STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA FEDERATION OF INTERPRETERS/TNG/CWA, Charging Party, v. REGION 4 COURT INTERPRETER EMPLOYMENT RELATIONS COMMITTEE AND THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE, Respondents.	Case No. LA-CE-6-I PERB Decision No. 1987-I November 21, 2008

Appearances: Beeson, Tayer & Bodine by Lisa W. Pau, Attorney, for California Federation of Interpreters/TNG/CWA; Paul, Plevin, Sullivan & Connaughton by Michael R. Minguet, Attorney, for Region 4 Court Interpreter Employment Relations Committee and the Superior Court of California, County of Riverside.

Before Neuwald, Chair; Wesley, Rystrom and Dowdin Calvillo, Members.

DECISION

RYSTROM, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Region 4 Court Interpreter Employment Relations Committee[1] and the Superior Court of California, County of Riverside (Committee and Court, respectively, collectively Respondents) to the proposed decision of an administrative law judge (ALJ).

[1]Section 71808 of the Act provides, inter alia, that the "regional court interpreter employment relations committee shall set terms and conditions of employment for court interpreters within the region, subject to meet and confer in good faith."

The ALJ found that the Committee violated the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act or Act)[2] by denying the California Federation of Interpreters/TNG/CWA (Federation) requested information and arbitration of a dispute. The ALJ found the denial of information violated Sections 71815, 71818, and 71822 and the refusal to arbitrate violated Sections 71802(f), 71815, and 71822. The ALJ declined to adjudicate allegations that the Court had violated the Act by refusing to hire an applicant finding the Act required arbitration. These allegations were dismissed and the dispute was deferred to arbitration.

We have reviewed the entire record in this matter, including but not limited to the amended complaint, answer, hearing transcript, proposed decision, Respondent's exceptions to the proposed decision and supporting brief, and the Federation's response. Based upon this de novo review, we conclude the ALJ's findings are erroneous. We hold that the amended complaint must be dismissed against the Respondents because PERB lacked jurisdiction given the Federation did not have standing under the Act to file the complaint as a charging party.

PROCEDURAL HISTORY

The Federation filed an unfair practice charge naming itself as the charging party against Respondents on March 25, 2005. Subsequently the Federation withdrew without prejudice its allegations against the Court. A complaint was issued naming the Federation as the charging party against the Committee on November 23, 2005. The Federation filed a request to amend the complaint on April 6, 2006.[3] On May 9, 2006, the request was granted

[2]The Court Interpreter Act is codified at Government Code section 71800 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

[3]According to the ALJ, no written response was made by Respondents objecting to this request.

and an amended complaint was issued. The amended complaint was the same as the original complaint with the addition of the Court as a respondent and allegations against it.

The amended complaint alleged that the Respondents committed violations of: Section 71802(c)(2) and (e) by failing to offer employment to Clara Newton (Newton) which was also an unfair practice in violation of Section 71825(c) and PERB Regulation 32608(a) and (g);[4] Section 71818, Section 71825(c) and PERB Regulation 32608(c) by refusing to meet and confer in good faith; Section 71822, Section 71825(c) and PERB Regulation 32608(a) by interfering with the bargaining unit employees represented by the Federation; Section 71815, Section 71825(c) and PERB Regulation 32608(b) by interfering with the Federation's right to represent bargaining unit employees; and Section 71802(f), Section 71825(c) and PERB Regulation 32608(a) and (g) by denying the Federation's requests for arbitration.

Neither the Committee or Court filed an answer to the amended complaint which issued one day before the hearing commenced. Previously, the Committee filed an answer to the original complaint on December 14, 2005, admitting certain of the alleged conduct but denying all alleged violations. Affirmative defenses alleged by the Committee in this answer were the statute of limitations, the Federation's lack of standing, and PERB's lack of jurisdiction. The ALJ deemed the additional factual allegations in the amended complaint denied pursuant to PERB Regulation 32644(a).

The alleged conduct by Respondents which gave rise to the violations of the Act charged in the amended complaint was:

1. On July 14, 2004, the Court refused to offer employment to Newton by returning application materials to Newton and informing her that the Court was not currently recruiting for the position of Court Interpreter Pro Tempore.

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

2. On October 29, 2004, information was requested from the Committee by the Federation which it considered relevant and necessary to discharge its duty to represent employees: (a) clarification of the Court's reasons for rejecting Newton's job application and the Court's position as to its obligations under Section 71802(c)(2) and (e); (b) the bases for the Court's cause, if any, for not hiring Newton; (c) all information including documents forming the basis for the Court's decision not to hire Newton; (d) the dates the Court used any 100-day contractors or non-certified interpreters in Spanish including the names of the interpreters assigned from January 2004 to the present including any interpreters provided through agencies; (e) information regarding periods of time, if any, when the Court has maintained a public notice that it is accepting applications for the position of court interpreter pro tempore for Spanish as required pursuant to Section 71802(e); and (f) the number of days or parts of Court days Newton worked for the trial court in 2004.

3. On January 3, 2005, the Committee refused to provide the above-requested information.

4. On November 23, 2005 and February 15, 2006, the Federation made requests to the Committee that the dispute be submitted for binding arbitration.

5. These requests were denied by the Committee on March 3, 2006.

The ALJ held a formal hearing on May 10, 2006. At that time, Respondents made a motion to limit the scope of the hearing to the allegations in the original complaint with a continued hearing for the additional allegations in the amended complaint. This motion was denied by the ALJ.

