STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SAN BERNARDINO CHAPTER NO. 183,	)	
Charging Party,	)	Case No. LA-CE-2051
v.	)	PERB Decision No. 723
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT	)	March 8, 1989
Respondent.	)	

Appearances: William C. Heath, Attorney, for the California School Employees Association and its San Bernardino Chapter No. 183; Joseph J. Woodford, Director of Employee Relations, for the San Bernardino City Unified School District. Amicus Curiae: California School Personnel Commissioners Association by James Louie and Jerome S. Sanderson.

Before Hesse, Chairperson; Porter, Craib and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the San Bernardino City Unified School District (District) to the attached proposed decision of a PERB administrative law judge (ALJ) finding that it violated section 3543.5(b) and (c) of the Educational Employment Relations Act (EERA)[1] by refusing to negotiate changes in the salary ranges for certain classifications within an occupational grouping.

[1]The EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

The Board finds the District's exceptions to be without merit and affirms the ALJ's findings of fact and conclusions of law.

DISCUSSION

The District's sole exception is its claim that PERB cannot properly determine the matter at issue because it has no jurisdiction to interpret the Education Code. The cases cited by the District hold only that (1) PERB has no jurisdiction where no unfair practice under the EERA has arguably been committed, and (2) PERB is not empowered to enforce the Education Code.[2] (See, e.g., California School Employees Association v. Azusa Unified School District (1984) 152 Cal.App.3d 580.) However, PERB does have exclusive initial jurisdiction to enforce the statutes it administers, in this case, the EERA. (San Diego Teachers Association v. Superior Court (1979) 24 Cal.3d 1.)

Where the EERA and the Education Code address the same or similar subjects, the Board properly seeks a resolution which harmonizes the legislative intent underlying the EERA with existing provisions of the Education Code. (San Mateo City School District v. PERB (1983) 33 Cal.3d 850.) Inherent in this

[2]The District also argues that the salary proposal involved herein fails the three-prong test for negotiability adopted by the Board in Anaheim Union High School District (1981) PERB Decision No. 177 and approved by the Supreme Court in San Mateo City School District v. PERB (1983) 33 Cal.3d 850. However, that test is applied only to subjects not specifically enumerated in EERA section 3543.2 as being within the scope of representation. The subject of wages is specifically enumerated in section 3543.2.

process is the need to interpret the Education Code (absent an antecedent court decision which provides the necessary interpretation). The instant case, in which the ALJ interpreted amended Education Code section 45256 to determine if the charging party's salary proposal was lawfully the subject of negotiations, is but one example. On numerous occasions PERB has been compelled to interpret Education Code provisions in order to carry out its statutory duty to administer the EERA. (See, e.g., Jefferson School District (1980) PERB Decision No. 133; Mammoth Unified School District (1983) PERB Decision No. 371.) Further, it is within an administrative agency's traditional authority to interpret existing law in the course of discharging its statutory obligations. (Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638, Regents of the University of California v. PERB (1983) 139 Cal.App.3d 1037.) Clearly, the Board has not exceeded its jurisdiction.

The ALJ concluded that the District had the obligation to negotiate a proposal to adjust upward the salary ranges of certain classifications within various occupational groups or "job families." He based this conclusion upon the decision of the First District Court of Appeals in Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689 (Sonoma) and upon the rejection of the District's argument that a later amendment to Education Code section 45256 effectively overruled the Court's decision. Education Code section 45268 states, in pertinent part, that the governing board of a school district may not set

salary levels so as to "disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the (personnel) commission" (in a district which has adopted a merit system). In Sonoma, the court held, citing approvingly an earlier opinion of the Attorney General [54 Ops.Cal.Atty.Gen. 77 (1971)], that section 45268 does not limit the governing board's authority to negotiate changes in salary differentials between classifications within an occupational group as long as the relative ranking of the classification as set by the personnel commission remains undisturbed.[3]

The Board agrees with the ALJ that it is clear that the 1981 amendment to Education Code section 45256 did not overrule the Sonoma decision. It should be noted that at the same time of the amendment to section 45256, the Legislature amended section 45260. Section 45260, subdivision (a) now states (the underlined portions reflect the language added by the 1981 amendment):

> The commission shall prescribe, amend, and interpret, subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit. The rules shall be

[3]The court in Sonoma also held that salary changes may not disturb the relationship in salary schedules between occupational groups (as established by the personnel commission). (102 Cal.App.3d at p. 702, fn.15.)

> binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this code.

The above amendment to section 45260 is difficult to square with the District's assertion that the Legislature in 1981 expanded the authority of personnel commissions. On the contrary, the above language seems to indicate just the opposite. In any event, the effect of section 45260 was never addressed by either the parties or the ALJ and the Board need not consider its effect in order to decide the present case.

ORDER

Based on the entire record in this case, the Public Employment Relations Board ORDERS that the San Bernardino City Unified School District shall:

A. CEASE AND DESIST FROM:

Failing to meet and negotiate in good faith upon request with the exclusive representative of the classified employees concerning wages and salaries paid to individual job classifications, except that the District shall not be obligated to negotiate proposals which would change the relative relationships as defined under Education Code section 45268, of the individual job classifications as established by the personnel commission within an occupational group or which would change the relative relationships among occupational groups.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such positing shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

Written notification of the actions taken to comply with this Order shall be made to the regional director of the Public Employment Relations Board in accordance with his instructions.

Chairperson Hesse's concurring opinion begins on p. 7.
Member Camilli's concurring opinion begins on p. 10.
Member Porter's dissenting opinion begins on p. 11.

Hesse, Chairperson, concurring: I concur in the result reached by my colleague but I write separately to set forth my interpretation of this case, as it relates to the Education Code and to the decision of the First District Court of Appeal in Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689 (Sonoma).

Sonoma is controlling. The 1981 amendment to Education Code section 45256 in my view does not expand the Personnel Commission's authority to establish appropriate relationships among classifications and occupational groups to the extent of overcoming the Sonoma holdings. Under Sonoma, a commission's authority to approve classification relationships remains coextensive with the employer's obligation to negotiate salary proposals, even if such proposals arguably affect the classification matrix. This anomaly in merit system school districts is unfortunate but it is also the current law.

The 1981 amendment does not establish exclusive salary setting authority with the Commission. I do not believe the Legislature intended to vest "exclusive" authority in personnel commissions to set and maintain "salary relationships" among classifications, as argued by the Commission. Such a position is not supported by the legislative history and would simply ignore Education Code section 45268 and section 45260, which expressly recognize the coexistence of EERA and the primacy of Government Code section 3543.2 over wages, an enumerated subject of negotiation. Nor do I believe that by the passage

of EERA, and the continuance of the merit system, the Legislature intended the pay matrix to be compressed or collapsed by the collective bargaining agreements.

I depart from the ALJ's analysis insofar as he reasons that the court in Sonoma defined the term classification "relationship" to mean "rankings" exclusively within an occupational group. The court determined that Education Code section 45268 requires that negotiated salary adjustments must comport with the classification relationships established by a Commission within and among occupational groups. The Sonoma court expressly stated:

> We emphasize that the narrow restriction imposed upon the Board under the statute sanctioning relative salary changes within operate in such a manner as not to disturb the relationship in salary schedules as established between the remaining occupational groups. However, we need not and do not decide the nature and extent of changes which could possibly result in the proscribed disturbance. . . . (Id., at p. 702, fn. 15, emphasis added.)

Much of the focus of the case before us and the Sonoma case is centered on whether "to classify" means to set rankings within occupational groups and whether "relationship" means simply ranking or determining salary differentials between classes. I respectfully submit that the position of my fellow panel member is a restatement of the Sonoma arguments. The focus is misplaced.

Sonoma is no more than an attempt at accommodating collective bargaining and the merit systems' jurisdiction which

results in a convoluted distinction between classification and pay. The classification and pay functions are symbiotic. Each function drives the other and oftentimes is of benefit to each. Through classification changes, wages can be changed, and through wage provision changes, classifications can be changed. For example, the Commission has the exclusive authority to delete a task or job characteristic or minimum qualification which thus accelerates the salary advances within the same salary range. Regardless of the District's action, by changing an item in the job specification, the Commission is capable of giving incumbent employees a wage increase. Conversely, the District could negotiate educational incentive pay for a particular class which would have the effect of creating new qualifications and a new salary range.

Classification, selection, and assignment are part of personnel administration, a part of management. Theoretically, as the collective bargaining process expands, there will be a corresponding contraction of the merit systems' role over aspects of employment relationships.

For these reasons, I concur that the District had an obligation to bargain, an obligation it did not meet.

Camilli, Member, concurring: The Board's findings in this decision are fully supported by this member. In addition, it is noted that the ALJ's proposed decision and discussion goes into considerable detail regarding "legislative intent." Did the Legislature, in effect, change EERA by amending the Education Code sections establishing the authority of School District Personnel Commissions?

Generally, when the Legislature intends to amend a law, it does so, and does not leave such amendment to the "interpretations" of various other parties. The fact that the Legislature did not amend EERA, or the Education Code in a way that affected the scope of representation under EERA at the time it made the Education Code changes cited in this decision, is a clear demonstration of the Legislature's "intent" to not change EERA.

From this point, it seems that the provisions of EERA are still paramount in describing and establishing the way a school district will conduct its business with the employee representatives. The Education Code provisions cited throughout this case describe the powers and authorities and method of handling personnel matters within a district when that district has established a merit system/personnel commission. Any need to "harmonize" the powers and authorities of the district and the personnel commission can, and should be done by these two parties. Such "harmonizing" has no bearing on the EERA provisions and leaves intact the entire range of negotiable issues under EERA.

Porter, Member, dissenting: This case presents the question of whether the salary for each classification in the "classified service" of a merit system public school district is separately negotiable under EERA.[1] The plurality opinions forming the majority, believing that Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689 (hereafter 1980 Sonoma) is controlling precedent on the question, answer in the affirmative. Upon examining the arguments considered by the court in 1980 Sonoma, and other relevant provisions of the Education Code and the Government Code which were not dealt with in 1980 Sonoma, along with the Legislature's post 1980 Sonoma statutory additions and amendments with respect thereto, I am not persuaded that 1980 Sonoma is controlling precedent[2] and, for the reasons which

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[1]The distinction must be kept in mind between attempting to negotiate the particular individual salary for *a* classification (or for several classifications), and negotiating a general percentage increase in the salary schedules for all of the classifications in a classified service.

