Case No. S177403

In the
Supreme Court
of the
State of California

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Appellant,

vs.

UNITED TEACHERS LOS ANGELES,

Respondent.

APPEAL FROM THE COURT OF APPEALS, CASE NO. B214119
SECOND APPELLATE DISTRICT, DIVISION ONE

BRIEF OF RESPONDENT UNITED TEACHERS LOS ANGELES

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INTRODUCTION

United Teachers Los Angeles ("UTLA") is the exclusive bargaining representative of certificated teachers and other employees of the Los Angeles Unified School District ("District" or "LAUSD"). UTLA and the District are parties to a collective bargaining agreement ("Agreement") containing a multi-step grievance procedure whose ultimate step is final and binding arbitration.

This matter comes before the Supreme Court because UTLA filed a grievance against the District for violating the terms of the Agreement related to providing information regarding a possible conversion of a LAUSD school to charter status. UTLA advanced the grievance to the final step of the agreed upon grievance procedure in the Agreement, but the District refused to arbitrate the dispute. UTLA then filed a Petition to Compel Arbitration.

Code of Civil Procedure ("CCP") Section 1281.2 sets forth a very simple test regarding the granting of a petition to compel arbitration. It consists of two questions: (1) is there an agreement to arbitrate, and (2) has one side refused to arbitrate. The answer to both of these questions in the present case is yes. The District made a promise to arbitrate grievances based on the Agreement, which it then refused to honor.

The Superior Court denied the petition to compel citing a statutory conflict between the Agreement and the Education Code. The Court of Appeals reversed the lower court's order, holding that as a matter of law, where a valid agreement to arbitrate exists, the court should order arbitration. The Court of Appeals explained that potential statutory conflicts like the one considered by the trial court can be resolved by the arbitrator or raised in the post-arbitration context.

The District appealed to this Court.

ISSUE PRESENTED

(1) Where a bona fide agreement to arbitrate disputes governed by a contract exists between two parties and one side refuses to arbitrate a dispute based on that contract, does CCP 1281.2 compel arbitration of that dispute?

PROCEDURAL HISTORY

Pursuant to CCP Section 1281.2, UTLA filed a Petition to Compel Arbitration against the District based on the mutually agreed grievance procedure in the Agreement. The underlying grievance sought enforcement of Sections 2.0 and 3.0 of Article XII-B of the Agreement. The Petition and its supporting documents were filed on May 9, 2008. Joint Appendix ("JA") 8-71. The District filed its Opposition and supporting papers on

May 30, 2008. JA 72-156.

The Petition was not heard in the Superior Court until November 12, 2008. JA 1-7, 250-59. The Superior Court entered a Minute Order denying the Petition that same day (JA 260), and Respondent filed its Notice of Entry of Order Denying the Petition on December 12, 2008 (JA 261). The Notice of Entry of Order overstepped the scope of the underlying grievance by invalidating Article XII-B of the Agreement in its entirety, despite having only Sections 2.0 and 3.0 under review[1].

UTLA filed its Notice of Appeal on February 13, 2009. JA 267. Both UTLA and the District filed supporting briefs with the Court of Appeals. In addition, the District filed a request for the Court of Appeals to judicially notice two documents: (1) portions of the Agreement that were not part of the record, and (2) a report on the legislative history of the Charter Schools Act. On September 4, 2009, the Court of Appeals issued a minute order denying the District's request for judicial notice. The Court of Appeals ruled that the portions of the Agreement were irrelevant and that arguments regarding potential statutory conflicts with the Agreement should be placed before an arbitrator.

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[1] Article XII-B covers a wide variety subjects relating to employer-employee relations between the District and members of UTLA, none of which were covered in the grievance. JA 60-67.

On September 17, 2009, the Court of Appeals issued its opinion reversing the trial court's order denying the Petition to Compel Arbitration. In rendering its decision, the Court of Appeals noted the overwhelming public policy that favors the arbitration of grievances where there is a bona fide agreement to arbitrate, particularly in the context of employee-employer relations. The Court of Appeals emphasized the ability of arbitrators to consider the merits of a defense to the grievance – that the collective bargaining agreement is in conflict with a statute – while still reserving the right of courts to review an arbitrator's award for possible conflicts with public policy.

The District petitioned for Supreme Court review. This Court granted review on December 23, 2009.

STATEMENT OF FACTS

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 Educational Employment Relations Act ("EERA"), the comprehensive state law intended to promote employee-employer relations in California public schools. Cal. Govt. Code §§ 3540 et. seq. JA 50. Government Code Section 3540 states the purpose of the 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 the EERA, UTLA and the District are parties to a collective bargaining agreement containing provisions covering the wages, hours, and other terms and conditions of employment for teachers and certificated classroom support personnel employed by the District. JA 51. The Agreement at issue in the underlying dispute covered the period commencing July 1, 2006 through June 30, 2009. *Id.*

B. The Agreement Requires The District To Disclose Certain Information To UTLA When There Is A Petition to Convert a District School to Charter Status.

