S 177403

IN THE

SUPREME COURT OF CALIFORNIA

UNITED TEACHERS LOS ANGELES
Plaintiff and Appellant
vs.
LOS ANGELES UNIFIED SCHOOL DISTRICT
Defendant and Respondent

Second Appellate District Court of Appeal,
Case No. B214119;
Los Angeles County Superior Court Case No. BS116739
Honorable Mary Ann Murphy, Judge Presiding

APPLICATION FOR LEAVE TO FILE, AND BRIEF OF AMICUS CURIAE CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

TO THE HONORABLE RONALD M. GEORGE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT,

Pursuant to Rule 8.520(f) of the California Rules of Court, leave is hereby requested to file the accompanying Brief of *Amicus Curiae* on behalf of the California School Boards Association's ("CSBA") Education Legal Alliance ("Alliance") in support of Respondent Los Angeles Unified School District.

INTEREST OF AMICUS CURIAE

This case concerns, *inter alia,* the novel issue of whether the procedures mandated by the Legislature for establishing a charter school under the Charter Schools Act, Government Code section 47600 et seq., are a proper subject for collective bargaining under the Educational Employment Relations Act, Government Code section 3540 et seq. ("EERA"), the law governing public school labor relations in California. Specifically, the case at hand presents the question of whether a school district, having followed the comprehensive procedures required by the Legislature for the formation of a charter school, must then submit to binding labor arbitration a grievance regarding additional procedures, neither required nor approved by the Charter Schools Act but negotiated with the union. The provisions negotiated by the parties under the EERA are inconsistent with the school district's obligations under conflicting provisions of the Charter Schools Act, a comprehensive statute which occupies the field and precludes negotiations.

The decision of the Court of Appeal in this case, ordering the parties to arbitration, creates significant uncertainty for school districts both in the area of compliance with the Charter School Act as well as the scope of collective bargaining under the EERA, and compromises the ability of school districts to comply with state and federal laws mandating education reform. Upholding the decision of the Court of Appeal would have far-reaching educational and economic consequences that potentially impact all school districts in the state.

CSBA is a California non-profit corporation duly formed and validly existing under the laws of the State of California. CSBA is a member-driven association composed of the governing boards of nearly all of California's more than 1,000 school districts and county offices of education, including the Los Angeles Unified School District. The Alliance is composed of just under 800 CSBA members and is dedicated to addressing public education legal issues of statewide concern to school districts and county offices of education. The purpose of the Alliance, among other things, is to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law and to make appropriate policy decisions for their local agencies. The Alliance's activities have included, as in this appeal, joining in litigation where the statewide interests of public education are at stake. The Alliance has been granted leave to participate in numerous cases before California Courts of Appeal and this Court.

BRIEF OF AMICUS CURIAE WILL ASSIST THE COURT

Amicus Curiae's brief will assist the Court in several ways. It supplements Respondent's arguments regarding the applicability of this Court's decision in *Board of Education v. Round Valley Teachers Association* (1996) 13 Cal.4th 269 and points out a significant misreading of *Round Valley* by the Court of Appeal. It covers, in a level of detail not included in the briefs submitted by the parties, the methodology established by this Court in addressing questions regarding the scope of negotiations, and using this methodology shows that the school district's obligations under the Charter School Act are not a proper subject for negotiation. It addresses the specific issues of legislative intent and statutory construction as they relate to the interplay between the Education Code and Government Code section 3543.2, which governs the scope of negotiations, showing that where the Legislature has provided a role for unions in various statutory schemes through the Education Code it has done so explicitly, whereas schoolteachers, but not unions, have expressly been included in the comprehensive statute governing the charter school approval process. Finally, it discusses the practical implications for public education in California if the Court of Appeal's decision is upheld.

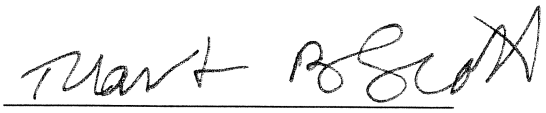
CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests that the Court accept the accompanying Brief for filing in this case.

Dated: August 18, 2010

Respectfully submitted

LOZANO SMITH



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INTRODUCTION

The Court of Appeal in this case, breaking with precedent, would defer to binding arbitration a question of first impression that belongs before this Court: is the process that a school district is legally required to follow in approving a charter school a proper subject of collective bargaining? The decision of the Court of Appeal ignores a quarter century of methodical legislative development and administrative and judicial precedent, including this Court's decision in *Board of Education v. Round Valley Teachers Association* (1996) 13 Cal.4th 269 (hereafter *Round Valley*).