[2]As to the doctrine of stare decisis (Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 455-456), prior appellate decisions must be viewed in the light of the matters (facts, law, issues, points and propositions) then raised before the court and considered by the court in its opinion. Appellate opinions are not controlling precedent as to matters not raised and considered therein, nor are they controlling where the opinion on a matter was rendered prior to the enactment or amendment of a statute affecting such matter. (General Motors Acceptance Corp. v. Kyle (1960) 54 Cal.2d 101, 114; McDowell & Craig v. City of Santa Fe Springs (1960) 54 Cal.2d 33, 38; People v. Banks (1959) 53 Cal.2d 370, 389; Dept. of Mental Hygiene v. Kirchner (1964) 60 Cal.2d 716, 721; In re Tartar (1959) 52 Cal.2d 250, 257-258; Hayes v. Superior Court (1971) 6 Cal.3d 216, 223-224, fn. 3; Worthley v. Worthley (1955) 44 Cal.2d 465, 471-472; Fricker v. Uddo & Taormina (1957) 48 Cal.2d 696, 701; Pacific Gas & Electric Co. v. Superior Court (1973) 33 Cal.App.3d 325-326; Woodman v. Ackerman (1967) 249 Cal.App.2d 644, 647, hg. den.; McConnell v. Pacific Mutual Life Insurance Co. (1962) 205 Cal.App.2d 469, 484,

follow, my answer must be in the negative.

Certain provisions of the Education Code addressing various aspects of wages, hours, and other terms and conditions of public school employment existed prior to the enactment of EERA. (Stats. 1975, ch. 961; Gov. Code, secs. 3540-3549.3.)[3] Such provisions differ as between teachers (the "certificated") and nonteachers (the "classified" or "classified service"). As to the "classified services," there is a still further differentiation in the provisions dependent upon whether a particular "classified service" is or is not under a merit system.[4]

EERA provides that the public school employer shall meet and negotiate with the public school employees' representative with regard to matters relating to wages, hours and other terms and conditions of employment. (Gov. Code, secs. 3543.2 and 3543.5.) However, the Legislature has conditioned the foregoing with its prescription at the outset of the statute that "(n)othing contained herein [EERA] shall be deemed to supersede other provisions of the Education Code. . . ." (Gov. Code, sec. 3540.)

In enacting EERA, the Legislature was fully aware of the existing Education Code provisions. (Estate of McDill (1975)

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hg. den.; Richmond Ramblers Motorcycle Club v. Western Title Guaranty Co. (1975) 47 Cal.App.3d 747, 757-758; Harm v. Frasher (1960) 181 Cal.App.2d 405, 416, hg. den.)

[3]See generally Education Code sections 44000-45460 and 87000-88270 (former Ed. Code, secs. 12901-13777).

[4]See generally Education Code sections 45220-45320 and 88060-88139 (former Ed. Code, secs. 13701-12758).

14 Cal.3d 831, 837-839; Bailey v. Superior Court (1977) 19 Cal.3d 970, 977, fn. 10; Fuentes v. Workers' Compensation Appeals Board (1976) 16 Cal.3d 1, 7.) Further, the Legislature has been selectively innovative in public school employer-employee relations. (California Federation of Teachers, AFL-CIO v. Oxnard Elementary Schools (1969) 272 Cal.App.2d 514, 519-540[5].)

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[5]As cogently observed by the court in Oxnard in dealing with EERA's predecessor, the Winton Act (Stats. 1965, ch. 2041; former Ed. Code, secs. 13080-13090):

> Since the policy underlying Labor Code section 923 had no necessary application to public employees, who occupy a status in relation to their employer different from that of their private counterparts, separate and distinctive legislative treatment has been accorded the regulation of their employment relations. The Legislature, acceding to the demands of public employees for a more effective and substantial voice in the determination of the terms and conditions of their employment, has only recently been confronted with the need to reconcile those elements which differentiate the position of public employees relative to their employer from that of private employees. In attempting to formulate statutes to extend to public employees appropriate opportunities to participate in determinations relating to the terms and conditions of their employment, the Legislature has been compelled to reevaluate procedures such as collective bargaining, exclusive representation, and strikes which fulfill a traditional role in private labor negotiations with respect to the appropriateness of their application not only to the public sector generally, but to the wide variety of occupations and professions encompassed within the field of public employment.
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> . . . The California Legislature has clearly been attempting to reconcile by selective innovation the divergent elements inherent in

Therefore, the Legislature's placement of an express nonsupersession prescription in EERA, with respect to Education

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> public employer-employee relations including the acknowledged distinctions in the status and obligations of public and private employees, as well as the various occupations and professions represented by public employment.
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> . . . "Like its 1961 predecessor, the Winton Act was designed to strengthen existing tenure, merit or civil service systems and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public school employers by which they are employed . . . ."
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> . . . . . .
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> It is generally acknowledged that essential distinctions exist between educational public agencies and general, non-educational public agencies, and for this reason educational agencies have traditionally received separate legislative treatment. [Citation.] The Education Code accordingly establishes a complete system dealing with the credentials, employment, tenure, leave, salaries, dismissal, retirement, and other employee rights and obligations applicable to public school employees. ([Former] Ed. Code, secs. 12901-13777; 24201-24324.) This legislation, separate from statutes relating to state, county and other public agency employees, differentiates certificated employees ([former] Ed. Code, secs. 13101-13575.7) from noncertificated employees ([former] Ed. Code, secs. 13580-13756) in the public school and junior college systems . . . .
> (272 Cal.App.2d at 521-529, emphasis added.)

Code enactments, is of particular statutory significance[6] and commands careful analysis when dealing with an EERA issue involving a matter also covered by Education Code provisions.

The proscriptive intent of the Legislature's provision in Government Code section 3540 that Education Code provisions are not to be superseded by EERA provisions--and/or by the provisions of a memorandum of understanding negotiated under EERA provisions—is further evidenced by the Legislature's subsequent additions and amendments to EERA's scope of representation section. In 1981, the Legislature amended Government Code section 3543.2 to add subdivisions (b) and (c) to provide as to teachers for negotiations as to nondismissal disciplinary actions and as to procedures and criteria for layoffs notwithstanding Education Code sections 44944 and 44955:

> (b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the

[6]The established rule that, when statutory provisions conflict, the last enacted provision is deemed to supersede the earlier enactment (Pacific Legal Foundation v. California Unemployment Insurance Appeals Board (1981) 29 Cal.3d 101, 115; Fuentes v. Workers' Compensation Appeals Board (1976) 16 Cal.3d 1, 7; City of Petaluma v. Pacific Telephone & Telegraph Co. (1955) 44 Cal.2d 284, 288; Bledstein v. Superior Court (1984) 162 Cal.App.3d 152, 160, hg. den.) would--in the absence of Government Code section 3540--call for EERA provisions to supersede earlier enactments of the Education Code with which EERA would interfere or conflict.

> Education Code shall apply.
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> (c) Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44955 of the Education Code shall apply. (Stats. 1981, chs. 100 and 1093, as amended by Stats. 1983, ch. 498.)

It is particularly significant that the Legislature, in 1983, further amended Government Code section 3543.2 as to the negotiability of the salary schedules of certificated public school employees. The amended section provides as to teachers that, notwithstanding the salary schedule classification procedures and restrictions set forth in Education Code section 45028[7] (which forbade a public school employer from placing

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[7]Education Code section 45028 prescribes:

> Effective July 1, 1970, each person employed by a district in a position requiring certification qualifications except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.
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> In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section, nor shall any superintendent draw any requisition for the salary of any teacher in violation thereof.

teachers in differing salary schedule classifications other than on the basis of a uniform allowance for years of training and years of experience), negotiations for the payment of "additional compensation based upon criteria other than years of training and years of experience" are permitted. This section states, in pertinent part:

> (d) Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply.
> (Stats. 1983, ch. 498.)

The nonsupersession as to Education Code provisions is further highlighted by provisions contained in the subsequently enacted sister Acts to EERA: the State Employer-Employee Relations Act (SEERA - Stats. 1977, ch. 1159; Gov. Code, secs. 3512-3524), and the Higher Education Employer-Employee Relations Act (HEERA - Stats. 1978, ch. 744; Gov. Code, secs. 3560-3599).

In SEERA, on the subject of scope of representation and negotiability of "wages, hours, and other terms and conditions of employment" as to state employees (Gov. Code, sec. 3516), the

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> This section shall not apply to teachers of special day and evening classes in elementary schools, teachers of special classes for elementary pupils, teachers of special day and evening high school classes and substitute teachers.

Legislature has provided for express supersession over numerous Education Code and Government Code statutes by prescribing in Government Code section 3517.6:

> In any case where the provisions of section 70031 of the Education Code, or subdivision (h) of Section 3513, or Sections [sic] 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880. 1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4., 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20750.11, 21400, 21402, 21404, 21405, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become

> effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature. (Stats. 1977, ch. 1159; as amended by Stats. 1978, ch. 776, Stats. 1979, chs. 403 and 1008, Stats. 1980, ch. 869, Stats. 1981, ch. 230, Stats. 1984, ch. 89, and Stats. 1985, ch. 1015.)

Likewise, in HEERA, on the subject of scope of representation and negotiability of "wages, hours, and other terms and conditions of employment" as to higher education employees (Gov. Code, sec. 3562, subds. (d), (q) and (r)), the Legislature has also provided for express supersession over various Education Code, Government Code, and Military and Veterans Code statutes by prescribing in Government Code section 3572.5:

> In the case where the following provisions of law are in conflict with a memorandum of understanding, the memorandum of understanding shall be controlling.
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> (a) Part 13 (commencing with Section 22000) of Division 1 of Title 1 of, Sections 66609, 89007, 89039, 89500, 89501, 89502, 89503, 89504, 89505, 89505.5, 89506, 89507, 89508, 89509, 89510, 89512, 89513, 89514, 89515, 89516, 89517, 89518, 89519, 89520, 89523, 89524, 89527, 89531, 89532, 89533, 89534, 89537, 89541, 89542, 89542.5, 89543, 89544, 89545, 89546, 89550, 89551, 89552, 89553, 89554, 89555, 89556, 89700 and 89701 of, the Education Code.
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> (b) Sections 825, 825.2, 825.6, 3569.5, 6700, 11020, and 11021 of, Chapter 4 (commencing with Section 18150) of Part 1 of Division 5 of Title 2 of, Sections 18200, 19841, 19848, 19850.6, 19864, and 19875 of, Article 4 (commencing with section 19869) and Article 5 (commencing with Section 19878) of Chapter 2.5

of Part 2.6 of Division 5 of Title 2 of, and Section 22825.1 of, the Government Code.

(c) Sections 395, 395.01, 395.05, 395.1 and 395.3 of the Military and Veterans Code. (Stats. 1978, ch. 744; as amended by Stats. 1979, ch. 1072, Stats. 1981, ch. 230, Stats. 1982, ch. 1095, and Stats. 1983, ch. 1040.)

