STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RAVENSWOOD TEACHERS ASSOCIATION, Charging Party, v. RAVENSWOOD CITY ELEMENTARY SCHOOL DISTRICT, Respondent.	Case No. SF-CE-2218-E
RAVENSWOOD TEACHERS ASSOCIATION, Charging Party, v. EDISON BRENTWOOD ACADEMY, Respondent.	Case No. SF-CE-2236-E PERB Decision No. 1660 July 14, 2004

Appearances: California Teachers Association by Ramon E. Romero, Attorney, for Ravenswood Teachers Association; Jones and Matson by Urrea C. Jones, Attorney, for Ravenswood City Elementary School District; Foley and Lardner by Laurence Arnold and John Douglas, Attorneys, for Edison Brentwood Academy.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: These consolidated cases come before the Public Employment Relations Board (PERB or Board) on a challenge by the Ravenswood Teachers Association (RTA) to the proposed decision (attached) of an administrative law judge (ALJ). In unfair practice charge Case No. SF-CE-2218-E, RTA alleged that the Ravenswood City Elementary

School District (District) violated the Educational Employment Relations Act (EERA)[1] by discriminating against three teachers at its charter school, Edison Brentwood Academy (Edison Brentwood). Subsequently, RTA filed unfair practice charge Case No. SF-CE-2236-E alleging identical facts, except naming Edison Brentwood, instead of the District, as the "public school employer."

In response to a motion to dismiss brought by the District, the ALJ bifurcated the issues raised in the complaints and held a consolidated hearing solely on the matter of employer status. In the proposed decision, the ALJ held that Edison Brentwood, and not the District, was the "public school employer" of Edison Academy teachers within the meaning of EERA section 3540.1(k). As a result the ALJ dismissed Case No. SF-CE-2218-E. With respect to Case No. SF-CE-2236-E, the ALJ certified his interlocutory ruling for appeal to the Board pursuant to PERB Regulation 32200[2]. RTA then filed exceptions in Case No. SF-CE-2218-E and an interlocutory appeal in Case No. SF-CE-2236-E.[3]

The Board has reviewed the entire record in these matters, including RTA's exceptions and appeal, and the responses of the District and Edison Brentwood. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

DISCUSSION

With the passage of AB 631 in 1999, charter schools became subject to the provisions of EERA effective January 1, 2000. Under AB 631, existing charter schools were given until

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[1]EERA is codified at Government Code section 3540, et seq.

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

[3]The interlocutory appeal and the exceptions are both addressed in this decision.

March 31, 2000, to "declare whether or not they shall be deemed a public school employer" for purposes of EERA. (Ed. Code sec. 47611.5(f).) Since these cases involve a charter school's effort to declare itself the public school employer in the specific time period provided by AB 631, they involve a set of facts unlikely to be repeated.

The issue here is whether Edison Brentwood or the District is the "public school employer" for the purposes of EERA. The ALJ noted that nothing in AB 631 specified the form or contents of a declaration made pursuant to Education Code section 47611.5(f). It is uncontested that Edison Brentwood engaged in the process of declaring itself the "public school employer" for purposes of EERA. Importantly, Edison Brentwood has admitted that it is the proper employer subject to PERB's jurisdiction in these cases. Further, the issue in these cases is whether certain teachers were discriminated against because of their protected activities. Since Edison Brentwood asserts that only it has the authority to hire and terminate teachers, it would also be required to assume the responsibility to reinstate them if so ordered by the Board. Therefore, the Board finds that the purposes of EERA are served by holding that Edison Brentwood is the "public school employer."

ORDER

The unfair practice charge and complaint in Case No. SF-CE-2218-E is hereby DISMISSED WITHOUT LEAVE TO AMEND. The interlocutory order in Case No. SF-CE-2236-E is hereby AFFIRMED.

Chairman Duncan joined in this Decision.

Member Whitehead's concurrence begins on page 4.

WHITEHEAD, Member, concurring: Although I reach the same conclusion as the majority, I write separately to caution against adopting a general rule for interpreting Education Code section 47611.5(f).

In Long Beach Community College District (2003) PERB Decision No. 1564 the Public Employment Relations Board found at p. 10:

> [I]t is a fundamental rule of statutory construction that the intent of the Legislature should be examined in order to effectuate the purpose of the law. (Moyer [v. Workmen's Comp. Appeals Bd. (1973) 10 Cal. 3d 222, 230 [110 Cal. Rptr. 144] (Moyer)], at p. 230.) In determining intent, it is important to examine the language of the statute and to give effect to each word. (Moyer at p. 230.) However, it is also a fundamental rule of statutory construction that a statute must be construed in context, 'keeping in mind the nature and obvious purpose of the statute where they appear.' (Moyer at p. 230.) "[T]he various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (Moyer at p. 230.) [Emphasis added.]

Along these lines, I look to the pertinent provisions of the Migden amendment to the Charter Schools Act (Stats. 1999, Ch. 828) for guidance. Section 47611.5(f) of the Education Code provides:

> By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter. [Emphasis added.]