School districts in California rely for guidance in labor relations on a body of law developed by the Legislature and interpreted by the decisions of the Public Employment Relations Board and, ultimately, the courts. The scope of labor negotiations in public education is well defined, explicitly stated by the Legislature and the courts, and relatively restrictive. The powers and duties of school districts are set forth in the Education Code and may not be abridged by courts or arbitrators absent specific statutory authority.

The Legislature's intention to occupy the field of charter school formation precludes bargaining on these issues; the Legislature is precise when it intends to include union involvement in a statutory scheme, and it has not done so in this case. The Petition to Compel Arbitration in this case

was properly denied by the Superior Court and the judgment of the Court of Appeal should be reversed.

I. THE COURT OF APPEAL MISREADS *ROUND VALLEY.*

The Court of Appeal, in rejecting the Superior Court's denial of the Petition to Compel Arbitration, justifies its decision in part by stating that *Round Valley* "does not address the issue of nor hold that the statutory defense was not subject, in the first instance to arbitration." (*United Teachers Los Angeles v. Los Angeles Unified School Dist.* (2009) 99 Cal. Rptr.3d 524, 532.) The Court of Appeal opinion goes on to state that in *Round Valley*, "[d]espite the school district's purportedly [sic] conclusive statutory defense, the Supreme Court did not suggest that such a case should never have reached the arbitrator." (*Id.* at p. 533.) The Court of Appeal is correct in that this Court's discussion of the arbitrator's role in *Round Valley*, as a prelude to its analysis of the substantive statutory conflicts, was confined to the reviewability of an arbitrator's decision already rendered, since that was the operative fact situation before the Court. (*Round Valley, supra,* 13 Cal.4th at pp. 274-278.) However, the Court of Appeal's reasoning for reliance on *Round Valley* is flawed since it is axiomatic that cases are not authority for propositions not therein considered. (*People v. Gilbert* (1969) 1 Cal.3d 475, 482, fn. 7; *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2; see also *Murphy v. Check 'n Go of*

Cal., Inc. (2007) 156 Cal.App.4th 138, 146; *Millbrae School Dist. v. Superior Ct.* (1989) 209 Cal.App.3d 1494, 1500.)

Notably, however, the Court of Appeal here overlooks the Supreme Court's approval in *Round Valley* of the result in *Fontana Teachers Association v. Fontana Unified School District* (1988) 201 Cal.App.3d 1517, which upheld the denial of a petition to compel arbitration where the subject had been excluded from the Educational Employment Relations Act, Government Code section 3540 et seq. (hereafter EERA) as a proper subject of collective bargaining. While disapproving the *Fontana* court's conflation of the terms "dismissal" and "nonreelection," this Court stated that it "agreed with the result" in *Fontana*, finding that Government Code 3543.2, subdivision (a), "evidences a general intent to exclude the procedures governing the reelection of probationary teachers as a proper subject of collective bargaining." (*Round Valley, supra*, 13 Cal.4th at p. 283.)

In deciding *Round Valley* this Court also discussed and relied on two other decisions of the Courts of Appeal involving the authority of arbitrators and the scope of collective bargaining concerning dismissal or nonreelection of public school employees, without regard to the procedural stages at which they had arisen. (*United Steelworkers of America v. Bd. of Ed.* (1984) 162 Cal.App.3d 823 [petition to compel arbitration]; *Bellflower Ed. Assn. v Bellflower Unified School Dist.* (1991) 228 Cal.App.3d 805

[petition to vacate arbitrator's award].) Even if properly characterized as dictum, statements of this Court are considered persuasive. (*United Steelworkers of America, supra,* 162 Cal.App.3d at p. 835.) This Court's approval of the result in *Fontana*, coupled with its unreserved reliance on the foregoing precedent, should have signaled to the Court of Appeal in this case that it could not so easily step aside from the task at hand. As articulately argued by Respondent, parties cannot be compelled to arbitrate a question on which they could not legally have reached agreement.