As defined by statute, a "conversion" charter school is an existing

District-run public school that converts to charter school status. Conversion requires the signatures of not less than 50 percent of the permanent teachers at the school being converted. Educ. Code § 47605(a)(2). UTLA represents all permanent teachers employed at District-run schools.

Article XII-B of the Agreement contains specific procedures intended to guarantee rights to employees of District schools that may be converted to charter schools status. JA 51, 60-67. As stated, the purpose of Article XII-B is to "mitigate the potentially disruptive effect" of the conversion process on school employees. *Id.* It does not regulate the charter petition process for charter applicants who wish to have their applications approved by the District. That entire process is regulated by statute and is solely between the charter applicant and the District, as discussed *infra*. Rather, Article XII-B implements procedures between UTLA and the District meant to maintain meaningful dialogue regarding the future of the school between the school's employees and the District.

Specifically, Section 2.0 of Article XII-B obligates the District to do the following: (a) urge the chartering applicants to present the complete proposed charter to employees at the school such that the District employees will be given ample time to review and discuss the charter petition; (b) urge employee proponents who are considering a charter in

order to be exempt from State or District rules or policies to discuss options with District staff and UTLA; (c) forward a copy of a proposed charter petition to UTLA within five days of receipt from a chartering applicant; and (d) encourage chartering applicants to disclose planned terms and conditions of employment at the prospective charter school to UTLA and the District. JA 60-61. Section 3.0 goes into greater detail regarding those disclosures that the chartering applicants are urged to make when submitting their charters. JA 62-63.

The remainder of Article XII-B contains other provisions relating to District employees and charter schools. These include transfer rights of employees who wish to remain working in the District and the ability of District employees to take unpaid leave in order to work at a charter school. JA 60-67.

C. The Agreement's Grievance Procedure Requires Final And Binding Arbitration Of Disputes That Cannot Be Resolved Informally By The Parties

Article V of the Agreement contains a multi-step grievance procedure to resolve disputes that arise under its terms. JA 51, 53-59.. The Agreement defines a grievance as, "a claim that the District has violated an express term of this Agreement and that by reason of such violation the grievant's rights under this Agreement have been adversely affected." JA

53.

The procedure begins with informal discussions followed by the filing of a formal grievance. If the two parties cannot resolve the formal grievance, the Agreement allows UTLA to request arbitration to resolve the dispute. JA 56. Once arbitration is requested by UTLA, the parties must meet within seven days to choose a Chairperson for the arbitration. Pursuant to Section 19.0 of Article V, the arbitrator's decision is final and binding on both parties. JA 58.

D. Availing Itself Of the Arbitration Clause Of The Agreement, UTLA Requested Arbitration Of A Grievance Against The District, Which The District Refused To Arbitrate

On August 30, 2007, UTLA filed a formal grievance against the District for violating Sections 2.0 and 3.0 of Article XII-B of the Agreement regarding the conversion of Locke High School into a charter school. JA 51, 68. No other sections of Article XII-B were alleged to be violated in the grievance. At the time that the grievance was filed, teachers and classroom support personnel at Locke High School were represented by UTLA and subject to the Agreement[2]. JA 51.

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[2] The District asserts in its brief that UTLA is attempting to compel arbitration over violations of the Agreement on behalf of charter school employees. Opening Brief ("OB") 38, fn 6. This misstates the facts. The grievance was brought on behalf of the teachers employed by the District and represented by UTLA on August 30, 2007. JA 68. Green Dot Public

The grievance tracked the language of Sections 2.0 and 3.0 stating that the District violated the Agreement by:

> "1. Not presenting [the] complete Charter to employees;
>
> 2. Not giving ample time to permit affected employees and community a reasonable opportunity to review and discuss plan[s] prior to seeking signatures;
>
> 3. Not giving UTLA a copy of the proposed Charter for review;
>
> 4. Not disclosing clearly and fully the basic terms and conditions of employment to be provided by the Charter School."

The grievance then requested the following remedies:

> "1) Rescind Charter approval and all references thereafter;
>
> 2) Full and complete compliance with the Collective Bargaining Agreement;
>
> 3) Express acknowledgment of UTLA Rights;

Schools, the chartering applicant had its charter approved on September 11, 2007. JA 113-130. As a party to the Agreement, UTLA brought the underlying action pursuant to CCP Section 1281.2 on behalf of its membership pursuant to EERA. *See* Cal. Gov. Code § 3543.8 (conferring standing on a labor union to represent its membership).

