STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

SONOMA COUNTY ORGANIZATION OF PUBLIC EMPLOYERS,	)	
		Case No. SF-CE-3
Charging Party,	)	EERB Decision No. 40
vs.	)	
SONOMA COUNTY OFFICE OF EDUCATION,		November 23, 1977
Respondent.	)	

Appearances: Peter M. Renkow (Doty & Renkow) for Sonoma County Organization of Public Employees; V.T. Hitchcock, Deputy County Counsel, for Sonoma County Office of Education; Elaine Grillo Canty, Attorney, for Amicus Curiae, California School Personnel Commissioners' Association in support of Respondent.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

This case is before the Educational Employment Relations Board on the exceptions of both the Sonoma County Organization of Public Employees and the Sonoma County Office of Education to the attached hearing officer's recommended decision.[1] The recommended decision ordered SCOE, a merit system district pursuant to Education Code Section 45240 et seq., to "cease and desist from failing to meet and negotiate in good faith upon request with the exclusive representative [SCOPE]" with regard to salaries paid to individual job classifications; except that the employer shall be under no obligation to bargain about proposals which would change the relationships of the individual jobs as established by the personnel commission." SCOPE urges that the scope of negotiations allowed by the recommended decision is too narrow and fails to comport with the legislative intent of the

[1] Hereinafter, the Educational Employment Relations Board is referred to as "EERB," the Sonoma County Organization of Public Employees is referred to as "SCOPE," and the Sonoma County Office of Education is referred to as "SCOE."

Educational Employment Relations Act[2] or with the attorney general's opinion cited in the recommended decision,[3] which would allow negotiation regarding salaries paid individual job classifications, except insofar as the relationships of the individual jobs within a single "occupational group" would be changed. Based on Education Code Section 45268 (formerly Education Code Section 13719), SCOE argues that SCOE's governing board should only be required to negotiate across-the-board increases or decreases in the salaries of all classified employees.

The EERB adopts the hearing officer's recommended decision, as modified herein.

The central issue presented by this case is whether or not the salaries paid to certain individual job classifications in the classified service are matters within the scope of representation. While Government Code Section 3543.2 states that matters relating to "wages" are within the scope of representation, Government Code Section 3540 provides that nothing contained in the EERA shall supercede, at least, provisions of the Education Code which establish and regulate a merit or civil service system. Education Code Section 45268 is such a provision, and interpretation of its last sentence provides the answer to the issue posed above. Section 45268 reads:

> 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.

If the governing board had total freedom to approve, reject or amend the recommendations of the personnel commission, then the salaries paid to certain individual job classifications would be fully negotiable since such salaries are certainly "wages." However, the last sentence of

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[2]Gov. Code Sec. 3540 et seq.

[3]54 Ops. Atty. Gen. 77 (1971).

Section 45268 limits the governing board's ability to amend the personnel commission's recommendations. To the extent of the limitation imposed by this sentence, the governing board is not able to negotiate regarding the salaries paid individual job classifications.

The EERB has the assistance of a 1971 attorney general's opinion which interprets Section 45268 (formerly Education Code Section 13719).[4] The EERB not only gives this opinion considerable weight, but finds it controlling in the resolution of this case. In Meyer v. Board of Trustees, 195 Cal. App.2d 420, 431, 432 (1961), it is stated:

> The contemporaneous construction of a statute by those charged with its enforcement and interpretation, although not necessarily controlling, "is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized." ...As a contemporaneous construction and because he was charged with the duty of rendering an opinion with respect to its meaning, the interpretation of the subject statute by the attorney general...is entitled to great respect...
>
> It must be presumed that the aforesaid interpretation has come to the attention of the Legislature, and if it were contrary to the legislative intent that some corrective measure would have been adopted in the course of the many enactments on the subject in the meantime.

Because the attorney general's opinion interpreting former Education Code Section 13719 was rendered six years ago and because that section was reenacted in the same form by the Legislature in the 1976 Education Code and has not subsequently been amended, the principle above quoted is applicable to the present case, and we therefore look to the attorney general's opinion.

Our interpretation of the attorney general's opinion differs from that outlined in the recommended decision. The recommended decision, purporting to follow the attorney general's opinion, concluded that the governing board can increase or decrease the salaries of individual job classifications, so long as such changes do not "lift a classification which formerly was lower paid above one which formerly was higher paid."

Rather, we find that the governing board can increase or decrease the salaries of particular job classifications, so long as such changes do not lift a classification which formerly was lower paid above one which formerly was higher paid within the same "occupational group."

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[4] Ibid.

As the attorney general's opinion notes:

> It is important to observe that even though positions within different occupational groups may have the same salary at a given moment in time, they do not necessarily have a compelling relationship which must be tied together in the salary structure. A carpenter foreman is not necessarily related to a first level clerical supervisor. Historically, each may have been receiving salary increases at different rates of increase producing a coincidental equality of rate for a given period of time. External competitive factors may have justified an increase for one occupational group but not for another.