II. THE COURT OF APPEAL'S FAILURE TO ADDRESS THE MERITS OF THE CASE WAS REVERSIBLE ERROR.

In its *Round Valley* opinion this Court reviewed both the applicable provisions of the Education Code and the Government Code, in determining that the issue at hand, i.e., nonretention of probationary teachers, was outside the statutory scope of collective bargaining and thus beyond the authority of an arbitrator. The Court relied not only on the cases cited above but also on its seminal decision in *San Mateo City School District v. Public Employment Relations Board* (1983) 33 Cal.3d 850 (hereafter *San Mateo*), which has provided ongoing guidance to school districts, courts, and the Public Employment Relations Board (hereafter PERB) regarding which matters fall within and without the scope of school labor negotiations. The *Round Valley* methodology is sound and should have been followed by the Court of Appeal in this case.

III. THE DENIAL OF THE PETITION TO COMPEL ARBITRATION WAS PROPER SINCE THE CHARTER SCHOOL APPROVAL PROCESS IS OUTSIDE THE SCOPE OF COLLECTIVE BARGAINING.

EERA gives school employees the right to bargain collectively through an elected exclusive representative organization. The scope of representation is limited to "matters relating to" an enumerated list of topics, which has been specifically expanded by the Legislature from time to time since the enactment of the EERA in 1977. (Gov. Code, § 3543.2; *San Mateo, supra,* 33 Cal.3d at pp. 855-858.) A particular bargaining proposal will fall within "matters relating to" the enumerated topics only if it meets the following three-pronged test:

> if (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment, (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not significantly abridge his freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission.

(*San Mateo, supra,* 33 Cal.3d at pp. 857-858.)

Government Code section 3543.2, subdivision (a), concludes: "All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school

employer to consult with any employees or employee organization on any matter outside the scope of representation."

A. Nothing In the Provisions Which UTLA Seeks to Submit To Arbitration Is Related In Any Way To An Enumerated Subject Of Bargaining.

In the present case, United Teachers of Los Angeles (hereafter UTLA) seeks enforcement through binding arbitration of provisions in its collective bargaining agreement with the Los Angeles Unified School District (hereafter LAUSD). These provisions call for LAUSD to take extra steps, not called for by statute, in its process of reviewing, gathering information, and deciding whether to approve or disapprove a petition seeking to convert one of LAUSD's existing schools to a charter school.

None of the provisions at issue is logically or reasonably related to hours, wages, or any other enumerated terms under the EERA. Management-employee conflict on the subject of procedures for consideration and approval of charter school petitions is unlikely since the submission, contents, and disposition of a charter petition are all highly regulated by law and relate to the creation of a separate educational entity with its own employees, who after the formation of the charter school may choose to select an exclusive representative and bargain on their own behalf. (Ed. Code, § 47611.5, subds. (b)-(d).) The mediatory influence of collective negotiations is an *inappropriate* means of resolving conflict on

this subject; in fact, the PERB is precluded by law from assuming jurisdiction over the approval process (Ed. Code, § 47611.5, subd. (e).) Finally, the obligation to negotiate is completely inconsistent with the duties imposed on the school district, which before deciding to grant or deny a petition must hold a public hearing, analyze the petition for adequacy concerning a large number of subjects enumerated in the charter law, most of which are technical educational matters, and only one of which could even remotely impact present employees of the district. (*Id.*, § 47605, subd. (b).) That one subject concerns leave and return rights for current district employees who wish to work for the charter school; the parties have included it elsewhere in their collective bargaining agreement and it is not at issue here. (*Id.*, § 47605, subd. (b)(5)(M); UTLA's Answer Brief on the Merits, at p. 7.)

Moreover, none of the grounds on which LAUSD is authorized to grant or deny the petition is remotely related to wages, hours, or any term or condition of employment within the scope of bargaining under Government Code section 3543.2. None of the information requested by UTLA or the procedures it seeks to impose bears on any rights enjoyed by current LAUSD employees, or any duty that the union has toward those current employees – again, with the exception of the leave and transfer provisions which have already been negotiated, apparently to UTLA's satisfaction.

According to UTLA, the provisions at issue are designed to "mitigate the potentially disruptive effect" of the conversion charter process, and "maintain meaningful dialogue regarding the future of the school between the school's employees and the District." (UTLA's Answer Brief on the Merits, at p. 6.) To be clear, the "school's employees" at this juncture, prior to the formation of a charter school, are actually employees of LAUSD. To the extent that this case concerns UTLA's efforts to bargain on behalf of employees of a school that has not yet come into existence, this matter is not ripe.