Thus, EERA may not supersede Education Code provisions, nor may this Board sanction the negotiability of bargaining proposals which would alter or conflict with Education Code provisions. (San Mateo City School District v. PERB (1983) 33 Cal.3d 850, 866; Wygant v. Victor Valley Joint Union H.S. District (1985) 168 Cal.App.3d 319, 323; United Steelworkers of America v. Board of Education of Fontana Unified School District (1984) 162 Cal.App.3d 823, 832-833, 840, hg. den.; California Teachers Association v. Parlier Unified School District (1984) 157 Cal.App.3d 174, 183-184, hg. den.; California School Employees Association v. Travis Unified School District (1984) 156 Cal.App.3d 242, 249-250; Jefferson Classroom Teachers Association v. Jefferson Elementary School District (1982) 137 Cal.App.3d 993, 999-1001, hg. den.)

In the instant case, the governing board of a merit system school district was willing to negotiate proposals as to a general across the board percentage increase for all merit system classifications,[8] but refused to negotiate proposals for separate salary increases for one or more individual merit system classifi-

[8]See also Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689, 693, footnote 3.

cations. The District's refusal to negotiate salary increases for individual classifications was based on Education Code section 45268's[9] prohibition on the governing board of a merit system school district preventing it from making any salary changes in the merit system classified service that would "disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the [personnel] commission," and the Legislature's 1981 addition to Education Code section 45256 (Stats. 1981, ch. 784) whereby the minimum elements of classification to be established by a personnel commission in classifying a merit system's classified service were statutorily prescribed.

Merit System School Districts (Ed. Code, secs. 45220-45320)

A merit system for the classified employees of a school district is established in one of three ways: (1) by the classified employees themselves through a petition and election

[9]Education Code section 45268, which was formerly Education Code section 13719 and was originally enacted by Statute 1935, chapter 618, prescribes:

> The commission shall recommend to the governing board salary schedules for the classified service. The governing board may approve, amend, or reject these recommendations. No amendment shall be adopted until the commission is first given a reasonable opportunity to make a written statement of the effect the amendments will have upon the principle of like pay for like service. No changes shall operate to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission.

process; (2) by a majority of the district's governing board through a resolution; or,, (3) by the qualified electors of the school district through a petition and election process. (Ed. Code, secs. 45220-45225.)

A merit system is administered by a three- or five-member personnel commission. In the three-member commission, one member is appointed by the governing board, one member by the classified employees, and these two members then choose the third member. In five-member commissions, two members are governing board appointees, two members are appointees of the classified employees, and these four members then choose the fifth member. If the appointed members cannot agree on the third or fifth member, that member is appointed by the executive officer of the State Personnel Board. (Ed. Code, secs. 45243 and 45246.)

Regarding qualifications of members of a merit system personnel commission, Education Code section 45244 prescribes:

> To be eligible for appointment or reappointment to the commission a person shall (a) be a registered voter and resident within the territorial jurisdiction of the school district and (b) be a known adherent to the principle of the merit system. No member of the governing board of any school district or a county board of education shall be eligible for appointment, reappointment, or continuance as a member of the commission. During his or her term of service, a member of the commission shall not be an employee of the school district.
>
> As used in this section, "known adherent to the principle of the merit system," with respect to a new appointee, shall mean a person who by the nature of his or her prior public or private service has given evidence that he or she supports the concept of

> employment, continuance in employment, in-service promotional opportunities, and other related matters on the basis of merit and fitness. As used in this section, "known adherent to the principle of the merit system," with respect to a candidate for reappointment, shall mean a commissioner who has clearly demonstrated through meeting attendance and actions that he or she does, in fact, support the merit system and its operation.
> (Ed. Code, sec. 45244, emphasis added.)

The budget for a merit system personnel commission is prepared by the personnel commission itself and, upon the approval of the county superintendent of schools, must be included by the district's governing board in the school district budget. (Ed. Code, sec. 45253.) In sum, merit system personnel commission members must be adherents of merit system principles, and may not be members of the school district's governing board (or of any district's governing board) or employees of the school district. Their budget is not controlled by the governing board. Accordingly, a merit system personnel commission is independent of, not subordinate to, a school district's governing board.

Included within the statutory authority and duties of a merit system personnel commission are: (1) "classifying" all employees and positions in the classified service (Ed. Code, sec. 45256); (2) controlling the promotion of classified employees to a higher class--with its concomitant higher salary schedule or pay grade level--by way of examination and by determining that the classified employees have the required amount of service in classes designated by the personnel commission or meet the minimum

qualifications of education, training, experience and length of service appropriate for the higher class (Ed. Code, sec. 45272; and see Almassy v. Los Angeles County Civil Service Commission (1949) 34 Cal.2d 387, 404; Steen v. Board of Civil Service Commissioners (1945) 26 Cal.2d 716, 722; Allen v. McKiney (1941) 18 Cal.2d 697, 705; Ligon v. State Personnel Board (1981) 123 Cal.App.3d 583, 590-591; Mierke v. Department of Water Resources (1980) 107 Cal.App.3d 58, 60; Lucchesi v. City of San Jose (1980) 104 Cal.App.3d 323, 329; Sojka v. City of Pasadena (1971) 15 Cal.App.3d 965, 968, hg. den.; Gov. Code, sec. 18951); and (3) determining when and whether classes or positions should be reclassified when a higher salary schedule or pay grade level is sought for an existing class or position (Ed. Code, sec. 45285; and see Webb v. State Personnel Board (1971) 16 Cal.App.3d 542, 545-547; Allen v. State Board of Equalization (1941) 43 Cal.App.2d 90, 91-92).

Finally, the governing board of a merit system school district must "employ, pay, and otherwise control the services of" merit system employees "only in accordance with" the merit system provisions of Education Code sections 45240-45320. (Ed. Code, sec. 45241.)

Merit System Classification and Salaries

Germane to any consideration of merit system classifications and salary schedules is the underlying general salary framework. Such a salary framework is typically composed of the full number of salary schedule or pay grade levels (or salary classes)

arranged consecutively in a vertical and ascending graduated order from the lowest salary grade level to the highest salary grade level. Each salary grade level represents a fixed salary range and is often designated by a numerical and/or alphabetical code symbol, and/or may show the minimum-maximum dollar range of that salary grade level. The framework may also show a horizontal grid of a series of salary "steps" opposite each salary grade level. Such "steps" are normally four to five in number, with the first "step" being the minimum and starting salary for that salary grade level, and each "step" thereafter increasing the salary by a percentage amount until the maximum salary for that salary grade level is reached at the final fourth or fifth "step." In merit and civil service systems, each of the "steps" after the first starting "step" usually represents a so-called "merit salary raise" or "merit salary increase" which is acquired by a merit or civil service system employee at the completion of each year of satisfactory merit service until the maximum "step" in the salary grade level is reached. (See, e.g., Service Employees International Union v. County of Napa (1979) 99 Cal.App.3d 946, 949, hg. den.; Young v. State Board of Control (1979) 93 Cal.App.3d 637, 639, hg. den.; Gov. Code, sec. 73678.) Examples of such salary frameworks may be found in Government Code sections 73486, 73525 and 73676.

With respect to the relationship between merit system classification and salary schedules, the Attorney General's opinion in 54 Ops.Cal.Atty.Gen. 77 (1971) quoted from Kaplan,

the Law of Civil Service, that:

> The term "classification of positions" . . . contemplates fixing titles of positions relative to duties and functions, allocating positions to their proper classes so that all positions with the same titles may be in the same class, and allocation of the classes of positions to their respective salary grades or schedules according to a devised or designed pay plan.
> (54 Ops.Cal.Atty.Gen. at p. 81.)

The opinion itself keenly observed: "One of the basic keys to a meaningful classification is the salary structure," and that a salary structure is designed to be internally consistent based on various principles, including the principle "that employees doing the same level duties and having similar responsibilities should receive similar pay," and based further on factors such as: "how much of a salary increase represents a promotion, how many intermediates there are between the working class and highest level class of each occupational grouping, what represents a proper salary structure or pay differential for workers and their supervisors, et cetera." (54 Ops.Cal.Atty.Gen. at p. 83, emphasis added.)

54 Ops.Cal.Atty.Gen 77 (1971)

In 1971, some four years prior to the enactment of EERA (Stats. 1975, ch. 961), the California Attorney General rendered an opinion, 54 Ops.Cal.Atty.Gen. 77, dealing with whether the governing board of a merit system school district could refuse to concur in a personnel commission's recommendations to change the respective pay grades assigned to certain existing classes in the

classified service. The personnel commission in a merit system school district had made recommendations for changes and/or reclassifications in various existing classes, including changing titles, duties and responsibilities of various classes, as well as changing the respective pay grades of the classes to higher pay grades. Some of the proposed pay grade changes were based on "external" factors (comparable salaries for such classes in the surrounding private and public sector areas), while others were related "internally" to alleged increases in the duties and responsibilities of a class. The governing board refused to adopt any of the recommendations, but did not attempt to amend or change any of the recommendations.

The question posed to the Attorney General was: "Can the Board of Education refuse to concur in a change of 'ranges' as proposed by the Personnel Commission as set forth herein?" (54 Ops.Cal.Atty.Gen. at p. 80.) Answering in the affirmative,[10] the 1971 opinion discussed various Education Code merit system provisions, including Education Code sections 45256 and 45268 (former Ed. Code, secs. 13712 and 13719). In so doing, the 1971 opinion went beyond the question of refusal, and opined that, under Education Code section 13719, other interested third parties could make salary change proposals to the governing board, and

[10]Dependent on various factors, including: whether the personnel commission's recommendations were as to new classifications or were reclassifications, whether they involved "equal pay" considerations, whether they were based on "internal" or "external" factors, and at what period in time during the school year they occurred.

that the governing board could, on its own motion, or by adopting the proposals of third parties, change the salaries for the classified service and disturb the vertical salary grade differentials existing between classes, so long as it did not disturb the simple ranking of the classes as established by the personnel commission.

Three aspects of this 1971 opinion are noteworthy. First, while recognizing that Education Code section 13712 directs the personnel commission--not the governing board--to "classify" all employees and positions within the classified service, the opinion observes that "nowhere in these sections does the Legislature define the term 'classify.'" The opinion then chose as a point of reference the definition of "class" as found in the State Civil Service Act (Gov. Code, sec. 18500 et seq.) meaning a group of positions sufficiently similar with respect to duties and responsibilities that they may be allocated to one class having the same title and schedule of compensation. (54 Ops.Cal.Atty.Gen. at p. 80.) The opinion then added, as a personnel commission function, the ranking of such classes within each occupational group. (54 Ops.Cal.Atty.Gen. at pp. 83-85.)