Thus, job classifications in different occupational groups should not be compared in determining whether their salary relationships have been changed by the governing board, as was done in the hypothetical example in the recommended decision. In the recommended decision the salary relationships of data processing workers, business office workers, audio visual technicians, clerical workers and custodians were hypothetically compared. Instead, the example given in the attorney general's opinion compares only job classifications within a single occupational group:

> 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...; 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.

SCOE argues that the Legislature did not intend pay schedules to be compressed or expanded by the governing board, and that such "tampering destroys the relationship" between job classifications. This argument was answered by the following quotation from the attorney general's opinion:

> This classification relationship may not be disturbed by action of the governing board in making changes in the 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.

Because the EERB considers the opinion of the attorney general binding on the EERB, it rejects SCOE's argument.

SCOPE raised the issue that the recommended decision did not address the second allegation of SCOPE'S charge which stated:

> The Personnel Director, Fred Walton, is a member of the management negotiation team and has prepared and submitted to the Personnel Commission a salary study which if adopted would unilaterally reduce the salary of individual classifications by 7.5%.

The exception was made on the grounds that "such unilateral action" would reduce the salaries of Individual classifications contrary to an agreement negotiated between the parties, dated September 13, 1976, which provided, "All employees in the bargaining unit will receive a general salary increase at each existing salary range of 5% effective September 1st, 1976___"

The EERB dismisses this allegation. It finds that the preparation and submission of the salary study to the personnel commission is not unilateral action which constitutes bad faith negotiations in violation of Government Code Sections 3540.1(h), 3543.2 and 3543.5(b) and (c), as alleged. As the allegation admits, the salary schedule was not adopted by the governing board, SCOE, and there is no allegation or proof that any salaries have in fact been unilaterally reduced by 7.5%.

ORDER

Pursuant to Government Code Section 3541.5(c) of the Educational Employment Relations Act, it is hereby ordered that:

A. The Sonoma County Board of Education 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 employer 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 ACT:

a. Prepare and post a copy of this order at its headquarters office for twenty (20) working days in a conspicuous place at the location where notices to classified employees are customarily posted;

b. At the end of the posting period, notify the San Francisco Regional Director of the Educational Employment Relations Board of the action it has taken to comply with this order.

B. The allegation of the Sonoma County Organization of Public Employees that the Sonoma County Office of Education's Personnel Director prepared and submitted to the Personnel Commission a salary study which if adopted would unilaterally reduce the salary of individual classifications by 7.5%, is hereby DISMISSED.

By: Raymond J. Gonzales, Member Reginald Alleyne, Chairman

Jerilou H. Cossack, Member, concurring and dissenting:

I agree with the majority that the Sonoma County Office of Education violated Section 3543.5(c) of the EERA by refusing to meet and negotiate with SCOPE, the exclusive representative of its classified employees, about wages of individual job classifications. However, I do not agree with the majority's rationale for finding a violation. I also conclude that the County Office further violated Section 3543.5(c) of the EERA by entertaining the salary study prepared by Fred Walton, its personnel director and the executive director of the personnel commission, without negotiations with SCOPE.

The majority's total reliance on the Attorney General's opinion[1] 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 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[2].

[1] 54 Ops.Cal.Atty.Gen. 77 (1971).

[2] Wenke, Hitchcock, 6 Cal.3d 746, 752, 100 Cal.Rptr. 290 (1972); King v. Central Bank, 18 Cal.3d 840 844, 134 Cal.Rptr. 771 (1977); and People v. Vallega, 67 Cal.App.3d 847, 870, ___Cal.Rptr.__(1977).

The fundamental question presented by this case is the relationship in merit system districts[3] between personnel commissions, governing boards of school districts and the collective negotiations prescribed by the EERA. In merit system districts neither the governing board alone nor the personnel commission alone controls the wages of the district's classified employees or is in a position to exercise full and exclusive authority over the collective negotiation relationship concerning its classified employees. It is only together that the governing board and the personnel commission control the wages paid classified employees.[4]

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[3] Personnel commissions administer a school district's merit or civil service, system for its classified employees. They are composed of three appointed members (Ed. Code Sec. 45243) whose primary purpose is to establish a classified service of the non-certificated employees of each school district adopting the merit system. (Ed. Code Sec. 45260.) Merit, or civil service, systems are generally understood to have been a response to the excesses of the spoils system and constitute an attempt to eliminate partisan political preferences from the selection and promotion of public employees.

There are 101 K through 12 merit system districts who employ 64,126 classified employees. California Personnel Commissioner School Directory. There are 1046 K through 12 school districts employing 132,624 classified employees. Ratio of California Public School Nonteaching Employees to Classroom Teachers (1975) Therefore, approximately 48.3 percent of the K through 12 classified employees in the state are covered by merit systems.

[4] In California's merit system school districts, the authority of the governing board is shared with the personnel commission in several critical areas affecting the wages paid to its classified employees. The governing board shall employ, pay and otherwise control its classified employees only in accordance with the provisions of Article 6, (Ed. Code Sec. 45421) which defines merit systems and enumerates the powers and obligations of personnel commission. Education Code Sections 45268, 45101(a), 45109 and 45276 exemplify the nature of this shared authority in determining the wages of classified employees. Section 45268 provides

> 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.