Bargaining on such broad topics as mitigation of potentially disruptive effects and maintenance of meaningful dialogue might have been permitted under Senate Bill No. 400 (the Moscone Act), which provided for negotiation of "the terms and conditions of service and other matters which affect the working environment of employees . . . ." As noted by this Court, however, in discussing the relatively limited scope of bargaining under the EERA, the Moscone Act passed the 1974 Legislature but was vetoed by the Governor. (*San Mateo*, *supra,* 33 Cal.3d at p. 862.) The purposes for which UTLA wishes to enforce the contract language at issue are not legitimate topics of bargaining under the EERA.

B. The Legislature Has Fully Occupied The Field Of The Creation And Maintenance Of Charter Schools

Any scope analysis must also take into account the statement of purpose in the EERA, which reads in relevant part, "This chapter shall not supersede other provisions of the Education Code[.]" (Gov. Code, § 3540.) This prohibits negotiations where provisions of the Education code would be "replaced, set aside or annulled," or where the Education Code language "clearly evidences an intent to set an inflexible standard or insure immutable provisions[.]" (*San Mateo, supra,* 33 Cal.3d at pp. 864-865.) Negotiations are also precluded on subjects where the Education Code exhibits a "legislative intent to fully occupy the field[.]" (*Id.* at p. 866.)

Determining the Legislature's intent with respect to preemption or "occupation" of a particular field is not measured solely by the statutory language in question, "but by the whole purpose and scope of the legislative scheme." (*Tolman v. Underhill* (1952) 39 Cal.2d 708, 712.) Statutes must be read to give effect to the purpose of the law, and various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230; *Select Base Materials v. Bd. of Equalization* (1959) 51 Cal.2d 640, 645.)

Education Code section 47600 et seq. is a comprehensive statutory scheme which fully occupies the field of creation and maintenance of charter schools. In enacting the Charter Schools Act, "the Legislature made the fundamental policy decision to give parents, teachers and community members the opportunity to set up public schools with operational independence in order to improve student learning, promote educational innovation and accomplish related public education goals." (*Wilson v. State Bd. of Ed.* (1999) 75 Cal.App.4th 1125, 1146-1147, rehg. den. Nov. 24, 1999, review den. Jan. 25, 2000.) It sets policy and fixes standards and limits, including the "numerous petition and operational requirements set forth in section 47605." (*Id.* at p. 1147.) Charter schools operate as separate educational entities but are deemed to be under the control and oversight of the entities which issue and have the power to revoke their charters, including school districts. (*Id.* at pp. 1139-1140.)[1]

A review of the Charter Schools Act confirms that the Legislature has left no room for local deviation from its comprehensive scheme, from the extensive statement of purpose (Ed. Code, § 47601) to the exhaustive requirements to be met by petitioners and districts alike in the process of presenting, reviewing, and granting or denying petitions (Ed. Code, § 47605) to the accountability and oversight requirements (Ed. Code,

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[1] Contrary to the assertion of UTLA, there is no way the requirements of the Charter Schools Act can be seen as merely "guidelines." (UTLA's Answer Brief on the Merits, p. 19.)

§§ 47604-47604.5, 47607, 47634.2, *inter alia.*) The Legislature could have written provisions into the Charter Schools Act creating flexibility for school districts; it did not. (See analysis of legislative preemption in *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 886-890 [broad field of financing new school facilities required to serve new development held not occupied by Legislature].)

The inevitable result of the lower court's holding in this case would be the piecemeal interpretation and re-interpretation of portions of the Charter Schools Act by arbitrators attempting to parse out permissible deviations from, or additions to, the complex standards and procedures imposed by the Legislature on school districts under the Charter Schools Act. In the present case, this would substitute the judgment of the arbitrator for that of the LAUSD Board, which is charged under Education Code section 47605 with the exclusive duty of receiving a petition, scheduling a public hearing, receiving input from employees and parents, and reviewing the petition for compliance with the myriad statutory requirements, all as part of its decision-making process. Standards for the consideration and approval of charter school petitions are fixed by the Legislature and school districts are not permitted to deviate from them, nor delegate them. The comprehensive provisions of the original 1992 Charter Schools Act were strengthened by the 1998 amendments; as the court in *Wilson v State Board of Education* pointed out, "Gone . . . is the broad discretion in granting or

denying a charter." (*Wilson, supra,* 75 Cal.App.4th at p. 1132.) The Legislature has made it clear that school districts discretion must be exercised within the narrow compass of the statutory scheme; such an obligation is "in the nature of a public trust and may not be exercised by others in the absence of statutory authorization." (*Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 24-25.)