Second, the opinion quoted in pertinent part from Kaplan, the Law of Civil Service, that:

> The term "classification of positions" has different meanings in different jurisdictions. . . . It contemplates fixing titles of positions relative to duties and functions, allocating positions to their proper classes so that all positions with the same titles may be in the same class, and allocation of the classes of positions to

> their respective salary grades or schedules according to a devised or designed pay plan. (54 Ops.Cal.Atty.Gen. at p. 81, emphasis added.)

The opinion itself then observed:

> One of the basic keys to a meaningful classification is the salary structure. Such a salary structure is normally designed to be internally consistent and externally competitive. The basic operative principle utilized to establish internal consistency is that employees doing the same level duties and having similar responsibilities should receive similar pay. Each organization establishes its own policy with respect to its internal structure. Such internal structuring is fairly subjective because it is based in part on factors of local significance. Illustrative would be how much of a salary increase represents a promotion, how many intermediates there are between the working class and highest level class of each occupational grouping, what represents a proper salary structure or pay differential for workers and their supervisors, et cetera. (54 Ops.Cal.Atty.Gen. at p. 83.)

The 1971 opinion thus recognized that an internally consistent "salary structure" is one of the basic components of a "meaningful classification" with each class in an occupational group being allocated to its appropriate pay grade level in relationship to other classes dependent on various factors. Such a salary structure is based in part on internal consistency factors, including the salary or pay grade differentials between classes dependent not only on the number of intermediate classes between the working class and the highest class, but also on what a proper salary differential is, as between the working classes and the supervisorial classes.

Last,--and related particularly to the opinion's earlier

observation that the Legislature had not defined what it meant by "classify"--the opinion further observed:

> The greatest difficulty in construing the language of these sections occurs in attempting to harmonize the general legislative intent as herein ascertained, which intent operates to vest power concerning salaries in the governing board, and the limitation upon that power stated in the fourth sentence of Section 13719 [45268] which forbids "changes" by the governing board from operating to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the personnel commission.
>
> The language of this sentence is terse and difficult to interpret. Certainly, legislation clarification would be helpful....
> (54 Ops.Cal.Atty.Gen. at p. 84, emphasis in original.)

In attempting to construe the fourth sentence of section 13719, the opinion advanced the premise that the words "amendments" in the third sentence and "changes" in the fourth sentence could not be synonymous because "it appears impossible to conceive of any change by the governing board, in a recommendation made by the personnel commission as not 'disturbing' the relationship which compensation schedules bear to one another."[11] Based

[1]This may be a faulty premise. Certainly it can be conceived that a governing board may refuse to adopt a personnel commission's five percent across the board salary increase recommendation, but amend the recommendation to provide either a lesser two percent or a greater six percent across the board salary increase. Such an amendment is a change in the recommendation which would not disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by.. the personnel commission.

on its "impossibility" premise, the opinion surmised that another meaning must be given to the word "changes." The opinion then set forth:

> It is concluded that although the duty to make recommendations to the governing board relative to salaries is imposed upon the personnel commission, other interested parties may make their own proposals to the board. Recommendations by other interested parties, or proposed action by the governing board on its own motion, relating to salary schedules for the classified service may be adopted by the board only if such changes do not operate to disturb the relationship which salary schedules bear to one another, as that relationship has been established in the classification made by the commission.
>
> It is axiomatic that relationships may be greater than, less than, or equal to. The classifications established by the personnel commission may reflect the fact that the secretary to the superintendent is assigned to a higher class than is the secretary to the assistant superintendent, and each would be in a higher class than a payroll clerk or secretary/clerk. In accordance with such classification, each ultimately would be assigned by the governing board to an appropriate salary range which would reflect adjustments for internal consistency and external competitiveness. The classification by the commission resulting in the secretary to the superintendent having a higher classification than the secretary to the assistant superintendent is within the exclusive control of the commission, section 13712; it then would be the duty of the board to assign the higher classification to a higher salary range than is assigned to each lower classification within each occupational group. This classification relationship may not be disturbed by action of the governing board in making changes in compensation schedules; however, we do not view such relationships as being necessarily "disturbed" if the governing board decreases or increases the salary differential between two non-equal positions, so long as each remains effectively higher or lower as such relative relationships

have been established by the personnel commission classification.

(54 Ops.Cal.Atty.Gen. at p. 85.)

Sonoma County Office of Education (1977) EERB No. 40

In 1977, in Sonoma County Office of Education (1977) EERB[12] No. 40 (Sonoma No. 40), this Board dealt for the first time with the issue of whether the governing board in a merit system school district could (and should) bargain with an exclusive employee organization over the individual salary schedules for particular merit system classifications. The majority opinion first referred to the statutory interpretation principles that "the contemporaneous construction of a statute by those charged with its enforcement and interpretation" is entitled to great weight,[13]

[12]Prior to 1978, PERB was known as the Educational Employment Relations Board (EERB).

[13]Sonoma No. 40's majority cited Meyer v. Board of Trustees (1961) 195 Cal.App.2d 420, for the principle that "great weight" should be given to "contemporaneous construction." It should be noted that Meyer, and the authorities cited in Meyer with respect to contemporaneous construction, relate to statutory interpretations by administrative officials, the attorney general or judges occurring at or near the time of the statute's enactment or amendment, when such interpreters were presumed to be familiar with the impetus and/or surrounding circumstances existing at the time of the enactment or amendment. This meaning of "contemporaneous" also underlies the Maxim of Jurisprudence of Civil Code section 3535: "Contemporaneous exposition is in general the best," which is derived from the old legal maxim Contemoranea expositio est optima et fortissima in lege. The latter maxim is defined by Black's Law Dictionary, Fourth Edition, page 390, as meaning: "Contemporaneous exposition is the best and strongest in the law. 2 Inst. 11. A statute is best explained by following the construction put upon it by judges who lived at the time it was made, or soon after. 10 Coke, 70; Broom, Max. 682." (Emphasis in original.)

In 54 Ops.Cal.Atty.Gen. 77, the 1971 opinion was attempting to interpret a statute which had been enacted and added to the California School Code in 1935 (Stats. 1935, ch. 618, p. 1748, School Code, sec. 5.797), and reenacted and recodified without

and that the Legislature may be presumed to know of such an interpretation and would adopt corrective measures in subsequent enactments on the subject if the interpretation was contrary to legislative intent. It then went on to observe that the opinion of the Attorney General (54 Ops.Cal.Atty.Gen. 77) interpreting former Education Code section 13719 was rendered in 1971, and that the Legislature had reenacted the section in its same form in 1976.[14] The majority held that the 1971 opinion's interpretation of Education Code section 45268 was controlling and "binding" on this Board (Sonoma No. 40, pp. 3-5), and that bargaining over salary schedules for individual merit system classifications was required under EERA in that:

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change up to the time of the 1971 opinion (Stats. 1943, ch. 71, Ed. Code, Sec. 14118; Stats. 1959, ch. 2, p. 975, Ed. Code, sec. 13719). While respect and weight may be accorded to an opinion of the Attorney General, the "great weight" to be accorded to a "contemporaneous construction" does not appear to have been appropriate. (And see Johnston v. Board of Supervisors (1947) 31 Cal.2d 66, 74; Knowles v. Yeates (1866) 31 Cal. 82, 89.)

[14]Sonoma No. 40 did not recognize or consider that such reenactment was simply a part and parcel of the 1976 complete reorganization, renumbering, and reenactment of the nearly one hundred thousand sections of the entire Education Code (Stats. 1976, ch. 1010, 1976 Ed. Code (Reorganized), secs. 1 - 99,005).

Also of significance is that the question presented and answered in 54 Ops.Cal.Atty.Gen. 77 was whether a governing board could refuse to adopt the recommendations of a personnel commission. The statute itself states that "the governing board may adopt, amend or reject." Accordingly, the opinion's affirmative answer as to the refusal conformed with the statute. The discussion concerning amendments or changes was, in essence, administrative "dicta" because it was not addressing the subject at issue.

Nor was the 1971 opinion of "long standing" in 1976. (See Whitcomb Hotel, Inc. v. California Employment Commission (1944) 24 Cal.2d 753, 757-758 (six years not "long standing".)

> . . . we find that the governing board can increase or decrease the salaries of particular job classifications, so long as such charges do not lift a classification which formerly was lower paid above one which formerly was higher paid within the same "occupational group."
> (Sonoma No. 40, p. 3, emphasis in original.)

The Sonoma No. 40 majority's reliance on the 1971 opinion with respect to its interpretation of Education Code section 45268--that the section's proscription against a governing board making any changes in the salary schedules that would disturb the relationship which compensation schedules bear to one another as established in the classification made by the personnel commission related solely to simple ranking—was both legally erroneous as to its "binding" effect on the Board,[15] and analytically unsound in

[15]The concurring and dissenting opinion in Sonoma No. 40 recognized the nonbinding effect of the 1971 opinion as well as other problems with the opinion:

> The majority's total reliance on the Attorney General's opinion is misplaced and has resulted in a misconstruction of the issue presented by this case. The authority of this Board to interpret the Education Code is only as broad as necessary to interpret and enforce the EERA. The majority's reliance on Meyer v. Board of Trustees to leap from the position of giving "great weight" to an Attorney General opinion to considering that opinion binding on this Board is misplaced. Meyer holds that "the construction of a statute by those charged with its enforcement and interpretation . . . "is entitled to great weight. . . .'" The Attorney General's opinion dealt solely with an interpretation of one section of the Education Code and in no way dealt with the relationship of the Education Code to the EERA. The Attorney General is not charged with the enforcement and interpretation of the EERA or the relationship between the personnel commission and the County office. Furthermore, giving

light of the 1971 opinion's self-announced difficulties with the statute.[16]

Although opinions of the Attorney General may be given weight, they are not binding. (Sanchez v. Unemployment Insurance Appeals Board (1977) 20 Cal.3d 55, 66-67); Smith v. Anderson (1967) 67 Cal.2d 635, 641; Public Utilities Commission v. Energy Resources Conserv. & Develop. Commission (1984) 150 Cal.App.3d 434, 447.)

> great weight to an opinion does not make that opinion binding. Moreover, it is well-established that an opinion of the Attorney General is advisory and not controlling. (Sonoma No. 40, conc, and dis. opn., p. 6, fns. omitted.)

