STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 21, AFL-CIO, Charging Party, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SF-CE-2282-E PERB Decision No. 1948 March 13, 2008

Appearances: Davis & Reno by Duane W. Reno, Attorney, for International Federation of Professional & Technical Engineers, Local 21, AFL-CIO; City and County of San Francisco by Martin R. Gran, Attorney, for San Francisco Unified School District.

Before Neuwald, Chair; McKeag and Wesley, Members.

DECISION

NEUWALD, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the International Federation of Professional & Technical Engineers, Local 21, AFL-CIO (Local 21) to the proposed decision of an administrative law judge (ALJ). The ALJ dismissed the charge and complaint, which alleged that the San Francisco Unified School District (District) violated the Educational Employment Relations Act (EERA)[1] by failing and refusing to negotiate in good faith; by unilaterally repudiating an obligation to participate in binding interest arbitration as provided by the City and County of San Francisco (City) Charter; and by failing and refusing to confer on District

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

classified employees' wages determined through City interest arbitration proceedings for the same classifications.

The Board has reviewed the entire record in this case, including but not limited to the complaint, the proposed decision, Local 21's exceptions, and the District's response. Based upon this review, the Board affirms the ALJ's dismissal of the unfair practice charge.

PROCEDURAL HISTORY

Local 21 initiated this action with the filing of an unfair practice charge against the District on August 15, 2002. Local 21 sought to give District classified employees the

> salary and wage increases required as the result of mediation-arbitration proceedings which took place between the City and Local 21 [which separately represented City employees] in May and June, 2001, and any and all other wage and salary increases established through such mediation/arbitration proceedings for classifications represented by Local 21.

On October 7, 2003, the Office of the General Counsel dismissed the charge. On October 28, 2003, Local 21 appealed the dismissal. In San Francisco Unified School District and City and County of San Francisco (2004) PERB Decision No. 1721 (SFUSD), the Board reversed the dismissal and remanded the matter for issuance of a complaint. The Board held that the charge was timely. The Board also disagreed with the Board agent's finding that the charge was barred by laches. Finally, the Board stated that it would defer the merits of the charge to an ALJ for initial determination, and ordered that a complaint be issued under EERA, rather than the Meyers-Milias-Brown Act (MMBA),[2] under which the unfair practice charge was originally filed.

On March 2, 2005, the Board denied the District's request for reconsideration. (San Francisco Unified School District and City and County of San Francisco (2005) PERB Decision No. 1721a.)

[2]The MMBA is codified at Government Code section 3500, et seq.

On March 9, 2005, the Office of the General Counsel issued a complaint alleging that the District unilaterally repudiated a policy of affording wage parity to employees in comparable classifications of the City as required by its Charter. This conduct was alleged to violate Section 3543.5(a), (b) and (c).[3]

On June 9, 2005, the parties participated in an informal settlement conference but the matter was not resolved.

On June 27, 2005, the District answered the complaint, denying all material allegations and asserting a number of affirmative defenses.

On December 7, 2005, the ALJ conducted a formal hearing.

The ALJ issued the proposed decision on December 22, 2006. Local 21 filed its statement of exceptions on January 11, 2007. The District filed its sole exception and its brief in response to Local 21's exceptions on February 5, 2007.

---

[3]In relevant part, Section 3543.5 provides as follows:

> It is 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.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

FINDINGS OF FACT[4]

The District is a public school employer within the meaning of EERA section 3540.1(k). Local 21 is an employee organization within the meaning of Section 3540.1(d) and an exclusive representative within the meaning of Section 3540.1(e).

Unit Recognitions and the Salary Standardization Ordinance

David Novogrodsky (Novogrodsky) is the executive director of Local 21, a union with local chapters throughout the Bay Area. He joined Local 21's staff in 1981. Local 21 currently represents 30 City bargaining units.[5]

Local 21's position from the outset has been that these bargaining units contain employees of both the District and the San Francisco Community College District. Novogrodsky testified that the original MMBA representation elections with the City included District employees among the units' classifications. In addition, prior to the enactment of EERA, the District was considered a department of the City. The District was governed by a school commission whose members were appointed by the mayor. However, in the late 1970s, those positions became elected positions. The City Charter now states that the District "shall be under the control and management" of the Board of Education. The Charter also stipulates that the District's governing board has the power to employ teachers and other staff and to "fix, alter and approve their salaries and compensations, except as in this charter otherwise provided."

---

[4]Most of these findings of fact are adopted from the ALJ's proposed decision.

[5]The unit proliferation, according to Novogrodsky, was the result of City preference for such during the process of recognition. Local 21 represents occupational classifications broadly described as technical and professional, including, for example, architects, planners, administrative analysts, health care service providers, occupational therapists, speech pathologists, accountants, engineers, computer technicians, etc. Despite the proliferation of units, Local 21 bargains at one table on behalf of its units.

Around 1983, after the enactment of EERA, Local 21 undertook representation elections with the District seeking recognition as the exclusive representative of employees in the same classifications represented within the City. The purpose for these elections, according to Novogrodsky, was to ensure recognition of agency fee rights for District employees and, by implication, was something of a superfluous act in other respects given the City's prior recognition of the same classifications under the MMBA.

The District has in fact recognized two units, which have been certified by PERB. However these units do not include any City employees. In addition to District employees, an assortment of employees not in the City units (e.g., building inspectors and architects) are included in these units. There are a total of 100 employees in both of the District units represented by Local 21.[6]

The non-certificated employees of the District (as well as the San Francisco Community College District) are covered by the City's merit system with respect to traditional merit system governance. Historically, the City's merit system, which predates collective bargaining, has performed traditional merit system functions, centered around maintenance of the classification plan for approximately 1,500 classifications employed within 60 departments. These functions include matters of classification, recruitment, examination, creation of eligible lists, appointment, employment status, layoffs and reductions in force, and disciplinary actions.

These functions are discharged through the City's Department of Human Resources (serving as the City's personnel department) and its Civil Service Commission (serving as the appellate body reviewing challenges to staff-level civil service determinations of the

[6]The parties agreed to unit modifications approved by PERB in 1990 and 1992. A total of 1,500 non-certificated employees are EERA-covered employees within the District.

Department). The legal authority for these entities arises from the City Charter. The mayor appoints the members of the Civil Service Commission.

Under the City's merit system, seniority for purposes of layoffs and bumping rights within common classifications exists so as to allow City employees to bump District employees and vice-versa.

