. Third Cause Of Action

The Third Cause of Action ("Promissory Estoppel") is premised on "representations . . . codified in labor organization-District collective bargaining agreements and other District documents." [Petition, p. 23:21-23]. These "representations," however, are wholly incorporated from the First and Second Causes of Action.

It is well established, moreover, that "a promise is an indispensable element of the doctrine of promissory estoppel. The cases are uniform in holding that this doctrine cannot be invoked and must be held inapplicable in the absence of a showing that a promise had been made upon which the complaining party relied to his prejudice." *Division of Labor Law Enforcement v. Transpacific Transportation Company* (1977) 69 Cal.App.3d 268, 275 [137 Cal.Rptr. 855, 860]. Here, the alleged promise underlying the Third Cause of Action is clearly the same alleged written contract underlying the First and Second Causes of Action, and, as such, is subject to demurrer for the same reasons.

d. Fourth Cause Of Action

The Fourth Cause of Action ("Equitable Estoppel") is premised on "representations [which] were recorded in Labor organizations-District contracts and other documentation." [Petition, p. 25:4-5]. These "representations," however, are wholly incorporated from the First and Second Causes of Action.

The elements of equitable estoppel, moreover, include that "the party to be estopped . . . must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended." *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305 [61 Cal.Rptr. 661, 431 P.2d 245]. Where, as here, this element is supported solely by reference to alleged written contracts, the cause of action for equitable estoppel is indistinguishable from a cause of action for breach of contract.

Petitioners' cause of action for equitable estoppel is thus based on the same alleged written promise underlying the First and Second Causes of Action, and is, therefore, subject to demurrer for the same reasons.

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e. Fifth Cause Of Action

The Fifth Cause of Action ("Declaratory and Injunctive Relief") contains no new factual allegations, and alleges merely that a "controversy" exists between the parties as to the "the health insurance and prescription drug costs the Board imposed on Petitioners." [Petition, p. 26:9-10]. Thus, this Cause of Action is premised on the same alleged controversy (i.e. breach of a written contract) as the First and Second Causes of Action, and is, therefore, subject to demurrer for the same reasons.

2. Elements Of A Cause Of Action For Breach of Contract

To state a cause of action for breach of contract, a party must plead: (1) the existence of a contract; (2) his performance of the contract or excuse for nonperformance; (3) the defendant's breach; and (4) resulting damage. *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459 [212 Cal.Rptr. 743].

Moreover, insofar as Petitioners allege breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference. *Ibid.* Thus, in assessing the merits of Petitioner's causes of action for breach of contract, for purposes of demurrer, the Court need only consider those contract terms specifically set forth in the Petition or attached and incorporated thereto.

3. Interpretation Of Written Contracts

Here, Petitioners primarily rely on the text of collective bargaining agreements negotiated between the District and its employee unions, along with alleged enactments of the District's Governing Board.

The interpretation of a collective bargaining agreement (as with any contract) is a judicial function. *City of El Cajon v. El Cajon Police Officers' Assn. (1996) 49 Cal.App.4th 64, 71 [56 Cal. Rptr. 2d 723].* "A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Civil Code § 1636. "As a rule, the language of an instrument must govern its interpretation if the language is clear and explicit. A court must view the language in light of the instrument as a whole and not use a 'disjointed, single-paragraph, strict construction approach'." *City of El*

Cajon, supra, at p. 71. (citations omitted). "When an instrument is susceptible to two interpretations, the court should give the construction that will make the instrument lawful, operative, definite, reasonable and capable of being carried into effect and avoid an interpretation which will make the instrument extraordinary, harsh, unjust, inequitable or which would result in absurdity." *Ibid.* (citations omitted); [quoting *Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal. App. 3d 726, 730 [223 Cal. Rptr. 175].]

As set forth in Sections III.C.5, *infra*, Petitioners fail to plead facts sufficient to establish that the District has breached any contract with the retirees, or any of them.

4. The District Has No Legal Obligation To Maintain Post-Retirement Health Benefits In Excess Of Those Specified In An Applicable Contract

While there is a relative paucity of court decisions addressing post-retirement health benefits under California law, it is at least clear that employers have no obligation to provide post-retirement health benefits which are more generous than those specified in an applicable contract. *Sappington v. Orange Unified School District* (2004) 119 Cal.App.4th 949.

> Generous benefits that exceed what is promised in a contract are just that: generous. They reflect a magnanimous spirit, not a contractual mandate.