After the fact, UTLA seeks to disclaim the remedy of "rescission" of charter school approval, which it sought in its grievance. Not only this remedy, but also the provisions of the agreement calling for LAUSD to perform additional acts, with alternative timelines, prior to the approval of a conversion charter, would, if enforced, "replace, set aside or annul" the timelines and other duties to be performed by LAUSD under Education code 47605, subdivision (b). Contractual timelines for processing grievances would likely have interfered with the strict timelines for consideration and approval under the statute even if UTLA had filed its grievance in a timely fashion. As it was, UTLA waited until after the charter petition had been approved before filing.

C. The Legislature Has Given No Role To Unions In The Formation Of Charter Schools

Education Code section 47605, subdivision (b), states in part, "No later than 30 days after receiving a petition . . . the governing board of the school district shall hold a public hearing on the provisions of the charter, at

which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents." The Legislature thus specified three groups from which the district must receive input; the exclusive representative was not included in that list. It can reasonably be concluded that the inclusion of teachers employed by the district, coupled with the exclusion of their union, makes the union's views regarding the proposed charter irrelevant. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13.)

A comparison of subdivisions (d), and (e) of Education Code section 47611.5 illuminates the Legislature's purpose:

> (d) The Public Employment Relations Board shall take into account the Charter Schools Act of 1992 (Part 26.8 (commencing with Section 47600)) when deciding cases brought before it related to **charter schools.**
>
> (e) The approval or a denial of a charter petition by **a granting agency** pursuant to subdivision (b) of Section 47605 shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board.

(Emphasis added.)

Education Code section 46711.5, subdivision (d), explicitly grants authority to PERB over matters dealing with charter schools. Before charter schools come into existence, however, subdivision (e) deprives PERB of jurisdiction over the granting agency when considering approval

or denial of a petition. There is no charter school in existence at the point in the charter approval process where UTLA's collective bargaining provisions purportedly take effect; there is therefore no PERB jurisdiction, and the parties have no authority to bargain such matters under the EERA.

Education Code section 47611.5 was enacted with the purpose of extending bargaining rights to employees at charter schools after the schools come into existence, not before. Subdivision (e) was added to make it clear that the process for approving charters pursuant to Education Code section 47605, subdivision (b), was not to be controlled by collective bargaining agreements. (Respondent's Opening Brief on the Merits, pp. 20-21, citing legislative committee reports.) There is a presumption that the Legislature adopted the proposed legislation with the intent and meaning expressed in committee reports. (*Cal. Teachers Assn. v. Governing Bd.* (1983) 141 Cal.App.3d 606, 613.) There is no merit to UTLA's contention that section 47611, subdivision (e), somehow transmutes the Charter Schools Act into a proper subject of bargaining. "An intention to legislate by implication is not to be presumed." (*People v. Christian S.* (1994) 7 Cal.4th 768, 776.)

Had the Legislature intended to provide a role for unions in the approval process, it could certainly have done so. The Legislature "knew what it was saying and meant what it said." (*Educational & Recreational Services, Inc. v. Pasadena Unified School Dist.* (1977) 65 Cal.App.3d 775,

782; *Pacific Gas & Electric Co. v. Shasta Dam etc. Dist.* (1955) 135 Cal.App.2d 463, 468.) The Legislature could easily have included provisions in the Charter Schools Act for union involvement in the approval process, as it has done in many other instances; that it chose not to do so indicates its intent to exclude the Act from the scope of collective bargaining. (Cf. *Educational & Recreational Services, supra,* 65 Cal.App.3d at p. 783.)

The Legislature knows well how to write such language when it intends to; unions have been given specific roles, from simple input to consultation to actual bargaining, in a variety of contexts throughout the Education Code. (See, e.g., Ed. Code, §§ 33050, subd. (d)(2) [request to State Board of Education for waiver of certain statutes must include the exclusive representative's position regarding the waiver], § 44503, subd. (a) [development of Peer Assistance and Review Program to be negotiated with exclusive representative], § 44653 [specific salary awards under Certificated Staff Performance Awards for improved Student Performance in Underachieving Schools Act to be negotiated with exclusive representative; also provides for implementation where no agreement is reached], § 44661.5 [inclusion in evaluation and assessment guidelines of objective national or state standards consistent with law permitted by mutual agreement with exclusive representative], §52054, subd. (f) [Immediate Intervention Underperforming Schools team to consult with

exclusive representatives in development of action plan], § 52055.620, subd. (d) [High Priority Schools Grant program school action plan strategy to be developed collaboratively with exclusive representatives outside of bargaining].)