[16]See pages 28-29, supra, as to the 1971 opinion's observations that the Legislature had not defined the term "classify" (54 Ops.Cal.Atty.Gen. at p. 80), and that:

> The greatest difficulty in construing the language of these sections occurs in attempting to harmonize the general legislative intent as herein ascertained, which intent operates to vest power concerning salaries in the governing board, and the limitation upon that power stated in the fourth sentence of Section 13719 [now sec. 45268] which forbids "changes" by the governing board from operating to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the personnel commission.
>
> The language of this sentence is terse and difficult to interpret. Certainly, legislative clarification would be helpful....
> 54 Ops.Cal.Atty.Gen. at p. 84, emphasis in original.)

Moreover, with respect to the Legislature having reenacted Education Code section 45268 without change as part of its complete reorganization and renumbering of the Education Code in 1976, the Supreme Court recently reaffirmed in Dyna-Med, Inc. v. Fair Employment & Housing Commission (1987) 43 Cal.3d 1379, 1396, that:

> "[A]n erroneous administrative construction does not govern the interpretation of a statute, even though the statute is subsequently reenacted without change. [Citations.]" (Whitcomb Hotel, Inc. v. Cal.Emp.Com. (1944) 24 Cal.2d 753, 757-758.)

(Accord Louis Stores, Inc. v. Dept, of Alcoholic Beverage Control (1962) 57 Cal.2d 749, 759-760; Estate of Madison (1945) 26 Cal.2d 453, 463; Addison v. Dept, of Motor Vehicles (1977) 69 Cal.App.3d 486, 497; Estate of Elsman (1977) 74 Cal.App.3d 721, 734, hg. den.; Sacramento Typographical Union No. 46 v. State of California (1971) 18 Cal.App.3d 634, 638; County of Los Angeles v. State Dept, of Public Health (1958) 158 Cal.App.2d 425, 438, hg. den.; and see Coan v. State of California (1974) 11 Cal.3d 286, 294, fn. 9.)

The 1980 Sonoma Appellate Decision

The Sonoma County Board of Education petitioned the superior court for review of the 1977 Sonoma No. 40 decision, and PERB cross-petitioned for enforcement of the decision.[17] The superior

[17]At the time of the Sonoma No. 40 decision in 1976, judicial review of EERB/PERB decisions was by way of a mandamus petition in the superior court, with the resulting judgment being appealable to the Court of Appeal. (Formerly Gov. Code, sec 3242; see Stats. 1979, ch. 1072.)

court entered judgment enforcing the Sonoma No. 40 decision. The county board appealed. Three years later, the appellate court rendered its decision in Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689 (1980 Sonoma), affirming the superior court's judgment.

The 1980 Sonoma court recognized initially that "[t]he appeal presents an issue of first impression: whether section 45268 effectively precludes a governing board from negotiating wages for individual job classifications." (102 Cal.App.3d at p. 693, emphasis added.)[18]

The 1980 Sonoma decision observed that a comprehensive statutory scheme for merit systems in local public schools had existed since 4935, and that the statutory scheme established an independent personnel commission which was charged "with the duty to classify all school employees and positions not otherwise expressly exempted. . . ." (102 Cal.App.3d at pp. 694-696,

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[18]The appellate court, by way of footnote, also observed that:

> The record discloses that except for the disputed salary issue, the parties successfully negotiated a memorandum of understanding which included a 5 percent "across-the-board" salary increase. While neither party raises an issue of mootness, we conclude that the novel questions presented are of such significant public interest as to require an adjudication on the merits (citations).
> (102 Cal.App.2d at p. 693, fn. 3, emphasis added.)

emphasis added.)[19]

While further recognizing that "the question whether board-initiated salary changes between classes would result in an impermissible disturbance in classification relationships has never before been decided" (102 Cal.App.3d at p. 696, emphasis added), the 1980 appellate decision, in an approach similar to Sonoma No. 40, turned to the 1971 opinion of the Attorney General, and to drawing inferences from subsequent legislative action and inaction.[20]

The 1980 Sonoma decision noted first that the 1971 opinion of the Attorney General had interpreted the Education Code language and had opined that, under Education Code section 45268, a governing board could change the salaries for, and the salary relationships between, individual merit system classes so long as it did not disturb the ranking of the classes within an occupational group as established by the personnel commission; and second, that the Education Code language interpreted in the 1971 opinion had remained unchanged by the Legislature as of 1980.

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[19]We note again the observations of 54 Ops.Cal.Atty.Gen. 77 at page 80: ". . . nowhere in these sections [merit system] does the Legislature define the term 'classify.'"

[20]The 1980 Sonoma decision set forth:

> The PERB relies heavily upon the Attorney General's interpretation of section 45268 which recognizes the governing board's authority to adjust salary differentials between unequal positions within the same occupational group provided that the relative ranking of such positions as established by the personnel commission remains undisturbed. (102 Cal.App.3d at p. 699, emphasis added.)

Additionally, the 1980 Sonoma court observed that, after the enactment of EERA, the Legislature amended Education Code section 45261 in 1977 to provide that merit system personnel commission rules should be in conformity with the terms of negotiated agreements as to negotiable subjects. The 1980 Sonoma decision "inferred" that the latter 1977 amendment indicated a legislative approval of the 1971 opinion.[21]

The 1980 Sonoma decision also attempted to deal with an integral component of merit system classification and salary structuring which was not addressed or resolved in the 1971 opinion[22] or in Sonoma No. 40. The 1980 Sonoma decision recognized that, with respect to merit system classification, a

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[21]We note again that the 1971 opinion arose from a situation where a governing board had refused to adopt any of a personnel commission's recommendations concerning existing classifications and pay grades. The question posed was whether a governing board could so refuse; it was not whether or what amendments or changes could be made by the governing board. Also, the 1971 opinion was rendered some four years before the enactment of EERA (Stats. 1975, ch. 961), did not deal at all with collective bargaining and/or negotiability of salary schedules vis-a-vis EERA, and had a "bottom line" conclusion--that the governing board could refuse to adopt the recommendations--which comported with the statutory provisions that the governing board could "reject" the recommendations. (Ed. Code, sec. 45268.)

[22]The 1971 opinion did note that positions or classes within different occupational groups may have the same salary for a given period of time, but that two different classes may not have such a compelling relationship that would require them to always have the same salary, as other factors could come into play changing the relationship. (54 Ops.Cal.Atty.Gen. at p. 83.) However, the 1971 opinion failed to address the disturbance in the horizontal salary level relationships between classes in different occupational groups as established by the personnel commission and which would be affected by the governing board changing the salary schedule level of a related class in only one occupational group.

personnel commission not only vertically structures the various individual classes within each occupational group, but that it also horizontally aligns between occupational groups those individual classes which--based on qualitative and quantitative factors, such as: class qualifications, license or certificate requirements, experience, level of duties and scope of responsibilities—are determined to merit the same salary grade level on the basis of the principle of "like pay for like service." (See 102 Cal.App.3d at pp. 694-695, fn. 6 and chart, pp. 699-700; Ed. Code, sec. 45268.)

The 1980 Sonoma decision attempted to handle the horizontal relationship problem by asserting that:

> Only the adjustment of salaries between classes within a given occupational group is affected; that permissible action cannot be said to necessarily disturb the relationship between salary schedules of other groups which remains within the classification prerogatives of the Commission.
> (102 Cal.App.3d at p. 700, emphasis added.)

If the court's latter "between" reference related to not necessarily disturbing the vertical "between" relationships of salary schedules of classes within other occupational groups, it ignores the horizontal "between" relationships as to individual classes of other occupational groups. But, if the "between" reference is to the horizontal "between" relationships—which is what the court was discussing immediately preceding its statement--it does not explain why a vertical salary schedule elevation of one or more individual classes within an occupational group does not disturb their horizontal relationship to corresponding salary

schedule level classes as established by the personnel commission and vice versa. Nor are we told why the disturbance of the relationship of salary schedules between classes within an occupational group is a prerogative of the governing board, while the relationship between salary schedules of classes in other groups remains within the classification prerogatives of the personnel commission.

Further, possibly confused with respect to the scope of the 1977 legislative amendment to Education Code section 45261 requiring that personnel commission rules applying to a bargaining unit be in accordance with the negotiated agreement as to matters which are negotiable, the 1980 Sonoma decision declared:

> . . . We construe the statutory intendment as manifesting a legislative policy that in the areas of collective bargaining authorized under the provisions of the Rodda Act [EERA], those provisions prevail over conflicting enactments and rules and regulations of the public school merit or civil service system relating to the matter of wages or compensation in its classified service. (102 Cal.App.3d at pp. 701-702, emphasis added.)

Clearly, the 1977 legislative amendment to Education Code section 45261 dealt with the rules of the personnel commission in relation to matters which are negotiable. The Legislature did not change Government Code section 3540's nonsupersession prescription as to conflicting Education Code enactments, nor did the Legislature amend the EERA scope of representation section (Gov. Code, sec. 3543.2) to provide that, notwithstanding Education Code section 45268, the public school employer shall meet and negotiate the

salary schedules for individual merit system classes, et cetera.[23]

Finally, after holding that a governing board was under a duty to bargain in good faith with an employee organization concerning proposals related to salaries or wages of the represented unit within the classified service, the 1980 Sonoma court stated:

> We further hold that no restriction is imposed upon the Board under the provisions of section 45268 in negotiating salary adjustments for individual job classifications within the same occupational group provided that the relationship between such individual positions as established by the Commission remains intact.
> (102 Cal.App.3d at p. 702.)

The 1980 Sonoma decision ended with the following inexplicable footnote:

> We emphasize that the narrow restriction imposed upon the Board under the statute sanctioning relative salary changes within an occupational group must nevertheless operate in such a manner as not to disturb the relationship in salary schedules as established between the remaining occupational groups. However, we need not and do not decide the nature and extent of changes which could possibly result in the proscribed disturbance. Given the practical realities of fiscal restraints and competitive economic factors within the labor market, such a possibility would appear more theoretical than real.
> (102 Cal.App.3d at pp. 702-703, fn. 15, emphasis added.)

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[23]A similar contention is raised in the lead plurality opinion concerning the 1981 amendment to Education Code section 45260 and its proviso that personnel commission rules shall not apply to bargaining unit members "if the subject matter is within the scope of representation." Like the 1977 amendment to its companion Education Code section 45261, this restriction on rule applicability relates to negotiable subject matters.