The ALJ issued his proposed decision on December 18, 2006. Respondents filed timely exceptions to the proposed decision and a supporting brief on January 18, 2007. The Federation filed a response on February 7, 2007.

BACKGROUND

The Court is a trial court within the meaning of Section 71801(k). The Committee is a regional court interpreter employment relations committee within the meaning of Section 71801(h).[5] The Federation is a recognized employee organization within the meaning of Section 71801(g) and at all times herein was the recognized employee organization for the court interpreters employed by the Court.

Newton has been a certified court interpreter within the meaning of Section 71801(a) since 1979. She began working full-time for the Court as an independent contractor in 1999.

The Act provides for the transition of independent contractor interpreters to Court employees beginning in 2003. During the "transition period" from January 1, 2003 to July 1, 2005,[6] such employees were to be placed in the position of "court interpreters pro tempore," with certain rights defined under the Act. On February 25, 2004, Newton declined this employment offer by the Court by signing an opt out form stating she intended to opt-out of employment as a court interpreter pro tempore with the Court and that she was over the age of 60 as of January 1, 2003.[7] Thereafter Newton continued to work for the Court as an independent contractor.

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[5]Section 71808 provides, inter alia, that the "regional court interpreter employment relations committee shall set terms and conditions of employment for court interpreters within the region, subject to meet and confer in good faith."

[6]Section 71801(i).

[7]Provisions in Section 71802(b)(2) allow the Court to use the services of independent contractor interpreters who were over the age of 60 by January 1, 2003 and requested in

On June 30, 2004, the Court informed Newton that her services were not going to be needed anymore. Newton asked why and was told that because she was only a vendor, the Court did not need to provide her with an explanation. By application dated the same day and filed with the Court on July 2, 2004, Newton applied for employment as a court interpreter pro tempore. In a letter dated July 14, 2004, the Court denied Newton's application for employment stating that the Court was not currently recruiting for the position of court interpreter pro tempore.

Sometime after her application was denied, Newton was shown a recruitment letter by another interpreter dated August 1, 2004, which announced that the Court was conducting an open recruitment for Spanish interpreters with an application deadline of August 31, 2004.[8] Newton testified that she was aware of four Spanish interpreters who were hired after the Court rejected her June 30, 2004, employment application. Newton did not know the dates these interpreters applied for employment but thinks it was pretty soon after June 30, 2004. The Federation submitted a printout from the Superior Court Human Resources website, dated May 4, 2006, showing that the Riverside Superior Court had posted notice of "continuous recruitment" for Spanish court interpreters.

By letter dated October 12, 2004, the Court responded to Newton's July 2, 2004, application. This letter stated that "the Court has determined that your credentials do not suit the Court's needs at this time. Therefore, the Court has concluded processing your application for employment." Newton was further informed in the letter: "When you chose 'opt-out'

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writing prior to June 1, 2003, the opportunity to perform services for a trial court as an independent contractor rather than as an employee.

[8]Newton could not remember when she received the August 1, 2004, recruitment letter but believes it might have been at the end of August 2004. She did not remember who gave it to her.

status on February 24, 2003, you chose to maintain your status as an independent contractor, rather than become an employee. The only right that status afforded you was the right of assignment over other independent contractors." The Court also asserted in this letter that "The minimum qualifications you mention refer to applications received during that initial hiring process in 2003. After that date, according to Government Code section 71804.5, the Court accepts applications per our Court Personnel Policies and Procedures."

On October 29, 2004, the Federation sent a letter to the Committee purporting to represent Newton regarding "ULP-Region 4-2004-02 – Violation of Statute Charge: Riverside Superior Court Violation of Government Code Section 71802(c)(2) and 71802(e)." [9] This letter stated that Newton was entitled to employment under the Act. It asserted that Newton met the requirements under Section 71802(c) entitling her to employment as a court interpreter pro tempore unless the Court had "cause" to deny such employment. In this letter the Federation also requested information regarding, inter alia, the basis for the Court's decision not to hire Newton, as well as information relevant to determining Newton's rights under the provisions of Section 71802.

Additional claims in the October 29 letter were that Newton was "a member of our organization" and that the Federation "has an interest in enforcing the law and has standing to dispute the Court's action by filing [its October 29, 2004] charge." The Federation also acknowledged in this letter that "Newton also has an individual right under the law to resolve by binding arbitration the dispute regarding whether or not the court is required to hire her."

[9]This October 29, 2004 letter was characterized in a November 23, 2005, letter from the Federation to the Committee as an "unfair practice charge filed with the Region on October 29, 2004 [which] has not been resolved."

By letter dated January 3, 2005, the Court informed the Federation that the information request was "not being honored at this time" because the Committee had found no violations of Section 71802(c)(2) and (e).

The Federation responded to the Committee by letter dated November 23, 2005, that the Federation's unfair practice charge filed with the Committee on October 29, 2004, had not been resolved and the Federation was writing to formally request arbitration of the Court's refusal to hire Newton pursuant to Section 71802(f). In this letter the Federation also stated that the information sought from the Court in the Federation's October 29, 2004, remains necessary and relevant to arbitration. The Federation further claimed that the Committee's refusal to provide the information or to process the Federation's unfair practice charge filed with the Committee has interfered with Newton's rights and the Federation's rights under the Court Interpreter Act.

