Case No. S177403

IN THE

SUPREME COURT OF CALIFORNIA

UNITED TEACHERS LOS ANGELES,

Plaintiff and Appellant,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Defendant and Respondent.

After a Decision by the Court of Appeal,
Second Appellate District, Division 5
Case No. 2nd Civil No. B214119

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Code of Civil Procedure ("CCP") Section 1281.2 establishes the legal framework for a successful motion to compel arbitration. This very clear and simple statute is at the heart of this case. CCP Section 1281.2 requires only two things: (1) that a written agreement to arbitrate exists; and (2) that one party has refused to arbitrate a dispute. *Id.* There has never been any dispute throughout the litigation and appeal of this case as to these two issues. Petitioner Los Angeles Unified School District ("District") is a party to a collective bargaining agreement ("Agreement") with Answering Party United Teachers Los Angeles ("UTLA"). The Agreement has an arbitration clause in it. UTLA brought a grievance against the District, which the District has refused to arbitrate.

The District would have the Court believe that this is a case about the future of charter schools in the state. This is all fluff and bluster with little relation to the discussion of legal issues before the Court. Peeling back the factual distortions and overblown rhetoric, the District's own legal analysis shows that this is a simple case about whether two parties with an agreement to arbitrate their disputes should honor that agreement. The simplicity of CCP Section 1281.2 and the overwhelming public policy in favor of arbitrating disputes have established a complete uniformity in the

law compelling parties to arbitrate their disputes when, as in this case, the two prongs of CCP Section 1281.2 are met.

BACKGROUND

A. The Collective Bargaining Relationship Between UTLA And The District

UTLA represents certain certificated employees of the District and is a labor organization within the meaning of the Education Employment Relations Act ("EERA"). Government Code Section 3540 states the purpose of EERA as follows:

> "It is the purpose of [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 school 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, and to afford certificated employees a voice in the formulation of educational policy."

Pursuant to EERA, UTLA and the District are parties to an Agreement containing provisions covering the wages, hours, and other terms and conditions of employment for teachers and classroom support personnel.

B. The Parties' Agreement Contains A Grievance Procedure Whose Final Step Is Binding Arbitration

Article V of the Agreement contains a multi-step grievance procedure to resolve disputes that arise under its terms. (Joint Appendix ("JA") 51, 53-59.) The procedure begins with informal discussions followed by the filing of a formal grievance. If the two parties cannot resolve the formal grievance, UTLA can then request arbitration. According to Article V, once requested by UTLA, arbitration of a grievance is compulsory upon the District, and the arbitrator's decision is final and binding on both parties. (JA 53-59.)

The grievance underlying the instant case was based on Article XII-B of the Agreement, which requests the exchange of certain information between UTLA and the District when a proposal is made for the conversion of a school to charter status.[1] (JA 68.) After failing to resolve the dispute,

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[1] In contrast to District assertion, Article XII-B does not affect the requirements stated in the Education Code for charter school conversion nor does it affect approval or denial of a charter. The collective bargaining

UTLA requested arbitration, which the District refused. (JA 52, 71.) None of these facts have ever been disputed by the District.

LEGAL DISCUSSION

A. CCP Section 1281.2 Governs Motions To Compel Arbitration

The EERA authorizes a party to a collective bargaining agreement to compel arbitration pursuant to CCP Section 1281.2 when that party is aggrieved by the refusal of the other party to abide by a bona fide agreement to arbitrate grievances. (Cal. Gov. Code § 3548.7.)

1. CCP Section 1281.2 Establishes A Simple Framework To Compel Arbitration

Pursuant to CCP Section 1281.2, upon one party's petition, a Court shall compel parties to arbitration where there is a bona fide agreement to arbitrate disputes, and the other party to that agreement has refused to arbitrate. The code allows for only three exceptions to this compulsory law: (1) the petitioner has waived arbitration; (2) grounds exist to revoke the agreement; or (3) a party to the arbitration agreement is also a party to a pending matter with a third party and there is a possibility of conflicting

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agreement must replace, set aside, or annul a statute in order to be found in conflict. (*Bd. of Ed. of the Round Valley Unified Sch. Dist. v. Round Valley Teachers Ass'n* (1996) 13 Cal.4th 269, 285.) There is no such conflict in this case.

rulings. CCP § 1281.2. (*See Cal. Corr. Peace Officers v. State of Cal.* (2006) 142 Cal.App.4th 198; *Amalgamated Transit Union Local 1277 v. Los Angeles County Metro. Transp. Auth.* (2003) 107 Cal.App.4th 673.) None of these three exceptions exist in the instant case, nor have they ever been alleged by the District.

