



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE:

Case No:

Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES

☐

If so, Case No.

NO

☒

1. CHARGING PARTY:

EMPLOYEE

☐

EMPLOYEE ORGANIZATION

☒

EMPLOYER

☐

PUBLIC¹

☐

a. Full name: Newport - Mesa Federation of Teachers, AFT Local 1794

b. Mailing address: 2900 Bristol Street, Suite C-107
Costa Mesa, CA 92626

c. Telephone number: (714) 754-6638

d. Name and title of person filing charge: Britt Dowdy, President

E-mail Address: brittdowdy.nmft@gmail.com

Telephone number: (714) 348-9877

Fax No.: (no fax)

e. Bargaining unit(s) involved: Certificated Bargaining Unit

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

☐

EMPLOYER

☒

a. Full name: Newport - Mesa Unified School District

b. Mailing address: 2985 Bear Street
Costa Mesa, CA 92626

c. Telephone number: (714) 424-5000

d. Name and title of agent to contact: Dr. Frederick Navarro, Superintendent

E-mail Address: superintendent@nmusd.us

Telephone number: (714) 424-5031

Fax No.: (714) 424-5018

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes ☐ No ☒

6. STATEMENT OF CHARGE

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
- ☒ Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- ☐ Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- ☐ Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- ☐ Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- ☐ Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
- ☐ Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- ☐ Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Gov. Code §3543, §3543.1, §3543.2, §3543.3, §3543.5
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(a copy of the applicable local rule(s) MUST be attached to the charge):**
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)*
- Please see attachment

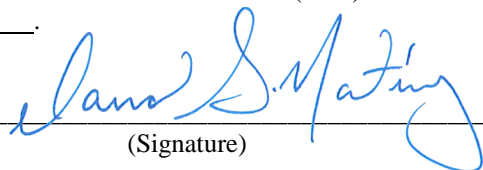
DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on October 31, 2018
(Date)

at Los Angeles, California
(City and State)

Dana S. Martinez

(Type or Print Name)


(Signature)

Title, if any: Attorney

Mailing address: 801 N. Brand Blvd., Suite 950
Glendale, CA 91203

Telephone Number: (818) 973-3204 E-Mail Address: dmartinez@bushgottlieb.com

STATEMENT OF FACTS

During the six months preceding the filing of this charge, the Governing Board of the Newport-Mesa Unified School District (“the District” or “NMUSD”), by its own actions and those of its agents and others, has interfered with employees’ exercise of their rights, denied to the Newport-Mesa Federation of Teachers (“NMFT” or “Union”) its rights under the Educational Employment Relations Act (“EERA”), failed to provide notice and refused to comply with the meet and confer requirements of the EERA as evidenced by, but not limited to, the following:

1. At all times relevant herein, the District has been a public school employer within the meaning of EERA, Section 3540.1(k).
2. At all relevant times herein, NMFT has been an employee organization within the meaning of EERA, Section 3540.1(d) and the exclusive representative of an appropriate unit of certificated employees of the District.
3. Pursuant to Article 13.2 of the Collective Bargaining Agreement (“CBA”) between the Union and the District, the parties agreed to establish a health benefits fund. The health benefit fund has been in existence since at least 2001. The money in the health benefit fund is used to provide health benefits to all employees in the District including NMFT, classified employees in the Classified School Employee Association bargaining unit and management employees. A true and correct copy of Article 13 of the CBA is attached hereto as Exhibit “A.”
4. Pursuant to Article 13.2 of the CBA, the District must deposit an amount equal to the negotiated cap for all eligible full-time and part-time employees. Article 13.2 provides that eligible employees includes all employees, even those who have chosen to not participate in the District health plan. At all relevant times, the negotiated cap per employee, per year was \$19,293.
5. The District has been depositing an amount equal to the negotiated cap for all District employees since at least 2001.
6. In or around May 2018 the Union and the District were engaged in reopener negotiations regarding, among other terms, health benefits. During this time, the Union made a request for information relevant to the health benefits fund. The District provided responsive information. In its review of the information provided by the District, the Union discovered that the District did not fund the health benefits fund consistent with the requirements of the CBA. Specifically, the Union learned that the District stopped depositing an amount equal to the negotiated cap for all employees. The District also did not deposited any amount for those employees who had chosen to not participate in the District health plan. Further, the District failed to fund the health benefits fund by using the agreed upon method of funding, and instead developed its own funding formula based upon past years’ experience, and projected participation and plan costs.

