STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS BARSTOW CHAPTER #306,	)	Case No. LA-CE-3396
Charging Party,	)	Request for Reconsideration PERB Decision No. 113 8
v.	)	
BARSTOW UNIFIED SCHOOL DISTRICT,	)	PERB Decision No. 113 8b
Respondent.	)	March 20, 1997

Appearances: California School Employees Association by William C. Heath, Attorney, for California School Employees Association and its Barstow Chapter #3 06; Atkinson, Andelson, Loya, Ruud & Romo by Ronald C. Ruud, Attorney, for Barstow Unified School District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) after the Board granted the California School Employees Association and its Barstow Chapter #306's (CSEA) request for reconsideration of Barstow Unified School District (1996) PERB Decision No. 1138. In that decision, the Board found that, pursuant to a collective bargaining agreement (CBA) provision allowing the Barstow Unified School District (District) to contract out work "which may lawfully be contracted for," the District did not violate section 3543.5(a), (b) and (c) of the Educational Employment

Relations Act (EERA)[1] by refusing to negotiate with CSEA and unilaterally contracting out pupil transportation and vehicle maintenance services. The Board granted reconsideration solely to determine whether the District's action was lawful under the Education Code and, therefore, under the EERA.

After a review of the entire record, including the Board's previous decision and the subsequent filings of the parties, the Board concludes that the District's contracting out of pupil transportation and vehicle maintenance services was lawful under the Education Code. Therefore, the District did not violate EERA section 3543.5(a), (b) and (c) when it took that action.

FACTUAL BACKGROUND

Neither party disputes the Board's factual findings in Barstow Unified School District, supra, PERB Decision No. 1138.

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[1]EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
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> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (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.

Briefly restated, the District and CSEA's CBA included a provision giving the District the "exclusive right" to "contract out work, which may lawfully be contracted for . . . ." At its May 4, 1993 meeting, the District's board of trustees voted to contract with Mayflower Contract Services, Inc. (Mayflower) for all student transportation and vehicle maintenance services.

On May 6, 1993, Jack Ashley (Ashley), the CSEA labor relations representative, demanded that the District negotiate the contracting out decision and its effects. On May 12, 1993, Robert Myers (Myers), the District's chief negotiator and assistant superintendent, replied that the CBA authorized the District to contract for services without bargaining. On May 16, 1993, Myers reiterated that the CBA authorized the District to unilaterally contract out services and offered to negotiate the "effects of layoff."

On May 18, 1993, the District's board of trustees voted to lay off 28 bargaining unit transportation employees effective June 30, 1993. On May 24, 1993, Ashley requested a meeting to negotiate the effects of the proposed layoffs. On June 3, 1993, CSEA and the District met. At the meeting, CSEA again demanded that the District negotiate the decision to contract out transportation services. The District stated that the CBA allowed contracting out and that it would only negotiate the effects of the decision.

On June 11, 1993, the District's board of trustees reviewed and approved the Mayflower contract. On approximately June 11,

1993, the District entered into a July 1, 1993 to June 30, 1996, contract with Mayflower to provide pupil transportation and vehicle maintenance services.

On approximately June 2, 1993, the District issued layoff notices to all affected transportation employees, effective July 5, 1993. Some employees moved into other bargaining unit positions at reduced salaries. Others took positions with Mayflower.

PROCEDURAL HISTORY

CSEA filed an unfair practice charge against the District on June 21, 1993, and an amended charge on January 13, 1994. On January 20, 1994, PERB's General Counsel issued a complaint alleging that the District violated EERA section 3543.5(a), (b) and (c) by unilaterally contracting out pupil transportation and vehicle maintenance services. A PERB-conducted settlement conference failed to resolve the dispute. PERB held a formal hearing from June 6 to June 8, 1994. In her January 12, 1995, proposed decision, the ALJ found that the District violated EERA section 3543.5(a), (b) and (c) by refusing to negotiate with CSEA and unilaterally contracting out pupil transportation and vehicle maintenance services.