When evaluating petitions to compel under CCP Section 1281.2, a trial court's role is narrowed to simply determining whether the party seeking arbitration has a grievance that is on its face governed by the contract. (*Amalgamated Transit Union*, 107 Cal.App.4th at 686.) There is no reason for a court to look beyond the four corners of the grievance and the contract. (*See id.*) The Code of Civil Procedure also limits the trial court to determine the existence of an arbitration agreement, a refusal to arbitrate, and the existence of an exception. (CCP § 1281.2.) No outside considerations should be made by the trial court. (*Id.*)

2. The Exacting Construction of CCP Section 1281.2 Demonstrates The Prevailing Presumption In Favor Of Arbitration

As discussed in the Opinion by the Court of Appeals in this case, California has a longstanding and overwhelming case history of favoring the arbitration of disputes when there is a valid agreement to arbitrate.

(Opinion ("Op.") 7-8.) The Court of Appeal in *California Correctional Peace Officers Association v. State of California* (2006) 142 Cal.App.4th 198, instructed, "In determining whether a matter is subject to arbitration courts apply the presumption in favor of arbitration...Doubts as to whether an arbitration clause applies to a particular dispute are to be resolved in favor of sending the parties to arbitration." (*Id.* at 205.) (*See also Cronus Investment, Inc. v. Concierge Services*, (2005) 35 Cal.4th 376, 386.)

In *United Firefighters of Los Angeles v. City of Los Angeles* (1991) 231 Cal.App.3d 1576, the Court of Appeal extolled the public policy in favor of arbitration specifically in the context of labor disputes: "The public policy of this state favors arbitration because it provides a means for the peaceful resolution of labor disputes and the promotion of industrial stabilization. Arbitration quickly and inexpensively resolves employment controversies and eases the burdens on the judiciary. By indulging in every intendment to give effect to arbitration proceedings, the courts advance the goal of the peaceful resolution of employment disputes." (*Id.* at 1583 (internal citations omitted).)

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B. The Strong Public Policy In Favor Of Arbitration Has Created A Uniform Case Law Directing Statutory Arguments To Be Heard By Arbitrators Before Reaching The Courts

1. Statutory Claims Are Heard By Arbitrators Because Of Their Expertise And To Further Good Public Policy Favoring Arbitration

Both federal courts and California courts have upheld the expertise of arbitrators to resolve matters involving statutory claims and the interpretation of statues. (*Peace Officers*, 142 Cal.App.4th at 208-9). Especially in the context of labor disputes where an agreement to arbitrate exists between two parties, arbitration is used as a means of healing a disruptive relationship between union and management. (*Id.* at 210.) Even in cases where the subject of arbitration could interfere with statute, arbitration is favored because of its ability to resolve questions regarding the merits of the dispute while also having the therapeutic value of airing a grievance for the parties involved.[2] (*Id.*).

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[2] Petitioner cites *Fontana Teachers Association v. Fontana Unified School District* (1988) 201 Cal.App.3d 1517, to support its claim that submitting a grievance to arbitration is a "pointless act." (Petitioner's Brief 11). This quote is taken out of context. Arbitration was deemed a "pointless act" because the underlying grievance sought arbitration for reinstatement of a probationary employee where the collective bargaining agreement did not require submission of such disputes to arbitration.

2. Even If A Collective Bargaining Agreement May Conflict With Statute, Probabilistic Conflict Is A Doubt Which Favors Resolution By Arbitration

As explained by the Court of Appeals, *Peace Officers* is instructive as it presents a similar situation to this case. (Op. 9.) In *Peace Officers*, the employer argued that statute preempted a collective bargaining agreement, thereby nullifying the union's petition to compel arbitration. The Court of Appeals in *Peace Officers* granted the order to compel arbitration reasoning that given all of the policy reasons in favor of arbitration compared to the conjectural nature of claims that a collective bargaining agreement might somehow interfere with a statute, arbitrators may be presented with issues of statutory interpretation and are entitled to resolve those issues at the first instance. (*Id.*) (*See also* Op. 9.) Judicial action barring arbitration based on potential conflicts between a possible award and statute would be premature and deny the parties' rights of arbitration.

