

NO. F 056201

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

RANDELL JOHNSON,
Plaintiff and Appellant

vs.

ARVIN-EDISON WATER STORAGE DISTRICT,
Defendant and Respondent.

Appeal from the Superior Court of Kern County
The Honorable Arthur Wallace, Judge Presiding
Case No. CV-261871

**APPLICATION FOR PERMISSION TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT and
BRIEF OF AMICUS CURIAE EDUCATION LEGAL ALLIANCE
OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION**

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, FIFTH APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: F 056201
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address): Richard L. Hamilton [SBN 037495]	Superior Court Case Number: CV-261871
EDUCATION LEGAL ALLIANCE/CA SCHOOL BOARDS ASSOCIATION 3100 Beacon Blvd. West Sacramento, CA 95691 TELEPHONE NO.: 916.371.4691 FAX NO. (Optional): 916.371.3407 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Amicus Curiae ELA/CSBA	FOR COURT USE ONLY
APPELLANT/PETITIONER: Randell Johnson	
RESPONDENT/REAL PARTY IN INTEREST: Arvin-Edison Water Storage District	
<p align="center">CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</p> (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
<p>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</p>	

1. This form is being submitted on behalf of the following party (name): Amicus Curiae ELA/CSBA

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person

Nature of interest (Explain):


- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 23, 2009

RICHARD L. HAMILTON
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
AND PROPOSED AMICUS CURIAE BRIEF OF EDUCATION LEGAL
ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS
ASSOCIATION IN SUPPORT OF DEFENDANT/ RESPONDENT**

I.

INTRODUCTION

Pursuant to California Rules of Court, Rule 8.200(c), the Education Legal Alliance of the California School Boards Association (“Amicus Curiae”) respectfully requests permission to file the accompanying amicus curiae brief (“Amicus Curiae Brief”) in support of Defendant/Respondent Arvin-Edison Water Storage District (hereinafter, “Respondent”). Amicus Curiae will address the question of general application of Labor Code provisions and California Industrial Welfare Commission (“IWC) Wage Orders to public entities as sought by Plaintiff/Appellant Randall Johnson (“Appellant”).

II.

**INTEREST OF AMICUS CURIAE CALIFORNIA SCHOOL BOARD
ASSOCIATION’S EDUCATION LEGAL ALLIANCE**

The California School Boards Association (CSBA) is a California non-profit corporation. CSBA is a member-driven association composed of nearly 1,000 K-12 school district governing boards and county boards of education throughout California. CSBA supports local school board governance and advocates on behalf of school districts and county offices of education. As part of CSBA, the Education Legal Alliance (the “Alliance”) helps to ensure that

local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. The Alliance represents its members, just under 800 of the state's 1,000 school districts and county offices of education, by addressing legal issues of statewide concern to school districts. The Alliance's activities include joining in litigation where the interests of public education are at stake.

In the case at bench, Appellant seeks to reverse long-established case law and Attorney General opinions relied upon by public entities, including members of Amicus Curiae, determining that Labor Code provisions and IWC Orders only apply when there is specific Legislative directive that is the case.

III.

CONCLUSION

For the foregoing reasons, Amicus Curiae respectfully request the Court to accept for filing the attached Amicus Curiae Brief.

Dated: February 23, 2009

Respectfully submitted,

EDUCATION LEGAL ALLIANCE OF THE
CA SCHOOL BOARDS ASSOCIATION

By: 

RICHARD L. HAMILTON
Associate General Counsel and Director

**PROPOSED AMICUS CURIAE BRIEF
OF THE EDUCATION LEGAL ALLIANCE
OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF DEFENDANT/RESPONDENT**

COMES NOW Amicus Curiae, the Education Legal Alliance of the California School Boards Association, to offer the following Argument in the above captioned matter.

I.

INTRODUCTION

The Education Legal Alliance of the California School Boards Association (“Amicus Curiae”) submits this amicus curiae brief (“Amicus Curiae Brief”) in support of Defendant/Respondent Arvin-Edison Water Storage District (hereinafter, “Respondent”) pursuant to California Rules of Court, Rule 8.200(c).

The California School Boards Association (CSBA) is a California non-profit corporation. CSBA is a member-driven association composed of nearly 1,000 K-12 school district governing boards and county boards of education throughout California. CSBA supports local school board governance and advocates on behalf of school districts and county offices of education. As part of CSBA, the Education Legal Alliance (the “Alliance”) helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. The Alliance represents its members, just under

800 of the state's 1,000 school districts and county offices of education, by addressing legal issues of statewide concern to school districts. The Alliance's activities include joining in litigation where the interests of public education are at stake.

II.

STATEMENT OF THE CASE

A. Facts and Procedural History

Plaintiff/Appellant Randall Johnson ("Appellant") has filed this class action complaint for overtime wages, meal and rest periods, statutory penalties and other wage and hours claims against the Respondent. Appellant asserts the Respondent has violated the Labor Code and a Wage Order promulgated by the California Industrial Welfare Commission ("IWC").

The trial court sustained Respondent's Demurrer to the Complaint without leave to amend on the grounds that a public entity, like Respondent, is not covered by the Labor Code provisions and IWC Order cited by Appellant.