Education Code section 47611.5(b) requires that:

> A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of the Government Code. [Emphasis added.]

Educational Employment Relations Act (EERA) section 3540.1(k) provides:

> 'Public school employer' or 'employer' means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code. [Emphasis added.]

This legislation does not describe a process by which the charter school "declares" the identity of public school employer but does state for each existing charter school that the declaration must be "in accordance with subdivision (b)" and "not materially inconsistent with the charter."[1]

It is this Board's responsibility to determine the identity of the public school employer for purposes of compliance with EERA. With the recent proliferation of charter schools, this task has been made more complicated. How a charter school complies with the requirements discussed above may vary significantly from one charter school to the next. Given that each charter school has its own charter, it would be impossible to write a general rule that would govern all occasions. I believe that each case must be judged on its own merits to determine whether the "declaration" was made in a manner that satisfies the Legislature's requirements.

[1]This obligation also appears to apply to charter schools that previously made a declaration and now wish to change it.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

RAVENSWOOD TEACHERS ASSOCIATION, Charging Party, v. RAVENSWOOD CITY SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-2218-E
RAVENSWOOD TEACHERS ASSOCIATION, Charging Party, v. EDISON BRENTWOOD ACADEMY, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-2236-E PROPOSED DECISION (9/18/02)

Appearances: Ramon Romero, Attorney, for Ravenswood Teachers Association; Jones and Matson, by Urrea Jones, Attorney, for Ravenswood City School District; Foley and Lardner, by Laurence Arnold and John Douglas, Attorneys, for Edison Brentwood Academy.

Before Fred D'Orazio, Administrative Law Judge.

PROCEDURAL HISTORY

The Ravenswood Teachers Association (RTA) commenced the action in Case No. SF-CE-2218-E on July 17, 2001, by filing an unfair practice charge against the Ravenswood City School District (District). On August 6, 2001, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging the District terminated three teachers at its charter school, Edison Brentwood Academy (Edison Brentwood), because of their protected conduct. It is alleged in the

complaint that the District, by its conduct, violated the Educational Employment Relations Act (EERA or Act) section 3543.5(a) and (b).[1]

On August 28, 2001, the District answered the complaint, denying all allegations and asserting a number of affirmative defenses. The District also moved to dismiss the complaint, alleging, among other things, that it is not the employer of the alleged discriminatees within the meaning of EERA section 3540.1(k). Rather, the District asserted, Edison Brentwood is the employer for EERA purposes.

On November 16, 2001, RTA filed an unfair practice charge, Case No. SF-CE-2236-E, against Edison Brentwood. The new charge contained essentially the same allegations of discrimination involving the same teachers. On December 5, 2001, the general counsel of PERB followed with a virtually identical complaint against Edison Brentwood, alleging the employees were terminated because of their protected activity, in violation of section 3543.5(a) and (b).

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[1] EERA is codified at Government Code section 3540 et seq. Unless otherwise indicted, all statutory references herein are to the Government Code. In relevant part, section 3543.5 provides:

> It shall be unlawful for a public school employer to do any of the following:
>
> > (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.

In its answer, filed on December 21, 2001, Edison Brentwood denied all allegations and asserted a number of affirmative defenses. Among other things, Edison Brentwood admitted that it is the employer of the charter school teachers at issue here under EERA section 3540.1(k).

Several efforts by a Board agent to settle the unfair practices were not successful. A series of motions followed in February 2002. First, RTA moved to consolidate the complaints, contending among other things that the facts in the two cases are virtually identical and a question exists as to which respondent is the public school employer of the alleged discriminatees. Edison Brentwood opposed consolidation, arguing that it is the public school employer. The District did not oppose consolidation. Second, in a separate motion, RTA moved to amend the complaint in Unfair Practice Case No. SF-CE-2218-E to include an allegation that the District unlawfully repudiated the terms of a memorandum of understanding, effectively terminating its employment relationship with bargaining unit employees. In its response, the District again argued that it is not the public school employer of teachers in the charter school. In a separate motion to dismiss the complaint in SF-CE-2218-E, the District reiterated its position that it is not the public school employer. In its response, RTA argued that the District is the employer of the charter school teachers at issue here.

After a pre-hearing conference on May 7, 2002, the undersigned informed the parties that the issues raised by the complaints would be bifurcated and a hearing conducted regarding

the matter of employer status.[2] A hearing was conducted on June 5, 2002. With the receipt of the final brief on August 5, 2002, the issue of employer status was submitted for decision.

FINDINGS OF FACT

RTA is an employee organization within the meaning of section 3540.1(d), and the exclusive representative of an appropriate unit of the District's certificated employees within the meaning of section 3540.1(e). The District is a public school employer within the meaning of section 3540.1(k). As more fully discussed below, Edison Brentwood is a public school employer within the meaning of section 3540.1(k).