The purpose of the *EERA*, as set forth in Section 3540 is "to promote the improvement of personnel management and employer-employee relations" by, among other things, permitting employees to be represented by employee organizations in their employment relationship with their employer. To effectuate this policy the EERA imposes a mutual obligation on the employer and the exclusive representative to meet and negotiate in a good faith effort to reach agreement on matters within the scope of representation. The scope of representation unequivocably includes wages.[5]

Section 3540 also states:

> Nothing contained herein 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.

Cont.

"Classification" is defined by Education Code Section 45101(a) as follows:

> "Classification" means that each position in the classified service shall have a designated title, a regular minimum number of assigned hours per day, days per week, and months per year, a specific statement of the duties required to be performed by the employees in each such position, and the regular monthly salary ranges for each such position. (Emphasis added.)

Ed. Code Sec. 45109 provides that governing boards "shall fix and prescribe the duties to be performed by all persons in the classified service." This specifically applies to merit system districts. Ed. Code Sec. 45276 further provides that "[t]he position duties shall be prescribed by the [governing] board and qualification requirements... shall be prepared and approved by the [personnel] commission...."

[5] Section 3543.2 provides, in pertinent part,

> The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. (Emphasis added.)

The EERA clearly does not repeal merit systems. Nor are the purposes of the EERA subordinate to the merit systems.[6]

The EERA clearly and explicitly requires an employer to negotiate about wages. In enacting the EERA, the Legislature must be presumed to have intended that personnel commissions, with their specifically prescribed obligations respecting classification of employees, would not defeat the basic purpose of the EERA. In fact, it is a well-understood canon of statutory construction that

> ... the court should ascertain the intent of the purpose of the law ' [E]very statute should be construed with reference to the whole system of which it is a part so that all may be harmonized and have effect'....Such purpose will not be sacrificed to a literal construction of any part of the act....[7]

Collective negotiations presuppose that the parties possess serious intent to adjust their differences and reach an acceptable common ground about those matters within the scope of representation.[8] It is axiomatic that meaningful negotiations require that the parties engaged in negotiating possess the authority to affect an agreement and implement the agreement reached.

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[6] When there is a conflict between legislation enacted at different times the later enacted legislation repeals that enacted earlier if there is either a manifested legislative intent to repeal or if the sections are determined to be irreconcilable. People v. Thomas, 53 Cal.2d 121, 126 23 Cal.Rptr. 161 (1962).

[7] Select Base Materials v. Board of Equalization, 51 C.2d 640, 645 (1959).

[8] 1 NLRB Ann. Rep. pp. 85-86; NLRB v. Insurance Agents Union, 361 U.S. 477, 485 (1960); Heinz Co. v. NLRB, 311 U.S. 514, 523 (1941).

Meeting and negotiating is defined by Government Code Section 3540.1(h) as meaning

> ...meeting, conferring, negotiating and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties....

In the private sector the question of who actually possesses the authority to determine the wages, hours and other terms and conditions of employment arises in several contexts. A "joint employer" relationship is generally found when two or more employers share common control of employment conditions.[9] Two or more employers are found to constitute a "single employer" when there is an interrelatedness of operations, centralized control of labor relations, common management, and cannon ownership or financial control.[10] One employer will be found to be an "ally" of another, and hence not a neutral innocent by-stander for purposes of determining whether economic pressure is primary or secondary when one employer is performing "struck work" for the primary employer or where the employer is engaged in an integrated, straight-line operation.[11] In determining whether two or more companies are engaged in an integrated, straight-line operation the NLRB and the courts look to the degree of common ownership, the common control of the

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[9]Greyhound Corp. 153 NLRB 1488, 59 LRRM 1665 (1965), enfd. 368 F.2d 778, 63 LRRM 2434 (5th Cir. 1966).

[10]Sakrete of Northern California, 137 NLRB 1220 (1962).

[11] Graphic Arts International Union Local 262, AFL-CIO (London Press, Inc.), 208 NLRB 37 (1973).

day-to-day operations including labor relations, the extent of integration of the business operations, and the dependence of one employer on the other for a substantial portion of business.[12] Finally, in determining whether a union is engaged in lawful primary economic pressure or unlawful secondary economic pressure, a critical element is whether the struck employer has the power to settle the dispute or the control over the disputed work.[13]

While none of these concepts is entirely apropos, they demonstrate a fundamental tenet that artificially constructed distinctions will not be permitted to obfuscate the true relationship between apparently autonomous entities to thwart negotiations between those capable of reaching agreement.

Neither the governing board nor the personnel commission, alone, possesses the requisite authority under the Education Code to affect and implement an agreement with SCOPE with respect to wages. Both must be a party to negotiations in order to harmonize the intent of the Legislature in enacting the EERA, with the shared authority of the governing board and the personnel commission prescribed by the Education Code.