Local 21's role historically in contract negotiations with the City has been limited in ways that are critical to this case. Wages and benefits were originally excluded from the scope of representation for MMBA purposes by virtue of the City's Salary Standardization Ordinance, contained in the Charter. The City's labor relations ordinance had confirmed this practice by excluding wages from the scope of representation for MMBA-covered employees. The Charter charged the Board of Supervisors with responsibility for setting salaries "in all cases where such compensations are paid by the city and county." This duty was discharged in conjunction with the Charter-based authority of the Civil Service Commission to conduct salary surveys and recommend salary schedules to the Board of Supervisors. Under the Salary Standardization Ordinance wages were determined by means of a salary survey conducted by the Department of Human Resources. Over time, complaints arose over the practices involved in the surveys, such as "tampering" by the department with the results of the survey causing anomalies and hence inequities.

Despite the exclusion of wages and other civil service regulations from the scope of bargaining with the City, Local 21 contracts incorporated the results of the Salary Standardization Ordinance process, presumably for purposes of enforcement through the contract's grievance machinery.

Propositions B and F

In 1991, a City initiative was passed by the voters allowing the City's "miscellaneous" employee unions, of which Local 21 is one, to opt either to remain under the prevailing wage procedure in place or choose a system consisting of (a) collective bargaining over wages and other issues and (b) binding interest arbitration in the event of bargaining impasse. With respect to the duty to bargain, the language of Proposition B, section 8.409 (renumbered A8.409), referenced the MMBA scope statute (sec. 3504) but excepted the merit system's "core functions."[7] Referring to District employees, the proposition stated that it was intended to apply to "all miscellaneous employees and including the employees of the San Francisco Unified School District and San Francisco Community College District to the extent authorized by state law."

[7]Section A8.409-3 ("Obligation To Bargain in Good Faith") currently defines, in pertinent part, the scope of bargaining in the following terms:

> Notwithstanding any other ordinances, rules or regulations of the city and county of San Francisco and its departments, boards and commissions, the city and county of San Francisco, through its duly authorized representatives, and recognized employee organizations representing classifications of employees covered by this part shall have the mutual obligation to bargain in good faith on all matters within the scope of representation as defined by Government code section 3504, relating to the wages, hours, benefits and other terms and conditions of city and county employment. . . .; *provided, however that, except insofar as they affect compensation, those matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit system shall not be subject to bargaining under this part.* . . . [Italics added.]

The parties agree that the italicized language describes the "core functions." Civil Service Commission Executive Officer Kate Favetti testified that under the current charter provisions the Commission deals exclusively with these core functions, and that during the prevailing wage survey days, the Commission kept the survey activity separate from the core merit system activities from a functional perspective.

With respect to the impasse procedures, Charter section A8.409-4 ("Impasse Resolution Procedures") presently provides for submission of a bargaining dispute to a three-member "mediation/arbitration board" following declaration of impasse by either side. This provision prescribes the matters to be considered by the arbitration board, namely "those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment," including, among other factors, the:

> financial resources of the city and county of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the board of supervisors; other demands on the city and county's resources including limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenue by enhancements or other means; budgetary reserves; and the city's ability to meet the costs of the decision of the arbitration board.

In 1994, Proposition F was passed, eliminating the option previously permitting employee organizations to abide by the Charter's prevailing wage procedure.

Local 21's Attempts To Invoke the Charter Provisions

When negotiations opened with the District over 1993-1994 compensation issues, Local 21 attempted to opt in to collective bargaining pursuant to Charter section A8.409. On April 8, 1993, the District wrote to Local 21 asserting that the City had no authority to negotiate these matters on behalf of the District and therefore such proposals should be submitted to the District for bargaining. By letter of the same date, the District wrote the mayor requesting that he instruct his staff not to negotiate with Local 21 with respect to these District employee matters. The City's representative, Thornton Bunch, Jr., wrote to Local 21 indicating that the City agreed with the District that it had no authority to negotiate on behalf of District employees pursuant to the Charter provisions.

At the same time as these events were occurring, the City was proceeding with interest arbitration under the Charter provisions with respect to compensation issues in the negotiations involving the City bargaining units. The three-member panel, which included a union member, City member, and a third-party neutral, issued a split opinion concluding that the City did not have the ability to pay an immediate wage increase. It did order a wage adjustment for Class 1650 accountants, a classification that includes some District employees. The award does not mention any analysis of the District's ability to pay.

By letter dated July 15, 1993, the District informed Local 21 that as a result of the union failing to submit proposals to the District, the District would begin bargaining under EERA. By letter dated July 27, 1993, Local 21 responded by asking the District to implement the new wage rates for Class 1650 accountants retroactive to July 1. The District replied, reaffirming its belief that it was not bound by the interest arbitration award. On August 12, 1993, Local 21 filed a grievance against the District under the interest arbitration award's grievance procedure, demanding the accountants' wage adjustment. The City responded by referring the matter to the District's human resources department.

Around this time, Local 21 filed a petition for writ of mandate in Superior Court for the County of San Francisco, seeking enforcement of the wage adjustment. On September 21, 1994, Judge Stuart Pollak (Pollak), denied the petition. The judge concluded that Proposition B violated the District's right to autonomy in school governance matters guaranteed by the California Constitution. (Cal. Const., art. IX, sec. 6.) As an alternative ground for denying the petition, the judge found that regardless of whether the constitutional analysis was correct the entire dispute fell within the initial exclusive jurisdiction of PERB.

On October 18, 1994, Novogrodsky wrote to the District Negotiator Bruce Julian, stating the union's willingness to proceed with sunshining of its proposals. Local 21's proposals were largely derived from the arbitration award. At the same time, Local 21

appealed Judge Pollack's order to the Court of Appeal. On October 30, 1995, the Court of Appeal issued a published opinion (International Federation of Prof. & Technical Engineers v. Bunch (1995) 40 Cal.App.4th 670 [46 Cal.Rptr.2d 813]), agreeing with the trial court's conclusion regarding PERB's initial exclusive jurisdiction but rejecting as superfluous the ruling regarding the conflict between the City Charter and the Constitution.[8]

Instead of filing an unfair practice charge with PERB, Local 21 continued bargaining with the District. As detailed below, a three-year contract was executed between the parties for the period of 1996-1999, and a second was executed covering 1999-2002.

Negotiations History and Employer Funding

Between 1983 and the passage of Proposition B, the District and Local 21 negotiated several contracts. The first such agreement stipulated that wages would be those established by the Salary Standardization Ordinance. Terms and conditions of employment actually negotiated included such matters as hours, vacation and leaves, overtime pay, and fringe benefits. The format of the contract remained relatively unchanged in subsequent iterations through 1993.