A review of these statutes, as well as Government Code section 3543.2, which has been methodically amended over the years to enlarge the scope of bargaining in certain discrete areas, evinces a thoughtfulness on the part of the Legislature that makes it impossible to conclude that the procedures for charter approval were ever intended to be a proper subject of bargaining.

The Legislature's treatment of Education Code section 45113 is also instructive. In both *San Mateo, supra,* 33 Cal.3d 850, and *United Steelworkers, supra,* 162 Cal.App.3d 823, the courts held that the language of Education Code section 45113 prohibited the arbitration of disciplinary matters involving classified employees. In 2001, the Legislature added subdivision (e) to Education Code 45113, permitting classified employees to submit certain disciplinary disputes to arbitration pursuant to the terms of a collective bargaining agreement. (Stats. 2001, ch. 844, §§ 1.5 and 3; Stats. 2001, ch. 839, § 1.) In *California School Employees Association v. Bonita Unified School District* (2008) 163 Cal.App.4th 387, 401, the court held that this amendment abrogated *San Mateo* and *United Steelworkers* to the extent that they interpreted Education Code section 45113 as a "flat

prohibition" on arbitration of classified disciplinary matters. This is another example of very precise action of the Legislature expanding the scope of collective bargaining. It also illustrates the complexity of the scope analysis, which is a subject for interpretation by courts, and not, as the Court of Appeal suggest in the present case, for arbitrators.

IV. AFFIRMANCE OF THE COURT OF APPEAL'S DECISION WOULD CREATE SERIOUS NEGATIVE CONSEQUENCES FOR PUBLIC EDUCATION

A. A Requirement to Bargain Procedures For The Formation Of Charter Schools Would Have Far-Reaching Consequences.

The enormous scale of public education in California makes settled precedent in this area essential. There are just over 1,000 school districts in California, virtually all of which are members of CSBA. These school districts are required by law to bargain with their employees on matters within the mandatory scope of collective bargaining under the EERA. There are approximately 675,000 employees in California's public education system from pre-kindergarten through and including the community college level.[2] The California Teachers Association represents 325,000 of the K-12 certificated employees, in 1,100 chapters throughout

[2] PERB 2009 annual report, at <http://www.perb.ca.gov/about/annual_reports.asp>.

the state;[3] another 120,000 educational employees, at all levels, are represented in 135 bargaining units by the California Federation of Teachers.[4] The California School Employees Association is the largest classified school employees union in the United States, representing 220,000 school support staff throughout California in more than 750 chapters throughout the state.[5] There are currently 749 active charter schools in California, and 41 pending.[6] According to EdSource, a authoritative nonpartisan research organization formed in 1977 by the California Parent-Teacher Association, the California League of Women Voters, and the American Association of University Women, the number of new charter schools has more than tripled in the past ten years, with an average of fifty new charter schools being authorized each year. In absolute numbers, California has the most charter schools and students in the country.[7] Requiring school districts to bargain charter school formation

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[3] CTA Fact Sheet, at <http://www.cta.org/About-CTA/Who-We-Are/CTA-Fact-Sheet.aspx>.

[4] CFT At A Glance, at <http://www.cft.org/index.php/at-a-glance.html>.

[5] About CSEA, at <http://members.csea.com/memberHome/AboutUs/AboutCSEA/tabid/115/Default.aspx>.

[6] California Department of Education, *Charter School FAQ Section I,* at <http://www.cde.ca.gov/sp/cs/re/qandasec1mar04.asp>.

[7] <http://www.edsource.org/sch_ChSch_VitalStats.html>.

issues, given the high levels of union representation and charter school activity in California, would lead to chaos.

B. The Court Of Appeal's Decision Burdens School Districts and, Ultimately, the State, With Unnecessary Costs

The cost of collective bargaining in California public education already exceeds approximately $40 million per year statewide.[8] While school districts are entitled to reimbursement for collective bargaining costs as an unfunded legislative mandate pursuant to Government Code section 17500 et seq., claims for reimbursement have not been honored in recent years due to the state budget crisis.[9] The costs of compliance with the Charter Schools Act are also eligible for reimbursement, including the procedures for approval required by Education Code section 47605, subdivision (b).[10] Notably, the Senate Appropriations Committee Report on the bill that added Education Code section 47611.5 estimated a relatively modest cost for the implementation of the new law, anticipating

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[8] From 2003-04 through 2007-08, claims for reimbursement of collective bargaining costs in public education totaled $138,800,000. California State Auditor Report 2009-501, October 2009, p. 10, at <http://www.bsa.ca.gov/pdfs/reports/2009-501.pdf>.