4) Such further relief as may be granted under the Collective Bargaining Agreement."

The District responded to the grievance in a letter dated December 4, 2007, claiming that the matter grieved was not arbitrable and not properly the subject of collective bargaining. JA 52, 69. However, the District also acknowledged that it was responding in accordance with the steps of the grievance procedure. *Id.* On January 9, 2008, UTLA advanced the grievance to the next step of the procedure by sending a letter to the next level of administration at the District. JA 52, 70. Unable to resolve the dispute informally, UTLA requested arbitration of the grievance on January 29, 2008, which the District refused. JA 52, 71. None of these facts were disputed by the District before the trial court.

ARGUMENT

A. Standard of Review

Where the underlying facts are undisputed by the parties, and the trial court based its opinion on a pure question of law, an appeal to a petition to compel is reviewed de novo. *Flores v. Evergreen*, (2007) 148 Cal.App.4th 581, 586; *Cal. Corr. Peace Officers v. State of Cal.*, (2006) 142 Cal.App.4th 198, 204.

The District contends that an order denying arbitration is reviewed

for abuse of discretion, citing *Whaley v. Soney Computer Entertainment America, Inc.*, (2004) 121 Cal.App.4th 479, 484. In *Whaley*, the Court of Appeal established an abuse of discretion standard specific to the exception stated in California Code of Civil Procedure Section 1281.2(c), which allows denial of a motion to compel arbitration when a party to the arbitration agreement is in a pending court action with a third party. The Court of Appeal clarified that where a trial court makes its decision based on statutory construction, as in the present case, a de novo standard of review is applied. *Whaley*, 121 Cal.App.4th at 484.

B. CCP § 1281.2 Compels The District To Comply With The Agreement and Arbitrate The Grievance Filed By UTLA

1. EERA Authorizes The Enforcement Of Final And Binding Arbitration As A Means Of Dispute Resolution In Collective Bargaining Agreements

In an effort to ensure labor peace and help the expedient adjudication of disputes between public sector employers and employees, the EERA allows collective bargaining agreements to include final and binding arbitration procedures to resolve disputes arising under said agreements. Cal. Gov. Code § 3548.5. Where one party to the written agreement refuses to proceed to arbitration pursuant to the collective bargaining agreement, EERA authorizes the aggrieved party to compel arbitration pursuant to CCP Section 1281.2. Cal. Gov. Code § 3548.7.

There is no dispute as to the validity of Article V of the Agreement, which outlines the grievance procedure between UTLA and the District, nor is there dispute as to the violation by the District of Sections 2.0 and 3.0 of Article XII-B of the Agreement as alleged in the grievance. The District also does not deny that it has refused to arbitrate the grievance.

2. CCP 1281.2 Compels Arbitration Upon The Showing Of A Dispute Based On A Contract And A Bona Fide Agreement To Arbitrate Such Disputes

CCP Section 1281.2 directs, "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists." This instruction from the legislature to the courts to order arbitration upon such a showing is "mandatory, not precatory." *Coast Plaza Doctors Hosp. v. Blue Cross of Cal.*, (2000) 83 Cal. App.4th 677, 686 [99 Cal.Rptr. 809].

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

rulings. CCP § 1281.2. *See Cal. Corr. Peace Officers v. State of Cal.*, (2006) 142 Cal.App.4th 198 [47 Cal.Rptr.3d 717]; *Amalgamated Transit Union Local 1277 v. Los Angeles County Metro. Transp. Auth.*, (2003)107 Cal.App.4th 673 [132 Cal.Rptr.2d 207]. 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, the Court of Appeal has confined the trial court's role to simply determining whether the party seeking arbitration has a grievance that is on its face governed by the contract. *Posner v. Grunwald-Marx, Inc.*, (1961) 56 Cal. 2d 169, 175 [14 Cal.Rptr. 297; 363 P.2d 313]; *Amalgamated Transit Union*, 107 Cal.App.4th at 686. There is no reason for a trial court to look beyond the four corners of the grievance and the contract. *See Posner*, 56 Cal.2d at 175; *Amalgamated Transit Union*, 107 Cal.App. At 686; *United Transp. Union v. S. Cal. Rapid Transit Dist.*, (1992) 7 Cal.App.4th 804, 808 [9 Cal.Rptr.2d 702]. 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 other considerations should be made by the Court. *Id.* *Amalgamated Transit Union*, 107 Cal.App.4th at 686. UTLA has met the elements of CCP Section 1281.2 and arbitration should be compelled. *Posner*, 56 Cal.2d 169; *Amalgamated*

Transit Union, 107 Cal.App.4th 689.