By letter dated February 15, 2006, a second request by the Federation was made to the Committee for the information sought in the October 29, 2004, letter and for arbitration of the Newton dispute. The Federation asserted in this letter that it could not effectively enforce the Act without the requested information and that it had an interest on behalf of all affected interpreters in enforcing the Act.

The Committee responded in a March 3, 2006, letter informing the Federation that arbitration was being denied. In this letter, the Committee asserted that at all times Newton provided services to the Court as an independent contractor not an employee and without an employment relationship, the Federation's arbitration request goes beyond the scope of its representation pursuant to Sections 71815 and 71816.

At the hearing, Newton testified that she was a dues paying member of the Federation and that she had been "dealing with" the Federation since it was a professional organization in

1997, or earlier. According to Newton, when the Federation converted from a professional organization to a union, she began to pay union dues and helped organize meetings for the Federation when they were in the process of lobbying for legislation.

ALJ PROPOSED DECISION

The ALJ determined the three issues in the case were: (1) Did the Committee unlawfully deny information? (2) Did the Committee unlawfully deny arbitration? (3) Did the Court unlawfully deny employment to Newton?

In deciding the first issue, the ALJ found that disputes concerning the rights of independent contractors seeking employment pursuant to the terms of the Act fell within the Act's scope of representation. Based on this, the ALJ concluded that the Committee had failed to provide the Federation with required information resulting in a violation of the Committee's duty to meet and confer under Section 71818 as well as interfering with the Federation's rights to represent Newton and her rights to be represented in violation of Sections 71815 and 71822.

The Committee's denial of arbitration was found to violate Section 71802(f). Because the ALJ found Newton's dispute to be within the scope of representation under the Act, this denial was also found to have interfered with the Federation's rights to represent Newton and her right to be represented in violation of Sections 71818 and 71822, respectively.

The ALJ concluded the allegation that the Court had unlawfully denied Newton employment should be deferred to the arbitration procedure delineated under the Act and dismissed those allegations in the amended complaint.

RESPONDENTS' EXCEPTIONS

Respondents except to the following:

1. The ALJ's denial of Respondents' motion to limit the hearing to the original complaint's allegations and to continue the hearing on the new allegations added

to the amended complaint. Respondents assert that this motion should have been granted.

2. The finding that Newton worked over 45 days in 2004 as an independent contractor. Respondents contend the record contains no evidence of how many days Newton actually provided services to the Court in 2004.

3. The finding that Newton is a "member" of the Federation and therefore entitled to representation. Respondents argue that because it is undisputed that Newton provided services to the Court as an independent contractor, not an employee, she could not be a member of the bargaining unit represented by the Federation as a matter of law.

4. The proposed decision's rationale and conclusions of law that pursuant to Section 71802(f), a recognized employee organization's scope of representation extends to independent contractors. Respondents contend that the Act grants to recognized employee organizations the right to represent employees, not independent contractors.

5. The finding that the Federation's information request of October 29, 2004, to the Committee asks for information necessary and relevant to resolving the dispute concerning Newton's rights under Section 71802(c)(2) and (e). Respondents argue that Newton had no right to employment therefore there was no violation of subsection (c)(2) and (e) of Section 71802.

6. To the extent that the amended complaint is not dismissed in its entirety, Respondents except to the broad, proposed orders of the proposed decision.

FEDERATION'S RESPONSE TO THE EXCEPTIONS

The Federation argues that each of Respondents' exceptions is without basis. The ALJ's decision is a correct interpretation of the Act's provisions and that the ALJ's findings of fact are supported by the record. No exceptions were filed by the Federation.

DISCUSSION

This case raises an issue of first impression under the Court Interpreter Act: Do independent contractor court interpreters who are not employed by the trial courts have collective bargaining rights under the Act. If no such rights are granted under the Act, the Federation does not have standing to file a complaint as the recognized employee organization for Newton and PERB is without jurisdiction.

Under Section 71825(c) of the Act, PERB has jurisdiction to process any unfair charge alleging a violation of the Act or rules and regulations adopted by a regional court interpreter relations committee pursuant to Section 71823. However, the Board does not have jurisdiction if the charging party does not have standing to bring the charge before PERB. (See Los Angeles Community College District (1994) PERB Decision No. 1060 (Los Angeles).) It is the Board's duty to determine standing (jurisdiction over the parties). (Los Angeles.) This is separate and distinguishable from the issue of whether the elements of a prima facie case exist and an inquiry into whether a party has standing to file a charge should be made by the Board agent. (Los Angeles.)

Our review of the Act indicates that the Legislature did not intend to provide collective bargaining rights to independent contractor court interpreters not employed by the trial courts. Newton was not an employee of the Court but rather an independent contractor seeking employment. Therefore, the Federation lacks standing to be the charging party in the instant case which results in PERB not having jurisdiction over the Federation's complaint.