The District filed exceptions to the ALJ's proposed decision on February 3, 1995. The Board issued Barstow Unified School District, supra, PERB Decision No. 1138 on February 20, 1996. In that decision, the Board found that the District did not violate EERA section 3543.5(a), (b) and (c) when it refused to negotiate

with CSEA and unilaterally contracted out pupil transportation and vehicle maintenance services. The Board held that the terms of the parties' CBA provided a clear and unmistakable waiver of the union's right to negotiate the decision to contract out transportation services. The Board did not address the question of whether the District's action was lawful under the Education Code, which the parties were pursuing in separate legal action.

On March 3, 1994, the Superior Court for the County of San Bernardino granted the petition for Writ of Mandate filed by the Barstow Unified School District Personnel Commission (Commission) against the District, the District's board of trustees, and Mayflower. The court entered judgment for the Commission and CSEA on March 11, 1994, finding that the board of trustee's decision to contract out pupil transportation services violated Education Code sections 45260, 45261 and 45256. The District and Mayflower filed notices of appeal on March 23, 1994. On March 18, 1996, the Fourth District Court of Appeal issued its decision. (Personnel Commission of Barstow Unified School Dist. v. Barstow Unified School Dist. (1996) 43 Cal.App.4th 871 [50 Cal.Rptr.2d 797].) The court ruled that the Commission lacked standing to challenge the Mayflower contract and that CSEA failed to exhaust its PERB administrative remedies before proceeding to court. The court remanded the matter to the Superior Court with the direction to stay the proceedings pending a full resolution of the PERB unfair practice charges.

Based on the court's decision, the Board granted CSEA's

request for reconsideration in Barstow Unified School District (1996) PERB Decision No. 1138a. The Board granted reconsideration solely to determine whether the District's June 1993 contracting out of pupil transportation and vehicle maintenance services was lawful under the Education Code, and directed the parties to submit briefs on this issue.

CSEA'S BRIEF

CSEA describes a conflict between Education Code section 39800 and the merit system classified service provisions of the Education Code. Education Code section 39800 allows a District to provide pupil transportation services and contract with private parties for that transportation.[2] Education Code section 45240 et seq. establishes a merit school district personnel system for classified employees that is similar to a civil service system. The District adopted the merit system in 1967. Education Code section 45241 requires merit system school districts to control the services of noncertificated employees in

[2]The relevant portion of Education Code section 39800 provides:

> The governing board of any school district may provide for the transportation of pupils to and from school whenever in the judgment of the board such transportation is advisable and good reasons exist therefor. The governing board . . . may contract with and pay responsible private parties for the transportation.

accordance with that system.[3] Education Code section 45256 limits exemptions from the classified service in a merit district to an enumerated list.[4]

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[3]Education Code section 45241 provides, in part:

> In any district in which the procedure set forth in this article has been incorporated the governing board shall employ, pay, and otherwise control the services of persons in positions not requiring certification qualifications only in accordance with the provisions of this article.

[4]Education Code section 45256 provides, in 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 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.
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> (b) Exempt from classified service are the following:
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> (1) Positions which require certification qualifications.
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> (2) Part-time playground positions.
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> (3) Full-time students employed part time.
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> (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.

CSEA points to the appellate court decisions that distinguish the authority of merit and nonmerit districts to contract out services. Merit districts are subject to statutory provisions and language expressly limiting their ability to use services of individuals who are not classified employees. (California State Employees Assn. v. Kern Community College Dist. (1996) 41 Cal.App.4th 1003 [48 Cal.Rptr.2d 889].) The merit system statutory scheme protects classified public school workers and imposes an obligation the District cannot avoid by the use of contracts. (California State Employees Assn. v. Del Norte County Unified Sch. Dist. (1992) 2 Cal.App.4th 1396 [4 Cal.Rptr.2d 35].) Since the District is a merit district and Education Code section 45256 does not list transportation workers as an exemption to the classified service requirement, the District cannot contract out transportation services and must use classified employees to perform that service.