3. All Doubts As To The Applicability Of An Arbitration Agreement Should Be Resolved In Favor of Arbitration

As discussed in the Opinion by the Court of Appeals in this case, California has a strong and well-established policy of favoring the arbitration of disputes when there is a valid agreement to arbitrate. (Opinion ("Op.") 7-8.). This longstanding public policy favoring arbitration, especially in the context of labor disputes, can be traced back to the *Steelworkers* arbitration trilogy decided by the United States Supreme Court in 1960[3]. In *Posner v. Grunwald-Marx, Incoporated*, (1961) 56 Cal. 2d 169, this Court approved and adopted the rulings of the U.S. Supreme Court, stating, "This rule is to the effect that, where the collective bargaining agreement provides for arbitration of all disputes pertaining to the meaning, interpretation and application of the collective bargaining agreement and its provisions, any dispute as to the meaning, interpretation and application of any specific matter covered by the collective bargaining agreement is a matter for arbitration. Doubts as to whether the arbitration clause applies are to be resolved in favor of coverage. The parties have

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United Steelworkers of Am. v. Am. Mfg. Co., 363 U.S. 564, 569 [80 S.Ct. 1343]; *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 [80 S.Ct. 1347]; *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593 [80 S.Ct. 1358].

contracted for an arbitrator's decision and not for that of the courts." 56 Cal.2d at 175. *See also O'Malley v. Wilshire Oil Co.*, (1963) 59 Cal.2d 482, 487 [30 Cal.Rptr. 452; 381 P.2d 188].

These same tenets of public policy are still upheld. 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; *United Transportation*, 7 Cal.App.4th 804, 808.

The narrow scope of inquiry mandated by CCP 1281.2 is also taken from the U.S. Supreme Court's *Steelworkers* decisions. The U.S. Supreme Court stated, "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by contract." 363 U.S. at 567-68. *See also O'Malley*, 59 Cal.2d at 488.

In *United Firefighters of Los Angeles v. City of Los Angeles* (1991)

231 Cal.App.3d 1576 [283 Cal.Rptr. 8], 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).) *See also O'Malley*, 59 Cal. 2d at 488; *United Transportation*, 7 Cal.App.4th 804, 808-09.

In reversing the trial court's order in this case, the Court of Appeal relied on these same longstanding decisions favoring the effectuation of an arbitration clause between two parties to a collective bargaining agreement. Op. 6-9.

C. Sections 2.0 And 3.0 Of Article XII-B Of The Agreement Harmonize Completely With The Charter Schools Act

1. The Charter Schools Act Requires Teacher Signatures For Conversion Charter Schools To Keep Permanent Teachers Engaged In The Future Of Their Schools

The Charter Schools Act, first enacted in 1992, sets forth a detailed legislative scheme which, among other things, establishes the procedure that must be followed to establish a charter school in California. *See*

generally Ed. Code §§ 47605-47608. A charter school is one that is operated by an entity other than a school district (often a private non-profit corporation), which operates outside the legal framework that governs public schools, but that nevertheless receives public funding. *See, e.g., Wells v. One2One Learning Foundation*, (2006) 39 Cal.4th 1164, 1201[48 Cal.Rptr.3d 108; 141 P.3d 225] (explaining that charter schools are exempt from laws governing school districts, and their sole relationship with chartering district is through the charters governing their operation). Further, ". . . charter schools are *strictly* creatures of statute. From how charter schools come into being, to who attends and who can teach, . . . the Legislature has plotted all aspects of their existence." *Wilson v. State Bd. of Education*, 75 Cal.App.4th 1125, 1135 (1999) (emphasis in original).

As originally enacted, the law required that *any* petition to establish a charter school within a school district had to be signed by at least 10% of the teachers currently employed by that district or at least 50% of the teachers currently employed at one school in that district. Former Ed. Code § 47605(a). In 1998, the Legislature amended that requirement (AB 544, Stats. 1998, chap. 34) and drew a distinction between a charter petition effecting "the conversion of an existing public school" and a start-up charter petition. *See* Ed. Code §§ 47605(a)(1), (2). Under the revised

statutory language, a start-up petition can be signed by parents or teachers (even from outside the district) who are meaningfully interested in sending their children to, or teaching at, the charter school. Ed. Code §§ 47605(a)(1), (3). On the other hand, a petition to convert an existing public school must be signed by "not less than 50 percent of the permanent status teachers currently employed at the public school to be converted." Ed. Code § 47605(a)(2); *see also* Ed. Code § 47605(d)(1).[4] The teachers' signatures on the conversion petition must be preceded by a statement attesting that each signer is meaningfully interested in teaching at the charter school. Ed. Code § 47605(a)(3). In amending the petition provisions in 1998, the Legislature specifically limited the ability of outsiders to convert *existing* public schools to charters by requiring that any petition to convert an existing public school be signed by at least 50% of the permanent teachers at that school.