On April 16, 1998, the District approved a charter petition under the Charter Schools Act of 1992 establishing a charter school, Edison Brentwood, at the campus of the former Brentwood Oaks Elementary School. Pursuant to the petition, the District retained Edison Schools, Inc. (Edison) to provide management services to students at Edison Brentwood. The governing charter contains several specific provisions which are relevant to the issue of employer status.

The charter provides that the "the Charter School is a public school which shall operate within the Ravenswood City School District." The charter also states that a Community Council

> . . . . shall provide input and guidance to the charter school from a range of community leaders and others who are keenly interested in helping to integrate an innovative school into the life of the community. The charter school shall establish a Community Council that engages a range of community leaders, including business people, leaders in the arts, public officials,

[2] A related case involving the employer status of Edison Schools, Inc., Edison Brentwood's parent organization, is currently before the Board on appeal of a regional attorney dismissal of an unfair practice charge alleging discrimination against teachers at Edison Brentwood. (Ravenswood Teachers Association, CTA/NEA v. Edison Schools, Inc., Case No. SF-CE-2233-E.)

> representatives from local associations or groups, and others. The Community Council shall receive the charter and be responsible to the Board of Education for the implementation of this charter as specified with the Edison program.

The charter contains a variety of general provisions regarding employment of teachers at Edison Brentwood. For example, the charter provides that charter school teachers "will be considered district employees" and the charter school will contribute to the State Teachers Retirement System and the Public Employees Retirement System. The charter provides that "selection and appointment of charter school staff members shall be the exclusive prerogative of the charter school," although the "Ravenswood staff will be given first consideration for each level of teachers and other positions as they become available." The charter notes that the charter school is entitled to "look outside the district to fill positions or may contract for such services as determined by the needs of the charter school." The charter provides further that the charter school "will not discriminate against any applicant on the basis of his/her race, creed, color, national origin, age, gender, disability, or any other basis prohibited by law."

The charter addresses other terms and conditions of employment in more specific terms. For example, it provides that "the Principal shall have the right to observe and evaluate staff using Edison's performance appraisal framework and system." It also sets forth criteria to be used in the assessment: (1) an analysis of student achievement "based on student performance on standardized and Edison specific assessments;" (2) observations by the principal in "professional settings;" (3) "accomplishment and growth consistent with core professional expectations as documented by the teacher in the Professional Portfolio;" and (4) a self assessment. The charter further states:

> Core Professional expectations for the performance of Edison partnership teachers grow directly out of the Edison Project school design, as articulated in the volume entitled Partnership

> School Design. These expectations, along with accompanying standards, form the backdrop of all evaluations, and are detailed in the attachment to this contract.

With respect to transfers and discipline, the charter states:

> Teachers may elect to leave the charter school at any time during the school year as per current district transfer policy.
>
> In recognition that this program is a different model than current district schools, there may be circumstances where a teacher is not being successful in the charter school program. If the teacher continues not to be successful, the principal may give notice no later than March 15 (when known district postings are listed) to the teacher that he/she will be transferred at the end of the year. As per the RTA Agreement, teachers in the Ravenswood City School District will be guaranteed a position in the event such a transfer should occur.
>
> In situations where discipline of an employee becomes an issue, the district and the charter school will jointly pursue progressive communication and action if needed.

The charter provides, in addition, that "charter school teachers will be treated the same as other district teachers with regard to health and welfare benefits. Edison will also develop and offer by the second year a separate health and welfare package as an option for staff members."

Regarding compensation, the charter provides that "teachers will be placed on the Edison salary schedule according to the responsibilities which they assume."

> Scheduled salaries include compensation for the charter school's longer workday and year. Teachers will receive a stipend for all training days that extend beyond their normal Edison contract year. Revenues and expenditures will be reviewed annually, and a recommendation will be made through the leadership team for cost of living adjustments and incentive pay to remain competitive with the district. Teachers may move up within each teacher level based on performance. Teachers may also apply to the leadership team as positions become available for promotions to move up the salary schedule or for new positions.

The charter states that the charter school will participate in the state class size reduction program; however, as part of the Edison program, "house teams of teachers are free to group and regroup youngsters for instruction so class sizes may vary and exceed that limit as determined by the charter school program needs during the day." The charter includes the work year and the workday for teachers, and provides that sick leave and personal necessity leave will be granted in accord with the RTA agreement.

The charter includes a four-step dispute resolution procedure, which begins with a written grievance to the principal or immediate supervisor and culminates in an appeal to a grievance committee consisting of three Community Council members and three Edison representatives.

Lastly, the charter sets out a procedure for amendment.

> The Charter may be amended only by an agreement in writing among the Board of Education, the Edison Project, and the Community Council. A copy will be forwarded to the State Department of Education.
>
> In addition a waiver may be requested from an established or prospective practice or policy in the district by a two-thirds vote of the staff and after consultation with the Community Council and approved by the SSC, the Director of Schools for The Edison project, and the Board of Education.