The conclusion is further buttressed by the fact that Fred Walton is the personnel director of the County Office, the executive officer of the personnel commission and a member of the County Office's negotiating team. His multiple functions attest to the recognition by the County Office and the personnel commission that they are inextricably intertwined in establishing wages, hours and terms and conditions of employment for the classified employees.

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[12] Local 810, Steel, Metal, Alloys and Hardware Fabricators, International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America (Sid Harvey, Inc.), 189 NLRB 612, 77 LRRM 1191 (197D, enf.den. 460 F.Zd 1, 80 LRRM 2417 (2nd Cir. 1972).

[13] NLRB v. Plumbers, Local 638 (Austin Co.), ___ U.S. ___, 94 LRRM 2628, 2634 (1977).

The County Office not only refused to negotiate about the wages to be paid individual classifications, it entertained proposals on this very matter from the personnel commission. Such conduct is clearly violative of Section 3543.5(c) of the EERA. It is not clear from the record whether the County Office, in fact, unilaterally reduced the wages of instructional aides as recommended by the personnel commission. Nor is there any evidence that the proposed reduction of instructional aide's wages was in any way related to their exercise of rights guaranteed by the EERA. Accordingly, I agree that this portion of the charge should be dismissed.

II

The majority opinion is silent regarding a threshold question of every allegation of refusal to negotiate in good faith: the appropriate unit. An employer is only obligated to negotiate with the exclusive representative of the employees in an appropriate unit.[14]

In this case the parties have stipulated that the negotiating unit for which SCOPE was recognized as the exclusive representative by the County Office is defined as follows:

> non-supervisory classified employees in the Sonoma County Office of Education.

This description is identical to that contained in the Memorandum of Understanding reached by the parties.

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[14]Sections 3543.5(c) and 3543.6(c) of the EERA impose a mutual obligation on an employer and an employee organization respectively to meet and negotiate in good faith. Section 3540.1(h) of the Act in turn defines meeting and negotiating as ". . .meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation" Section 3540.1(e) defines exclusive representative as "...the employee organization recognized or certified as the exclusive negotiating representative of.. .employees in an appropriate unit...." (Emphasis added.)

This unit description does not specifically exclude management and confidential employees as required by the EERA.. However, in all the circumstances of this case and since no party contends that this is a critical defect, it appears that the failure of the parties to specifically exclude management and confidential employees was an inadvertent oversight. Nothing suggests that any management or confidential employees are, in fact, included in the unit.[15]

This unit does not comport to the presumptively appropriate classified units which we have established by a series of cases beginning with Sweetwater Union High School District[16]. However, it "would ill-serve the purposes of the EERA to disrupt agreement of tine parties made in the interest of the expeditious handling of representation cases, even though there may be some question about tie unit composition were the matter litigated.[17] The unit agreed to by the parties does not contravene any provisions or purposes of the EERA or flaunt well-established Board policies.[18]

Jerilou H. Cossack, Member

[15]Cf. Fisher-New Center Company, 184 NLRB 809 (1970).

[16]EERB Decision No. 4, November 23, 1976.

[17]Pyper Construction Company, 177 NLRB 707 (1969).

[18] Otis Hospital, Inc., 219 NLRB 55.

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

ORDER

SONOMA COUNTY ORGANIZATION OF PUBLIC EMPLOYEES, Charging Party,	)	Case No. SF-CE-3
	)	EERB Decision No.40
vs.	)	November 23, 1977
SONOMA COUNTY OFFICE OF EDUCATION, Respondent.	)	

Pursuant to Government Code Section 3541.5(c) of the Educational Employment Relations Act, it is hereby ordered that:

A. The Sonoma County Board of Education 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 employer 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 ACT:

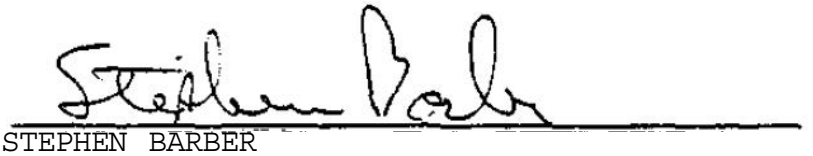
a. Prepare and post a copy of this order at its headquarters office for twenty (20) working days in a conspicuous place at the location where notices to classified employees are customarily posted;

b. At the end of the posting period, notify the San Francisco Regional Director of the Educational Employment Relations Board of the action it has taken to comply with this order.

B. The allegation of the Sonoma County Organization of Public Employees that the Sonoma County Office of Education's Personnel Director prepared and submitted to the Personnel Commission a salary study which if adopted would unilaterally reduce the salary of individual classifications by 7.5% is hereby DISMISSED.

Educational Employment Relations Board

by



STEPHEN BARBER
Executive Assistant to the Board

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of:	)	
	)	
SONOMA COUNTY ORGANIZATION OF PUBLIC EMPLOYEES,	)	
	)	
Charging Party,	)	Unfair Case No. SF-CE-3
	)	
vs.	)	
	)	
SONOMA COUNTY OFFICE OF EDUCATION,	)	
	)	
Respondent.	)	RECOMMENDED DECISION
	)	

Appearances: Doty & Renkow by Peter M. Renkow, for Sonoma County Organization of Public Employees.