In 1994, due to the pending litigation in San Francisco Superior Court, the parties settled on wages for an agreement covering July 1, 1996 through June 30, 1999, which terms were without prejudice to either party with respect to any litigation outcomes. The agreement was executed by the parties in the spring of 1995.

Wages were again negotiated directly between the parties for a 1999-2002 agreement. This contract provided for compensation reopeners in the final year.

On or about June 15, 2001, Local 21 initiated negotiations for a subsequent memorandum of understanding. The District board adopted the District's initial proposal for

[8]Local 21's petition for review with the California Supreme Court was denied on January 24, 1996.

"sunshining" purposes on February 26, 2002, and adopted Local 21's initial proposal for "sunshining" purposes on March 12, 2002. In or about March 2002, the parties began negotiating for a 2001-2002 agreement. In June 2002, Local 21 ceased negotiating with the District, pending resolution of the unfair practice charge that it intended to bring before PERB.

By letter dated June 28, 2002, Local 21 Representative Bill Fiore informed District Director of Labor Relations Tom Ruiz that the union had not invoked PERB's jurisdiction over the matter of Charter governance of wages "because the District has kept wages for classified employees at the District at about the same level as the wages established by collective bargaining and arbitration for City Employees in the same classifications." However, because approximate salary parity had ceased, in Local 21's mind, the union would now bring the matter to PERB.

By letter dated July 9, 2002, Deputy City Attorney Martin Gran (Gran) responded, asserting that Local 21 wage demands were "far in excess of wages awarded to City employees." Gran further asserted that the District, not the City, was the employer for purposes of collective bargaining and that Local 21 had waived its right to demand City wages by having negotiated with the District beginning in 1995 or 1996 and agreeing to wage settlements thereafter.

At the PERB hearing in the present dispute, the District presented two witnesses, District Chief of Policy and Planning Myong Leigh (Leigh) and City Director of Budget and Analysis Todd Rydstrom (Rydstrom), to explain the funding sources of the respective governmental entities. Leigh noted the District's primary reliance on state funding because it is a revenue-limit district. The District "controls" only two percent of its total revenue, that is, unrestricted revenues generated mainly through rental income from its properties. The remainder must be spent in accordance with requirements imposed by the state. The California Department of Education reviews and approves the District's annual budget.

Rydstrom explained that the largest component of the City's revenue is generated through user fees and service charges, from such services as water, sewer, and airport operations, followed by property taxes. With the exception of a recent Charter amendment (Proposition H) calling for City funding to be redirected to the District and a historical payment of $71,000 to pay for District executive salaries, the City does not provide the District with any sources of unrestricted funding. The City also provides a minimal amount of in-kind professional services to the District, some on a fee-for-service basis and some gratis.

ALJ'S PROPOSED DECISION

The ALJ's proposed decision held that the binding interest arbitration provisions of Proposition B, as amended by Proposition F, were preempted by the impasse resolution procedures under EERA. The ALJ found that the stated purpose of EERA, to provide a uniform basis for managing employer-employee relations, demonstrated an intent to occupy the field with regard to impasse resolution procedures. The ALJ also reasoned that because the Legislature gave PERB exclusive initial jurisdiction over matters covered by EERA, EERA should prevail over contradictory local regulations. Because the ALJ determined that the Charter provisions were preempted by EERA with respect to District classified employees, he found that there was no unilateral change when the District refused to confer on District classified employees the wages determined through the City interest arbitration proceedings for City employees in the same classifications. The ALJ declined to apply the doctrine of laches to bar the unfair practice charge.

LOCAL 21'S EXCEPTIONS TO PROPOSED DECISION

Local 21's key contention in its statement of exceptions is that the ALJ erroneously found that EERA preempts the Charter provisions requiring binding interest arbitration.

In its supporting brief, Local 21 first argues that EERA does not preempt the Charter provisions because there are other Charter provisions in operation that regulate the wages and

benefits of District classified employees. Local 21 cites cases in which courts have upheld the power of the City electorate to adopt Charter provisions regulating the wages and benefits of District classified employees (including health insurance, vacation leave, retirement, and contracting out restrictions).

Second, Local 21 argues that Education Code section 45318 "confirms that SFUSD's classified employees are to continue to have the same civil service employment rights as other members of the City's civil service system." Section 45318 states that District employees shall be employed "pursuant to the provisions of [the charter providing for a merit system of employment] and shall, in all respects, be subject to, and have all rights granted by, those provisions. . . ."

Third, Local 21 argues that EERA expressly does not supersede employers' rules and regulations governing employer-employee relations. EERA section 3540 provides that

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

Local 21 cites a Court of Appeal decision holding that the MMBA did not preempt a charter provision requiring a prospective collective bargaining agreement on fringe benefits to be submitted to the electorate for approval in the form of an amendment. (United Public Employees v. City and County of San Francisco (1987) 190 Cal.App.3d 419 [235 Cal.Rptr. 477] (United Public Employees).) It argues that, by analogy, EERA does not preempt the charter provisions in this case.

Fourth, Local 21 argues that prior to the enactment of Proposition B, the salaries of District classified employees were fixed at the same levels as comparable City employees under the City's Salary Standardization Ordinance, and that the history of the initiative

indicates that the voters were led to believe that the rights under the prior system, including wage parity, would not be altered.

DISTRICT'S RESPONSE AND SOLE EXCEPTION

In response to Local 21's exceptions, the District supports the ALJ's reasoning and makes the following additional arguments.

First, the District argues that the fact that some employment benefits, such as vacation and retirement, are specified in the Charter, does not mean that interest arbitration applies to the District. The District asserts that under the "home rule" principle that applies to charter cities, local rules are controlling in matters of local concern, while state laws control matters of state-wide concern.[9] It argues that collective bargaining procedures are a matter of state-wide

[9]Under the "home rule" principle,

> A city which has adopted such 'home rule' amendments thereby gained exemption, with respect to its municipal affairs, from the 'conflict with general laws' restrictions of section 11 of article XI [of the state Constitution].
>
> As to matters which are of statewide concern, however, home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine).
> (Bishop v. City of San Jose (1969) 1 Cal.3d 56, 61-62 [81 Cal.Rptr. 465] (Bishop), citations omitted.)