Under the charter, the collective bargaining agreement between the District and RTA plays a role in setting terms and conditions of employment for teachers at Edison Brentwood. The charter states:

> All aspects of the negotiated agreement (the Agreement) between the Ravenswood City School District and the Teachers' Association of Ravenswood will apply except as otherwise provided in this charter application or when in conflict with the Edison design. In the event that there is a dispute about the requirements to implement the school design and the Agreement,

> the final decision shall rest with the charter school and the requirements of the program shall prevail.
>
> In addition, at any time two-thirds of the Edison affected staff may elect to exempt an established or prospective practice or policy from any contrary provision or provisions of the then-current collective bargaining agreement between the Ravenswood Teachers' Association and the Ravenswood City School District.

In addition, a management agreement between the District and the Edison Project sets forth the obligations and duties of both parties with respect to the implementation of Edison's educational program. The management agreement provides that the principal and Edison Brentwood shall have authority

> . . . . to select and hold accountable the teachers and the non-instructional staff in each Charter School. Current district-employed administration, teaching, and non-instructional staff who choose and are selected to work in the Charter School shall remain employees of the District. Certified staff members employed from outside the District will become employees of the District and shall be jointly selected and evaluated by the District agreement and Edison. . . . . Teachers working in the Charter Schools shall have the right to accrue permanent status in the District on the same schedule and through a joint evaluation process with the District as per the Education Code. Edison compensation policies will apply to all employees at the Charter Schools, regardless of employer.

The management agreement also provides that Edison Brentwood teachers shall retain employment and benefit rights accrued as teachers in the District.

> The District shall also ensure that current employees in the District who move to the Charter Schools may return to the District without prejudice regardless of the reason that such employee leaves the District-Edison Charter School unless the employee is dismissed from the Charter School for a reason that would normally result in termination of the employee by the District or the employee is otherwise released and terminated by the District. In such event, the District shall, if the District decides to terminate the employee from District employment, provide such employee the due process rights to which the

> employee may be entitled. Edison shall cooperate with and assist the District in any such due process matters.

On or about May 20, 1998, RTA filed Unfair Practice Charge No. SF-CE-1978-E against the District alleging, among other things, that the District had unilaterally changed terms and conditions of employment of teachers by adopting the charter. The general counsel of PERB issued a complaint shortly thereafter.

Eventually, the parties settled the charge in SF-CE-1978-E. The settlement agreement, entitled "Memorandum of Understanding and Amendment to Ravenswood Edison Charter School Petition" (MOU), provides that certain provisions of the collective bargaining agreement between RTA and the District would apply to teachers at Edison Brentwood. Specifically, the MOU provided that the following articles would apply: Article 2 (Association Rights), Article 3 (Professional Fees and Payroll Deductions), Article 4 (Grievance Procedure), Article 6.2 (Organizational Activities or Preferences), Article 11 (Safety Conditions of Employment), Article 14 (District Rights), and Article 15 (Early Retiree-Consultant).

The MOU provides, in addition, that the following articles would not apply: Article 1 (Recognition), Article 5 (Class Size), Article 6 (Non-Discrimination and Academic Freedom, except for section 6.2), Article 7 (Hours of Employment), Article 8 (Evaluation Procedure), Article 9 (Leaves of Absence Provision), Article 10 (Transfers), Article 12 (Compensation), Article 13 (Facilities), Article 16 (Peer Assistance and Review Program for Teachers), Article 17 (Professional Growth Requirements-Credential), and Article 18 (Miscellaneous Provisions).

The MOU also addresses the District's concern about the application of the EERA to charter schools. One provision states:

> The district agrees to negotiate in good faith with RTA exclusively regarding the terms and conditions of employment of Edison charter school teachers, at the request of RTA, pursuant to the

> provisions of the EERA. This provision shall not be deemed to confer EERA/PERB jurisdiction. These negotiations shall be separate from bargaining over the District/RTA Agreement covering employees in the non-Edison schools.

Another provision in the MOU states:

> It is understood by the parties that by entering into this Memorandum of Understanding, the District and RTA do not waive and reserve any claims or defenses, including the claim or defense that the Educational Employment Relations Act does or does not apply to charter schools.

On October 8, 1999, the Governor signed AB 631, making the EERA applicable to charter schools. The new law, which went into effect on January 1, 2000, states:

> A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of the Government Code. [Education Code section 47611.5(b).]

In addition, the Education Code was amended by AB 631 to include the following:

> By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter. [Education Code section 47611.5(f).

Further, AB 631 amended EERA to include charter schools under the definition of "public school employer."

> "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code. (EERA section 3540.1(k).)

On or about March 30, 2000, Martha Navarette (Navarette), the principal of Edison Brentwood, prepared a declaration on Edison Brentwood letterhead stating:

> Pursuant to the requirements of Education Code 47611.5, as revised, the [Charter School] hereby declares that for the purposes of Government Code 3540.1, it shall be the exclusive public school employer of the employees at the charter school.
>
> Acting on behalf of the [Charter School] and the Community Council.