The teacher signature requirement for conversions serves several purposes. It gives District teachers, who are familiar with current students' needs and have a stake in the process, a voice in whether part or all of an

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See also Wilson, 75 Cal.App.4th at 1132 ("Petitions for the conversion of an existing public school to a charter school must be signed by at least half of the permanent status teachers currently employed at the school.") (citation omitted); *Sequoia Union High School Dist. v. Aurora Charter High School*, 112 Cal.App.4th 185, 188-89 (2003) (same).

existing District school should be converted to a particular charter school. It also recognizes that tenured teachers have constitutional and statutory rights in their employment, and thus reasonably should have a say in whether their schools convert to charter status. Further, by requiring teachers to support the charter effort, the requirement helps ensure that a conversion to charter status will be successful. In addition, the requirement protects the public's resources from being appropriated by entities that need not have any meaningful connection to the school community or to the school district.

2. Education Code Section 47605 Establishes Guidelines Between A Chartering Applicant And A School Board For Approval Of A Charter School

Section 47605 of the Education Code lays out the requirements that a chartering applicant must fulfill in order to successfully establish a conversion charter school. In addition to the teacher signatures, Section 47605(b) requires the school district to hold a public hearing regarding the charter provisions. A school district may only hold a public hearing and consider a charter petition if that petition was properly submitted "in accordance with [§ 47605] subdivision (a)" and its signature requirements. Ed. Code § 47605(b). And even if the district conducts a hearing and reviews the petition, the district must deny the petition if it did not contain

the number of signatures required by § 47605(a)(2) at the time it was submitted. *See* Ed. Code § 47605(b)(3); 5 Cal. Code Regs. § 11967.5.1(d).

As directed by statute, the school district is to consider the level of support for the petition by teachers and parents in the district. Section 47605(b)(5) permits a school district to reject a chartering petition if it does not contain reasonably comprehensive descriptions of a range of subjects governing the terms and conditions of employment, including how staff members of the charter schools will be covered for retirement benefits, what employment rights an employee of the school district will have upon leaving or returning to the district, and whether or not the charter school will be deemed the exclusive public school employer for purposes of the EERA.

3. Education Code Section 47611.5 Explicitly Applies The EERA To Charter Schools, While Carving Out A Single Exception Regarding Approval Or Denial Of The Charter Petition

At the trial court, the District sought judicial notice of *United Educators of San Francisco v. San Francisco Unified School District,* (2001) Docket No. SF-CE-2015-E (adopted by PERB in PERB Dec. No. 1438). JA 187-97. That case provides legislative history showing that initially, in 1992, two charter school bills were proposed, one that provided for EERA jurisdiction of charter schools, and another which did not. The

bill that included EERA jurisdiction also gave employee representative organizations the ability to approve or disapprove of all charter school applications. In 1992, Governor Wilson chose to sign the bill that excluded EERA jurisdiction over charter schools and did not give employee representative organizations power to approve or disapprove charter applications.

However, in 1999, in order to promote stable employer-employee relations in the charter school context, the legislature amended the Education Code so that the EERA would apply to charter schools. Educ. Code § 47611.5(a). The amendment allowed charter schools to operate as the exclusive public school employer of its employees for purposes of the EERA, or allowed the school district in which they were located to be deemed the public school employer. Educ. Code § 47611.5(b).

Acknowledging the legislative history and the rejected bill, which gave employee representative organizations the ultimate decision regarding approval or denial of a charter application, the legislature carved out a single bright line exception for the application of the EERA to charter schools. Education Code 47611.5(e) forbids collective bargaining agreements and the Public Employment Relations Board ("PERB"), the state agency designated to administer the EERA, any control over the

approval or denial of a charter petition. Educ. Code § 47611.5(e). The exclusion of collective bargaining from the ultimate approval or denial of a charter petition is the only exception to the EERA's reach within the charter school context.

4. The Terms Of Article XII-B Do Not Conflict With The Education Code Governing The Conversion Of A Public School Into A Charter School

a. The District Argues Direct Conflict Between Agreement And Statute, But None Of Its Cases Are Applicable

The District's main argument for denial of UTLA's Petition to Compel Arbitration is that the terms of the Agreement relating to the conversion of District schools conflict with the Education Code, and therefore, the Education Code preempts enforcement of the Agreement[5]. OB21-42. The District essentially argues that where a provision in a

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[5] It is disingenuous for the District to claim that the UTLA's position regarding preemption was never presented to the trial court, when the entire Reporter's Transcript reveals a hearing devoted to argument on these specific issues. All of the arguments raised by the UTLA herein were raised before the trial court and should be considered by this Court. *See JRS Products, Inc. v. Matsuhita Electric Corp. Of Am.*, (2004) 115 Cal.App.4th 168, 179 (holding that even when a theory is raised but not fully articulated at the trial level, it is not forfeited for appeal). *See also Bialo v. Western Mutual Insur.*, (2002) 95 Cal.App.4th 68, 73 (holding that an appeals court has discretion to accept purely legal arguments when considering a matter of public interest and facts are undisputed).

collective bargaining agreement conflicts with the Education Code, the Education Code preempts enforcement of a promise to arbitrate. OB31-42. The cases cited by the District all involve provisions in a collective bargaining agreement in direct contravention of clear enumerations of rights by the Legislature.