CSEA provides several statutory interpretation arguments to demonstrate that the Legislature never intended Education Code

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(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.

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 above shall be employed outside the classified service.

section 39800 to apply to merit system school districts. Education Code section 45256 specifies an all inclusive listing of exemptions from the merit system classified service requirement. When exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. (In Re Michael G (1988) 44 Cal.3d 283, 291 [243 Cal.Rptr. 224].) Therefore, PERB cannot infer a transportation worker exemption from the merit system classified service requirement.

The Legislature first enacted Education Code section 39800 in 1917 and section 45256 in 1935. The Legislature recodified section 39800 in 1976 and left the section unchanged. The Legislature last amended section 45256 in 1984. Where two statutes on the same subject cannot be reconciled, the latest legislative expression is controlling. (City of Petaluma v. Pac. Tel. & Tel. Co. (1955) 44 Cal.2d 284, 288 [282 P.2d 43].) Since the Legislature enacted and amended section 45256 last, that section controls.

CSEA asserts that Education Code section 39800 is a general provision applicable to all school districts, but section 45256 prevails as specifically applicable only to merit districts. When the specific statute is later than a previous general statute, the specific statute will be regarded as a qualification to the general one. (Estate of Compton (1962) 202 Cal.App.2d 94 [20 Cal.Rptr. 589].) Even if section 45256 is a general statute, a later general statute does not disturb a previous specific statute unless it is repealed by general words or by necessary

implication. (Id. at p. 98.) Section 39800 allows "any school district" to contract with a private party for transportation services. CSEA asserts that the enactment of the merit system, and the 1947 and 1984 amendments to section 45256 expressly limiting the classified service exemptions to those listed in the statute, necessarily imply a repeal of the word "any" in section 39800. This interpretation limits the application of section 39800 to nonmerit districts.

CSEA asserts that public policy considerations require restrictions on the District's authority to contract out classified employee work in a merit district. The purpose of the merit district statutory scheme is to induce competent people to enter and remain in public employment. (California School Employees Assn. v. Compton Unified School Dist. (1985) 165 Cal.App.3d 694 [211 Cal.Rptr. 653].) A comprehensive statutory scheme mandating and protecting employment in public service carries an implied prohibition on contracting out. The Legislature balanced the needs of school districts against the public policy of attracting competent people to public service. The Legislature addressed the needs of school districts by providing listed exemptions to the classified service requirement. The District's decision to contract out transportation services ignores the Legislature's careful balancing and contravenes the public policy considerations underlying the establishment of the merit system.

DISTRICT'S BRIEF

The District maintains that Education Code section 39800 expressly authorizes the Mayflower contract. School districts may contract for services authorized by statute. The Legislature made transportation services the proper subject of a contract. (California Sch. Employees Assn. v. Willits Unified Sch. Dist. (1966) 243 Cal.App.2d 776 [52 Cal.Rptr. 765].)

The District distinguishes this case from the appellate court merit/nonmerit district decisions cited by CSEA. No published decisions address the legality of contracting out transportation services, or any other service which is expressly authorized by a statute other than Education Code section 45256, in a merit district. Education Code section 39800 expressly authorizes the contracting out of transportation services. No court has invalidated a contract for services when express statutory authority to enter a contract existed.

The District argues that the rules of statutory construction support the validity of the contract. A strong presumption exists against repeals by implication. A reviewing court must maintain the integrity of both statutes unless the acts are so inconsistent there is no possibility of concurrent operation. (Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs. (1968) 263 Cal.App.2d 41 [69 Cal.Rptr. 480].) The purpose of Education Code section 39800 is to authorize any school district to contract out transportation services. Education Code section 80, written after section 45256, defines "any school

district" as districts of every kind or class. Education Code section 45256 pertains to classified service employment and positions. It contains no reference to contracting out, transportation services, or non-employees. Each provision may be read together to give full meaning to the required classification of district employees while retaining a district's authority to utilize a third party to provide transportation services.