Navarette then caused this declaration to be delivered to the District by March 30, 2000. The District forwarded the declaration to its attorneys, Jones and Matson, on March 31, 2000.

As noted above, on July 17, 2001, RTA filed Unfair Practice Charge No. SF-CE-2218-E against the District, and the general counsel of PERB issued a complaint shortly thereafter alleging that the District discriminated against teachers at Edison Brentwood because of their protected conduct. The complaint alleges that the District is the employer of the Edison Brentwood teachers within the meaning of section 3540.1(k) and that Navarette acted as the agent of the District in discriminating against the teachers. In its answer and in a subsequent motion to dismiss the complaint, the District argues that it is no longer the employer because Navarette's declaration states that Edison Brentwood is the employer.

Also as noted above, on November 16, 2001, RTA filed an almost identical unfair practice charge alleging the three teachers suffered discrimination because of their union activity. (Unfair Practice Charge No. SF-CE-2236-E.) The second charge named Edison Brentwood as the employer, and the general counsel of PERB issued a complaint. Shortly thereafter, Edison Brentwood answered the complaint, admitting that it was the employer of the alleged discriminatees.

ISSUE

The question presented here is whether the District or Edison Brentwood is the public school employer of teachers at the Edison Brentwood Academy?

CONCLUSIONS OF LAW

The complaints that grew out of these unfair practice charges are about the termination of three charter school teachers allegedly for their protected conduct. Edison Brentwood admits it is the employer of the teachers and is prepared to defend against the allegations. The District not only denies it is the employer, it agrees that Edison Brentwood is the employer. Nonetheless, RTA insists that the employer here is the District. In support of its claim, RTA advances a number of arguments aimed at proving Navarette's declaration is defective and the District, not Edison Brentwood, is the true employer of the teachers at issue here.

RTA first argues that Navarette's declaration is facially invalid for two reasons. The declaration names the "[Charter school]" rather than Edison Brentwood as the public school employer, and the charter does not grant individual principals authority to act on behalf of the Community Council. Thus, Navarette acted beyond her authority, RTA contends.

RTA advances a number of arguments in support of its claim that Navarette's declaration under Education Code section 47611.5(f) is "materially inconsistent" with the charter. RTA notes that the charter states that all "Charter school staff . . . will be considered district employees," the management agreement states that charter school teachers "shall remain employees of the district," and the fact that the District maintains a role in hiring and termination of charter school employees all point to the conclusion that the District is the employer of the teachers, according to RTA.

RTA asserts that the MOU amended the charter and established a practice under which certain aspects of the collective bargaining agreement apply to charter school teachers, and the District agreed in the MOU to negotiate in good faith with RTA exclusively about terms and conditions of employment of Edison Brentwood teachers as part of a separate bargaining unit. These provisions, RTA argues, point to the conclusion that the District is the employer.

RTA also argues that Navarette's declaration is invalid because it does not comply with the amendment procedure set forth in the charter; that is, it was not joined by the Board of Education or the Community Council, and it was not forwarded to the State Department of Education. Thus, RTA concludes, Edison Brentwood has not followed the amendment procedure as required by the charter.

Nor, RTA continues, has Edison Brentwood complied with various Education Code requirements for revising a charter. For example, RTA contends Edison Brentwood failed to comply with Education Code sections which require compliance with the amendment provisions in the charter; require that a material revision of the charter petition may be made only with the approval of the authority that granted the charter; require a public hearing on charter provisions; or require that all meetings by a school board where a grant, revocation, appeal, or renewal of a charter petition is discussed must comply with open meeting provisions in the Brown Act, which is codified at Government Code section 54950 et seq. These Education Code sections are more fully set forth below.

RTA next contends that Navarette's declaration should be invalidated as contrary to public policy because it undermines EERA's stated purpose of promoting improvement of employer-employee relations in the public school system. Even if the declaration is timely and valid, RTA argues, the fact that the public school employer of public school teachers has been

"secretly changed" interferes with the right of charter school teachers to organize and RTA's right to represent its members.

Lastly, RTA asserts that the District has continued to present itself as the employer of Edison Brentwood teachers. For example, teachers at Edison Brentwood were sent W-2 forms for 2001 stating that they were employed by the District, they received payroll statements from the District, and employment confirmation letters sent to charter school teachers after Navarette's declaration stated that the teacher would be a District employee. The District's conduct in this regard, RTA concludes, is further evidence of employer status.

For the following reasons, the arguments presented by RTA are hereby rejected.

AB 631 made EERA applicable to charter schools and contained provisions to determine whether the charter school or the district in which the charter school is located would be the employer for EERA purposes. Enacted as part of AB 631, Education Code section 47611.5(b) provides that a charter school charter "shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer" for purposes of EERA, and "if the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer" for purposes of EERA. A separate provision covers charter schools existing at the time of the legislation. Under Education Code section 47611.5(f), an existing charter school such as Edison Brentwood could become the employer of its employees by declaring its intention to do so: "By March 31, 2000, all existing public schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter." At the same time, EERA section

3540.1(k) was amended to provide that a charter school is a public school employer if it declares itself as such pursuant to Education Code section 47611.5(b).