7. At no time prior to making these changes to the funding methodology did the District provide notice to the Union of its intent to deviate from the CBA and long standing past practice.

8. The Union raised the issue of the unilateral changes to the District. The District has held the position that it was permitted to make the changes and has refused to return to the agreed upon practice.

9. These unilateral changes concern matters within the scope of representation and were made without giving the Union notice or an opportunity to bargain.

10. The unilateral changes have a generalized effect and continuing impact on the terms and conditions of employment of the bargaining unit.

11. The District's refusal to bargain and failure to provide notice to the Union of the above-mentioned unilateral changes constitute violations of Gov't Code §§ 3543, 3543.1, 3543.2, 3543.3 and 3542.5

12. The Union seeks an order requiring that the District: (1) retroactively and prospectively fund the health benefits fund in compliance with the CBA; (2) make whole all employees for any loss suffered by the District's unlawful conduct; (3) cease and desist from continuing its unlawful conduct; (4) post and email a relevant Notice to Employees by Order of PERB; (5) comply with all other obligations under EERA; and (6) any other relief deemed proper by PERB.

Exhibit A

**Newport-Mesa Unified School District
Newport-Mesa Federation of Teachers**



**Collective Bargaining Agreement
July 1, 2017 – June 30, 2020**

Approved by the Board of Education: 10/10/17

NMFT-NMUSD

Collective Bargaining Agreement

Board Approved: October 10, 2017

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ARTICLE 13. Health and Welfare Benefits

- 13.1 A Joint Benefits Team (JBT), composed of four (4) members of the Newport-Mesa Federation of Teachers, four (4) members of California School Employees Association, and one each of the Newport-Mesa Administrators Association, confidential employees, supervisors, and District management, shall be responsible for recommending health and benefits plans and vendors, monitoring performance of the plans, and implementing periodic vendor bidding of health and welfare plans. The Joint Benefits Team also recommends the amount of the District contribution and the amount of the employee contribution to fund the benefit packages.

13.1.1 Joint Benefits Team:

The Bargaining Units shall be invited to send four (4) members each from the negotiating teams to join one (1) each of the Newport-Mesa Administrators Association, confidential employees, supervisors, and District management to discuss benefit information. References in this Article to the "Employee Benefits Committee" shall refer to the "Joint Benefits Team" in this special provision. Negotiations related to benefit plans shall occur separately with the bargaining units. This provision shall continue going forward as the status quo unless a change is negotiated by the parties.

Definitions:

a.) "Benefits Cap" defined as the average FTE allocation required for Benefits Package coverage paid July through September at prior fiscal year Composite Rate for all coverages and costs October through June at current fiscal year Composite Rate.

b.) "Benefits Package" defined as medical, dental, vision, life, EAP (Employee Assistance Program) and administrative costs for coverage provided to employees and retirees as recommended by the Benefits Committee and adopted by NMFT.

- 13.2 Records shall be furnished to the Committee as required by benefit providers and District personnel charged with administering the health and welfare plan.

A consultant/broker or other support staff may be authorized by the Committee within the budget "cap."

A fund will be established for separate accounting of medical benefits. The District will deposit an amount annually equal to the negotiated cap for eligible full-time employees and the prorated amount for each eligible part-time employee. "All employees" is defined as all eligible employees even if he/she waives the right to receive medical benefits. Also deposited in this fund will be employee contributions toward benefits and monies returned from Section 125 plans. No expenditures involving monies within the District cap will be expended without authorization of the Committee, with the exception of ongoing monthly premiums as approved by the Committee to current vendors.

Expenditures from the fund will be limited to the following: premiums to providers, committee approved itemized costs from the District and/or any consultant hired by the Employee Benefit

Committee to administer the benefits and/or advise the Committee, and any other expenditures authorized by the Committee. All excess money at the end of the benefit year will be used to defray any future increases in benefits or additions to benefits.