Ibid. Thus, even in cases where an employer has, over a period of decades, maintained post-retirement health benefits which exceed those required by contract, the employer may at any time revert to the lower level of benefits mandated by the contract. *Ibid.*

5. None Of The Alleged Written Contracts Or Promises Obligate The District To Maintain The Same Health Benefit Plan Provided To Retirees On Their Date Of Retirement

a. Management Employees

As noted in Section III.C.1.a, *supra*, Petitioners claims on behalf of District managers are based on minutes of the District's Board meetings of August 7, 1973 and August 20, 1974, as well as a Managers Policy and Operations Manual adopted December 10, 1991.

The Petition incorporates the minutes of the Board meeting of August 7, 1973, which

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provide as follows:

> That, to assist in finalizing the 1973-1974 District budget, and to assist retirees in making the necessary arrangements with Blue Cross, **the following salaries and benefits be approved for the certificated staff for the 1973-74 fiscal year**, effective July 1, 1973:
>
> . . .
>
> 3. Payment of the Blue Cross premium under the current composite plan for retirees, **beginning with the retirees of 1972-1973**, who have served the District a minimum of 15 years and who have reached the age of 60 at the time of retirement.

[Petition, Exhibit 1 (emphasis added)].

The Board action of August 7, 1973, was, by its own terms, quite limited, as it authorized payment only during the 1973-1974 fiscal year for certain certificated staff aged 60 or above who had already retired during the 1972-1973 fiscal year. It is well established, however, that benefits awarded after retirement do not give rise to vested rights. Thus, in *Olson v. Cory* (1980) 27 Cal.3d 532, 542, the court stated: "Judicial pensioners whose benefits are based on judicial services terminating before the effective date of applicable law providing for unlimited cost-of-living increases, have no vested right to benefits resulting therefrom." Likewise, in *Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 652 [6 Cal.Rptr.2d 77], it was held that "former employees who ceased employment prior to the time when an implied statutory promise... could have arisen... earned no vested contract rights under the repealed statutes." Similarly, 1972-1973 certificated retirees could not have acquired any vested rights based on a Board action post-dating their retirement.

This Board action, moreover, made no provision for classified or managerial employees, nor did it provide for continued payment of retirement health benefits for retired certificated (i.e. academic) staff beyond the 1973-1974 fiscal year. Thus, this Board action is of no ongoing significance with respect to benefits for current retirees.

The Petition also incorporates the minutes of the Board meetings of June 4 and August 20, 1974, which provide as follows:

> (6/4/74) . . . **Issue of Health insurance for retirees – The Board considers this program to be innovative and exploratory, requiring additional study.**

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(8/20/74) 6. **District says current benefits for retirees shall continue in effect for 74/75 and be effective for 1974 retirees as well as 1973 retirees. This matter shall be a topic of joint administrative-faculty study during 1974/75 for the purpose of a recommendation for 75/76.**

Retiree Blue Cross Benefits

Dr. Simpson (Trustee) "program of medical insurance for retirees is still on an experimental basis and is subject to alteration in future years.

-- Board unanimously passed: That certificated, classified, and Trustees with a minimum of 15 years of District service, at least 60 at the time of retirement shall be retained on the District's group Blue Cross policy with premiums paid by the District. This policy shall apply to persons retiring after June 30, 1972."

[Petition, Exhibit 2 (emphasis added)].

The Board actions of June 4 and August 20, 1974, while expanding retirement health benefit coverage to a broader group of employees (and Trustees), made clear that such benefits were "in effect for 74/75" and not guaranteed for future years, but, rather, specified that such benefits were "innovative and exploratory, requiring additional study . . . experimental . . . and . . . subject to alteration in future years." Thus, the Board actions of June 4 and August 20, 1974, contain no promise that such benefits would be maintained at all, let alone that retirees would be entitled to maintain specific details of the health benefit plan in place at their time of retirement.

The Petition also incorporates the Managers Policy and Operations Manual ("Managers Policy") of December 10, 1991, which provides as follows:

> The District will provide health and welfare benefits for management personnel and their dependants under the existing plans or under such plans providing:
>
> . . .
>
> B. Managers retiring from the District shall be maintained on the District's existing group medical, dental, and vision policies with **premiums paid by the District** under the following conditions . . . [*specifying age and years of service required*]

[Petition, Exhibit 12].

Significantly, the alleged Managers Policy provides that "premiums [be] paid by the District," but contains no language requiring District payment of other cost-related items, such as co-pays, deductibles, etc. "'Under the familiar maxim of *expressio unius est exclusio alterius* it is

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well settled that when a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded.'" *Kiely Corp. v. Gibson* (1964) 231 Cal. App. 2d 39, 46 [41 Cal. Rptr. 559]; *Collins v. City & Co. of San Francisco* (1952) 112 Cal. App. 2d 719, 731 [247 P.2d 362]. This doctrine is equally applicable to interpretation of contracts in the employment context. *Stephenson v. Drever* (1997) 16 Cal.4th 1167, 1175. Thus, it cannot be maintained that the Managers Policy obligated the District to absorb, in addition to premiums, the cost of co-pays, deductibles, and out-of-pocket maximums for management retirees.