Under this reading, section 45256 and section 39800 do not conflict. Even if the two statutes did conflict, the more specific section dealing with transportation services, section 39800, prevails over the general classified employment section 45256. (Code Civ. Proc. sec. 1859; People v. Tanner (1979) 24 Cal.3d 514, 521 [156 Cal. Rptr. 450].) If the adoption of a merit system nullifies the right to contract out for student transportation, then it must nullify all other governing board rights to contract out services that are contained in Education Code sections other than section 45256.

The District also asserts that public policy considerations support upholding the Mayflower contract. A strong public policy exists to give governing boards discretion over whether or not to provide nonessential student transportation services. (Arcadia Unified School Dist. v. State Dept. of Education (1992) 2 Cal.4th 251, 264 [5 Cal.Rptr.2d 545].) Governing boards are also given broad discretion to reduce or eliminate classified services, including transportation. (Ed. Code sec. 45308; California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.

(1977) 71 Cal.App.3d 318 [139 Cal.Rptr. 633].) Public policy considerations do not mandate that public schools employ more bus drivers, but that they spend more money on education-related expenditures. Depriving the District of its specific statutory authority to contract out transportation services flies in the face of these fundamental policy considerations.

DISCUSSION

As the expert administrative agency established by the Legislature to administer collective bargaining in California's public education systems, PERB has exclusive initial jurisdiction over conduct that arguably violates EERA. (EERA sec. 3541.5; San Diego Teachers Assn. v. Superior Court (1979) 24 Cal.3d 1 [154 Cal.Rptr. 893]; El Rancho Unified School Dist. v. National Education Assn. (1983) 33 Cal.3d 946 [192 Cal.Rptr. 123]; San Jose Teachers Assn. v. Superior Court (1985) 38 Cal.3d 839 [215 Cal.Rptr. 250] vac. on other grounds 475 U.S. 1063.)[5] While PERB may not enforce the Education Code, the Board may interpret the Education Code to carry out its duty to administer EERA. (San Bernardino City Unified School District (1989) PERB Decision No. 723; Whisman Elementary School District (1991) PERB Decision No. 868.) When unlawful conduct allegedly violates both the Education Code and EERA, the Board may determine whether the

[5]The San Diego decision requires a party to exhaust administrative remedies at PERB when: (1) the conduct complained of could arguably violate EERA; (2) PERB may furnish relief equivalent to that available in court; and (3) PERB has exclusive initial jurisdiction over remedies for conduct arguably violating EERA. (See San Diego Teachers Assn. v. Superior Court, supra. 24 Cal.3d 1.)

action constitutes an unfair practice. (Oxnard School District (1988) PERB Decision No. 667.) Accordingly, in this case, PERB's exclusive initial jurisdiction requires it to decide whether the the Education Code prohibits the District's contracting out of pupil transportation services and, hence, whether an EERA violation occurred.

In 1976, the Legislature adopted the permissive Education Code. Education Code section 35160 allows the governing board of any school district to act in any manner that is not "in conflict with or inconsistent with, or preempted by, any law . . . ." The Legislature intended the general authority of Education Code section 35160 to allow school districts to enter into any contract not prohibited by law.

The Education Code specifically authorizes pupil transportation contracts. Education Code section 39800 expressly provides that any school district may provide pupil transportation services, and "may contract with and pay responsible private parties" to provide those services. Education Code section 80 defines "any school district" as districts of every kind or class.

In addition, the Education Code allows a district to adopt a merit system to govern its classified service. The District adopted the merit system in 1967. Education Code section 45241 requires merit system school districts to "employ, pay, and otherwise control" the services of persons in classified positions only in accordance with merit system provisions.

Section 45256 lists the merit district exemptions from the classified service. This section does not include transportation workers as one of the enumerated exemptions. Section 45256 concludes that "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 above shall be employed outside the classified service."