So, on this "issue of first impression" involving a "novel question" that "has never before been decided" (102 Cal.App.3d at pp. 693-696), the 1980 Sonoma decision held in essence--like the 1971 Attorney General's opinion and Sonoma No. 40--that the merit system classification relationship established by the personnel commission and which Education Code section 45268 bars a governing board from disturbing in making any salary schedule changes, was only that of the simple vertical ranking of individual classes within an occupational group. That is, the salary grade or level of a class cannot be raised to a grade equal to or above that of the next class ranked above (or alternatively, cannot be lowered to or below the class ranked below). Thus, 1980 Sonoma held that a governing board could, and must, negotiate with exclusive employee organizations the salary schedules or grades for individual merit system classes, and may disturb the salary grade differential relationship established and existing vertically between merit system classes, so long as the simple ranking was not changed.

The 1981 Legislative Amendment

Following the issuance of the first impression 1980 Sonoma decision[24]--opining that a governing board in a merit system

[24]The 1980 Sonoma decision identified the issue presented as "an issue of first impression: Whether section 45268 effectively precludes a governing school board from negotiating wages for individual job classifications" (entailing "novel questions" of "significant public interest") and involving the question of "whether board-initiated salary changes between classes would result in an impermissible disturbance in classification relationships." (Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689, 693, fn. 3, 696, emphasis in original.)

school district must bargain with employee unions the salary schedule level for individual classes in an occupational group and could disturb the classification relationships established vertically in the gradation or number of salary schedule grades or levels existing between individual classes, so long as the simple hierarchical ranking of the individual classes was not disturbed--there was legislative action. The 1981 Legislature amended Education Code section 45256 to statutorily declare the meaning and effect of "to classify" in its statutory mandate to merit system personnel commissions to classify[25] all positions in the classified service of a merit system school district. (Stats. 1981, ch. 784, p. 3051.)

The 1981 Legislature made the following addition to Education Code section 45265 in the merit system article of which Education Code section 45268 is a part:

> (a) The commission shall classify all employees and positions within the jurisdiction of the governing board or of the commission, except those which are exempt

[25]As noted previously, the Attorney General's opinion in 54 Ops.Cal.Atty.Gen. 77 observed that, in directing a personnel commission to "classify" merit system positions (former Ed. Code, sec. 13712, now Ed. Code, sec. 45256), the Legislature had not defined the term "classify." The opinion then opted to use the definition of "class" found in the State Civil Service Act (Gov. Code, sec. 18523) which relates solely to the placing of similar positions into the same class. (54 Ops.Cal.Atty.Gen. at p. 80.) Then, in addressing Education Code section 45268's proscription against a governing board making salary schedule changes which would disturb "the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission," the opinion further observed that "(t)he language of this sentence is terse and difficult to interpret. Certainly, legislative... clarification would be helpful." (54 Ops.Cal.Atty.Gen. at p. 84, emphasis added.)

> from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. "To classify" shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.
> (Underlined portion added by Stats. 1981, ch. 784, p. 3051)

This 1981 legislation prescribes what a personnel commission's classification of a merit system classified service must minimally include (". . . shall include, but not be limited to . . . "[26]). It thereby clarified the elements of a classification established by a merit system personnel commission which a governing board is prohibited from disturbing pursuant to Education Code 45268. (In re Marriage of Paddock (1971) 18 Cal.App.3d 355, 360, hg. den.; In re Connie M. (1986) 176 Cal.App.3d 1225, 1238; Nationwide Investment Corp. v. California Funeral Service (1974) 40 Cal.App.3d 494, 500-501.) Such a statutory prescription as to the meaning of a term is binding when interpreting the statutory scheme. (Rideaux v. Torgrimson (1939) 12 Cal.2d 633, 636; Haggerty v. Associated Farmers of California (1955) 44 Cal. 2d 60, 69; People v. Dillon (1983) 34 Cal.3d 441, 468; Great Lakes

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[26]"Shall" is mandatory. (Ed. Code, sec. 75; Fair v. Hernandez (1981) 116 Cal.App.3d 868, 878, hg. den.; Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 133, hg. den.; REA Enterprises v. California Coastal Commission (1975) 52 Cal.App.3d 596, 606, hg. den.)

And "(t)he term 'includes' is ordinarily a word of enlargement and not of limitation." (People v. Western Air Lines, Inc. (1954) 42 Cal.2d 621, 639; Oil Workers International Union v. Superior Court (1951) 103 Cal.App.2d 512, 570.)

Properties, Inc. v. City of El Segundo (1977) 19 Cal.3d 152, 156; Urban Renewal Agency v. California Coastal Zone Conserv. Commission (1975) 15 Cal.3d 577, 584-585; Keller Street Develop. Co. v. Dept, of Investment (1964) 227 Cal.App.2d 760, 763, hg. den.; B.P. Schulberg Prod. v. California Employment Commission (1944) 66 Cal.App.2d 831, 835.)

The 1981 legislative enactment identifies and mandates four distinct elements of "classifying" which must be formulated and established by a personnel commission as components of a merit system classification scheme:

1. "allocating positions to appropriate classes,"
2. "arranging classes into occupational hierarchies,"
3. "determining reasonable relationships within occupational hierarchies," and
4. "preparing written class specifications."

The first required element, "allocating positions to appropriate classes," is one of the components of classification which was opted for in 54 Ops.Cal.Atty.Gen. 77, at page 80, and has long been statutorily exemplified in the statutory definition of "class" found in Government Code section 18523 of the State Civil Service Act:

> "Class" means a group of positions sufficiently similar with respect to duties and responsibilities that the same title may reasonably and fairly be used to designate each position allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.
> (Gov. Code, sec. 18523, emphasis added.)

Thus, the first threshold element in classification by a personnel commission is to marshal together and allocate to an individual class all those positions which the personnel commission determines: (a) as having sufficiently similar duties and responsibilities that the same title may be used to designate each position allocated to the class; (b) that substantially the same tests of fitness and the same minimum qualifications may be used and required for each position allocated to the class; and (c) that the same schedule of compensation may equitably apply to each position allocated to the class. (Ed. Code, sec. 45256; Professional Engineers in California Government v. State Personnel Board (1977) 70 Cal.App.3d 346, 350-351, hg. den.; Allen v. State Board of Equalization (1941) 43 Cal.App.2d 90, 92.)

Once a personnel commission has completed this first step, it must perform the second required element, which is "arranging classes into occupational hierarchies." This element requires that the personnel commission arrange the various classes into occupational hierarchies. That is, it must cull occupationally-related classes together into an occupational group and vertically rank the classes within each occupational group. Of critical significance to the issue presented in this case, it is this second element of classification--the vertical ranking of classes within an occupational group--which the 1980 Sonoma decision (and the Attorney General's 1971 opinion and Sonoma No. 40) believed to be the sole classification relationship which Education Code section 45268 proscribes from being disturbed by governing board

changes in the salary schedule level for an individual class in an occupational group.[27] That this second element prescribes and includes the vertical ranking of classes within an occupational group is evidenced by the Legislature's use of the term "hierarchies." The legislative mandate in the second element of classification is to "arranging classes into occupational hierarchies," not simply into occupational groups, divisions or sections. The general definition and meaning of a "hierarchy" is:

> A body of persons organized or classified according to rank, capacity, or authority . . . A body of entities arranged in a graded series . . .
> (The American Heritage Dictionary of the English Language, New College Edition (1980), p. 621, emphasis added.)
>
> 1: a rank or order of . . .; 5a: the arrangement of objects, elements, or values in a graduated series (the hierarchy of occupations is based on the degree of skill and responsibility they entail) . . .
> (Webster's Third New International Dictionary, Unabridged, 1976 Edition, p. 1066, emphasis added.)

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[27]The gist of the 1980 Sonoma decision was that a governing board may change the salary schedule grade for an individual class in an occupational group--and disturb the salary schedule grade differentials existing between classes within an occupational group--so long as it does not disturb the simple vertical ranking established by the personnel commission by raising the salary grade level of an individual class to the same as, or higher than, the salary grade of the next higher ranked class (nor reduce the salary grade level to the same as, or lower than, the salary grade level of the next lowest class).

1980 Sonoma also recognized that the governing board could not disturb the horizontal salary grade alignment of classes between occupational groups, but did not explain or resolve how a vertical change in the salary grade of a class within one occupational group did not disturb the existing horizontal alignment of said class with classes in other occupational groups.

So, under the first and second statutorily prescribed elements of classification, a personnel commission allocates all merit system positions to their appropriate classes, marshals all occupationally-related classes into their appropriate occupational groups, and vertically ranks the classes within each occupational group.

The third mandated element of classification, "determining reasonable relationships within occupational hierarchies," brings us to a component of classification dealing with determining relationships "within" each occupational hierarchy. The word "within" is defined to mean "on the inside, INTERNALLY, inside the bounds of, INSIDE OF: not beyond" (Webster's Third New Intern. Dict., 1976 Ed., p. 2627) and "inside, not outside, in the inner part of" (The American Heritage Dict, of the English Language, New College Ed., 1980, p. 1471). The classification relationship to be determined by the personnel commission in this third prescribed step of classifying is not the pure ranking relationship of the classes within an occupational group because that hierarchical relationship has already been established in the second element of classification. Moreover, we may not assume that this third requirement of classifying is merely a reiteration or alternate expression of pure hierarchical ranking as that would make the third requirement surplusage, an interpretation that must be avoided. (Turner v. Board of Trustees (1976) 16 Cal.3d 818, 826; Moyer v. Workmen's Compensation Appeals Board (1973) 10 Cal.3d 222, 230; Watkins v. Real Estate Commissioner (1960)

182 Cal.App.2d 397, 400, hg. den.)

There are two correlative relationships with respect to classes within an occupational group. One is the primary hierarchical ranking of the classes. The second involves the gradation of each of the hierarchically ranked classes to its appropriate grade level in the vertically graduated salary structure.

In a merit system, the appropriate pay grade level for an individual class, in relation to the other ranked classes in its occupational group, and the number of salary schedule levels or pay grade differentials vertically separating the individual classes, is dependent upon various merit related factors including: (1) the minimum qualifications for the class including education, training, experience, skills, licensure, years of proven merit and efficiency in a lower class; (2) whether a class is entry, junior, intermediate, senior or journeyman working level; (3) the degree of duties and scope of responsibilities of the class; (4) the number of intermediate classes between the entry and senior levels; (5) whether the class has any "lead" or supervisory duties and responsibilities and, if so, over how many lower classes involving how many total positions; and (6) the number of ascending supervisory classes.

