

CLIENT NEWS BRIEF

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**COURT ADDRESSES ARBITRATION PURSUANT TO A LABOR GRIEVANCE
REGARDING APPROVAL OF CHARTER SCHOOL PETITION**

In United Teachers Los Angeles v. Los Angeles Unified School Dist. (September 17, 2009) ___ Cal.App.4th ___ (“Los Angeles”), a California Court of Appeal ruled that a petition to compel arbitration of a grievance regarding the District’s grant of a charter school petition pursuant to a collective bargaining agreement must be granted, even where Education Code section 47611.5 states that approval or denial of a charter petition by a granting agency shall not be controlled by collective bargaining agreements. An order modifying the opinion clarified that the arbitrator may conclude all of the union's claims are barred by section 47611.5.

In this case, the District granted a charter school petition to convert Alain Leroy Locke Senior High School to a charter school. It appears that the District did not negotiate its decision to convert the school with United Teachers Los Angeles, the certificated employee bargaining unit. The collective bargaining agreement between the District and United Teachers Los Angeles (“CBA”) included several articles setting forth procedures for converting a school to a charter school. The union filed a petition with the trial court to compel arbitration pursuant to the CBA. The petition alleged that the union had filed a grievance asserting that the District had violated the CBA by “not presenting the complete charter to employees; not giving ample time to permit affected employees and the community a reasonable opportunity to review and discuss the plan; not giving the union a copy of the proposed charter for review; and not clearly and fully disclosing the conditions of employment with the charter school.”

In opposition to the petition to compel, the District made two arguments. First, the District argued that the union had no standing to challenge the alleged violations of the CBA on behalf of its members. Second, the District argued the union’s claims concerning the alleged violations of the CBA could not be arbitrated. The District reasoned that there was no valid agreement to arbitrate because the applicable provision of the CBA was either preempted or invalidated by Education Code section 47611.5, subdivision (e), which states: “The approval or denial of a charter petition by a granting agency pursuant to subdivision (b) of Section 47605 shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board.” (Ed. Code, 47611.5, subd. (e).) The District further argued that

the CBA was invalid because it imposed procedural steps on the District for charter petition approval beyond what is required under Education Code section 47605.

The court rejected the District's arguments. In response to the first argument, the court concluded that the union has standing to file the petition to compel arbitration. The court reasoned: "It is undisputed that the district and the union are both parties to the collective bargaining agreement. The union is seeking to enforce provisions of the collective bargaining agreement. The union and the district are in a dispute about a provision of the collective bargaining agreement. Thus, one party to an agreement to arbitrate is seeking to enforce the arbitration clause against another signatory."

In response to the second argument, the court concluded that "the merits of a dispute, such as the effect of section 47611.5, subdivision (e), must be resolved in the first instance by the arbitrator." The court found that the trial court's determination is limited to whether there was a valid agreement to arbitrate. It further found that arbitrators are authorized to resolve statutory claims, including interpreting statutes and considering statutory defenses such as section 47611.5, subdivision (e). If the arbitrator concludes that the District violated the CBA, the court suggested the District could then challenge the award in the trial court based on its defense that section 47611.5, subdivision (e), preempts the union's grievance rights. However, if the arbitrator decides that the District did not violate the CBA, there would be no need to decide the preemption issue in the courts.

In this case, the court upheld an arbitration provision in a CBA regarding a charter school grievance, even where the Education Code specifically states that the subject matter shall not be controlled by collective bargaining agreements. Because charter school petition processes are generally governed by the Charter Schools Act and not collective bargaining agreements, this case highlights the importance of carefully deciding whether to agree to contract language regarding charter schools. Although this case presents unique provisions, even including a provision merely referencing the Charter Schools Act may trigger the right to invoke the grievance procedure provided in the CBA.

If you have any questions about this case, please contact one of our seven offices located statewide.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.



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