For example, *Board of Education of the Round Valley Unified School District v. Round Valley Teachers Association*, (1996) 13 Cal.4th 269 [52 Cal.Rptr.2d 115; 914 P.2d 193], dealt with the issue of probationary teachers. As explained in *Round Valley*, the Education Code was amended, creating a new procedure for the dismissal and re-election of probationary teachers. *Id.* at 278-80. Likewise, the EERA was also amended, expressly carving out an exception for this newly amended portion of the Education Code, reserving all regulation regarding probationary teachers to the Education Code. *Id.* In *Round Valley*, the collective bargaining agreement sought to reclaim the process by which probationary teachers were dismissed and re-elected in direct contravention to the two amendments. *Id.* Hence, the California Supreme Court held that an arbitration award enforcing the collective bargaining agreement did not harmonize with statutory law, and should be vacated. *Id.* at 287-88. *See also Bellflower Educ. Ass'n v. Bellflower Unified Sch. Dist.*, (1991) 228 Cal.App.3d 805

[279 Cal.Rptr.179], and *Fontana Teachers Ass'n v. Fontana Unified Sch. Dist.*, (1988) 201 Cal.App.3d 1517 [247 Cal.Rptr. 761] (both cases involve similar fact patterns where a collective bargaining agreement conflicts with the Education Code regarding probationary employees).

Similarly, in *United Steelworkers of America v. Board Of Education of Fontana*, (1984) 162 Cal.App.3d 823 [209 Cal.Rptr. 16], the collective bargaining agreement relinquished school board control of disciplinary action expressly provided exclusively to the school board by an amendment to the Education Code. *Id.* at 831. Again, the provision of the collective bargaining agreement was preempted.

In both *Round Valley* and *Fontana*, the courts reasoned that because enforcement of the collective bargaining agreements would ultimately result in the replacing or setting aside of nonnegotiable and mandatory provisions of the Education Code, the specific collective bargaining provisions that conflicted with the statutes should be invalidated. 13 Cal. 4th at 286; 162 Cal.App.3d 823 at 832-33, respectively.

No such direct conflicts exist between the Education Code and the provisions of Article XII-B, Sections 2.0 and 3.0 in the Agreement. Sections 2.0 and 3.0 have absolutely no effect on the Charter Schools Act and do not replace, set aside, or change the meaning of any aspect of the

charter school application process. Education Code. *Cf. Round Valley*, 13 Cal.4th 269. Indeed, there is no dispute that, in this case, the LAUSD Board of Education approved the charter school petition on September 11, 2007, and that the converted charter school opened in September, 2008.

The District also makes a broader argument claiming that the Agreement conflicts with "public policy" generally. OB 49-50. Again, the cases cited by the District are inapposite. Both *Nyulassy v. Lockheed Martin Corp.*, (2004) 120 Cal.App.4th 1267 [16 Cal.Rptr.3d 296], and *Gentry v. Superior Court*, (2007) 42 Cal. 4th 443 [64 Cal.Rptr.3d 773; 165 P.3d 556], involved unconscionable arbitration clauses. In accordance with CCP 1281.2, one of the enumerated exceptions to a motion to compel arbitration is that grounds for revocation of the agreement exist. An unconscionable arbitration clause would fall under this exception. But, the District makes absolutely no claim as to unconscionability of the final and binding arbitration clause in Article V of the Agreement.

The District further cites to cases that generally find contracts that conflict with public policy should not be enforced. *Kelton v. Stravinski*, 138 Cal.App.4th 941 [41 Cal.Rptr.3d 877] (holding that a non-compete clause in direct conflict with statute could not be enforced); *Tiedje v. Aluminum Taper Milling Co.*, (1956) 46 Cal.2d 450 [296 P.2d 554] (holding

that a contract to purchase stocks that violates the Corporations Code cannot be enforced). None of these cases consider non-enforcement of an arbitration clause based on a contract provision that conflicts with public policy. As discussed *infra*, in such a case, that issue should be presented to an arbitrator, who can determine whether the conflict exists and choose not to enforce those provisions that conflict with public policy. The relief requested by the District is not supported by case law.

b. Sections 2.0 and 3.0 of Article XII-B Do Not Conflict With The Education Code

The procedures established in Section 47605 of the Education Code for approval of a charter school conversion application touch only on the requirements that a chartering applicant needs to meet in submitting a charter proposal to the District. Sections 2.0 and 3.0 of Article XII-B in the Agreement, on the other hand, impose some minimal procedural obligations on the District with respect to UTLA and the employees it represents.