With respect to the school system, the Court in Butterworth v. Boyd (1938) 12 Cal.2d 140, 152 (Butterworth) stated,

> The school system has been held to be a matter of general concern, rather than a municipal affair, and consequently is not committed to the exclusive control of local governments. But the cities may make local regulations beneficial to and in furtherance of the school system, provided that these provisions do not conflict with the general law.

concern, so that EERA controls. The District states that "courts have also distinguished between benefits themselves and process when it comes to determining whether a matter is of statewide versus local concern." The District asserts that binding interest arbitration provides for a dispute resolution process that is different than the impasse resolution procedure in EERA. Therefore, the District concludes that the process provided in EERA is a matter of statewide, rather than local, concern, and that EERA process preempts the Charter.

Second, the District argues that Education Code section 45318 applies only to merit system matters, which do not include wage setting and collective bargaining matters.

Third, the District argues that EERA's non-supersession clause in Section 3540 does not apply because Proposition B is not a rule or regulation of a public school employer.

Fourth, the District argues that because EERA provides for arbitration of grievances (secs. 3548.5 through 3548.8), and specifies other impasse procedures (mediation and fact-finding) for bargaining disputes, EERA cannot be interpreted to allow interest arbitration.

Fifth, the District asserts that the application of binding interest arbitration to District classified employees is not "authorized by state law," as required under Proposition B.

Sixth, the District argues that school districts have a Constitutional right to control their finances, and that submitting the wages of District employees to binding interest arbitration would contradict that right.

Additionally, the District excepts to the ALJ's decision not to apply the doctrine of laches to bar Local 21's charge. The District argues that Local 21 bargained with the District

---

The Court further stated that "[s]chool teachers are not employees of the city and county of San Francisco but of a school district, a governmental entity entirely separate from the city and county." (Id. at p. 156.)

In the City, the "charter 'represents the supreme law of the City and County of San Francisco, subject, of course, to conflicting provisions in the United States and California Constitutions, and to preemptive state law." (United Public Employees at p. 422.)

from 1994 to 2002 before filing an unfair practice charge, and that during that period, the District had no reason to participate in arbitration proceedings between the City and City employees. The District asserts that the arbitration proceedings between the City and its employees considered only the City's finances, not the District's finances, under the terms of Charter section A.8.409-4.

DISCUSSION

The key issue in this case is whether the ALJ correctly held that, with respect to District classified employees, EERA preempts the City Charter provision requiring binding interest arbitration of collective bargaining disputes, thus precluding Local 21's unfair practice charge alleging a unilateral change based upon the District's refusal to apply the Charter provision.

A public school employer is required to meet and negotiate in good faith with the exclusive representative of its employees concerning matters within the scope of representation. (Secs. 3540.1(h), 3543.5(c).) An employer's unilateral implementation of a change as to a negotiable subject, absent a valid defense, constitutes a per se violation of its duty to meet and negotiate in good faith. (Pajaro Valley Unified School District (1978) PERB Decision No. 51.) No finding of over-all subjective bad faith is required because such conduct, just like a flat refusal, necessarily obstructs bargaining and frustrates the objectives of the Act. (California State Employees' Assn. v. Public Employment Relations Bd. (1996) 51 Cal.App.4th 923, 934-935 [59 Cal.Rptr.2d 488], citing NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].)

The elements of a unilateral change violation are: (1) the employer breached or altered the parties' written agreement or its own established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change is not merely an isolated departure from the policy, but amounts to a change of policy, i.e., the change has a generalized effect or continuing impact on bargaining

unit members' terms and conditions of employment; and (4) the change in policy concerns a matter within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196.)

Applicability of Binding Interest Arbitration Provisions of City Charter (Amended By Propositions B and F) to District Employees

Propositions B and F amended section A.8.409 of the City Charter by replacing the City's Salary Standardization Ordinance,[10] which set salaries for all City and District employees, with the requirement that the City and District employees engage in collective bargaining over wages, hours, and other terms and conditions of employment. Propositions B and F also implemented a system of binding interest arbitration for resolving collective bargaining disputes.[11] Proposition B stated the following with regard to whether its provisions were applicable to District employees:

> These Sections 8.409 through 8.409-6, inclusive, shall apply to all miscellaneous officers and employees and including employees of San Francisco Unified School District and San Francisco Community College District to the extent authorized by state law.
> (Charter sec. A.8.409-1, CP Exh. 1, at p. 00002.)

The parties agree that the collective bargaining requirements of Propositions B and F apply to both City and District employees.[12] They disagree over whether the requirement of

---

[10]See 1932 City Charter, art. V.

[11]Charter section A.8.409-4(a) provides that disputes remaining after good faith bargaining between the City and a recognized employee organization shall be submitted to a three-member mediation/arbitration board, having representatives designated by the City and the employee organization.

[12]Supporting this interpretation, the voter information pamphlet accompanying Proposition B included a statement from the City Controller that

> The proposed Charter amendment allows employee unions representing approximately 24,000 City, School District and Community College miscellaneous (non-teaching) employees the option to either negotiate salaries, benefits and working

binding interest arbitration applies to District employees, or whether that Charter provision is preempted by EERA.

Local 21 argues that prior to the enactment of Proposition B, the salaries of District classified employees were fixed at the same levels as comparable City employees under the City's Salary Standardization Ordinance, and that the history of the initiative indicates that the voters were led to believe that the rights under the prior system, including wage parity, would not be altered.[13]

Because the collective bargaining provisions of Propositions B and F apply to the District, it is arguable that the voters intended the binding arbitration provisions to apply as well, subject to the limiting language "to the extent authorized by state law."[14]

> conditions, or to remain under existing formulae which set salaries by a survey of local employers and require voter approval to change benefits and working conditions. [Emphasis added.]

[13]Local 21 points to the City Attorney's summary regarding the removal of the Salary Standardization provisions, which stated,

> These provisions may be deleted because the City has very limited authority in these areas, and the subjects are governed by preemptive state law. None of the proposed changes would affect the substantive rights, powers and duties of these institutions.

While Local 21 focuses upon the sentence stating that the proposed changes would not affect the "substantive rights, powers and duties" of the school district, Local 21 ignores the accompanying sentence stating that "the City has very limited authority in these areas, and the subjects are governed by preemptive state law." Thus, we find Local 21's argument to be unpersuasive.

[14]In the prior decision in this matter (SFUSD), which reversed the Board agent's dismissal and remanded the case for issuance of a complaint, the Board stated the following:

> Here, the Board finds that Local 21 has, at a minimum, established some ambiguity as to the intent and meaning of Proposition B with respect to the role of the District in contract negotiations. Specifically, Proposition B states on its face that it applies to classified employees of the District 'to the extent authorized by state law.' It is unclear what this means. However, nothing in EERA prevents an employer and employee

The District asserts that, by its terms, Proposition B applies only to the extent "authorized by state law." The District argues that this requirement is not met for the application of binding interest arbitration to District classified employees, because no separate state law authorizes the use of binding interest arbitration for school employees.