This secondary relationship between ranked classes within an occupational group thus concerns the gradation or difference in salary schedule or pay grade levels existing between the classes and which is determined on various factors including the differ-

ences as to level and degree of the duties and responsibilities of each class with respect to the classes ranked above and below it. A partial example of this vertical gradation relationship between classes within an occupational group is illustrated in footnote 6 of 1980 Sonoma (102 Cal.App. 3d at p. 695), showing the salary-grade levels of the different classes within an occupational group and the varying number of salary grade levels existing vertically between such classes. A similar example of this secondary salary schedule relationship between classes within an occupational group is found in the Legislature's own assignment of court employee classes to salary schedule levels with varying numbers of salary schedule levels between consecutive classes, such as the deputy clerk classes in Government Code section 72609. While another entity--such as the Los Angeles County Board of Supervisors with respect to Government Code section 72609 or a school district governing board with respect to Education Code section 45268--may make a general percentage change increasing the salary schedule amounts, the salary schedule relationship difference in the degree of salary separation between the classes remains the same.

The third mandated element thus requires a personnel commission to determine the gradation or reasonable differential in salary schedule levels which should exist vertically between the classes in an occupational group.

The fourth required element of classification, "preparing written class specifications," speaks for itself.

Lastly, while Education Code section 45256 prescribes the aforesaid four elements as minimum requirements in classification, the statute expressly provides that the personnel commission's classification authority is not limited to said requirements. Accordingly, a merit system personnel commission may, as part of classification, establish a horizontal alignment of classes between occupational groups with respect to the merit principle of "like pay for like service." (Again, see the chart in footnote 6 of 1980 Sonoma (102 Cal.App.3d at p. 695).)

Conclusion

The 1980 Sonoma appellate decision held that Education Code section 45268's prohibition against a governing board making any changes in the compensation schedules which would disturb the relationship which compensation schedules bear to one another in the classification established by a merit system personnel commission involves only the simple ranking of the classes within an occupational group by the personnel commission, and that classification by a personnel commission does not involve the respective salary schedule differentials or gradation relationships existing vertically between the ranked classes. The 1981 Legislature then amended Education Code section 45256 to specifically declare that classification by a merit system personnel commission involves not only the simple ranking of the classes within an occupational group, but also determining the vertical relationships between the ranked classes within an occupational group. Education Code section 45268 thus bars a

governing board from making salary schedule changes for individual classes and disturbing the salary schedule relationships existing vertically between the ranked classes. Accordingly, proposals to bargain the salary schedules for individual classes are nonnegotiable.[28] (San Mateo City School District v. PERB (1983) 33 Cal.3d 850, 866; Wygant v. Victor Valley Joint Union H.S. District (1985) 168 Cal.App.3d 319, 323; United Steelworkers of America v. Board of Education of Fontana Unified School District (1984) 162 Cal.App.3d 823, 832-833, 840, hg. den.; California Teachers Association v. Parlier Unified School District (1984) 157 Cal.App.3d 174, 183-184, hg. den.; California School Employees Association v. Travis Unified School District (1984) 156 Cal.App.3d 242, 249-250; Jefferson Classroom Teachers Association v. Jefferson Elementary School District (1982) 137 Cal.App.3d 993, 999-1001, hg. den.)

I would dismiss the charges.

"A governing board does, of course, have a duty to bargain proposals for a general salary increase--as the governing board did in the instant case, and as the governing board did in 1980 Sonoma (102 Cal.App.3 at p. 693, fn. 3)--because a general across the board increase in the salary schedules does not disturb the personnel commission's classification relationships.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-2051, California School Employees Association and its San Bernardino Chapter No. 183 v. San Bernardino City Unified School District, in which all parties had the right to participate, it has been found that the San Bernardino City Unified School District violated section 3543.5(b) and (c) of the Educational Employment Relations Act (EERA) by refusing to meet and negotiate on a CSEA proposal to adjust the salaries of 17 specific job classes. It has been determined that the subject matter is not excluded from negotiations by any provision of the Education Code or EERA and that the District had no right to refuse to negotiate. It has also been found that, by this conduct, the District denied CSEA the right to represent the employees in the representation unit of classified employees.

As a result of this conduct, we have been ordered to post this Notice, and will abide by the following: We will:

A. CEASE AND DESIST FROM:

Failing to meet and negotiate in good faith upon request with the exclusive representative of the classified employees with regard to salaries paid to individual job classifications, except that the District shall not be obligated to negotiate proposals which would change the relationships, as defined under Education Code section 45268, of individual job classifications established by the personnel commission within an occupational group or among occupational groups.

Dated:_____ SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

By:_____
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION and its SAN BERNARDINO CHAPTER NO. 183,	)	
Charging Party,	)	Unfair Practice Case No. LA-CE-2051
V.	)	PROPOSED DECISION (3/29/85)
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT,	)	
Respondent.	)	

Appearances; William C. Heath, Attorney for the California School Employees Association and its San Bernardino Chapter No. 183; Joseph J. Woodford, Director of Employee Relations for the San Bernardino City Unified School District.

Before Ronald E. Blubaugh, Administrative Law Judge.

PROCEDURAL HISTORY

This case presents the narrow issue of whether a 1981 amendment to the Education Code eliminated the power of merit system school districts to negotiate about certain changes in the pay relationship between job classes. There is no factual dispute and the case was submitted on a stipulated record. The District, relying upon the advice of a county counsel, contends that the change in law precludes negotiations about a salary proposal made by the union. The union contends that the Education Code change was technical and did not affect negotiating obligations.

This Board agent decision has been appealed to the Board itself and is not final. Only to the extent the Board itself adopts this decision and rationale may it be cited as precedent.

The charge which commenced this action was filed on September 20, 1984, by the California School Employees Association and its San Bernardino Chapter No. 183 (hereafter CSEA) against the San Bernardino City Unified School District (hereafter District). The charge alleges that the District refused to negotiate about changes in salary relationships proposed by CSEA thereby violating Educational Employment Relations Act subsections 3543.5(c) and (b).[1]

On October 19, 1984, the Los Angeles Regional Attorney for the Public Employment Relations Board (hereafter PERB) issued a complaint against the District which incorporated the allegations of CSEA. The District filed an answer to the complaint on October 24, 1984, in which it admitted the factual allegations in the CSEA charge but asserted as an affirmative defense that it had no power over the matters raised by CSEA. The District contended that the establishment of salary

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[1]Unless otherwise indicated, all references are to the Government Code. The Educational Employment Relations Act (hereafter EERA) is found at section 3540 et seq. In relevant part, section 3543.5 provides as follows:

> It shall be unlawful for a public school employer to:
>
> . . . . . .
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

relationships is within the exclusive purview of the District personnel commission and is therefore not negotiable.

On November 30, 1984, the parties submitted a stipulated record. The parties filed simultaneous briefs the last of which was received on March 22, 1985. The matter was submitted for decision upon receipt of the briefs.

FINDINGS OF FACT

The San Bernardino City Unified School District is a public school employer under the EERA. At all times relevant, CSEA has been the exclusive representative of all of the District's classified employees except for management and confidential employees, day-to-day substitutes and part-time employees working fewer than five days per week and two hours per day.

The District is a merit system school district and has a personnel commission in charge of certain employment-related matters.[2] On August 22, 1984, during negotiations for the 1984-85 school year, CSEA submitted a four-part proposal to the District. One portion of the proposal called for an across-the-board salary increase of 9.5 percent for all unit members. The other salary-related part of the proposal called for specific position adjustments for employees in 17 listed job classes. In each instance, the proposal would have

[2]Provisions pertaining to the merit system in public school districts are set out at Education Code section 45220 et seq.

increased the salary range for employees within a particular job family.[3] In no instance, however, would the proposal have disturbed the hierarchy or ranking of those job classifications within their respective job families.[4]

On August 24, 1984, the District refused to negotiate about the proposal for specific salary adjustments in the 17 listed classes. The District based its refusal to negotiate on an opinion from the office of the San Bernardino County Counsel. Joseph J. Woodford, District director of employee relations, sent CSEA a letter explaining its refusal to negotiate. The letter, which makes reference to the opinion of the county counsel, reads in part as follows:

> It is the District's belief and understanding that this Opinion places the subject of changing salary relationships within occupational series outside the scope of negotiations and within the authority of the Personnel Commission. Therefore, the District's representative has no authority under the law to negotiate salary adjustments as proposed by the Association on August 22, 1984.

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[3]For example, the proposal would have increased the pay for elementary secretaries from range 35A to range 37 and of school police officer I from range 37A to 39A.

[4]For example, under the existing classification system employees in the class of campus security I were ranked in range 34A and employees in campus security II were ranked in range 35A. Under the CSEA proposal, campus security I would advance to range 36A and campus security II would advance to range 37A. Thus, employees in the position of campus security I would remain beneath those in campus security II although employees in both classes would be at somewhat higher pay levels than before.

The parties continued to negotiate other proposals after August 24, 1984, but with the understanding that the further negotiations would not prejudice CSEA's right to proceed with an unfair practice.

LEGAL ISSUE

Did the District by refusing to negotiate about CSEA's proposal to adjust the salaries of 17 specific job classes fail to meet and negotiate in good faith in violation of subsection 3543.5(c) and (b)?

CONCLUSIONS OF LAW

Public school employers under section 3543.3 have the obligation to meet and negotiate with any employee organization chosen as an exclusive representative by their employees. Refusal to meet and negotiate upon the demand of the exclusive representative is an unfair practice and a violation of subsection 3543.5(c). The obligation to negotiate, however, extends only to those matters within the scope of representation.[5] If the exclusive representative cannot

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[5]The scope of representation under the EERA is set out in section 3543.2, which provides in relevant part as follows:

> (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the

establish that the matter at issue is within the scope of representation then the employer's refusal to bargain is justified.[6]

Related to the limitation placed on negotiations by the scope of representation is the statutory reservation that nothing in the EERA,

> . . . shall be deemed to supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements. (Section 3540.)

The effect of this section is to further limit the obligation of an employer to negotiate. An exclusive representative's proposal is not negotiable insofar as it would conflict with the statutory authority of a personnel commission to regulate the merit system. In such a situation, a public school employer can lawfully refuse to negotiate.

> evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, and the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code. . . .

[6]It is the burden of the charging party to show that a negotiable matter is within scope. See, Mt. Diablo Unified School District (12/30/83) PERB Decision No. 373 and Mt. Diablo Unified School District (8/15/84) PERB Decision No. 373b.

The District argues here that a 1981 amendment to the Education Code removed from the school board the power to make (and therefore to negotiate about) certain changes in the classified employee salary schedule. Specifically, the District contends that it no longer has the power to make salary adjustments for individual job classifications within an occupational group. The District contends that its power to make such adjustments was removed by the 1981 addition to Education Code section 45256 of the following definition:

> . . . "To classify" shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.[7]

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[7]Education Code section 45256 provides as follows:

> (a) The commission shall classify all employees and positions within the jurisdiction of the governing board or the commission, except those which are exempt from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. "To classify" shall include, but not be limited to allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.
>
> (b) Exempt from the classified service are the following:
>
> (1) Positions which require certification qualifications.