Rather than conflict with Section 47605, Sections 2.0 and 3.0 of Article XII-B facilitate greater communication between the District, UTLA, and represented employees. If the District abided by the agreed upon procedures of Article XII-B, the efficacy and administration of Section 47605 would be advanced from the meaningful interest denoted by a teacher's signature on a petition to the exchange of ideas at a public

hearing.

For example, Article XII-B, Section 2.0(c) requests that the District provide UTLA with a copy of a new charter school proposal within five days of the District's receipt of same. This requirement of the Agreement is completely harmonized with the Charter Schools Act. It places no additional conditions upon chartering applicants for the approval or denial of their applications. In fact, it has absolutely no effect whatsoever on the approval or denial of a conversion petition. Rather, it helps keep teachers at a District school stay informed regarding the possible conversion of the school to charter status. This result effectuates the purpose of the Charter Schools Act, by engaging teachers in the conversion process. The chartering applicant's requirements are unaffected.

The District erroneously argues that Sections 2.0 and 3.0 of Article XII-B conflict with Section 47611.5(e) of the Education Code. The Agreement does not contain any mechanism whatsoever whereby UTLA has any control over the approval or denial of a charter as forbidden by statute. The intent of the legislature and pronouncement of public policy on this matter is clear: a collective bargaining agreement shall not control approval or denial of a charter petition. In this case, not a single provision of the collective bargaining agreement touches upon the approval or denial

of such a petition, and therefore, the provisions are fully arbitrable under the contract's grievance procedures. *Cf. Round Valley*, 13 Cal.4th 269.

Admittedly, one of the remedies sought in the underlying UTLA grievance does request that charter approval be "rescinded" by the District (JA 68), however, this request for rescission is not based on a remedy sanctioned by Article XII-B. Indeed, if this non-collective-bargaining-agreement-based remedy is deemed to conflict with statute, then it could easily be evaluated by an arbitrator. The remaining remedies requested in the grievance could still be awarded without conflict with the Education Code. Without wrongly conflating the remedy with the actual terms of the Agreement, there is no conflict between Article XII-B and the Education Code.

E. Even If The Education Code Was Found To Conflict With The Agreement, Preemption Would Not Bar Arbitration

As stated above in Section B, CCP Section 1281.2 only considers the four corners of the grievance and collective bargaining agreement. *Posner*, 56 Cal.2d at 175; *O'Malley*, 59 Cal.2d at 488; *Amalgamated Transit Union*, 107 Cal.App.4th at 686. If there is a grievance arising out of a collective bargaining agreement and that grievance is subject to an arbitration clause, then the inquiry ends, and CCP Section 1281.2 makes arbitration compulsory on the parties. *Id.*

The District cites *Round Valley* for the proposition that a provision of a collective bargaining agreement may be deemed "preempted," excusing arbitration. Such reliance is unfounded. *Round Valley* is distinguishable because (1) it involved an actual rather than conjectural conflict between the Education Code and the collective bargaining agreement, and (2) it involved the separate issue of whether judicial review of an arbitration award is appropriate where the award may directly conflict with a state statute. 13 Cal.4th 269, 275-77. The extent of the holding was narrow enough to only permit judicial review of an arbitrator's award to ensure harmony with public policy. *Id. See also Peace Officers*, 142 Cal.App.4th 209 (explaining the limited reach of the holding in *Round Valley*). Such a holding allows recourse for the District if, as they conjecture, the arbitration results in an award that conflicts with Education Code Section 47611.5(e). In that case, that portion of the award could be vacated or challenged in an enforcement action. *Round Valley*, 13 Cal.4th 269, 275-77.

In *Round Valley*, this Court did not consider whether a statute could preempt a provision of a collective bargaining agreement so as to bar arbitration in the first place pursuant to CCP Section 1281.2. That argument – that an alleged conflict between a statute and a provision in a labor agreement preempts arbitration – was rejected by the Court of Appeal

in *Peace Officers*. 142 Cal.App.4th 198. The Court of Appeal reasoned:

> "Even assuming...that the [statutory code] supersedes any inconsistent provisions of the [memorandum of understanding], [the statute] in no way prevents the presentation of this argument to an arbitrator. Reduced to its essence, the [party's] claim is that it should be permitted to avoid arbitration because the Union's position is barred by [statute]–in other words, that the Union's claim, as a matter of law, has no merit. As discussed above, *Code of Civil Procedure section 1281.2* expressly *forbids* courts from denying arbitration on the ground that the petitioner's claim is meritless."