V. T. Hitchcock, Deputy County Counsel, for Sonoma County Office of Education.

Elaine Grillo Canty, Attorney for Amicus Curiae, California School Personnel Commissioners' Association in support of Respondent.

Before Ronald E. Blubaugh, Hearing Officer.

STATEMENT OF CASE

On June 3, 1976, the Sonoma County Board of Education (hereafter "Board") recognized the Sonoma County Organization of Public Employees (hereafter SCOPE) as the exclusive representative of a unit of classified employees of the Sonoma County Office of Education.

Subsequent to that date, the parties commenced bargaining for a contract. On July 15, 1976, SCOPE filed an unfair practice charge against the Sonoma County Office of Education (hereafter "employer" or "respondent")

contending a violation of Government Code Section 3543.2 and 3540(h).[1/] Because the parties have reached an agreed statement of facts, the allegations and responses in the original charge and answer are summarized here in only the most cursory manner. In brief, SCOPE alleged that the employer refused to meet and negotiate about the salaries of individual job classifications of employees within its unit. The employer denied this and affirmatively defended on the theory that those matters were within the domain of the district personnel commission and that the board was precluded from bargaining about them by the Education Code.

An informal conference was held on this matter on November 23, 1976. A second informal conference was set for December 10, 1976. However, prior to the start of that conference the parties worked out a set of stipulated facts. The parties waived notice requirements and a formal hearing was commenced immediately. The hearing was continued to March 8, 1977, when the parties argued the case orally, on the record.

In their agreed statement of facts, the parties give the following narrative of the events which led up to the charge which was filed with the Educational Employment Relations Board:

[1/] Government Code Section 3543.2 details the scope of representation in meeting and negotiating. There is no Government Code Section 3540(h). SCOPE apparently intended to allege a violation of Government Code Section 3540.1(11) which is the definition of "meeting and negotiating." This is technically an improper statement of the charge. All parties however, have treated this case as if there were an allegation that the employer violated Government Code Section 3543.5(c) by refusing to bargain over matters contained in Government Code Section 3543.2. Because there was no objection to the manner in which the charge was filed and because all parties have treated it as cited above, the hearing officer will do the same.

On June 3, 1976, SCOPE submitted to the respondent a comprehensive statement of proposals upon which to commence the meet and negotiate process. On June 17, 1976, the Board of Education responded to SCOPE's proposals and formally indicated the appointment of Dick Bacon, chief spokesman, and Don Boriolo and Fred Walton, additional members of the Board's negotiating team. Dick Bacon is... (the employer's) chief deputy superintendent. Don Boriolo is the program manager of the Sonoma County Regional Occupation Program. Fred Walton is the personnel director in the Sonoma County Office of Education. He is also the executive director of the Personnel Commission.

Sometime after June 3, 1976, the representatives of SCOPE were made aware of the fact that the Personnel Commission was scheduled to meet and consider for possible approval a salary study which analyzed the salary schedule and the placement thereon of the various non-supervisory job classifications. The study also contained a proposal for the realignment of reclassification of some of the various positions on the wage schedule. The study and reclassification proposal were compiled by Fred Walton.

The representatives of SCOPE requested that the respondent's negotiating team meet and negotiate regarding the salaries of individual job classifications prior to any action being taken by the Board of Education or the Personnel Commission.

These requests to meet and negotiate on the subject of wages for individual job classifications were denied by the negotiating team of the Board of Education. They expressed to the SCOPE representatives that changes in the salary relationships between job classifications or salary ranges of individual classifications were the exclusive purview of the Personnel Commission and beyond the scope of negotiations as outlined in the Rodda Act. All other matters were agreed to....

and the parties signed a memorandum of understanding about those matters[2].

The stipulated facts of the parties are adopted as findings of fact by the hearing officer.

STATEMENT OF THE ISSUES

1. Does Government Code Section 3540 preempt from the scope of representation all matters within the purview of Personnel Commissions as outlined in Education Code Section 13701 et seq.?

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[2] On September 13, 1976 the parties to this dispute signed a "Memorandum of Understanding" covering the non-supervisory classified employees unit. Paragraph two of that understanding declares in part that "the parties to this agreement acknowledge that this agreement constitutes the result of meeting and negotiating in good faith as prescribed by Chapter 10.7, Section 3540 *et seq*, of the Government Code of California and further acknowledge that all matters upon which the parties reached agreement are set forth herein." In the fifth paragraph of that agreement (which is numbered 3 by the parties), there is the following statement:

> Provided that the Employee Relations Board, (or if District chooses, a court of competent jurisdiction including all appellant rights) confirm the right of SCOPE to meet and negotiate and the obligation of the District to meet and negotiate regarding salary ranges or salaries of individual classifications, the District agrees to meet and negotiate in good faith on salary inequities or prevailing wage matters forthwith.