A. The Act Does Not Give Collective Bargaining Rights to the Independent Contractor Court Interpreters Covered by the Act

Our determination that the independent contractor court interpreters covered by the Court Interpreter Act do not have collective bargaining rights is based on the language of the Act itself. If the language of a statute is clear and unambiguous, then the intent of the Legislature is reflected in the plain meaning of the statute. (County of Imperial (2007) PERB Decision No. 1916-M and cases cited therein.[10]) However, to put our decision in context, we find it initially helpful to discuss the background of the Act, its purposes and objectives as presented in a final legislative committee report discussing the history involving independent contractors leading up to the Act.[11]

1. Background of the Court Interpreter Act

The Senate Judiciary Committee report on SB 371 as amended on August 28, 2002, gave the following background for the bill:[12]

> The Trial Court Employment Protection and Governance Act (SB 2140, Burton, Chapter 1010, Statutes of 2000) created a trial court personnel system that governs the hiring, classification and compensation, advancement and protection, retirement, labor relations, and treatment of personnel files of trial court employees. Under the act, these former county employees become employees of the local trial court, but are not state employees. Effective January 1, 2001, the Act is in the process of implementation by the trial courts and the Judicial Council.
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> According to the California Federation of Interpreters and the Bay Area Court Interpreters Association, sponsors of this bill, there are approximately 1,300 certified and registered court interpreters working for the state's trial courts. All but 25 of

[10]Barstow Unified School District (1966) PERB Decision No. 1138; North Orange County Regional Occupational Program (1990) PERB Decision No. 857 (North Orange).

[11]One ferrets out the legislative purpose of a statute by considering its objective, the evils which it is designed to prevent, the policy enunciated and vindicated and the social history which attends it. (Santa Barbara County Taxpayers Assn. v. County of Santa Barbara (1987) 194 Cal.App. 3d 674, 680 [239 Cal.Rptr. 769].)

[12]Senate Committee on Judiciary, Analysis of Senate Bill No. 371 (2001-2002 Reg. Sess.) as amended August 28, 2002.

these court interpreters are excluded from the protections provided by the Act because they are not trial court employees but rather they are 'independent contractors.' The sponsors of the bill contend that most of these 'independent contractors' actually work within a small circle of trial courts daily and have long-term relationships with those courts. Thus, while these interpreters rely on the trial courts as their principal source of income, their status as 'independent contractors' provide them no benefits, job security, or the right to representation.

This bill would transition the courts from relying on court interpretation services provided by 'independent contractors' to using court employees to provide those constitutionally mandated services. This bill would apply only to interpreting spoken language, and would specifically exclude interpreting sign language.

Under "Changes To Existing Law" this report stated in relevant part:

Existing law authorizes the Judicial Council to set standards for and certify or register court interpreters for sign and spoken language.

Existing law, the Trial Court Employee Protection and Governance Act, (TCEPGA), provides protection in employment and a right to engage in collective bargaining to employees of the trial courts.

Existing law does not require the trial courts to employ court interpreters, but requires them to use court interpreters in proceedings as specified by statute or court rules.

This bill makes legislative declarations and findings regarding court interpreters in the trial court system, and states the intent of the Legislature to transition the courts from a system that relies on independent contractors to one that uses employees for interpretation services.

This bill would:

1) require the courts, by July 1, 2003, to appoint trial court employees, rather than independent contractors to perform spoken language interpretation of trial court proceedings. See Comment 2 for employment terms specified in the bill.

2) allow a court to appoint an independent contractor to perform spoken language interpretation under specified circumstances (See Comment 3a for details)

3) allow a court to appoint an independent contractor on a day to day basis under specified circumstances (see Comment 3b for details.)

4) create a new classification of 'court interpreter pro tempore' to perform simultaneous and consecutive interpretation and sight translation in spoken languages. See Comment 2d for details.

5) establish the right of court interpreter employees to collective bargaining, and provide for the development of terms and conditions of employment of court interpreters through the use of regional court interpreter employment relations committees representing the courts and recognized employee organizations representing the court interpreters. See Comment 2a for details.

6) provide for a two-year regional transition period from January 1, 2003 unless terminated by agreement between the regional employment relations committee and a recognized employee organization.

Comment 2a of this report provided:

2. Court interpreters as employees: collective bargaining rights and ability to engage in outside employment

This bill would transition the courts, over a two-year period, from a system that uses independent contractors to provide court interpreting services, to one that uses employees for those services.

a. Collective bargaining rights

> SB 371 tracks language in TCEPGA, relating to provisions such as representation by recognized employee organizations, collective bargaining, agency shop agreements, meet and confer in good faith, notice of matters within the scope of representation, memoranda of agreement, mediation, labor relations rules and regulations, dues deduction and personnel rules applicable to other court personnel. The scope of representation by recognized employee organizations would include all matters relating to employment conditions and employer-employee relations, including wages, hours, and other terms and condition.
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> However, this bill diverges from TCEPGA in some respects because of the unique services provided by court interpreters and opportunities for work that may be available to them outside of the trial courts.

As will be discussed below, the Court Interpreter Act contains provisions granting certain rights to non-employee (independent contractor) court interpreters and other rights to court interpreters who are trial court employees. This inclusion of rights for independent contractor court interpreters in the Act is explained by the above legislative background report. This makes the Court Interpreter Act unique from the other statutes administered by PERB which do not provide protections for non-employees except for the interference and discrimination provisions in sections 3519, 3543.5, and 3571 of the Ralph C. Dills Act (Dills Act), Educational Employment Relations Act (EERA), and Higher Education Employer-Employee Relations Act (HEERA), respectively, which extend those specific provisions to applicants as well as employees.[13]

[13]The Dills Act is codified at Government Code section 3512 et seq.; EERA is codified at Government Code section 3540 et seq.; and HEERA is codified at Government Code section 3560 et seq.