[9] Ibid.

[10] Office of the State Controller, State Mandated Costs Claiming Instructions No. 2007-06, Consolidation of Charter Schools (CS), CS II, and CS III for Fiscal Year 2007-08 and Subsequent Fiscal Years, February 22, 2007, Revised September 5, 2009, at <http://www.sco.ca.gov/Files-ARD-Local/Manuals/sd_0809_cs278.pdf>.

that it would trigger bargaining only in the 150 then-existing charter schools, and not in the State's 1,000 school districts:

> Current law authorizes 250 charter schools statewide. Approximately 150 are operational with 50 more approved, but not operational. How many of these would choose to be their own employer is unknown. The cost to add site specific amendments could be as high as $1,000 per site.
>
> The actual mandated costs of this bill are unknown, but likely to be less than $150,000, with fewer than 150 schools adding site specific amendments.
>
> Staff notes that to the extent collective bargaining results in higher salaries or benefits at charter schools, their costs would be increased. However, these costs are subject to negotiation and not a mandated cost of the bill.

(Sen. Approp. Com., Fiscal Summ. of Assem. Bill No. 631 (1999-2000 Reg. Sess.) as amended Aug. 17, 1999.)

The Court of Appeal's decision creates an expensive and unwieldy process for determining the scope of negotiations on a case-by-case, district-by-district basis. Expenses for processing labor grievances are also reimbursable mandated costs that would be ultimately borne by the state,[11] but are at this juncture owed by the state to school districts into the indeterminate future. School districts have already cut their budgets to the

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[11] Office of the State Controller, State Mandated Costs Claiming Instructions, Collective Bargaining and Collective Bargaining Agreement Disclosure (School Districts), Revised September 24, 2009, at <http://www.sco.ca.gov/Files-ARD-Local/Manuals/sd_0809_cb011.pdf>.

bone and should not be further burdened; this Court should reverse the lower court's decision and bring certainty to this area.

C. The Requirements Of The EERA Are Irreconcilable With The Provisions Of The Charter Schools Act.

Respondent's Reply Brief on the Merits shows in detail how the contract terms at issue here replace, set aside, or annul the provisions of the Charter Schools Act. (Respondent's Reply Brief on the Merits, pp. 51-55.) Time lines for the submission of information to UTLA under the contract are inconsistent with the time lines for receiving input from teachers and others under Education Code section 47605, subdivision (b). The time lines for grievance processing are inconsistent with the entire charter petition approval process mandated by law. Faced with the choice to violate the terms of the contract or violate the Charter Schools Act, LAUSD in this case reasonably opted for the former. Were the provisions of the Charter Schools Act to be declared bargainable, school districts in California would find themselves again and again caught in an ongoing and expensive double bind which would serve neither the purposes of the Charter Schools Act nor the orderly course of employer-employee relations. Were the approval process for charter petitions to be declared a mandatory subject of bargaining, the submission of a charter petition under Education Codes section 47605 could give rise to demands to bargain from both certificated and classified unions, which if the parties could not reach

agreement could trigger the lengthy impasse and factfinding process and defeat the strict time requirements for approval of charter petitions under that section.

D. Requiring Collective Bargaining Of Procedures For Charter School Approval Directly Conflicts With Recent School Reform Laws

Earlier this year the Legislature, in special session, enacted school reform laws to address the serious problems of persistently low-achieving schools in California. (SBX 5 1 (Stats. 2010, ch. 1) and SBX 5 4 (Stats. 2010, ch. 3), adding, *inter alia,* Ed. Code §§ 53100 et seq.) Education Code sections 53202 and 53300 now require local educational agencies (LEAs) to implement one of four "interventions", including a "restart model", in certain circumstances. Both these statutes and the federal regulations to which the statutes refer make clear that the "restart model" involves creation of a charter school:

> (b) Restart model. A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. (A CMO is a non-profit organization that operates or manages charter schools by centralizing or sharing certain functions and resources among schools. An EMO is a for-profit or non-profit organization that provides "whole-school operation" services to an LEA.) A restart model must enroll, within the grades it serves, any former student who wishes to attend the school.