Prior to the 1981 revision, the District acknowledges, merit system school districts were obligated to negotiate

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(2) Part-time playground positions.

(3) Full-time students employed part time.

(4) Part-time students employed part time in any college work-study program, or in a work experience education program conducted by a community college district pursuant to Article 7 (commencing with section 51760) of Chapter 5 of Part 28 and which is financed by state or federal funds.

(5) Apprentice positions.

(6) Positions established for the employment of professional experts on a temporary basis for a specific project by the governing board or by the commission when so designated by the commission.

Employment of either full-time or part-time students in any college work-study program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

However, nothing in this section shall prevent an employee, who has attained regular status in a full-time position, from taking a voluntary reduction in time and retaining his or her regular status under the provision of this law.

No person whose contribution consists solely in the rendition of individual personal services and whose employment does not come within the scope of the exceptions listed anove shall be employed outside the classified service.

A part-time position is one for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is less the 87 1/2 percent of the normally assigned time of the majority of employees in the classified service. [Underlined provision added by Stats, 1981, Chapter 784.]

about changes in the salaries for individual job classifications within the same occupational group. The only limitation on a school board's power was that the negotiated changes could not change the relationship, i.e., relative ranking, among individual positions as established by the personnel commission. Sonoma County Board of Education v. Public Employment Relations Board (1980) 102 Cal.App.3d 689 [163 Cal.Rptr. 464], enforcing Sonoma County Board of Education (11/23/77) EERB Decision No. 40. However, the District reasons, the rationale of the Sonoma County decision was undercut with the 1981 revision of Education Code section 45256. Since then, the District concludes, the personnel commission has the duty to determine the salary differential between classifications as well as their relative ranking. Thus, because the school board has no power to change the salary differential among the various classifications, it has no obligation to negotiate.

As CSEA points out, however, the District's rationale ignores other provisions of the Education Code, creates needless disharmony between the Education Code and the EERA and posits a statutory interpretation apparently not envisioned by the Legislature.

In advancing its position, the District essentially ignores Sonoma County Board v. PERB, supra, 102 Cal.App.3d 689 and the Education Code section which it interprets. The Court of

Appeal, in Sonoma County Board, was required to interpret Education Code section 45268. That section provides as follows:

> The commission shall recommend to the governing board salary schedules for the classified service. The governing board may approve, amend, or reject these recommendations. No amendment shall be adopted until the commission is first given a reasonable opportunity to make a written statement of the effect the amendments will have upon the principle of like pay for like service. No changes shall operate to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission. [Emphasis added.]

The Court concluded that under Education Code section 45268 the school board retained the exclusive authority to fix the compensation of classified employees subject only to the limitation of the section's final sentence. Relying in part on a prior interpretation of the section by the Attorney General[8] and in part on a 1976 amendment to a related provision of the Education Code,[9] the Court of Appeal read

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[8]54 Ops.Cal.Atty.Gen. 77 (1977).

[9]The court relied heavily on the amended version of Education Code section 45261 which provides as follows:

> Subjects of rules. (a) The rules shall provide for the procedures to be followed by the governing board as they pertain to the classified service regarding applications, examinations, eligibility, appointments, promotions, demotions, transfers, dismissals, resignations, layoffs,

Education Code section 45268 as imposing only a narrow restriction on bargaining. The Court concluded that the employer was obligated to bargain about salary proposals for individual job classes within an occupational group so long as the relationship between positions remains as established by the personnel commission.

Fundamental to the Court's decision is its interpretation of the word, "relationship." The Court follows the Attorney General's interpretation of the word as meaning, "ranking." The Court describes with approval the Attorney General's conclusion that under Education Code section 45268 a governing board may adjust salary differentials between unequal positions within the same occupational group so long as "the relative ranking of such positions as established by the personnel commission remains undisturbed." 102 Cal.App.3d 689, 699.

> reemployment, vacations, leaves of absence, compensation within classification, job analyses and specifications, performance evaluations, public advertisement of examinations, rejection of unfit applicants without competition, and any other matters necessary to carry out the provisions and purposes of this article.
>
> (b) With respect to those matters set forth in subdivision (a) which are a subject of negotiation under the provisions of Section 3543.2 of the Government Code, such rules as apply to each bargaining unit shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer.

The definition of the word "relationship" to mean "ranking" is important to the present dispute. If the word "relationship" is interpreted in the newly amended Education Code section 45256 to mean "ranking" then the section is consistent with the Court's interpretation of Education Code section 45268.

The District rejects this definition of "relationship" arguing that the word means the dollar differential between positions. The District argues that the concept of ranking job classes is included within the section 45256 requirement that the personnel commission arrange job classes into occupational "hierarchies." Therefore, the District continues, the statutory command to "determine reasonable relationships" must mean something else, i.e., to set the dollar differential between positions.[10]

The District's interpretation, however, would impute two different meanings to the word "relationship" within related provisions of the Education Code. Since the Court of Appeal

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[10]CSEA offers an effective counter to this argument. CSEA notes that the District's rationale would telescope two personnel commission functions — arranging classes into occupational groups and then ranking the classes -- into the single phrase, "arranging classes into occupational hierarchies." At that point, CSEA continues, the District is left with surplus language, i.e., the duty to determine "reasonable relationships within occupational hierarchies." Rather than recognize the surplusage as evidence of an error in analysis, CSEA argues, the District simply proceeds to invent a new meaning for the word "relationship."

already has determined that the word "relationship" means "ranking," it can be presumed that the Legislature intended the word to have the judicially construed meaning when it amended Education Code section 45256. See People v. Curtis (1969) 70 Cal.2d 347, 355 [74 Cal.Rptr. 713]. Thus, as CSEA argues, under Education Code section 45256 the personnel commission is given four distinct responsibilities: the duty to allocate positions into appropriate classes, the duty to gather the classes into occupational groups (hierarchies), the duty to determine reasonable rankings (relationships) within occupational groups and the duty to prepare written class specifications.

CSEA's construction of the statute harmonizes section 45256 with the whole system of law of which it is a part. See Moyer v. Workmen's Compensation Appeals Board (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144]. Where a statute is subject to two or more reasonable interpretations, the interpretation which will harmonize rather than conflict with other provisions should be adopted. People v. Kuhn (1963) 216 Cal.App.2d 695, 698 [31 Cal.Rptr. 253].

In this regard, it should be noted that Education Code section 45261, upon which the Court relied heavily in Sonoma County Board, supra, 102 Cal.App.3d 689, remains unchanged by the amendment to section 45256. Section 45261 sets out the subject upon which a personnel commission shall make rules,

including "compensation within classification." The section then specifies that such personnel commission rules as pertain to matters within the EERA scope of representation "shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer." In Sonoma County Board, the Court interpreted the requirement,

> . . . as manifesting a legislative policy that in the areas of collective bargaining authorized under the provisions of the Rodda Act, those provisions prevail over conflicting enactments and rules and regulations of the public school merit or civil service system relating to the matter of wages or compensation of its classified service. (102 Cal.App.3d 689, 701-702.)

There is nothing in the amendment of Education Code section 45256 which affects the Court's conclusion. Indeed, the District's interpretation of the amendment to Education Code section 45256 essentially would repeal the statutory prohibition against personnel commission rules which conflict with negotiated agreements. Plainly, the amendment should not be read to provide such a disharmonious result.

Finally, the result for which the District argues is without support in the legislative history of the amendment to Education Code section 45256. The change arose in Senate Bill 952 of the 1981 legislative session. As part of the stipulated record, the parties introduced the complete history of SB 952 including the various amendments to the bill and the analyses

of the various legislative consultants who prepared the bill for legislative committee review. Nowhere in the legislative counsel's digest of the bill in its various versions or in the analyses of the legislative committee consultants is there any hint that the bill would restrict the ability of an exclusive representative to bargain about salary relationships in merit system districts. The consultant's report to the Senate Industrial Relations Committee describes the purpose of the bill as making "several minor and clarifying changes in the responsibility and authority of personnel commissions in merit system school district." The consultant's report to the Assembly Committee on Public Employees and Retirement gives a virtually identical description. The effect of the measure under the District's analysis could hardly be described as "minor and clarifying."

For these reasons, it is concluded that the 1981 amendment to Education Code section 45256 did not remove from the District its ability to make adjustments in the dollar amount paid to job classes within occupational families. The only restriction on the District's authority is the familiar qualification set out by Education Code section 45268 that no change shall disturb the ranking set by the personnel commission.

It is undisputed that the District refused to negotiate about the CSEA proposal to adjust the salaries of the

17 specific job classes. Since wages are a specifically listed subject within the scope of representation, it is concluded that the District has failed to negotiate in good faith. Such a refusal violates EERA subsections 3543.5(c) and concurrently (b) because it denies CSEA the right to represent its members.

REMEDY

CSEA seeks an order that the District be directed to negotiate in good faith about its proposal to adjust the salaries of employees in the 17 specific job classes. The PERB in subsection 3541.5(c) is given:

> . . . the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

The remedy CSEA seeks is the ordinary remedy in a refusal to bargain case. It is appropriate that the District be directed to cease and desist from its unfair practice and to post a notice incorporating the terms of the order. Posting of such a notice, signed by an authorized agent of the District, will provide employees with notice that the District has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with the order. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and the District's readiness to

comply with the ordered remedy. Davis Unified School District et al. (2/22/80) PERB Decision No. 116; see also Placerville Union School District (9/18/78) PERB Decision No. 69.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the San Bernardino City Unified School District violated subsections 3543.5(b) and (c) of the Educational Employment Relations Act. Pursuant to subsection 3541.5(d) of the Government Code, it is hereby ORDERED that the District, its governing board and its representatives shall:

1. CEASE AND DESIST FROM:

Failing to meet and negotiate in good faith upon request with the exclusive representative of the classified employees with regard to salaries paid to individual job classifications;

Except that the District shall be under no obligation to bargain about proposals which would change the relationships of the individual jobs as established by the personnel commission within an occupational group.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

(a) Within ten (10) workdays of service of a final decision in this matter, post at all school sites and all other work locations where notices to employees are customarily placed, copies of the notice attached hereto as an appendix.

The notice must be signed by an authorized agent of the District, indicating that the District will comply with the terms of this order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced or covered by any other material.

(b) Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with her instructions.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on April 18, 1985, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code, title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on April 18, 1985, or sent by telegraph or certified United States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions

and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, section 32300 and 32305 as amended.

Dated: March 29, 1985

Ronald E. Blubaugh
Administrative Law Judge