The Petition recognizes that the District imposed strict limitations on post-retirement coverage for employees hired after specified dates in June, July, and August, 1990. See, Section II, *supra*. Petitioners nevertheless allege, implausibly, that the District, through the Managers Policy, took action in 1991 to vastly expand post-retirement health benefits for its management employees, without imposing any such limit. Moreover, Petitioners' proposed contract interpretation would require, in essence, that the District maintain in perpetuity all of its prior health benefit plans, this despite the fact that the District is plainly not an insurance company and must, instead, contract with third party insurance providers to secure its employee and retiree health benefit plans. For these reasons, Petitioners' strained interpretation of the Managers Policy is both absurd and not "capable of being carried into effect," and, as such, should not be adopted by this Court. See Section III.C.3, *supra*.

b. Academic And Classified Employees

Petitioners base their claims, with respect to academic employees and classified non-supervisory employees, on identical language, albeit contained in separate collective bargaining agreements in place from 1977 through June 30, 1982 with respect to these employees, which provide, in pertinent part, as follows:

> Article [4.1 (for academic); 3.1 (for classified)]: The District will, **during the term of this Agreement**, and subject to the remaining provisions of this Article, continue to provide Blue Cross and CDS coverage for eligible faculty members and their dependants under the existing plans or under such plans providing at least equivalent benefits **as the District may designate**.
>
> . . .

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> Article [4.9 (for academic); 3.8 (for classified)]: Employees who are employed by the District at the time of retirement shall be **retained on the District's existing group medical policy**, with **premiums** paid by the District in accordance with the provisions of this Article . . .
>
> Article [4.11 (for academic); 3.10 (for classified)]: **Eligibility and benefits shall be as specified in the then-existing group medical insurance plan**.

[Petition, pp. 11:16-12:12, 13:3-25 (Exhibits 3 and 6)] (emphasis added) (hereinafter cited, e.g., as "Article 4.1/3.1").

Petitioners contend that these provisions establish a right, on the part, of academic and classified retirees, to retain the very same health benefit plan in place at their time of retirement, including the same co-pays, deductibles, out-of-pocket maximums, and scope of benefits. When the above-quoted text is viewed as a whole, however, it is clear that the District has made no such promise.

The Petition emphasizes certain portions of the text of Article 4.1/3.1, and particularly the reference to "existing plans or under such plans providing at least equivalent benefits." In so doing, Petitioners have overlooked that, pursuant to Article 4.1/3.1, such benefits are provided only "as the District may designate," and only "during the term of this Agreement."[1] The health benefits provided under Article 4.1/3.1 are, therefore, quite limited, as they are guaranteed only as designated and only through the date of expiration of the collective bargaining agreement.

In *San Bernardino Public Employees Association v. City of Fontana* (1998) 67 Cal.App.4th 1215, the court considered the continuing effect of collective bargaining agreements negotiated between a public entity and its employees. The court concluded that:

> Those collective bargaining agreements, as implemented through previous MOU's, were of fixed duration. **Once the MOU's expired under their own terms, the employees had no legitimate expectation that the longevity-based benefits would continue unless they were renegotiated as part of a new bargaining agreement.** It has long been held that "public employees have no vested right in any particular measure of compensation or benefits, and that these may be modified or reduced by the proper statutory authority.

Id. at p. 1223 (emphasis added). Thus, by limiting the application of Article 4.1/3.1 to the "term of this Agreement," the District assumed no obligation – under Article 4.1/3.1 – to provide such

[1] Collective bargaining agreements under the Educational Employment Relations Act (EERA), which applies to the District, are limited in term to 3 years, and are subject to renegotiation during the 3-year term of agreement. Government Code 3540.1(h).

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benefits indefinitely.

Article 4.9/3.8 specifically provides for retirement health benefits, but establishes only that retirees "shall be retained on the existing group medical policy." The "existing . . . policy," however, is that specified in Article 4.1/3.1, which, as noted above, comes with no guarantee that the "existing plans or . . . such plans providing at least equivalent benefits" will be maintained beyond the expiration of the collective bargaining agreement.

Moreover, Article 4.11/3.10 describes the benefits which apply to both active and retired employees alike, stating: "[e]ligibility and benefits shall be as specified in the then-existing group medical insurance plan." As noted above, however, in light of Article 4.1/3.1, the "then-existing . . . plan" need not be identical to the health benefit plan in place when the collective bargaining agreement was adopted in 1977, or at any specific point thereafter, as the District never assumed an obligation to maintain a specific health benefit plan beyond the term of the collective bargaining agreement.