The District further contends that EERA preempts the Charter's binding interest arbitration procedure with respect to District employees. As the District argues, EERA provides for arbitration of grievances (secs. 3548.5 through 3548.8), and specifies other impasse procedures (mediation and fact-finding) for bargaining disputes that directly conflict with the interest arbitration requirement of Propositions B and F.

As a remedy, Local 21 sought to have an award issued in the binding interest arbitration proceedings between the City and Local 21's City units in May and June 2001 apply to District employees in the same classifications. In the alternative, Local 21 argued in its post-hearing brief that the District should be ordered to resolve its bargaining dispute with Local 21's District unit by engaging in a separate binding interest arbitration with Local 21 on behalf of District employees. The District argued that the alternative remedy in Local 21's post-hearing brief should not be available because the remedy was not alleged in the original unfair practice charge.

The ALJ found that EERA preempts contrary local impasse resolution procedures, including the Charter's binding interest arbitration requirement.[15] The ALJ based his finding

---

> organization from agreeing to interest arbitration. Thus, there is a plausible argument that the District must submit disputes involving its classified employees to procedures provided by Proposition B. Whether this is in fact the case is an issue that the Board believes should be first addressed by an ALJ.

[15]Because the ALJ found that EERA preempts any contrary local impasse resolution procedures, the ALJ did not resolve the question of voter intent in passing Proposition B, or the meaning of the language in Proposition B stating that it would apply to District employees "to the extent authorized by state law."

of preemption upon analyses of (1) the California Constitution and case law holding that state law preempts local regulation by "home rule" cities, such as the City, with regard to matters of state-wide concern, and (2) the legislative purposes and provisions of EERA. The Board adopts the following preemption analysis from the ALJ's proposed decision:

> The local police power of a city or county is recognized in article XI, sections 6[16], 7[17], and 8[18] of the Constitution. Section 7 allows adoption and enforcement of local regulations "not in conflict with general laws." Sections 6 and 8 were amended following enactment of section 7 (formerly section 11) to give greater deference to charter cities under the "home rule" concept, which exempts such cities from the "conflict with general laws" restriction. [See Bishop at p. 61.] San Francisco is a charter city. As the Bishop case explains:
>
> As to matters which are of statewide concern, however, home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the

---

[16]Section 6 provides:

> (a) A county and all cities within it may consolidate as a charter city and county as provided by statute.
>
> (b) A charter city and county is a charter city and a charter county. Its charter city powers supersede conflicting charter county powers.

[17]Section 7 provides:

> Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws.

[18]Section 8 provides:

> (a) The Legislature may provide that counties perform municipal functions at the request of cities within them.
>
> (b) If provided by their respective charters, a county may agree with a city within it to assume and discharge specified municipal functions.

field to the exclusion of municipal regulation (the preemption doctrine). [Citations.]

As is made clear in the leading case of Pipoly v. Venson [(1942) 20 Cal.2d 366], local governments (whether chartered or not) do not lack the power, nor are they forbidden by the Constitution, to legislate upon matters which are not of a local nature, nor is the Legislature forbidden to legislate with respect to the local municipal affairs of a home rule municipality. Instead, in the event of conflict between the regulations of state and of local governments, or if the state legislation discloses an intent to preempt the field to the exclusion of local regulation, the question becomes one of predominance or superiority as between general state law on the one hand and the local regulations on the other. (Id. at pp. 61-62.)

There can be little dispute that the interest arbitration procedure conflicts with EERA's impasse procedure (mediation followed by factfinding). (Secs. 3548-3548.8.) The District presumably would be the only school district in the state controlled by an interest arbitration procedure for determining salaries of its employees, while all others with represented employees are required to proceed through the EERA impasse procedure. The interest arbitration procedure places wage-setting in the hands of a party other than the District governing board and allows a binding award of wages based on factors that potentially compromise the District's budgetary prerogatives and oversight. (See County of Riverside v. Superior Court (2003) 30 Cal.4th 278, 287 [132 Cal.Rptr.2d 713]; Bagley v. City of Manhattan Beach (1976) 18 Cal.3d 22 [132 Cal.Rptr. 668]; United Steelworkers of America v. Board of Education (1984) 162 Cal.App.3d 823 [209 Cal.Rptr. 16] [superseded by statute, Ed. Code, sec. 45113, subd. (e)]; Taylor v. Crane (1979) 24 Cal.3d 442, 452-453 [155 Cal.Rptr. 695]; see also Bd. of Education of Round Valley Unified School Dist. v. Round Valley Teachers Assn. (1996) 13 Cal.4th 269 [52 Cal.Rptr. 2d 115].)

At the same time, it is well settled that "creating uniform fair labor practices" and the "maintenance of stable employment relations" between public employees and their employers are matters of statewide concern. (Baggett v. Gates (1982) 32 Cal.3d 128, 139 [185 Cal.Rptr. 232]; Professional Fire Fighters, Inc. v. City of Los Angeles (1963) 60 Cal.2d 276, 293-294 [32 Cal.Rptr. 830].) This conclusion was extended specifically to the procedures for the resolution of bargaining disputes. (People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach (1984) 36 Cal.3d 591, 600, fn. 11 [205 Cal.Rptr. 794].)

County of Riverside v. Superior Court, supra, 30 Cal.4th 278, which struck down as violative of the Constitution the Legislature's requirement that local governments submit bargaining impasses to arbitration, distinguished between the right of the Legislature to regulate labor relations matters even if it impinges "to a limited extent" on the constitutional guarantees to local government, and regulation that deprives local government authority to determine wage rates to be paid its employees – only the latter being prohibited. (Id. at pp. 287-288, citing Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 296, 317 [152 Cal.Rptr. 903].) Significantly, by this reasoning the constitutionality of the EERA impasse procedure vis-à-vis the Charter is not at issue here.

The Legislature's intent to occupy the field to the exclusion of inconsistent local procedures for resolving bargaining disputes is evident in section 3540, which states that it is the purpose of the EERA 'to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California *by providing a uniform basis for recognizing the right of public employees* to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit. . . .' (Italics added.) (Cf. Evans v. San Francisco Unified School Dist. (1989) 209 Cal.App.3d 1478, 1485 [258 Cal.Rptr. 15] [further local amendments to the state civil service system not preempted; and citing Tri County Apartment Assn. v. City of Mountain View (1987) 196 Cal.App.3d 1283, 1295 [242 Cal.Rptr. 438] for propositions that preemption occurs when the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern, or the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action].) This preemptive intent is also expressed in the granting of initial exclusive jurisdiction to PERB, the quasi-judicial agency administering the EERA, to decide both unfair practice violations and representation issues arising under the Act. (Secs. 3542.3, 3541.5, 3544-3544; San Diego Teachers Assn. v. Superior Court (1979) 24 Cal.3d 1, 12 [154 Cal.Rptr. 893].) Such a scheme conflicts with local rulemaking intended to address local concerns.