The Court of Appeals in *Peace Officers* also confirmed the narrow questions a trial court faces when evaluating petitions to compel arbitration according to CCP Section 1281.2 stating, "There is no statutory exception for arbitrations presenting issues of statutory construction. (*Id.* at 211.)

The District cites the inapposite *Board of Education of the Round*

Valley Unified School District v. Round Valley Teachers Association, (1996) 13 Cal.4th 269, to support its contention that when a collective bargaining agreement conflicts with statute, then a motion to compel arbitration should be denied.[3] The holding made by this Court in *Round Valley* fashions no such rule. This Court held that where an arbitration award forces implementation of a collective bargaining agreement that conflicts with statute, the arbitration award can be reviewed and annulled based on preemption. (*Id.* at 288-89.) (*See also* Op. 11-12.) As noted by the Court of Appeals in this case, the *Round Valley* opinion "does not address the issue of nor hold that the statutory defense was not subject, in the first instance, to arbitration." (Op. 12.) "Rather, it ruled that the Education Code provisions represented an 'explicit legislative expression of public policy' permitting review of the arbitrators award to ensure that it did not contravene public policy.'" (Op. 12-13 (quoting *Peace Officers* at 209 (citations omitted in Op.)).)

The facts in the *Round Valley* case demonstrate the consistency in

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[3] The District also cites *United Steelworkers of America v. Board of Education of Fontana* (1984) 162 Cal.App.3d 823. This case is likewise inapposite as it makes no consideration of the public policy favoring arbitration. Cases post-dating *United Steelworkers* offer the public policy favoring arbitration due deference. (*See Peace Officers* (2006) Cal.App.4th 198; *Round Valley* (1996) 13 Cal.4th 269.)

the law favoring arbitration of statutory issues at the first instance. Prior to reaching its holding in *Round Valley*, this Court paid special deference to the public policy favoring arbitration. (*Round Valley* at 275.) Reserving judicial review as a post-arbitration remedy supports this public policy. Furthermore, as applied to this case, allowing post-arbitration review of an award preserves–but only if needed–the ability of the District to remedy any possible inconsistency that an arbitration award might have with statute.

Such a scenario is unlikely. The Court of Appeals explained, "[T]he arbitrator may decide that the district did not violate the collective bargaining agreement. Or the arbitrator may issue an award that has nothing to do with the charter school petition but only reaches issues such as the adequacy of notice and its effect on union members who will not be involved in the charter school operation." (Op. 13 (including parts from modified opinion).)

However, as dictated by public policy and supported by law, where a valid arbitration agreement exists, the arbitrator should be trusted at the first instance to make a decision that does not conflict with statute. The public policy favoring arbitration has created a uniform and consistent body of law.

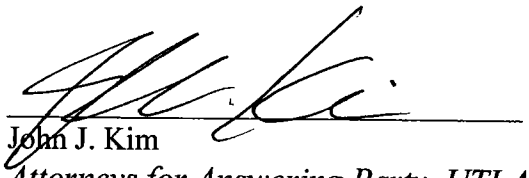
CONCLUSION

For the reasons stated, UTLA respectfully requests this Court to deny the District's petition.

Dated: November 13, 2009

Respectfully submitted,

HOLGUIN, GARFIELD & MARTINEZ



John J. Kim
Attorneys for Answering Party, UTLA

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, Appellant's Answer to Petition for Review was produced using 13-point Roman type including footnotes and does not exceed 8,400 words and contains approximately 2,220 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this Answer.

Dated: November 13, 2009

HOLGUIN, GARFIELD & MARTINEZ

John J. Kim
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is 800 West Sixth Street, Suite 950, Los Angeles, CA 90017.

On **November 13, 2009**, I served the foregoing document(s) described as **ANSWER TO PETITION FOR REVIEW** on interested parties in this action by placing true copies thereof enclosed in a sealed envelope as follows:

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Hon. Mary Ann Murphy
Department 25
Los Angeles Superior Court
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Los Angeles, CA 90012

(X) **(By U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I will deposit such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Los Angeles, California today.

( ) **BY PERSONAL SERVICE:** I caused the attorney service employed by this firm, First Class Attorney Service, 111 W. 6th St., Los Angeles, CA 90017, to hand carry the foregoing documents to the address listed in the Service List. (A proof of service signed by the authorized courier will be filed forthwith.)

(X) **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 13, 2009, at Los Angeles, California.

Elizabeth White

Elizabeth White