Moreover, while the text of Article 4.9/3.8 specifies, with respect to retirees, that "premiums [will be] paid by the District," that Article contains no language requiring that the District absorb each and every cost-related items, such as co-pays and deductibles, nor that the District maintain specified out-of-pocket maximums. "'Under the familiar maxim of *expressio unius est exclusio alterius* it is well settled that when a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded.'" *Kiely Corp. v. Gibson* (1964) 231 Cal. App. 2d 39, 46 [41 Cal. Rptr. 559]. See Section III.C.5.a, *supra*.

c. Classified Supervisors

The Petition alleges that classified supervisory employees of the District were employed under a series of collective bargaining agreements which provided for "District-paid retiree medical coverage" or "District paid health . . . insurance upon retirement." [Petition, p. 14:19-15:7 (Exhibits 9 and 10)]. Petitioners further allege that the collective bargaining agreement in effect from July 1, 1990, through June 30, 1993 provided that:

> Supervisory employees hired prior to August 7, 1990 who are employed by the District at the time of retirement **shall be retained on the District health, vision and dental insurance, with premiums paid by the District . . ..**

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[Petition, p.15:13-16 (quotation from Exhibit 11 to the Petition)].

Plainly, the above collective bargaining agreement language contains no guarantee that retirees will be retained in a specific health benefit plan, let alone the same plan provided to them at their time of retirement. Nor does this language equate to a promise that the District will pay all costs associated with coverage (exclusive of premiums) and/or maintain the same co-pays, deductibles, out-of-pocket maximums or scope of coverage as was provided at the time of retirement. In fact, the court in *Sappington, supra*, rejected the same argument, concluding that collective bargaining agreement language referencing "the District's Medical and Hospital Insurance Program" did not create an obligation, on the part of the school district employer, to "provide . . . any particular kind of insurance," let alone to maintain the same health benefit plan (i.e. a fully-paid PPO plan) provided in prior years. *Sappington, supra*, at p. 954. For the same reasons, there is no basis to conclude that the District agreed to maintain retired classified supervisors in the same health benefit plan provided to them on their date of retirement.

Petitioners further allege that the classified supervisors' union dissolved in 1993, and that classified supervisors were thereafter subject to the Managers Policy. [Petition, p. 15:17-20]. This contention, however, is not supported by the text of the Managers Policy, which refers only to managers and contains no reference to supervisory employees. Additionally, insofar as Petitioners allege the Managers Policy was adopted in 1991 (i.e. at least 2 years prior to the alleged dissolution of the classified supervisors' union), and Petitioners do not and cannot contend the Managers Policy applied to classified supervisory employees at the time of its adoption, there is no basis to apply the Managers Policy to classified supervisors as of 1993 or any other date.

Finally, even if it is assumed, *arguendo*, that the Managers Policy was applicable to classified supervisors, for the reasons set forth in Section III.C.5.a, *supra*, it cannot be maintained that the Managers Policy obligated the District to absorb, in addition to premiums, the cost of co-pays, deductibles, and out-of-pocket maximums for management retirees.

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IV.

CONCLUSION

For all of the reasons set forth herein, Respondents' demurrer must be sustained and the Petition must be denied without leave to amend, and Judgment entered against Petitioners and in favor of Respondents.

DATED: October 12, 2007

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: _____
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Re: Ventura County Community College Retirees Association v. Ventura County Community College District
Ventura County Case No. 56-2007-00303058-CU-WM-VTA

PROOF OF SERVICE
(Code Civ. Proc. § 1013a(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 17871 Park Plaza Drive, Cerritos, CA 90703-8597.

On October 15, 2007, I served the following document(s) described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO VERIFIED PETITION FOR WRIT OF MANDAMUS & COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Thomas M. Sharpe, Esq.
BENNETT & SHARPE, INC.
2444 Main Street, Suite 110
Fresno, CA 93721
(559) 485-0120 / Fax (559) 485-5823

Attorneys For Petitioners and Plaintiffs

☒ **BY MAIL:** I deposited such envelope in the mail at Cerritos, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☐ **BY OVERNIGHT COURIER:** I sent such document(s) on October 15, 2007, by Overnite Express with postage thereon fully prepaid at Cerritos, California.

☐ **BY FAX**: I sent such document by use of facsimile machine telephone number (562) 653-3333. Facsimile cover sheet and confirmation is attached hereto indicating the recipients' facsimile number and time of transmission pursuant to California Rules of Court Rule 2008(e). The facsimile machine I used complied with California Rules of Court Rule 2003(3) and no error was reported by the machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 15, 2007, at Cerritos, California.

JEANNIE K. CURTISS