The ALJ correctly found that the EERA preempts contrary local impasse resolution procedures. As stated in Whisman v. San Francisco Unified Sch. Dist. (1978) 86 Cal.App.3d 782, 789-90 [150 Cal.Rptr. 548], to the extent there is any inconsistency between state law and a city Charter with regard to a matter of state-wide concern, the former controls. The court stated, "The school system has been held to be a matter of general concern rather than a municipal affair. [Citations omitted.] Charter provisions, ordinances and regulations relating to schools are therefore subject to preemption by conflicting general laws." (Id. at p. 789.)

In this case, Local 21 and the District did not use the impasse resolution procedures under the EERA. Instead, Local 21 simply argues that the interest arbitration award for the City units should also apply to the District's classified employees. Alternatively, Local 21 argues that the District should be required to participate in binding interest arbitration, presumably without first exhausting bargaining and impasse resolution procedures under the EERA. Such a remedy or requirement would conflict with the EERA.

Parties may not waive the impasse procedures set forth under the EERA, either individually or by agreement. The impasse procedures under the EERA almost certainly were included in the EERA for the purpose of heading off strikes (see San Diego Teachers Assn. v. Superior Court (1979) 24 Cal.3d 1 [154 Cal.Rptr. 893]), so that the procedures were intended by the Legislature to protect the public from the disruption of public employee strikes by providing a method other than a work stoppage for resolving a deadlock in bargaining. Because the procedures were designed primarily for the benefit of the public, employers and employee organizations subject to the EERA cannot waive the EERA impasse procedures by agreement, or create contradictory impasse procedures by rule or regulation.

However, our decision does not preclude parties from using binding interest arbitration procedures that do not conflict with the EERA; i.e., procedures that supplement the impasse

resolution procedures under the EERA.[19] In the Board's prior decision in SFUSD, we stated, "[N]othing in EERA prevents an employer and employee organization from agreeing to interest arbitration." We modify that statement by clarifying that an employer and employee organization may agree to interest arbitration procedures that do not conflict with the procedures set forth in the EERA.

In this case, however, we find that the remedy sought by Local 21 would result in bypassing the impasse resolution procedures under the EERA. Therefore, we find that the charge must be dismissed.

Below, we discuss issues raised by Local 21's exceptions.

EERA's Supersession Clause

Local 21 argues that EERA expressly does not supersede employers' rules and regulations governing employer-employee relations. EERA section 3540 provides that

> This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering

[19]The State Supreme Court addressed the issue of binding interest arbitration in County of Riverside v. Superior Court (2003) 30 Cal.4th 278 [132 Cal.Rptr.2d 713]. In that case, the Court held unconstitutional a statute that would have required counties and other local agencies to submit certain economic issues that arise during negotiations with unions representing firefighters or law enforcement officers to binding arbitration. The Court held that the statute violated two provisions of article XI of the California Constitution: Section 1, subd. (b), which states that a county's "governing body shall provide for the . . . compensation . . . of employees"; and Section 11, subd. (a), which "forbids the Legislature to 'delegate to a private person or body power to . . . interfere with county or municipal corporation . . . money . . . or perform municipal functions.'" (Id. at p. 282.) However, the Court's decision did not invalidate all binding interest arbitration. The Court stated,

> we emphasize that the issue is not whether a county may *voluntarily* submit compensation issues to arbitration, i.e., whether the county may delegate its own authority, but whether the Legislature may *compel* a county to submit to arbitration *involuntarily*. The issue involves the division of authority between the state and the county, not what the county may itself do.
> (Id. at p. 284, italics in original.)

> employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.
> (Emphasis added.)

Local 21 argues that this section means that EERA does not supersede conflicting Charter provisions.

Case law indicates, however, that EERA section 3540 should be construed in a limited fashion. In Sonoma County Bd. of Education v. Public Employment Relations Bd. (1980) 102 Cal.App.3d 689 [163 Cal.Rptr. 464] (Sonoma), the Court of Appeal discussed whether a local board of education was required to negotiate over salaries to be paid to job classifications that were covered under the Education Code's merit system provisions. The court rejected the Board of Education's argument that the collective bargaining provisions of EERA were subordinate to the existing merit system rules. The court found that the "Legislature by clear implication included the subject matter of 'compensation [or wages] within classification' within the 'scope of representation,'" thus indicating that bargaining under EERA was required, subject to limitations imposed by the Education Code. (Sonoma at pp. 700-701.) Although the issue before the court involved the interaction between the Education Code and EERA, the court also stated that EERA was intended to "prevail over conflicting enactments and rules and regulations of the public school merit or civil service system relating to the matter of wages or compensation of its classified service." (Id. at p. 702.) The court reasoned,

> However, following the 1975 Rodda [EERA] enactment providing that merit or civil service system rules may not conflict with lawful collective bargaining agreements (see Gov. Code sec. 3540, *post*), the Legislature amended a related statute requiring that the rules with respect to identified bargaining matters be consistent with the "negotiated agreement." (Sec. 45261, subd. (b).)
> (Id. at p. 697.)

Based upon EERA section 3540 and Education Code section 45261(b), the court found that the Legislature intended to require parties to bargain over compensation despite the existence of related merit system rules.

Moreover, the courts have construed a similar non-supersession provision in the MMBA narrowly. Section 3500 of the MMBA states,

> Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations. . . .

Like Section 3540 of EERA, Section 3500 of the MMBA provides that the statute does not supersede employers' rules providing other methods of administering employer-employee relations. In Los Angeles County Civil Service Comm. v. Superior Court (1978) 23 Cal.3d 55 [151 Cal.Rptr. 547] (Los Angeles County Civil Service Comm.), the California Supreme Court stated that Section 3500 "reserves to local agencies the right to pass ordinances and promulgate regulations consistent with the purposes of the MMBA. To extend a broader insulation from MMBA's requirements would allow local rules to undercut the minimum rights that the MMBA guarantees." (Id. at p. 63, emphasis added.) The Supreme Court cited with approval two Court of Appeal decisions.