No party has raised the issue that the September 13, 1976 agreement made the unfair practice charge moot. Paragraph two of the agreement would seem to indicate that there was no unfair practice charge remaining. Paragraph five evidences an intent to keep the issue alive. Federal precedent indicates that the signing of a contract by a party which has filed an unfair labor practice does not automatically moot the charge. See General Electric Co., 163 NLRB 198, 64 LRRM 1312 (1967). Additionally, the parties have agreed in their stipulation of facts involving the instant case that the September 13, 1976 agreement provides "for a determination of this dispute through the appropriate legal and administrative channels." In an appropriate case it would be necessary to consider the question of mootness. But because of the stipulation of the parties, the hearing officer will not attempt to consider that issue in the instant case.

2. Are the wages for individual job classifications a subject which has been preempted from the scope of representation in personnel commission districts by Education Code Section 13719?

3. Did the employer commit an unfair practice by refusing to bargain with SCOPE about a matter within the scope of representation?

THE RELATIONSHIP BETWEEN THE EDUCATIONAL EMPLOYMENT RELATIONS ACT AND THE MERIT SYSTEM

The merit system is a form of administering personnel relations for non-certificated employees in a school district or a county superintendent of schools office.[3] In merit system districts the school boards relinquish certain powers and responsibilities to a personnel commission. Among the duties of a personnel commission are the classification of employees and

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[3]Provisions relating to the creation and operation of the merit system applicable to this case are set forth in Education Code Sections 13701 *et seq*.

[4] As noted by counsel for the California School Personnel Commissioners' Association in a helpful amicus brief, the term "classification" has an accepted meaning even though it is not explained in the California codes. Kaplan, in The Law of Civil Service, defines it on page 120 as follows:

> The term "classification of positions"...in most jurisdictions... relates to the assembling of positions according to duties, functions and responsibilities so that similar positions may be assigned similar titles and embraced within the same class descriptive of the functions of the class of positions. The purpose of such classification is to provide uniform standards, uniform pay scales and an orderly means of controlling and regulating the status of incumbents. 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.

This definition is recited with approval by the attorney general in the only reported authority construing the meaning of Education Code Section 13719, 54 Ops. Atty. Gen. 77, 81.

positions,[5] prescription of rules binding on the governing board designed to insure the selection and retention of employees on the basis of merit[6] and the recommendation of a salary schedule for classified employees.[7]

Legislation originally authorizing the creation of merit systems in California school districts was enacted in 1935.[8] It was the same year that the United States Congress enacted the National Labor Relations Act covering employees in private industry, a time long before any anticipation that public school employees in California would ever engage in collective bargaining.

In the more than 40 years since the two statutes were enacted, a great deal of law and tradition has developed about the separate systems of collective bargaining and civil service. With the enactment of the Educational Employment Relations Act in 1975, the California Legislature introduced collective bargaining into the public school system. How collective bargaining and the merit system shall operate together in the framework of a single employer is a matter of first impression. The initial source of guidance on this question must come from Government Code Section 3540 which declares in part:

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[5] Education Code Section 13712.

[6] Education Code Sections 13713 and 13714.

[7] Education Code Section 13719.

[8] Statutes 1935, Chapter 618, Section 1.

> ...Nothing contained herein 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.[9]

In the instant case the employer has declined to bargain with SCOPE about the salaries of individual job classifications within the unit.[10] SCOPE contends that the employer is obligated by the E.E.R.A. to engage in bargaining about the salaries paid to individual job classifications. The employer defends on the theory that Education Code Section 13719 removes from the Board the power to change the relationships among classes as established by the personnel commission.[11]

To resolve this apparent conflict, SCOPE urges attention to the legislative purpose expressed in the E.E.R.A. Citing Government Code Section 3540, SCOPE notes that the purpose of the statute is to "improve

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[9] SCOPE reads the case of Los Angeles City and County Employees Union v. Los Angeles City Board of Education, 12 C.3d 851 (1974) as holding that "it is the governing board and not the (personnel) commission which has the power to fix and pay wages and salaries." (SCOPE's opening brief at page 6.) The hearing officer does not find the decision applicable to the instant case. In Los Angeles City and County Employees Union, the court does not consider the meaning of the final sentence of Education Code Section 13719. It is that sentence which is the key to the instant case.

[10] It is important to note that the employee organization did not seek to bargain over the subject of classification. There is some precedent from the National Labor Relations Board to indicate that the classification of jobs is a mandatory subject of bargaining under federal law. See Latin Watch Co., 156 NLRB 203, 61 LRRM 1021. Whether that precedent would be followed in California and, if followed, its effect on merit system districts, are issues not presented in the instant case. According to the stipulated facts, the instant case involves a refusal to bargain about "the salaries of individual job classifications." This opinion, therefore, does not consider what would happen if an employee organization sought to bargain over job classifications established by a personnel commission.