2. The Plain Language of the Court Interpreter Act Indicates the Legislature Did Not Intend to Provide Collective Bargaining Rights to Independent Contractor Interpreters

Respondents contend that the ALJ erred by finding that a recognized employee organization's scope of representation under the Act extends beyond the employer-employee relationship to encompass independent contractors. Respondents argue that under the plain language of the Act, the Federation only has the right to represent employees of the Court which does not extend to independent contractors.

The Federation agrees with the ALJ's conclusions that: (1) Section 71816(a)'s scope of representation provisions should be interpreted broadly to include representation of independent contractor interpreters; and (2) given the Legislature exempted certain matters from the scope of representation under the Act, the fact independent contractors were not exempted indicates they are included within the scope of representation.

We agree with Respondents and find that the Act's provisions in Section 71813 specifying who is granted the right under the Act to join and participate in employee organization activities are the appropriate starting point in this analysis. The question to be answered is whether or not these provisions indicate independent contractor interpreters have collective bargaining rights. If they do not, the Federation does not have authority under the Act to represent independent contractors who are not employees of the trial courts.

Section 71813 provides:

> Except as otherwise provided by statute, court interpreters employed by the trial courts shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Court interpreters employed by the trial courts also shall have the right to refuse to join or participate in these activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the trial courts. [Emphasis added.]

This section provides that court interpreters who are employed by the trial courts have the right to be represented by an employee organization of their own for the purpose of representing them. Section 71813 does not contain a definition of "employee" nor is there such a definition elsewhere in the Act. To determine if independent contractors were intended by the Legislature to be considered as "employees of the trial courts" we have reviewed other sections of the Act which answer this question by clearly providing that independent contractor court interpreters are not considered employees of the trial courts.

Section 71802(a) of the Act differentiates between independent contractors and employees of the trial courts. It provides that after July 1, 2003, trial courts shall appoint trial court employees, rather than independent contractors to perform spoken language interpretation of trial court proceedings.

Additional sections which show that independent contractors are not "employees of the trial courts" are the sections delineating the exceptions as to when independent contractors may be appointed to provide interpretation services. The language used by the Legislature to designate these exceptions makes it clear that independent contractors so appointed are not employees. One of these exceptions states an independent contractor court interpreter may be appointed if "the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, and the interpreter requests in writing prior to June 1, 2003, the opportunity to perform services for the trial court as an independent contractor rather than as an employee." (Sec. 71802(b)(2) emphasis added.) Another exception provides that the court may appoint an independent contractor interpreter who has performed services for the trial courts as an independent contractor prior to June 1, 2003, and notifies the trial court in writing that the interpreter is "precluded from accepting employment" because of the terms of

an employment contract with a public agency or the terms of a public employee retirement program. (Sec. 71802(b)(4), emphasis added.)

Consistent with the above sections differentiating court interpreters employed by the trial courts from those which are independent contractors is Section 71803 which creates a new employee classification of "court interpreter pro tempore" to perform interpreting services. This classification is appointed by trial courts to perform work on an as needed basis, is paid on a per diem basis for work performed and is not required to receive health, pension, or paid leave benefits. The Act provides that all independent contractors who provided a certain amount of interpreting services to a trial court during 2001 or 2002 were entitled to be employed as court interpreters pro tempore unless they were rejected for cause. The Act mandated that the trial courts had to start accepting applications for this position no later than May 1, 2003. (Secs. 71804 and 71805, emphasis added.)

During the regional transition period, January 1, 2003 to July 1, 2005, all court interpreters employed by the trial courts were classified as court interpreters pro tempore.[14] (Secs. 71801(i) and 71805(a).) At the conclusion of the regional transition period the Act allowed the employment of interpreters in full-time or part-time court interpreter positions created by the trial courts as well as employing court interpreters pro tempore.

From these provisions in the Act we conclude that interpreters who are considered as trial court employees are interpreters in full or part time positions and court interpreters pro tempore who work on an as needed basis without benefits. Independent contractor interpreters are not considered as trial court employees. We therefore find under the express

[14]Solano and Ventura counties were excepted from this provision. Also, should an employee organization and trial court agree otherwise in a memorandum of understanding this statutory provision could be changed.

language of Section 71813 that independent contractor court interpreters do not have collective bargaining rights. This finding is consistent with other provisions in the Act.

A reasonable interpretation of Section 71815, which contains the Act's provisions granting representation rights to employee organizations, also limits a recognized employee organization's representation rights to court interpreters who are employees of the trial courts. Section 71815 provides in pertinent part:

> A recognized employee organization shall have the right to represent its members in their employment relations with the trial courts as to matters covered by this chapter. [Emphasis added.]

The Legislature uses the term "recognized employee organization" in this section. The Legislature has defined this term as an employee organization which have been formally acknowledged to represent the court interpreters employed by the trial courts. (Sec. 71801(g).) Additionally, the language of Section 71815 indicates that the right to represent is limited to "employment relations" with the trial courts as to matters covered by the Act. Independent contractors do not have "employment relations" with the trial courts per our above discussion which found them not to be trial court employees.