(Race to the Top Fund, 74 Fed. Reg. 59,688, 59,829 (2009) [Appendix C to the notice of final priorities, requirements, definitions, and selection criteria].)

Education Code section 53202 states that the LEA for any school identified by the Superintendent of Public Instruction as "persistently-lowest achieving" "shall implement" one of the interventions unless the LEA can demonstrate that it has implemented a reform in the past two years. Likewise, Education Code section 53300 permits the parents and guardians of students in a school that is subject to corrective action under federal law to petition the LEA to implement one of the interventions. Upon receiving such a petition, the LEA must implement one of the interventions, though it is not required to implement the model selected by the petitioners, and may select one of the other interventions following a public hearing. Education Code section 53300 states in pertinent part:

> [T]he local educational agency shall implement the option requested by the parents unless, in a regularly scheduled public hearing, the local educational agency makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options described in this section it will implement in the subsequent school year consistent with requirements specified in federal regulations and guidelines for schools subject to restructuring under Section 1116(b)(8) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) and regulations and guidelines for the four interventions.

(Emphasis added.)

It is extremely doubtful that compliance with a collective bargaining agreement would be considered an adequate reason not to enact an intervention such as the restart model. At the time of this writing, recipients of federal Race to the Top funding have not been announced. If California is selected to receive school reform funding under the exacting requirements of federal law, a decision requiring collective bargaining of charter school approval could conceivably jeopardize the State's eligibility for such funds. Regardless of whether California receives such funding, the above-cited provisions of the newly enacted state school reform legislation will remain in effect, and conflict with that law is inevitable if charter school approval is subjected to collective bargaining.

CONCLUSION

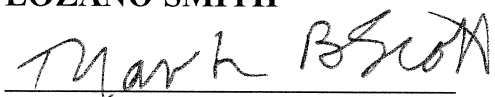
Upholding the decision of the Court of Appeal in this case would leave both school districts and labor unions without guidance as to whether the procedures set forth in the Charter Schools Act are bargainable. This Court should follow the sound methodology it established in deciding *Round Valley* and address the interplay of the Charter Schools Act and the EERA. Public education in this state is at a point of crisis as it struggles to comply with the layers of legislation designed to address the critical needs students, all the while facing devastating budget reductions. *Amicus Curiae* respectfully contends that the Legislature has made it clear that the Charter Schools Act is, in fact, outside the scope of bargaining. To preserve the

orderly course of labor relations and enable California public schools to fulfill their mission to educate, the decision of the Court of Appeal should be reversed.

Dated: August 18, 2010

Respectfully submitted

LOZANO SMITH



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CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c) of the California Rules of Court, counsel hereby certifies that the word count of the computer program used to prepare this brief (excluding the cover, tables and this certificate) is 5,370 words.

Dated: August 18, 2010

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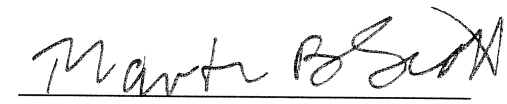

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PROOF OF SERVICE

(Code Civ. Proc., §§ 1013, subd. (a), and 2015.5)

I am employed in the County of Contra Costa, California. I am over the age of 18 years and not a party to this action. My business address is LOZANO SMITH, 2001 North Main Street, Suite 650, Walnut Creek, California 94596.

On August 20, 2010, I served the attached **APPLICATION FOR LEAVE TO FILE AND BRIEF OF AMICUS CURIAE CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE** on each interested party in said cause as indicated below:

SEE ATTACHED SERVICE LIST

[ ] ***(BY ELECTRONIC MAIL)*** The pleading was served electronically and the transmission was served complete and without error.

[ ] ***(BY PERSONAL SERVICE)*** I caused a copy of said pleading to be hand delivered to the interested parties listed below:

[ ] ***(BY FACSIMILE)*** I caused a copy of said pleading to be sent via facsimile transmission to the interested parties listed above:

[ ] ***(BY OVERNIGHT MAIL)*** I caused a copy of said pleadings to be sent by overnight mail to the parties listed below:

[X] ***(BY REGULAR MAIL)*** I caused a copy of said pleading to be placed in a United States mail depository, in a sealed envelope, with postage fully prepaid, to the parties listed above:

I declare under the penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on August 20, 2010, at Walnut Creek, California.

Vanessa Bonite

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