[11] See Page 8.

employer-employee relations and provide a uniform basis for regulating employment relations with public school employers." This, SCOPE continues, should lead to a construction of the statutes which applies uniformly among all school districts regardless of whether or not they have adopted the merit system. SCOPE would accomplish uniformity by reading the Act to allow collective bargaining agreements to supersede any rules and regulations of a personnel commission.

The employer argues that under Government Code Section 3540 the Educational Employment Relations Act does not supersede the sections of the Education Code which relate to personnel commissions. The employer reasons that the legislature took "pains" to protect the functions of the merit system and that conflicts between the merit system and the E.E.R.A. must be resolved in favor of the merit system.

11/ Government Code Section 3543.5(c) makes it unlawful for an employer to "refuse or fail to meet and negotiate in good faith with an exclusive representative." Government Code Section 3543.2 fixes the scope of representation at "matters relating to wages, hours of employment, and other terms and conditions of employment." It is admitted in the stipulation that the employer refused to bargain over the wages paid to individual job classifications. This is a prima facie violation of the Act. SCOPE argues that nothing more need be considered. According to SCOPE, if the legislature had intended to limit negotiations over "wages" between exclusive representatives and employers with personnel commissions it would have done so with some specific language. SCOPE points to the definition of "terms and conditions of employment" in Section 3543.2 and notes that there is no similar limiting definition of "wages." Therefore, reasons SCOPE, the legislature intended no limit on bargaining about wages. But this reading of the statute ignores the respondent's principal defense, namely that Government Code Section 3540 specifically provides that the E.E.R.A. shall not supersede the Education Code. A tribunal interpreting a statute cannot be blind to all the provisions of that statute because it must be presumed that in enacting a statute every provision was inserted for a purpose and that nothing was done in vain. Select Base Materials v. Board of Equalization (1959) 51 C.2d 640, 645; Reimel v. Alcoholic Beverages, etc. Appeals Bd. (1967) 256 CA. 158, 167.

Amicus argues that personnel commissions have been given a great deal of legal independence from school boards. The commissions have independent management powers and authority to serve as a check on school boards and the E.E.R.A. does not change that relationship. Amicus places heavy reliance on Education Code Section 13719 as a bar to negotiations about the placement of individual positions on the salary schedule. Amicus contends that SCOPE'S reading of the E.E.R.A. would give governing boards in personnel commission districts power which they did not formerly have.

The parties have cited a number of authorities as guides for the interpretation of statutes.

In attempting to devine the meaning of Government Code Section 3540, it is helpful to note that the language contained therein is not entirely original to the E.E.R.A. The Winton Act[12] — had similar language[13] — but an important addition was made with the enactment of Government Code Section 3540. As quoted above, the newer section, after reciting an intention not to supersede other laws and regulations, continues as follows:

> ...so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

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[12]Former Education Code Section 13080 *et* seq.

13/[13]Former Education Code Section 13080 read in part:

> It is the purpose of this article to promote the improvement of personnel management and employer-employee relations within the public schools in the State of California.... Nothing contained herein shall, be deemed to supersede other provisions of this 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....

From this addition, one can infer that while the legislature clearly intended that the E.E.R.A. should not preempt certain existing laws and practices, it also clearly intended that some of those practices should not block collective agreements. The challenge, however, is to decide which matters are excluded from the reach of the E.E.R.A.

A division of the applicable part of Government Code Section 3540 suggests the legislature intended that:

1. Nothing in the E.E.R.A. shall supersede the Education Code;

2. Nothing in the E.E.R.A. shall supersede the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide other methods...so long as the rules and regulations or other methods...of the public school employer dp not conflict with lawful collective agreements.

Under this reading, the Education Code will supersede all negotiated contracts while rules and regulations of a public school employer may be preempted by a lawful contract. In an appropriate case it would next be necessary to decide whether the statutory reference to "the rules and regulations...of the public school employer" includes the rules and regulations of a personnel commission. In the instant case, however, such an inquiry is not necessary because of Education Code Section 13719. The section is specifically applicable to SCOPE'S demand that the employer bargain.

The final inquiry, therefore, must concern the meaning of that code section.

Under the analysis above, nothing in the E.E.R.A. shall supersede any specific provision of the Education Code. Therefore, the scope of bargaining can be no greater than the authority of the respondent under the Education Code. Citing Education Code 13719, respondent takes the position that with respect to job classifications it has no authority to change the relationships between job categories. Thus, respondent continues, it has no obligation to bargain on the matters which SCOPE has demanded to bargain.

Education Code Section 13719[14] — is a troubling collection of sentences. There is no reported court decision which construes the meaning of that section. The sole guide is a 1971 opinion of the California Attorney General.[15] (The opinion describes the final sentence of this section as "terse and difficult to interpret" and suggests that "legislative clarification would be helpful.") The conclusion of the attorney general is that the first three sentences of the section evidence legislative intent "to repose ultimate control over wages and salaries in the governing board rather than in the

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[14] Education Code Section 13719 reads 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.