The appellate courts have found that the Legislature intended to make a clear distinction between merit and nonmerit districts when it enacted these Education Code provisions. Unlike nonmerit districts, merit districts are subject to statutory provisions and language expressly limiting their ability to use the services of employees who are not classified employees.[6] (Service Employees Internat. Union v. Board of Trustees, supra. 47 Cal.App.4th 1661; California State Employees Assn. v. Kern Community College Dist., supra. 41 Cal.App.4th 1003.) The limiting language in the merit district provisions mandates that all noncertificated persons employed by merit school districts, and not specifically exempted, must be part of the classified service. (California State Employees Assn. v. Del Norte County Unified Sch. Dist., supra, 2 Cal.App.4th at 1403.)

CSEA interprets the Kern and Del Norte decisions as

[6]In nonmerit districts, the broad powers of the permissive Education Code allow the district to contract out services beyond Education Code section 45256's listed exemptions. (Service Employees Internat. Union v. Board of Trustees (1996) 47 Cal.App.4th 1661 [55 Cal.Rptr.2d 484].)

restricting merit districts' ability to contract out to the exemptions listed in Education Code section 45256. This interpretation overbroadly characterizes the courts' rulings in these cases.

In California State Employees Assn. v. Del Norte County Unified Sch. Dist., supra, 2 Cal.App.4th 1396, a merit district contracted out supervision of maintenance and custodial employees, a function that does not fall within section 45256's listed exemptions. The court also reviewed Government Code section 53060, which allows districts to contract for "district special services and advice in financial, economic, accounting, engineering, legal or administrative matters." Since neither that provision, or Education Code section 45256, specifically authorized merit districts to contract out the supervision of custodial employees, the court concluded that the classified service requirements of the Education Code prohibited the merit district from contracting out this service and invalidated the contract. (Id. at 1403.) Interestingly, the court's consideration of Government Code section 53060 suggests that the statutory authority to contract out work in a merit district may not be limited to Education Code section 45256's listed exemptions to the classified service.

In California State Employees Assn. v. Kern Community College Dist., supra, 41 Cal.App.4th 1003, a nonmerit community college district contracted out its groundskeeping services. The court noted that nonmerit districts are not subject to the

Education Code's limiting language that requires merit districts to "employ, pay and otherwise control" services "only in accordance with the provisions of this Article." Therefore, the Education Code does not mandate that all noncertificated persons employed by a nonmerit district be classified employees. Since the Education Code did not prohibit the District from contracting out groundskeeping, the court upheld the contract under the general permissive Education Code authority of section 35160.

Neither of these cases addresses the circumstances present in the case at bar. Pupil transportation and vehicle maintenance services do not fall within the merit district exemptions to the classified service listed in Education Code section 45256. However, Education Code section 39800 expressly authorizes any school district to contract with private parties for transportation. While the cited cases involve the question of contracting out services by a school district, they differ from the instant case in that they do not involve contracting out in a merit district pursuant to a specific statutory authorization included in a section other than Education Code section 45256.

As a result, the Board must interpret Education Code sections 39800 and 45256 to ascertain the legislative intent and carry out the Board's duty to administer the EERA. The Board is guided by several fundamental principles in interpreting the language of these provisions. First, if the language is not ambiguous, then the plain meaning of the language shall govern its interpretation. (Lennane v. Franchise Tax Bd. (1994)

9 Cal.4th 263 [36 Cal.Rptr.2d 563].) Second, interpretations that render a term mere surplusage should be avoided, and every word should be given significance, leaving no part useless or devoid of meaning. (City and County of San Francisco v. Farrell (1982) 32 Cal.3d 47 [184 Cal.Rptr. 713].) Third, repeals by implication are not favored and will not be found if statutes can be harmonized on any rational basis. (Metropolitan Water Dist. v. Dorff (1982) 138 Cal.App.3d 388 [188 Cal.Rptr. 169].); United Public Employees v. Public Employment Relations Bd. (1989) 213 Cal.App.3d 1119, 1127 [262 Cal.Rptr. 158].)