It is well established that the primary goal in interpreting a statute is to ascertain the intent of the Legislature so as to effectuate the purposes of the law. "In determining such intent, a court must look first to the words of the statutes themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (Dyna-Med, Inc. v. Fair Employment and Housing Commission (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67]; see also Halbert's Lumber Company, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233, 1238-1239 [8 Cal.Rptr.2d 298] [words are to be given their usual and ordinary meaning unless they are otherwise defined in the statute].)

Education Code section 47611.5(f) does not establish an elaborate procedure for a charter school to acquire public school employer status. Nor does it require a charter school to give notice of its intent to employee organizations. It states only that a charter school must "declare" whether it intends to be a public school employer, and that term is not defined in the statute. It is appropriate, therefore, to interpret the word "declare" in accordance with its usual meaning. As Edison Brentwood points out, the term "declare" is defined in Webster's Ninth New Collegiate Dictionary as "to make clear," "to make known formally or explicitly," or "to make evident." Edison Brentwood also notes that Black's Law Dictionary, Seventh Edition 1999, defines "declaration" as a "formal statement, or announcement." And the American

Heritage Dictionary, New College Edition, defines "declare" as "to state with emphasis or authority; affirm."

The evidence established that Navarette, acting within her authority as the principal of Edison Brentwood, executed a declaration formally stating that Edison Brentwood "shall be the exclusive public school employer of the employees at the charter school." Navarette's declaration falls within the plain and usual meaning of the term "declare," and the declaration was forwarded to the District prior to March 31, 2000. Thus, Edison Brentwood complied with Education Code section 47611.5(f) in exercising its discretion to declare itself the public school employer.

This determination is consistent with the purpose of the Charter Schools Act and its legislative history. As noted above, AB 631 made EERA applicable to charter schools for the first time, and expressly addressed the question of which entity would be the employer for EERA purposes, the district or the charter school. The plain language in Education Code section 47611.5(b) and section 47611.5(f) provides that the determination of whether an existing charter school or the district is the public school employer for the purpose of EERA is left to the charter school. The analysis of AB 631 by the California Senate Rules Committee states that the bill

> Requires a charter school to declare, in its charter, whether or not the charter school will be the exclusive employer of employees at the school. Existing schools are required to make this declaration by March 31, 2000.

The analysis states further that if a charter school fails to declare itself the employer, "then the school district that issued the school's charter shall be the exclusive employer."[3]

[3] Official notice is taken of the Senate Rules Committee's analysis. (Evidence Code section 452(c).)

RTA's contention that Navarette's declaration is facially invalid because it did not expressly state it was made on behalf of Edison Brentwood and that Navarette had no authority to act for the Community Council is unconvincing. The document was prepared on Edison Brentwood letterhead, and Navarette testified without rebuttal that she prepared it as principal of Edison Brentwood. Navarette was not cross-examined at hearing, and there is no evidence in the record that the declaration is anything other than what it purports to be, her declaration under Education Code section 47611.5(f). Further, there was no objection to the introduction of the declaration on the ground that Navarette lacked authority to act on behalf of the Community Council. RTA objected on only authenticity grounds, asserting that the declaration introduced into evidence was not the original declaration and thus not the best evidence. The document speaks for itself, and there is no evidence that the District or the Community Council has ever objected to the declaration. In fact, the District has at all times argued that the declaration is valid. Therefore, I conclude that there is no basis in the record to conclude that Navarette's declaration is invalid or that she lacked authority to execute the declaration.

The next question is whether Navarette's declaration is materially inconsistent with the charter, and RTA advances several arguments in support of its claim on this issue. After carefully considering these arguments, I find RTA's arguments unpersuasive.

Contrary to RTA, mere references in the charter, the management agreement or employment documents that charter school teachers are employees of the District does not render the declaration materially inconsistent with the charter. As Edison Brentwood points out, charter schools remain subject to the control of the public school system. (Education Code section 47615(a)(1)(2) ["Charter schools are part of the Public

School System" and are "under the jurisdiction of the public schools."]; see also Wilson v. State Board of Education (2000) 75 Cal.App.4th 1125, 1139-1140 [89 Cal.Rptr.2d 745].) Indeed, PERB has observed that a reference to a charter school teacher as a district employee

> . . . is a distinction without a difference, however, because nothing in the Charter Schools Act reflects a legislative intent that charter school employees cease being District employees. The Legislature simply created a separate experimental environment where District employees at a charter school were free to innovate creative educational processes without the interference or protection of other state laws. . . . [San Francisco Unified School District (2001) PERB Decision No. 1438, adopting proposed decision of administrative law judge, at p. 8.]