The agency shop provisions of the Act are consistent with our interpretation of Sections 71813 and 71815. Section 71814 defines "agency shop" as meaning: "an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or for a period of three years from the effective date of the agreement, whichever comes first." (Emphasis added.)

This section also provides that an agency shop provision in a memorandum of understanding or agreement in effect "may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding" if certain criteria is met.

We find that Section 71816(a), the Act's scope of representation provisions is consistent with our interpretation of Sections 71813 and 71815. Section 71816(a) provides, in relevant part:

> The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. [Emphasis added.]

The Legislature's use of the words "employment conditions" in the ordinary sense of the words means conditions of employees. [15] Similarly "employer-employee relations" refers to employees and does not reasonably include non-employee independent contractors.

Section 71823 also indicates that the Legislature intended collective bargaining rights under the Act to be limited to court interpreters employed by the trial courts. This section provides that the regional court interpreter employment relations committee[16] shall adopt reasonable rules and regulations "for the administration of employer-employee relations under this chapter." Pertinent to our analysis, the required provisions of Section 71823 delineated in subsections (1) and (3) through (5) below are limited to court reporters employed by the trial courts. These subsections provide:

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[15] Where no ambiguity exists, the intent of the Legislature in enacting a law is to be gleaned from the words of the statute itself, according to the usual and ordinary import of the language employed. (North Orange.)

[16] "Regional court interpreter employment relations committee" means the committee established pursuant to Section 71807. (Sec. 71801(h).) Section 71807 provides that the trial courts are divided up into four regions with a regional court interpreter employment relations committee for each region, composed of representatives chosen by the trial courts within the region.

(1) Verification that an organization represents employees of the trial courts within the applicable region.

. . . . . .

(3) Registration of employee organizations and recognition of these organizations as representatives of interpreters employed by the trial courts in the region.

(4) Establishment of a single, regional bargaining unit of all court interpreters employed by the trial courts in the region, including court interpreters pro tempore.

(5) Recognition of an employee organization as the exclusive representative of all court interpreters employed by the trial courts in the region, subject to the right of a court interpreter to represent himself or herself, as provided in Section 71813, upon either of the following:

(A) Presentation of a petition or cards with the signatures of 50 percent plus one of the court interpreters employed by the trial courts in the region during the payroll period immediately prior to the presentation of the cards or petition, including court interpreters pro tempore, regardless of whether they have been appointed to interpret during that payroll period, if they have worked for the trial courts as independent contractors or employees for at least 15 days in the six months prior to the filing of the petition or cards with those signatures having been obtained within one year prior to presentation of the petition or cards. A signature shall be valid even if the interpreter was not yet an employee at the time the petition or card was signed if the interpreter had previously performed work for the trial courts as an independent contractor, provided that the signature was obtained no more than 90 days before the interpreter became an employee.

(B) Receipt by the employee organization of 50 percent plus one of the votes cast at a secret ballot representation conducted by mail. . . . A signature shall be valid even if the interpreter was not yet an employee at the time the petition or card was signed if the interpreter had previously performed work for the trial courts as an independent contractor, provided that the signature was obtained no more than 90 days before the interpreter became an employee. All certified and registered interpreters employed by the trial courts in the payroll period immediately prior to the election, including court interpreters pro tempore, shall be eligible to vote in the election, regardless of whether they have been appointed to interpret during that pay period, so long as they

> have worked for the trial courts as independent contractors or employees for at least 15 days in the six months prior to the filing of the petition or cards. [Emphasis added.]

The plain language of the above subsections of Section 71823, individually and collectively, indicates that the collective bargaining rights provided under the Act are limited to employees of the trial courts.

Consistent with the above analysis, Section 71822's provisions regarding prohibited conduct of the Act indicate that applicants for interpreter employment are not employees of the trial courts. This section provides:

> The trial courts, the regional court interpreter employment relations committee, and employee organizations may not interfere with, intimidate, restrain, coerce, harass, or discriminate against applicants for interpreter employment or interpreter employees because of their membership in an interpreter association or employee organization, because of their participation in any grievance, complaint, or meet and confer activities, or for the exercise of any other rights granted to interpreter employees under this chapter.

Based on the plain language in the foregoing provisions of the Act, we find that collective bargaining rights were not extended to independent contractor interpreters, but rather were limited to interpreters who are employed by the courts full-time or part-time or who are on call as court interpreters pro tempore.

The Federation argues that the ALJ's decision is correct. We disagree with the ALJ's legal analysis. The ALJ began his analysis of whether court interpreters seeking employment under the Act had collective bargaining rights by interpreting Section 71816, the scope of representation provisions.[17] The ALJ found that subsection (a) of Section 71816's language was broad while subsection (b) of the sections general language specifically excluded several

[17]As stated above, we think that is putting the cart before the horse and that the better starting point is Section 71813, which delineates who has the right to be represented by an employee organization under the Act.

matters from the scope of representation, but did not mention the rights of independent contractors to become employees.[18] We do not find that these provisions indicate a legislative intent to give collective bargaining rights to trial court interpreters seeking employment under the terms of the Act.

The scope of representation section of the Act was not intended to provide who has the right to be represented by an employee organization, but rather what are the matters which are mandatory subjects of bargaining under the Act. (Sutter In-Home Supportive Services Public Authority (2007) PERB Decision No. 1900-M (Sutter).) We are not aware of any PERB cases, and none has been cited, which stand for the proposition that, in addition to delineating matters which are the subject of bargaining, the scope of representation section is also determinative of who has collective bargaining rights under the Act.