13.3 District Funded Health and Welfare Benefit Cap and Employee Contributions

The District funded Health and Welfare Benefit Unit Cap (Benefit Cap) shall be a maximum of up to \$19,293.

2017-2018 Employee Over Cap Benefit Contribution (OCAP)

There will still be a residual dollar amount required to fund the total cost of 2017-2018 employee benefits beyond the 2017-2018 District funded Benefit Cap. This additional residual amount shall be paid by each employee with benefits on a tenths basis via payroll deduction.

All NMFT bargaining unit members with benefits shall pay the applicable Employee Over Cap Benefit Contribution (OCAP) based on the following table:

2017-2018 Employee OCAP Benefit Contribution Chart (tenths)				
	Cigna HMO	Kaiser HMO	Cigna Select HMO	Cigna OAP (PPO)
Employee	\$20	\$20	\$20	\$178
Employee + 1	\$60	\$60	\$60	\$364
Employee + Family	\$100	\$100	\$100	\$532

Full-time employees pay the total OCAP on the chart above. Full-time employees shall pay no premium deduction for the Dental (HMO) plan for themselves or eligible dependents. An additional premium charge shall be paid by those employees selecting Dental (PPO).

Part-time employees who enroll in medical benefits shall pay OCAP amount for benefits plus the appropriate part time rates based on the 2017-18 Active Employee Benefit Payroll Deduction Table, effective October 1, 2017 as calculated by Risk Management/Benefits in consultation with NMFT.

Full time employees who elect to opt-out of medical and retain Dental Plan and/or Vision Plan will pay only the \$9.27 over-cap tenths or the prorated amount for part-time employees. The over-cap calculator and Active Employee Benefit Payroll Deduction Table are available at www.nmusd.us/benefits.

Full-time employees will pay no premium deductions for the vision plan for themselves and their eligible dependents.

The District will provide at no cost to the employee term life insurance in the amount of \$50,000 for full-time employees and \$25,000 for part-time employees.

The District will provide at no cost to the employee an Employee Assistance Program.

Scope of Benefits

A change to the scope of the Health and Welfare Benefits is subject to negotiations. The Health and Welfare benefits provided by the District to active employees and early retirees qualifying under Article 16 include medical insurance, dental, vision and life insurance, taking into consideration recommendations made by the Joint Benefits Team. As noted, changes to any of these benefit plans are subject to negotiations between the Federation and District, taking into consideration recommendations made by the Joint Benefits Team (JBT).

If the funded Health and Welfare Benefit Unit Cap is insufficient to cover the full cost of benefits as established by the JBT then plan modifications to reduce the coverage profile cost to an amount within the funded cap may be made by the JBT and adopted by NMFT. If plan modifications are not made or not adopted then effective for the first premium payment the residual dollar amount required beyond the funded cap shall be made by employee contribution paid through employee payroll deduction on a tenthly basis.

13.5 Available Health Plans

The available health and welfare benefits are determined by the scope of benefits provided under section 13.3.

13.5.1 Active Members – Premium Payment

The scope of benefits and premium payments are provided in accordance with Section 13.3.

Dual Employee Benefit Coverage

Dual Benefit Coverage. Married couples/domestic partners who are both employees of the district have enrollment options during the annual open enrollment period. Options include:

- A. Both employees enroll as independent subscribers for benefits, with one employee covering dependents (if any). Each employee is responsible for individual OCAP contributions, or
- B. Only one employee enrolls as the subscriber for benefits, and the other employee and/or dependents are enrolled as dependents. Only the subscriber will pay the OCAP, or
- C. One employee enrolls as a 2-party or family in medical, dental and vision with spouse/partner and eligible dependents and pays full OCAP but no payroll premium deduction for Dental PPO. The other employee declines medical and enrolls in dental and vision with eligible dependents, pays the reduced OCAP, but no payroll premium deduction for Dental PPO. There is no coordination of benefits with Dental PPO. There is coordination of benefits with VSP.