First, in Huntington Beach Police Officers' Assn. v. City of Huntington Beach (1976) 58 Cal.App.3d 492 [129 Cal.Rptr. 893] (City of Huntington Beach), the court held that a charter city's implementation of a change in the work-week without meeting and conferring violated the MMBA. Citing MMBA section 3500, the court stated,

> Although the legislature did not intend to preempt all aspects of labor relations in the public sector, [fn. omitted] we cannot attribute to it an intention to permit local entities to adopt regulations which would frustrate the declared policies and purposes of the MMB Act. Were we to uphold the city's

> regulation in question, local entities would, as Professor Grodin observed, be "free to adopt rules prohibiting employees from joining unions, to decline recognition to any organization, and to refuse to meet or confer with recognized organizations on matters pertaining to employment relations – in short, to undercut the very purposes which the act purports to serve. Such an interpretation is inconsistent with the general objectives of the statute as declared in the preamble and with the mandatory language which appears in many of the sections." (Grodin, Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts (1972) 23 Hastings L.J. 719, 724-725.) In the words of Professor Grodin, the power reserved to local agencies to adopt rules and regulations was intended to permit supplementary local regulations which are "consistent with, and effectuate the declared purposes of, the statute as a whole." (Grodin, supra, at p. 725.)
> (City of Huntington Beach at pp. 501-02, emphasis added.)

Second, in Los Angeles County Firefighters Local 1014 v. City of Monrovia (1972) 24 Cal.App.3d 289 [101 Cal.Rptr. 78] (City of Monrovia), the court found that MMBA section 3500 did not exempt the city from the application of the MMBA. The court reasoned,

> If the city's argument had merit, every public agency would be exempted; no agency can operate without some employer-employees rules and policies. Surely the Legislature had no intent to exempt from the law those public agencies having arbitrary and unreasonable rules and regulations. . . .
>
> It appears from our examination of the entire act that the Legislature intended by it to set forth reasonable, proper and necessary principles which public agencies must follow in their rules and regulations for administering their employer-employee relations, including therein specific provisions for the right of public employees, as individuals and as members of organizations of their own choice, to negotiate on equal footing with other employees and employee organizations, without discrimination; that the Legislature did not intend thereby to preempt the field of public employer-employee relations except where public agencies do not provide reasonable 'methods of administering employer-employee relations through . . . uniform and orderly methods of communication between employees and the public agencies by which they are employed. . . .
> (City of Monrovia at pp. 294-295, emphasis added.)

The court found that the city policy in that case did not meet the MMBA's reasonableness standard, and that the MMBA therefore preempted the city policy.

Furthermore, because the MMBA explicitly provides for local agencies to adopt reasonable rules and regulations governing employer-employee relations (MMBA sec. 3507), whereas EERA does not provide for such local regulation, the argument in favor of preemption of local rules by EERA is even stronger than under the MMBA.[20]

In this case, allowing the City to replace EERA's impasse resolution provisions with the Charter's binding interest arbitration provisions would undermine the purpose of EERA of "providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers. . . ." (EERA sec. 3540.) The fact that the Legislature gave PERB exclusive initial jurisdiction over matters covered by EERA, as the ALJ noted, indicates a legislative intent for uniform state-wide standards to apply to such matters. As stated in Los Angeles County Civil Service Comm., local regulation should not be allowed to "undercut the minimum rights" guaranteed by statute. Thus, while Section 3540 should be read to allow local regulations that supplement EERA's statutory scheme, or do not conflict with the purposes of EERA, we agree with the ALJ that Section 3540 does not allow

[20]In City and County of San Francisco (2007) PERB Decision No. 1890-M, the Board held that the binding interest arbitration provision of the City Charter was not an unreasonable regulation under the MMBA. We note that case is distinguishable because the issue there was whether the provision was a "reasonable" regulation under the MMBA. The MMBA specifically authorizes local governments to enact reasonable regulations governing employer-employee relations, including "[a]dditional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment." (MMBA sec. 3507(a)(5).) Thus, the Board found that the MMBA, which contains an impasse provision allowing the employer to implement its last, best, and final offer upon impasse, did not preempt the Charter's impasse arbitration provision. EERA is distinguishable because it contains no provision authorizing the use of local rules or regulations such as the interest arbitration provision in the City Charter.

the District or City to enact a Charter provision with impasse resolution procedures that contradict those found in EERA.

Note that this standard would differ from the standard governing the supersession of EERA by provisions of the Education Code under section 3540. Based upon the statement in Section 3540 that EERA does not supersede "other provisions of the Education Code," PERB and the courts have held that conflicting provisions of the Education Code will prohibit collective bargaining under EERA where "provisions of the Education Code would be 'replaced, set aside or annulled by the language of the proposed contract clause.'" (San Mateo City School Dist. v. Public Employment Relations Bd. (1983) 33 Cal.3d 850, 864 [191 Cal.Rptr. 800], citing Healdsburg Union High School District and Healdsburg Union School District (1980) PERB Decision No. 132.) Additionally, "'Unless the statutory language [of the Education Code] clearly evidences an intent to set an inflexible standard or insure immutable provisions, the negotiability of a proposal should not be precluded.'" (Id. at pp. 864-865.) The Board has held that there are also subjects, such as layoff of classified employees, and the causes and procedures leading to disciplinary action, for which the Education Code has "fully occupied the field" such that collective negotiations on these subjects are prohibited. (Id. at p. 866.) Because the Education Code is state-wide law, while the Charter provisions at issue are local law, and EERA has a stated purpose for providing a "uniform basis" of collective bargaining rights, the Board finds that it is reasonable to adopt a different preemption standard for local rules and regulations. As stated in Los Angeles County Civil Service Commission, it would not make sense to allow local employers to adopt regulations that exempt themselves from the requirements of the statute.

Local 21 cites a Court of Appeal decision holding that the MMBA did not preempt a Charter provision requiring a prospective collective bargaining agreement on fringe benefits to be submitted to the electorate for approval in the form of an amendment. (United Public Employees.) In that case, the court stated that the procedure by which compensation is determined is subject to the MMBA, rather than the City Charter. However, the court found that the meet-and-confer requirements of the MMBA did not conflict with the requirement in the Charter for Charter amendments to be submitted to the voters for approval. Because the court in United Public Employees found that the MMBA did not conflict with the procedures in the charter, it is distinguishable from the present case.

> The MMBA does not prescribe the manner in which an agreement between a local government and an employee organization should be put into effect – in fact, it is silent as to what occurs after a nonbinding memorandum of understanding is submitted to the governing body "for determination." [Citation omitted.] Nothing in the express language of the MMBA prevents the voters of a charter city, such as San Francisco, from adopting a charter provision requiring voter approval of any "addition, deletion or modification" of city employee benefits. (S.F. charter, sec. 8.407.)
> (United Public Employees at p. 423.)