Section 39800 authorizes any school district to contract with private parties for transportation. To ascertain the legislative intent, PERB looks to the words of the statute. If the language is not ambiguous, then the plain meaning of the language governs. (Lennane v. Franchise Tax Bd., supra, 9 Cal.4th 263.) Education Code section 80 defines "any school district" as districts of every kind or class. The plain meaning clearly gives any school district, including merit districts, the authority to contract out transportation services.

CSEA argues that section 45256's listing of exemptions to the merit district classified service requirement is all inclusive, and effectively repeals the word "any" from the phrase "any school district" in Section 39800. This interpretation makes section 39800's authorization to provide transportation services applicable only to nonmerit districts. As noted above, interpretations that render a term mere surplusage should be

avoided, and every word should be given significance, leaving no part useless or devoid of meaning. (City and County of San Francisco v. Farrell, supra, 32 Cal.3d 47.) Therefore, an interpretation of section 39800 that repeals the defining term "any school district" and makes it applicable only to nonmerit districts should be avoided.

It is important to note that Education Code section 39800 does more than merely address the authority of school districts to contract for pupil transportation services. It gives any school district the fundamental authority to provide, or not provide, those services. If a district provides transportation services, section 39800 authorizes it to furnish them through a variety of means, including: contracting with common carriers or municipally-owned transit systems; contracting with responsible private parties; and contracting with the parents or guardians of pupils. Moreover, section 39800 begins a portion of the Education Code which deals with the subject of transportation services in K-12 schools. (Ed. Code, tit. 2, div. 3, pt. 23 secs. 39800-39860.) Among other things, its provisions authorize school districts to contract with a county superintendent of schools to provide transportation services (Ed. Code sec. 39801); to transport preschool age children and their parents to preschool classes (Ed. Code sec. 39820); and to contract for the transportation of pupils to special activities (Ed. Code sec. 39860).

The legislative intent in enacting these Education Code

sections is clearly to provide California K-12 school districts with the option of providing transportation services, and with the flexibility to utilize a variety of means of providing those services. Given the vast differences in size, geography and demography among the approximately one thousand K-12 school districts in California, the options and flexibility provided by these sections are critical to school districts' ability to provide pupil transportation services. For example, a rural district serving pupils spread out over a large geographical area may choose to take advantage of an existing service offered by a common carrier, or join with other rural districts in the area in contracting with the county superintendent of schools for transportation services. Or, a district which operates its own vehicles to provide transportation services for the general pupil population may choose to contract with a private party specializing in transporting pupils whose disabilities present special transportation needs.

Pursuant to CSEA's argument, merit districts would have no authority to contract for transportation services with common carriers, municipally-owned transit systems, parents, or with a private company specializing in the transportation of disabled pupils. A merit district would also arguably be prohibited from contracting with a county superintendent of schools to provide transportation services, or with a private carrier for transportation for special activities such as field trips and athletic events. The potential impact on a merit district's

ability to use various means in providing pupil transportation services in rural or geographically decentralized areas, in meeting the specialized transportation needs of disabled students, or in transporting students involved in special activities, underscores the need to avoid an interpretation that repeals by implication for merit districts this important flexibility granted by the Education Code.[7]

Repeals by implication are not favored and will not be found if laws can be harmonized on any rational basis. (Metropolitan Water Dist, v. Dorff, supra, 138 Cal.App.3d 388.) The Board must consider the statute as a whole and harmonize the various elements by considering each clause and section in context of the overall statutory framework. (People v. Jenkins (1995) 10 Cal.4th 234 [40 Cal.Rptr.2d 903].)