13.5.2 Employees eligible for health and welfare benefits who are in paid status through the last day of their regular K-12 student school year shall have the health and welfare benefits

under this article effective through the last day of September of the succeeding school year. Employees eligible for the health and welfare benefits who terminate their employment prior to the close of the school year shall have their benefits continue through the last day of the month in which their termination occurs. Life insurance benefits shall terminate at the same time as other group health benefits following an employee's termination.

13.5.3 Employees who were employed after the first day of the school year shall have all benefits of this article commence on the first day of the month following their first day of employment.

13.5.4 Early Retirees – Premium Payments for Retirees meeting the eligibility requirements of Article 16 are designated as “early retirees.”

Early retirees shall have the same “scope of benefits” as actives, except the District will provide at no cost to retirees, term life insurance in the amount of \$10,000 until they reach age 65.

If both spouses are eligible retirees in the District, they shall also be eligible for dual Benefit Coverage as provided to actives.

Early retirees who have retired on or before June 30, 2011 will pay no over-the-cap employee contributions until they reach age 65.

For early retirees who retire on or after July 1, 2011, early retirees will be subject to and will pay the same over-the-cap employee contributions as actives under Article 13.3. (Note: as a result Article 16 at section 16.2.1.1 regarding “no premium cost” shall apply only to those retirees who retired on or before June 30, 2011. Early retirees retiring on or after July 1, 2011 will be subject to and will pay the same over-the-cap employee contributions as actives under Article 13.3).

A. An additional premium charge will be paid by early retirees selecting Cigna Dental (PPO).

13.5.5 Retirees no longer eligible for District insurance under Article 16 may purchase medical and dental insurance under the District group plan. Cost of the insurance is the sole responsibility of the retiree.

13.6 Any unit member employed after April 1, 1977, who works less than full-time for fifty percent (50%) or more of a full-time contract, shall receive a prorated fringe benefit contribution from the district in proportion to the number of hours per week or days per month of scheduled duty worked.

13.7 Unit members hired prior to April 1, 1977, who work less than full-time but fifty percent (50%) or more of a full-time contract and who, on April 27, 1977, received full paid benefits from the District, shall not have their benefits diminished because of the provisions in 13.2 above.

- 13.8 Unit members who work less than fifty percent (50%) of a full-time contract shall not receive any health and welfare benefits with the exception of 15.3.1.
- 13.9 Employees who work fifty percent (50%) or more may purchase medical benefits as calculated by Risk Management/Benefits.
- 13.10 Following the death of a bargaining unit employee, the health and dental insurance program in effect for eligible bargaining unit employees will be provided to the surviving covered dependent(s) for a period of one (1) year following the death of the employee, to an extent equal to the fullest manner authorized by the insurance provider. Any pro-rata contribution for health and dental benefits in effect at the time of death of the employee shall become the responsibility of the dependent(s) for continued coverage.
- 13.11 Unit members who are on a Board approved unpaid leave of absence shall have the option to continue to participate in the District health and welfare benefit program for a maximum of three (3) years at no cost to the District. Participation in such a benefit program shall be subject to any limitations imposed by the health benefits carrier and reasonable requirements established by the District regarding timely premium payments.
- 13.12 Unit members may participate in tax sheltered annuity programs of their choice, at no cost to the District. Companies involved in tax sheltered annuity programs for employees must appear on the Board approved list in advance. The District shall provide payroll deductions for this purpose.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles,
State of California. I am over the age of 18 years. The name and address of my
residence or business is 801 N. Brand Blvd., Suite 950, Glendale, CA 91203

On October 31, 2018, I served the Unfair Practice Charge
(Date) (Description of document(s))

(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check
the applicable method or methods):

☒ placing a true copy thereof enclosed in a sealed envelope for collection and delivery
by the United States Postal Service or private delivery service following ordinary business
practices with postage or other costs prepaid;

☐ personal delivery;

☐ facsimile transmission in accordance with the requirements of PERB Regulations
32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

Dr. Frederick Navarro, Superintendent
Newport-Mesa Unified School District
2985 Bear Street
Costa Mesa, CA 92626
Email: superintendent@nmusd.us

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on October 31, 2018, at Glendale CA.
(Date) (City) (State)

Ashlie Kennedy

(Type or print name)


(Signature)