The court in United Public Employees cited People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach (1984) 36 Cal.3d 591 [205 Cal.Rptr. 794] (Seal Beach), in which the California Supreme Court held that the MMBA's meet-and-confer requirements were compatible with the charter city council's constitutional power to propose charter amendments, and that therefore the city must meet and confer with representatives of city employees before proposing amendments to the charter that affected the employees' terms and conditions of employment. Thus, the United Public Employees decision does not govern the situation at issue in the present case, in which the Charter provisions directly conflict with procedures specified by EERA.

Therefore, the Board finds that despite the non-supersession clause in EERA section 3540, EERA preempts the Charter provision at issue in this case.

Education Code Section 45318

Local 21 argues that Education Code section 45318 "confirms that SFUSD's classified employees are to continue to have the same civil service employment rights as other members of the City's civil service system." Section 45318 states that District employees shall be employed "pursuant to the provisions of [the Charter providing for a merit system of employment] and shall, in all respects, be subject to, and have all rights granted by, those provisions. . . ." As the Board stated in SFUSD "[t]hus, under Education Code section 45318, it appears that the District's non-certificated employees, commonly referred to as 'classified employees,' are subject to the City charter's merit system provisions." (Id. at p. 3.) However, civil service employment rights do not include the right to binding interest arbitration of collective bargaining disputes.

Civil service system rights do not encompass the amount of wages or benefits, or collective bargaining procedures. This is explained in Pacific Legal Foundation v. Brown (1981) 29 Cal.3d 168 [172 Cal.Rptr. 487], which held that the State Employer-Employee Relations Act (SEERA), Cal. Gov. Code section 3512 et seq., did not conflict with the merit principle of civil service employment established by Article VII of the California Constitution. The Court found that the purpose of the civil service system is to establish "the principle that appointments and promotions in state service be made solely on the basis of merit," rather than on a politically partisan basis. (Id. at pp. 183-184.) The Court stated that "although the power to classify positions has frequently been lodged in civil service commissions or personnel boards, the actual authority to set salaries has traditionally been viewed as a legislative function, with ultimate authority residing in the legislative body." (Id. at p. 188.) Furthermore, the Court stated,

> Thus, as we have seen, past judicial, legislative and administrative pronouncements and practice all refute petitioners' contention that the State Personnel Board's constitutional authority to prescribe classifications carries with it the constitutional authority to set salaries.
> (Id. at p. 192.)

Because the civil service system does not encompass the setting of salaries, benefits, or collective bargaining procedures, the Board finds that the civil service system rights guaranteed under Education Code section 45318 do not include matters such as the interest arbitration provision of the City Charter.

Charter Provisions Regulating Wages and Benefits

Local 21 argues that because the Charter contains operational provisions regulating wages and benefits of District employees, the Charter provision requiring binding interest arbitration should apply to District employees. However, the fact that the Charter contains provisions regulating the wages and benefits of District employees does not mean that the Charter preempts EERA collective bargaining process. As the District argued, courts have distinguished between local regulation of substantive benefits, and local regulations of procedure, with the former subject to local control, while the latter is preempted by applicable state-wide law. The court in United Public Employees stated,

> The California Constitution . . . grants charter cities the direct power to determine the compensation of their officers and employees. (Cal. Const., art. XI, sec. 5, subds. (a) and (b).) However, while the amount of compensation is considered strictly a local affair and not preempted by the general law (Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 296, 317 [152 Cal.Rptr. 903, 591 P.2d 1]), the procedure by which such compensation is determined is subject to the provisions of the MMBA. [Seal Beach at pp. 596-601.] In this regard, however, statutory enactments such as the MMBA should be construed, if possible, to avoid conflict with city charters. (Building Material & Construction Teamsters' Union, Local 216 v. Farrell (1986) 41 Cal.3d 651, 665 [224 Cal.Rptr. 688, 715 P.2d 648]; [Seal Beach at pp. 596-601].)
> (United Public Employees at pp. 422-423.)

The fact that the Charter contains provisions governing the substantive benefits of District employees is consistent with the principle that such benefits are a matter of local concern. On the other hand, local procedures, such as the impasse resolution procedures at issue here, however, are subject to preemption by a conflicting state law.

Moreover, the cases cited by Local 21 are inapposite. First, Local 21 cites Butterworth, which enforced City Charter amendments that established a health service system for the provision of health services for City employees. The Court in Butterworth stated that wages and benefits, including compensation of a municipal officer or employee, a pension or retirement system for municipal employees, sick leave pay, and removal of municipal officers, have been held to be municipal affairs. (Id. at p. 148.) The Court stated that "There can be no question, under these authorities, of the power of the city to establish a system of medical service for its employees or their dependents." (Id. at p. 148.) This case, however, was decided before the enactment of any collective bargaining statutes. Additionally, it addressed substantive benefits, which, under the authorities cited earlier, are subject to local control.

Second, Local 21 cites Service Employees Internat. Union v. Board of Supervisors (1986) 180 Cal.App.3d 1179 [226 Cal.Rptr. 52]. That case held that the City "cannot by ordinance award vacation with pay at a rate different than that afforded by the charter." (Id. at p. 1184.) Although the case indicates that the City Charter sets the rate of vacation pay, the holding of the case has nothing to do with the relationship between the Charter and collective bargaining rights. It simply holds that the City Charter prevails over a contradictory City ordinance.

Third, Local 21 cites an unpublished Court of Appeal decision, which the Board does not find persuasive.

Therefore, the Board finds that the fact that the Charter includes provisions for employment benefits that are applicable to District employees does not undermine the conclusion that EERA preempts contrary Charter provisions providing for collective bargaining procedures.

Laches

Having found that EERA preempts the City Charter's binding interest arbitration provisions in this case, the Board does not reach the District's exception based upon the doctrine of laches.

CONCLUSION

Consistent with the discussion above, the Board affirms the ALJ's finding that EERA preempts the Charter's binding interest arbitration provisions in this case. Accordingly, the Board affirms the ALJ's finding that the District did not commit an unlawful unilateral change by refusing to participate in binding interest arbitration, or by refusing to confer on its employees wages determined through the City interest arbitration proceedings for the same classifications, and therefore did not violate EERA section 3543.5(a), (b) or (c).

ORDER

The complaint and underlying unfair practice charge in Case No. SF-CE-2282-E are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Wesley joined in this Decision.