Id. at 211 (italics in original). The argument was also rejected by the federal courts. *Peace Officers*, 142 Cal.App.4th at 209-210 (reviewing federal judiciary decisions for guidance on a matter of first impression in California). In *Peace Officers*, the Court of Appeal noted that in the federal courts, where a provision of a collective bargaining agreement may conflict with statutory law, arbitration is still compelled because of the therapeutic value that the arbitration process imparts to heal the disruptive relations between employees and employers. *Id.* ("Several other federal decisions have rejected claims by parties to an agreement to arbitration that they should be allowed to bypass arbitration because the claims made by the petitioner are inconsistent with statutory law or public policy." Id.)

Potential conflicts between a contract provision and statutory law do not preclude arbitration. *Id.* Indeed, in its Opinion in this case, the Court of

Appeal pointed out that arbitrators are often required to consider statutory claims by engaging in interpretation of statutes and also called upon the wealth of case law upholding an arbitrator's ability to interpret collective bargaining agreements in ways that do not conflict with applicable statutes. Op. 9. *See also Broughton v. Cigna Healthplans*, (1999) 21 Cal.4th 1066, 1075 [90 Cal.Rptr.2d 334; 988 P.2d 67]; *Moncharsh v. Heily & Blase*, (1992) 3 Cal.4th 1, 33 [10 Cal.Rptr.2d 183; 832 P.2d 899]; *Peace Officers,* at 208-10. In *Peace Officers*, the Court of Appeals finally ruled, "There is no statutory exception [under CCP § 1281.2] for arbitrations presenting issues of statutory construction." *Id.* at 211. In *Service Employees International Union, Local 1000 v. Department of Personnel Administration*, (2006) 142 Cal.App.4th 866 [48 Cal.Rptr.3d 457], the Court of Appeals praised the efficiency of having arbitrators evaluate statutory claims: "[An arbitrator's] decision may dispose of the constitutional and statutory claims and save the judicial system the burden of resolving those disputes the parties have agreed to resolve in another forum." *Id.* at 875. The Court of Appeals in *Local 1000* offered the same remedy for a potential arbitration award violating statutory rights as this Court did in *Round Valley*–judicial review of the award, not preemption of the contract provision and of arbitration. *Id.*

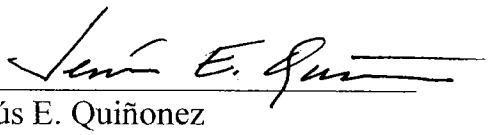
The exacting construction of CCP Section 1281.2 demonstrates the prevailing presumption in favor of arbitration applied by California courts, especially in the context of a public employer's promise to resolve disputes via final and binding arbitration. *Peace Officers*, 142 Cal.App.4th at 205; *Amalgamated Transit Union*, 107 Cal.App.4th at 685.

The overwhelming public policy favoring arbitration, even when there is an alleged conflict between a contract provision and statutory laws, requires arbitration of UTLA's grievance.

Dated: May 18, 2010

Respectfully submitted,

HOLGUIN, GARFIELD,
MARTINEZ & QUIÑONEZ



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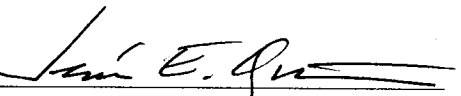
CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, United Teacher Los Angeles' Answer Brief on the Merits was produced using 13-point Roman type including footnotes and does not exceed 8,400 words and contains approximately 7,012 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 brief.

Dated: May 18, 2010

Respectfully submitted,

HOLGUIN, GARFIELD,
MARTINEZ & QUIÑONEZ



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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 **May 19, 2010**, I served the foregoing document(s) described as: **BRIEF OF UNITED TEACHERS LOS ANGELES** on all interested parties in this action by placing true copies thereof enclosed in a sealed envelope as follows:

Attorneys for LAUSD
Sue Ann Salmon Evans, Esq.
MILLER, BROWN, DANNIS
301 E. Ocean Boulevard, Suite 1750
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Clerk
California Court of Appeal
Second Appellate District
300 S. Spring Street
Los Angeles, CA 90012

Hon. Mary Ann Murphy
Department 25
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

(**X**) **(By U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing mail with the United States Postal Service. Under that practice, the envelope(s) addressed to the above party(ies) would be deposited with the U.S. Postal Service at Los Angeles, California, on the same day with pre-paid postage thereon. 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.

(**X**) **(FEDERAL)** I declare that I am employed in the office of a member of the Bar of this Court at whose discretion the above service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 19, 2010, at Los Angeles, California.

Isabel A. Montoya