Therefore, I conclude that mere reference in the charter or elsewhere to Edison Brentwood teachers as employees of the District does not constitute a material inconsistency between the charter and Navarette's declaration.

In addition, mere references to Edison Brentwood teachers as District employees are outweighed by Edison Brentwood's control over actual working conditions. It is important to note that, under the express terms of the charter, Edison Brentwood has retained authority over the most fundamental terms and conditions of employment that traditionally are indicators of employer status. As Brentwood Edison points out in its brief, "it would [be] materially inconsistent for an entity **other than Edison Brentwood** to be the employer of its teachers for EERA purposes." (Emphasis in original.) Specifically, while the charter petition provides that the collective bargaining agreement between the District and RTA may play a role in setting terms and conditions of employment for Edison Brentwood teachers, the charter also states that the agreement applies "except as otherwise provided in [the] charter application or when in conflict with the Edison design." The charter further states that "in the event there is a dispute about the requirements to implement the school design and the Agreement, the final decision

shall rest with the charter school and the requirements of the program shall prevail." Thus, Edison Brentwood has always had the discretion under the charter to unilaterally set terms and conditions of employment of its teachers when it deems the agreement conflicts with the program for the charter school.

Furthermore, Edison Brentwood has always had the authority under the charter to determine the most significant terms and conditions of employment. The charter expressly notes, for example, that such authority extends to compensation, hours, performance-based promotions and advancement, class size, pension contributions, discipline and evaluations. Given the extent of Edison Brentwood's authority in these areas, RTA's claim that the District is the true employer is not convincing.

The management agreement, a document designed to implement the Edison plan, underscores Edison Brentwood's role as employer. It provides that Edison Brentwood has authority to "select and hold accountable" teachers, and to dismiss teachers from the charter school. Granted, the management agreement does state that the District and Edison will jointly select and evaluate charter school teachers, and the District will provide due process protections in the event of a termination. However, even if the District plays some role in selection and evaluation of teachers, or in affording teachers due process rights in disciplinary matters, such authority derives from the management agreement, not the charter. The ultimate authority over such matters is found in the charter, and it remains with Edison Brentwood.

The agreement between the District and RTA to amend the charter via the MOU does little to undermine Navarette's declaration and the evidence pointing to Edison Brentwood's status as employer. While the MOU made certain provisions in the collective bargaining agreement between the District and RTA applicable to Edison Brentwood teachers, other

provisions of the agreement were made inapplicable. A comparison of these two categories of contractual provisions sheds light on the employer status issue. Most of the terms of the agreement made applicable to Edison Brentwood teachers do not involve matters that touch upon the day-to-day implementation of the educational program as far as the actual work of the teachers is concerned. (E.g., RTA rights, professional fees and payroll deductions, grievance procedure, organizational activities, safety conditions, and District rights.) On the other hand, provisions of the agreement not applicable to Edison Brentwood teachers involve more substantive terms and conditions of employment that are more likely to come into play in the day-to-day operation of the charter school. (E.g., class size, hours, evaluations, leaves, transfers, compensation, Peer Assistance and Review Program, and professional growth requirements.) The decision to make contractual provisions such as these inapplicable to Edison Brentwood teachers, viewed in combination with Edison Brentwood's sweeping authority in the charter itself, strongly suggests that Edison Brentwood is the employer. In any event, it bears repeating that Edison Brentwood may ignore even applicable provisions in the collective bargaining agreement if they conflict with the Edison design. Navarette's declaration is not materially inconsistent with Edison Brentwood's role.

It is true, as RTA contends, that the District agreed in the MOU to "negotiate in good faith with RTA exclusively regarding the terms and conditions of employment of Edison charter school teachers." RTA contends this provision effectively created a new bargaining unit and "name[d] the District as the exclusive employer of Edison charter school teachers." Under the circumstances presented here, I find this provision neither created a new unit nor established the District as the employer of Edison Brentwood teachers.

While the District may have agreed to negotiate with RTA as part of a settlement of an earlier unfair practice charge (Case No. SF-CE-1978-E), the plain language in the MOU cannot be read as creating a new bargaining unit or conferring employer status on the District for EERA purposes. The District made it clear that, while it would negotiate with RTA, the MOU "shall not be deemed to confer EERA/PERB jurisdiction" and it reserved the claim or defense that "the Educational Employment Relations Act does or does not apply to charter schools." As the MOU indicates, the District's pre-AB 631 position was that it had no statutory duty to bargain with RTA about charter school teachers. Indeed, the MOU was agreed upon before charter schools became covered by EERA, and one provision in the collective bargaining agreement that was **not** made applicable to Edison Brentwood teachers through the charter is the clause recognizing RTA as the exclusive representative of certificated employees at Edison Brentwood. The District's pre-AB 631 agreement to negotiate with RTA, while at the same time reserving its claim that EERA was not applicable to Edison Brentwood, is hardly evidence of employer status under EERA. AB 631 subsequently gave Edison Brentwood the right to declare itself the employer of charter school employees. It did so, and the District has never contested the declaration.