The overall legislative intent of the permissive Education Code is to give school districts the flexibility to act under the general authority of Education Code section 35160. The Legislature balanced a school district's need for flexibility with the need to attract competent people to public service, and promote stability and consistency, by allowing a district to

[7]The Board further notes that interpreting section 45256's list of exemptions as a repeal of section 39800's authorization to contract out transportation services in merit districts suggests the repeal by implication of other Education Code provisions. For example, Education Code section 35041.5's expressed authority for "any school district" to contract for legal counsel and Education Code section 39646's authority to contract for electronic data processing work would arguably be repealed by implication for merit districts.

adopt a merit system governing its classified service. To ensure that districts which adopted the merit system retained some flexibility in the delivery of services, the Legislature provides specific exceptions to the classified service requirement. Those exceptions appear in section 45256, and in other Education Code provisions authorizing contracts for specified services. Thus, the adoption of the merit system requires a school district to utilize the classified service to employ noncertificated persons unless an exemption to the use of the classified service is specifically authorized by a statutory provision. Education Code section 39800 authorizes a variety of options for any school district deciding to provide transportation services, including contracting with a private party.

CSEA asserts that PERB may not infer additional merit district exemptions to the classified service, beyond those specified in section 45256, because when exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. (In Re Michael G, supra, 44 Cal.3d 283.) However, this rule is inapplicable if it contradicts a discernable and contrary legislative intent. (Wildlife Alive v. Chickering (1976) 18 Cal.3d 190 [132 Cal.Rptr. 377].) As noted, the Legislature clearly expressed the intent to permit a variety of options for any school district to provide pupil transportation services in section 39800.

CSEA also contends that because the Legislature enacted and amended section 45256 last, it preempts section 39800. While a

later enacted law on the same subject takes precedence, the overriding principle is that repeals by implication are not favored and will not be found if laws can be harmonized on any rational basis. (Metropolitan Water Dist. v. Dorff, supra, 138 Cal.App.3d 388.) Again, sections 39800 and 45256 may easily be harmonized. Both sections contain specific exemptions to the merit district classified service requirement.

As noted above, while the Board has no authority to enforce the Education Code, it may interpret it in carrying out its duty to administer the EERA. (San Bernardino City Unified School District, supra. PERB Decision No. 723; Whisman Elementary School District, supra, PERB Decision No. 868.) When EERA and the Education Code address similar subjects, the Board seeks an interpretation that harmonizes the purposes underlying EERA with the Education Code provisions. (San Mateo City School Dist. v. Public Employment Relations Bd. (1983) 33 Cal.3d 850 [191 Cal.Rptr. 800].) It is important, therefore, that the Board harmonize its interpretation of the Education Code sections at issue with EERA's purposes.

It is the fundamental purpose of EERA to provide for and foster collective bargaining between school district employers and their employees on matters within the scope of representation. Among EERA's mandatory subjects of collective bargaining is the employer's decision to contract out work in order to reduce labor costs. (State of California (Department of Personnel Administration) (1987) PERB Decision No. 648-S; Arcata

Elementary School District (1996) PERB Decision No. 1163.) Thus, it is clear that the Legislature intended to provide public school employers and employees with the right and obligation to bargain in good faith over the subject of the contracting out of work such as transportation services. It is undisputed in this case that the District and CSEA bargained in good faith over the subject of contracting out work.

Under Education Code section 39800, the District may lawfully contract out transportation services, subject to the good faith bargaining obligation mandated by EERA. The parties fulfilled that obligation by negotiating over the subject of contracting out work, and CSEA unmistakably agreed to waive its right to further bargaining on this subject. (Barstow Unified School District, supra. PERB Decision No. 1138.) Therefore, the purposes of both the EERA and the Education Code were served through a good faith bargaining process that resulted in flexibility for the District to provide transportation services.[8]

In summary, the District's refusal to negotiate its lawful decision to contract out pupil transportation and vehicle maintenance services was in keeping with the provisions of the parties' CBA, and did not violate EERA section 3543.5(a), (b) and (c).

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[8]Conversely, an interpretation that Education Code section 39800 applies only to nonmerit districts runs counter to the purposes of both the Education Code and the EERA by denying merit districts the flexibility provided by the Education Code in providing transportation services, and by restricting the EERA rights of merit districts and their employees to negotiate in good faith over a mandatory subject of bargaining.

ORDER

The unfair practice charge and complaint in Case No. LA-CE-3396 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.