In Sutter, PERB interpreted Section 3504 of the MMBA and delineated the criteria to be applied in determining whether a matter fell within the scope of representation provisions under the MMBA.[19] The Board concluded that a three part test was to be applied pursuant to the balancing test stated in Claremont Police Officers Assn. v. City of Claremont (2006) 39 Cal.4th 623 [47 Cal.Rptr.3d 69]. In the first step PERB asks "whether the management action has 'a significant an adverse effect on the wages, hours, or working conditions of the bargaining-unit employees.'" If the answer is no, there is no duty to meet and confer. An

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[18]This subsection excludes specific decisions due to the unique and special responsibilities of the trial courts in the administration of justice. The excluded decisions are: (1) the merits and administration of the trial courts; (2) coordination, consolidation and merger of the trial courts and staff; (3) automation; (4) design, construction and location of court facilities; (5) delivery of court services; and (6) hours of operation.

[19]Section 71826 of the Act provides that where sections of the MMBA are the same or substantially the same as that in the Act, these sections in the Act are to be interpreted and applied in accordance with the judicial interpretations of the same or similar sections in the MMBA. The language of Section 71816(a) in the Act is identical to that of Section 3504 of the MMBA.

affirmative finding leads to the next step which is to determine whether "a significant and adverse effect arises from the implementation of a fundamental managerial or policy decision." If the answer is no, the meet and confer requirement applies. Finally, if both factors are present, an action taken to implement a fundamental managerial or policy decision has a significant and adverse effect on the wages, hours, or working conditions of the employees, PERB applies a balancing test. This results in the matter being within the scope of representation only if the employer's need for unencumbered decision making in managing its operations is outweighed by the benefit to the employer-employee relations of bargaining about the action in question.

The Federation argues that the words "all matters relating to employment conditions" in Section 71816(a) indicates the Legislature intended that the representation of independent contractors applying for jobs under the Act was to be included within the scope of representation. The Federation reasons that "it is inconceivable that the Legislature could have meant to exclude the hiring of independent contractors from the Union's scope of representation, given that prior to July 1, 2003, virtually all court interpreters were considered independent contractors and the statute clearly meant to regulate the conversion of such individuals to employee status."

We agree that one of the purposes of the Act was to convert independent contractors to trial court employees and add that another key purpose was to give collective bargaining rights to those employees. We do not find the phrase "all matters relating to employment conditions" should be interpreted to provide that non-employee independent contractor interpreters have collective bargaining rights under the Act.

In support of its position that the Legislature intended independent contractor interpreters to be represented by a recognized employee organization, the Federation cites the ALJ's findings based on subsection (f) of Section 71802 of the Act. This subsection provides:

> Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes concerning a violation of this section shall be submitted for binding arbitration to the California State Mediation and Conciliation Service. [Emphasis added by ALJ.]

The ALJ reasoned that if a memorandum of understanding with a recognized employee organization may provide procedures resolving disputes under the Section 71802 of the Act, those procedures are within the organization's scope of representation and such disputes would often concern the rights of independent contractors to become employees given this is in large part what the section concerns. We disagree with this analysis.

Section 71802 has provisions providing rights to employed court interpreters as well as non-employee independent contractor court interpreters. Subsection (a) of Section 71802 protects employed court interpreters by providing that after July 1, 2003, the trial courts shall appoint trial court employees rather than independent contractors for interpretation of trial court proceedings. Subsection (b) of Section 71802 delineates the circumstances under which independent contractor court interpreters may be assigned thus giving independent contractors who meet the special circumstances rights over other independent contactor court interpreters who do not. Section 71802(c)(2) contains language granting rights to independent contractors meeting specified criteria to be offered employment by the trial courts.[20]

[20]Section 71802(c)(2) gives rise to the issues in the amended charge filed in this case by the Federation.

We find that Section 71802(f)'s provisions are intended to provide dispute resolution procedures for both trial court employees and independent contractors regarding their different rights under Section 71802. A reasonable interpretation of the language of subsection (f) of Section 71802 stating that alternative memorandum of understanding dispute procedures may be agreed upon by a "recognized employee organization" is that such language refers to the provisions in Section 71802 which give rights to trial court employees.[21] A recognized employee organization cannot bargain for different alternative dispute resolution procedures for independent contractors which it is not authorized to represent. Therefore the arbitration procedures enunciated in subsection (f) of Section 71802 would apply to independent contractor disputes under the Act regardless of any dispute procedures for trial court employees agreed upon in a memorandum of understanding.

Statutes are to be given reasonable and common sense interpretations consistent with the apparent intention of the lawmakers. (Inglewood Unified School District (1991) PERB Order Ad-222 (citing DeYoung v. City of San Diego (1983) 147 Cal.App.3d 11, 18 [194 Cal.Rptr. 722].) Where a statute is subject to two or more reasonable interpretations, the interpretation which will harmonize rather than conflict with other provisions should be adopted. (San Bernardino City Unified School District (1989) PERB Decision No. 723 (citing People v. Kuhn (1963) 216 Cal. App. 2d 695, 698 [31 Cal.Rptr. 253].)