Further, it is not clear whether RTA claims the MOU intended to expand the existing unit to include charter school teachers or created an entirely separate unit of charter school teachers. In any event, there is no evidence that RTA or the District took the necessary steps to do either. There is no evidence, for example, that RTA filed a request for recognition with PERB or complied with the procedures required to secure recognition in a new unit of

employees. (See e.g., PERB Regulation 33050 et seq.[4]) In fact, the District has declined to recognize RTA as the exclusive representative of Edison Brentwood employees. PERB has found, moreover, that a mutual agreement regarding unit modification is desirable and permissible; however, if any party decides it is not satisfied with the agreed-upon placement, a dispute exists and only PERB has the authority to resolve the matter. (Hemet Unified School District (1990) PERB Decision No. 820 at p. 5.) Thus, I find the MOU does not create a new unit of charter school employees in which the District is the employer for EERA purposes.

In these circumstances, a conclusion that Navarette's declaration is materially inconsistent with the MOU would run counter to the plain language in the MOU, the express terms of AB 631, the underlying legislative history of the bill, and the overall state policy giving a charter school the unilateral right to declare itself the public school employer.

RTA contends that Navarette's declaration is materially inconsistent with the charter because Edison Brentwood did not comply with the amendment procedure set forth in the charter petition; nor, RTA claims, has Edison Brentwood complied with Education Code and Brown Act procedures for making revisions to a charter.[5] There is no dispute here that formal amendment requirements were not followed. However, as Edison Brentwood points out,

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[4] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[5] The charter provides for amendment "only by an agreement in writing among the Board of Education, the Edison Project, and the Community Council." Various sections of the Education Code also address revisions or amendments to the charter. (E.g., Education Code section 47610 [charter school shall comply with "all of the provisions set forth in its charter"]; Education Code section 47607(a) ["material revision of the provisions of a charter petition may be made only with the approval of the authority that granted the charter"]; Education Code section 47605(b) [requires public hearing on charter provisions]; and Education Code section 47608 [all meetings of a governing board of a school district "at which the granting, revocation, appeal or renewal of a charter petition is discussed shall comply with the Ralph M. Brown Act"].)

procedures to amend or revise a charter must be followed only if there is an actual amendment or material revision to the charter. As discussed elsewhere, Navarette's declaration is not materially inconsistent with the charter and thus the claim that the charter was amended or revised without following appropriate procedures is rejected.

On a related point, RTA has argued that there has been no compliance with the charter provision that requires a two-thirds vote of Edison Brentwood staff to exempt a policy or practice from a contrary provision in the collective bargaining agreement. However, Navarette's declaration did not change a practice or policy that would have triggered a vote. It merely declared that Edison Brentwood would be the employer, and, as discussed above, the declaration is not inconsistent with the charter.

PROPOSED ORDER

Based on the foregoing findings of fact and conclusions of law and the entire record herein, I make the following findings.

Unfair Practice Case No. SF-CE-2236-E:

Edison Brentwood is the public school employer of teachers at the Edison Brentwood Academy within the meaning of Government Code section 3540.1(k). Accordingly, a formal hearing will be conducted on October 23-25, 2002, as previously scheduled, to adjudicate the underlying complaint of discrimination in Ravenswood Teachers Association v. Edison Brentwood Academy, Case No. SF-CE-2236-E. This ruling may be appealed only under PERB Regulation 32200 (Cal. Code Regs, tit. 8, sec. 32200).[6]

[6] PERB Regulation 32200 states:

> A party may object to a Board agent's interlocutory order or ruling on a motion and request a ruling by the Board itself. The request shall be in writing to

Unfair Practice Case No. SF-CE-2218-E:

It is found that the Ravenswood City School District is not the public school employer of teachers at Edison Brentwood Academy within the meaning of Government Code section 3540.1(k). Accordingly, the complaint and the underlying unfair practice charge in Ravenswood Teachers Association v. Ravenswood City School District, Case No. SF-CE-2218-E, are hereby dismissed.[7]

Pursuant to California Code of Regulations, title 8, section 32305, the Proposed Decision and Order in Ravenswood Teachers Association v. Ravenswood City School District, Case NO. SF-CE-2218-E, shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

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the Board agent and a copy shall be sent to the Board itself. Service and proof of service pursuant to Section 32140 are required. The Board agent may refuse the request, or may join in the request and certify the matter to the Board. The Board itself will not accept the request unless the Board agent joins in the request. The Board agent may join in the request only where all of the following apply:

(a) The issue involved is one of law;

(b) The issue involved is controlling in the case;

(c) An immediate appeal will materially advance the resolution of the case.

[7] Given this ruling, it is unnecessary to address RTA's motion to amend the complaint in Case No. SF-CE-2218-E or its motion to consolidate these unfair practice charges for hearing.

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Fred D'Orazio

FRED D'ORAZIO
Administrative Law Judge