[15] 54 Ops. Atty. Gen. 77. SCOPE argues that this opinion by the attorney general should be given little weight because it was authored prior to the enactment of the E.E.R.A. However, the E.E.R.A. did not purport to change Education Code Section 13719. Because Education Code Section 13719 is controlling in this case, it is necessary to look at the only reported authority interpreting that section.

personnel commission.[16] However, that authority is limited by the restriction in the final sentence of the section.

Under the attorney general's interpretation, other parties than the personnel commission may make recommendations to the governing board about salary schedules. The board can adopt these recommendations so long as they "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."[17]

The opinion then continues with this key observation:

> ...This classification relationship may not be disturbed by action of the governing board in making changes in the 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.[18]

The following hypothetical example will illustrate what the opinion holds. Suppose a particular county superintendent of schools employs data processing workers, business office workers, audio-visual technicians, clerical workers and custodians. Suppose further that the highest paid of these classifications is that of the data processing employees who receive salaries that are roughly five percent higher than those paid to business office workers. Suppose further that the business office workers earn salaries ten percent higher than the audio-visual technicians who in turn earn salaries

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[16] 54 Ops. Atty. Gen. 77, 84.

[17] 54 Ops. Atty. Gen. 77, 85.

[18] 54 Ops. Atty. Gen. 77, 85.

five percent higher than the clerical workers who in turn earn salaries three percent higher than the custodians. Finally, suppose the county superintendent operates under the merit system and the relationship between the above classifications were set by the personnel commission.

Under the attorney general's opinion, the county board of education would be able to change the gap between the data processing workers and business office workers from five percent to six percent. It could change the gap between the business office workers and the audio-visual technicians from ten percent to seven percent. However, the board of education would be prohibited from decreasing the salaries of the business office workers so much that they then tumble beneath the salaries paid to the audio-visual technicians.[19]

In summary, the attorney general would allow changes in the size of the salary differential between the various job classifications. The prohibition is against changes which would lift a classification which formerly was lower paid above one which formerly was higher paid.

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[19] The hypothetical illustration above is somewhat simplified from what would occur in actual practice. Typically, most parties negotiate over benchmark classifications. Other similar jobs are grouped around the benchmarks. What the attorney general's opinion would allow an individual school board to do in a given case would be determined according to whether the personnel commission had classified all jobs. If the commission had classified all jobs and fixed the relationship of each job to every other job, the attorney general would not allow any job to be moved above or below any other job within the district. If the commission had only established the relationship of the benchmark positions in each job family, the attorney general presumably would allow changes in relationship of the non-benchmark jobs with each other, so long as there was no change in their relationship to the benchmark positions fixed by the personnel commission.

While opinions of the attorney general do not have the same authority as decisions by a court, they are given considerable weight when the attorney general has issued an interpretation of a statute and the legislature has subsequently taken no action. In one case involving a code section which the attorney general had previously interpreted, the court wrote:

> It must be presumed that the aforesaid interpretation has come to the attention of the Legislature, and if it were contrary to the legislative intent that some corrective measure would have been adopted in the course of the many enactments on the subject in the meantime. (Meyer v. Board of Trustees, 195 CA. 2d 420 at 432 (1961)).[20]

The attorney general's opinion above-discussed was issued nearly six years ago in May of 1971. The legislature made numerous changes in the statutes involving the merit system during the 1972, 1973, 1974 and 1975 sessions. It left unmodified Education Code Section 13719. For that reason the hearing officer will therefore adopt the attorney general's interpretation of Section 13719.

Applying that interpretation to the facts of the instant case, it is clear that the Sonoma County Board of Education had the authority to make some modifications in the salaries paid to individual job classifications.

It is undisputed that the employer refused to bargain about this subject. Therefore, the employer has violated Government Code Section 3543.5(c) by refusing to bargain over a matter within the scope of representation.

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[20] In People v. Union Oil Co., 268 CA. 2d 566 (1968), the court noted the importance of the passage of time following the publication of an opinion by the attorney general. The court held that "the lapse of time since the first announcement of that view supports the inference that, if it were contrary to legislative intent, some corrective measure would have been adopted," 268 CA. 2d 566, 571. See also California State Employees Association v. Trustees of Cal. State Colleges, 237 CA. 2d 530 (1965).

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record of this case, and pursuant to Government Code Section 3541.5(c) of the Educational Employment Relations Act, it is hereby ordered that the Sonoma County Board of Education, superintendent and representative shall:

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 employer shall be under no obligation to bargain about proposals which would change the relationships of the individual jobs as established by the personnel commission.

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

1. Prepare and post at its headquarters office for twenty (20) working days in a conspicuous place at the location where notices to classified employees are customarily posted, a copy of this order;

2. At the end of the posting period, notify the San Francisco Regional Director of the Educational Employment Relations Board of the action it has taken to comply with this order.

Pursuant to Title 8, Cal. Admin/ Code 35029, this recommended decision and order shall become the final decision and order of the Board itself on April 1, 1977 unless a party files a timely statement of exceptions. See 8 Cal. Admin. Code 35030.

Dated March 18, 1977.

Ronald E. Blubaugh

Ronald E. Blubaugh
Hearing Officer