There is a potential for significant conflicts if Section 71802(f)'s provisions are interpreted as indicating that the Legislature intended that independent contractors could be represented by the same employee organization representing trial court employees. For instance, this would result, under subsection (c) of Section 71802, in the recognized employee

[21]This is consistent with the definition of a recognized employee organization which is "an employee organization that has been formally acknowledged to represent the court interpreters employed by the trial courts." (Sec. 71801(g), emphasis added.)

organization having authority to bargain on behalf of employees as well as non-employee independent contractors as to the circumstances under which independent contractors may be appointed to day-to-day assignments. These two groups have built in conflicts of interest under Section 71802(c) given they have separate interests. Court interpreters pro tempore who are employed by the trial courts want to protect that employment so that there will always be work for which they can be assigned on a per diem basis. It is in this employee group's interest to bargain for more stringent day-to-day criteria before an independent contractor can be assigned.

On the other hand independent contractors could want to bargain for less stringent day-to-day criteria to make their assignment by the trial courts more feasible under Section 71802(c). It would be unreasonable to interpret the Act as providing that a recognized employee organization should bargain for these competing interests.

Another potential conflict of interest between court interpreter employees and independent contractors results under subsection (2) of Section 71802(c). Subsection (2) provides that under certain circumstances, independent contractors are entitled to apply for employment as pro tempore court interpreters. Currently employed court interpreters would have an interest in making sure the trial court does not employ court interpreters pro tempore under subsection (2) of Section 71802(c) who do not meet the statute's requirements for such employment. This interest conflicts with that of the independent contractor who is applying for employment under subsection (2) of Section 71802. It is unreasonable to interpret the Act as providing that the recognized employee organization should represent both of these competing interests.

For all of the above reasons, we hold that the Legislature did not intend the Act to give collective bargaining rights to independent contractor court interpreters, thus the Federation

does not have standing to file a charge in its name seeking to vindicate rights allegedly held by an independent contractor under the Act.[22]

ORDER

The unfair practice charge and complaint in Case No. LA-CE-6-I are hereby DISMISSED WITH PREJUDICE.

Members Wesley and Dowdin Calvillo joined in this Decision.

Chair Neuwald's dissent begins on page 29.

[22]Given our finding that PERB lacks jurisdiction over the Federation's amended charge we do not address the remaining exceptions by Respondents to the ALJ's proposed decision.

NEUWALD, Chair, dissenting: I respectfully dissent from the majority's ruling. Section 71822 of the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) provides:

> The trial courts, the regional court interpreter employment relations committee, and employee organizations may not interfere with, intimidate, restrain, coerce, harass, or discriminate against applicants for interpreter employment or interpreter employees because of their membership in an interpreter association or employee organization, because of their participation in any grievance, complaint, or meet and confer activities, or for the exercise of any other rights granted to interpreter employees under this chapter. [Emphasis added.]

Clara Newton (Newton) exercised rights under this chapter seeking employment pursuant to Section 71802(c)(2). The majority finds that the California Federation of Interpreters/TNG/CWA did not have standing to file a charge in its name seeking to vindicate Newton's rights. For the reasons stated below, I disagree.

As discussed in the majority decision, the Court Interpreter Act provides certain rights solely to employees and exclusive representatives. Section 71813 states that employees have the right to participate in a union for purposes of representation in employer-employee relations. Further, Section 71815 gives an exclusive representative the right to represent members in their employment relations with the courts. The legislative history indicates that the Legislature modeled these provisions after the Trial Court Employment Protection and Governance Act (Trial Court Act)[1] to provide employees and exclusive representatives similar collective bargaining rights. The Legislature, however, provided additional bargaining authority under the Court Interpreter Act not found in the other statutes PERB administers.

[1]The Trial Court Act is codified at Government Code section 71600 et seq.

While the Legislature provided for the conversion of independent contractors to court employees, it acknowledged the courts may have the need to use independent contractors on occasion. The Legislature specifically provided the circumstances under which independent contractors could be utilized and in some cases authorized the parties to negotiate over these provisions. For example, Section 71802(b) provides that a court may appoint independent contractors if one or more of four specified circumstances exist. Section 71802(c) provides other circumstances under which a court may appoint independent contractors. But, the Legislature authorized a court and a union to negotiate regarding Section 71802(c). In contrast, no authority is given under Section 71802(b) to negotiate other terms. Section 71802(c) states:

> (c) Notwithstanding subdivisions (a) and (b), and unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, a trial court may also appoint an independent contractor on a day-to-day basis to perform spoken language interpretation of trial court proceedings if all of the following circumstances exist. (Emphasis added.)

Section 71802(f) also allows a court and a union to negotiate different dispute resolution procedures involving matters covered in Section 71802. Section 71802(f) states:

> Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes concerning a violation of this section shall be submitted for binding arbitration to the California State Mediation and Conciliation Service.

Contrary to the conclusion in the majority decision, I do not find any express language in subsection (f) that limits a union to negotiate procedures that affect only employees.

While Section 71816, the scope of representation provision, may limit negotiations to terms and conditions of employment as it does in the other collective bargaining statutes, the

Legislature expressly granted the parties additional authority to bargain certain limited subjects involving independent contractors. It appears the statue grants an exclusive representative an independent right to bargain regarding these matters and, thus, seek enforcement of these provisions through the unfair practice process, including the right to relevant and necessary information. As such, I would adopt the administrative law judge's proposed decision as a decision of the Board itself subject to the discussion above.