B. Summary of the Parties' Arguments on Appeal

As pertinent for purposes of this Amicus Curiae Brief, in summary, Appellant argues that:

"First, under established legal precedent, public employers are subject to generally applicable statutory provisions unless expressly made exempt or where the statute would infringe on the public entity's sovereign powers. As Labor Code sections 201 [immediate payment of wages upon discharge or layoff], 202

[immediate payment of wages upon resignation], 203 [failure to make payment/penalties], 510 [overtime] and 512 [meal periods] do not infringe on the District's [Respondent's] sovereign powers, the District is subject to these Labor Code sections.

Second, the Legislature granted the IWC with the authority to govern the wages and hours of all employees within the state of California, regardless of whether public or private, and to exempt categories of employers from the overtime and meal period requirement of Labor Code sections 510 and 512. As the IWC has not exempted public employers from Wage Order 17, which is applicable to the District, the District is subject to Labor Code sections 510 and 512." (Reply Brief, pg 3).

As pertinent to these arguments of Appellant, in summary, Respondent argues:

"The trial court correctly sustained the District's [Respondent's] demurrer without leave to amend for three reasons. First, Labor Code sections 510 and 512 are inapplicable to public agencies like the District. Under longstanding rules of statutory construction, statutes are presumed not to apply to governmental agencies unless they expressly say so. (See, e.g., *Regents of the University of California v. Superior Court* (1976) 17 Cal.3d 533, 536). Sections 510 and 512 concern the terms and conditions of public employment, which are powers specifically reserved to the District. (*County of Riverside v. Superior Court*, *supra* 30 Cal.4th at 285; *Sonoma County Organization of Public Employees v. County of Sonoma*, *supra* 23 Cal.3d at 316). Accordingly, courts have refused to apply Labor Code provisions as against public entities. (See, e.g. *Curcini v. County of Alameda*, *supra*, 164 Cal. App.4th at 638; *Kistler v. Redwoods Community College District* (1993) 15 Cal.App.4th at 1326.)

Second, Wage Order 17 does not apply to public agencies like the District. The IWC's enabling statute does not confer the IWC with the authority to regulate public agencies. Moreover, the legislative history reveals the Wage Order 17 was not designed to expand meal period obligations to public employees; rather it was intended to carry forward the preexisting exemption for public entities that existed in 1997.

...." (Respondent's Brief, pg 7-8)

III.

ARGUMENT

LABOR CODE PROVISIONS AND IWC WAGE ORDERS DO NOT GENERALLY APPLY TO PUBLIC ENTITIES

As the representative of the vast majority of school districts and county offices of education in the state of California, Amicus Curiae agrees with the arguments made by Respondent in its Brief as to the general non-applicability of these Labor Code provisions and the IWC Wage Order to public entities, which includes California's school districts and county offices of education.

In furtherance of those arguments with a specific focus on public school employers it should be observed that the Legislature has plenary power over public school districts subject only to constitutional restraints. (*Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1134-1135) The Legislature, in exercising this authority, provides extensive statutory direction concerning school operations, including Title 2, Division 3, Part 25 of the Education Code ("Part 25"), entitled "Employees." Part 25 sets out a myriad of provisions relative to wage and hour issues pertinent to both certificated and classified employees.

Moreover, the Legislature has enacted broad rights of public school employees to collectively bargain with their public school employers who are members of Amicus Curiae. (Government Code section 3540 et seq.) The

scope of representation includes inter alia, wages and hours. (Government Code section 3543.2.)

For these reasons the general assertion that the Labor Code provisions here at issue or the IWC Wage Order should be rejected not only on the points of law raised by Respondent but also by reason that the Legislature has taken care of public employees on such matters through other means.

Furthermore, it is absurd that the Labor Code provisions and IWC Order would be deemed to apply to public entities under a theory of "general applicability unless made expressly exempt" when it is considered that the Legislature, at least with respect to public school employers, has specifically designated in the Education Code when provisions of the Labor Code and IWC due apply. They are numerous but two references applicable to the employment of school employees are pertinent: (1) Education Code section 44031, pertaining to the right of an employee to inspect personnel records pursuant to Labor Code section 1198.5 and (2) Education Code section 51769 wherein the school district providing the training mentioned in the section is considered the employer under Division 4 (commencing with section 3200) of the Labor Code.

Thus the Legislature has demonstrated when provisions of the Labor Code apply a specific Education Code provisions is the vehicle.

Likewise it is with IWC Orders. Education Code section 49116 regulates the maximum work hours of minors, and incorporates Wage Order

15. When an IWC Wage Order is to apply, the Legislature knows that a specific reference is necessary under established law, statutes are presumed not to apply to governmental agencies unless they expressly say so.

Finally, it would create fiscal chaos, particularly in these extremely difficult fiscal times for school districts, should long-established case law and Attorney General Opinions be deemed a nullity by a new court ruling that the Labor Code provisions and Wage Order here at issue were deemed applicable to public entities and not infringe on their sovereign powers.

IV.


CONCLUSION

For the foregoing reasons, the decision of the trial court should be affirmed.

Dated: February 23, 2009

Respectfully submitted,

EDUCATION LEGAL ALLIANCE OF THE
CA SCHOOL BOARDS ASSOCIATION

By: 

RICHARD L. HAMILTON
Associate General Counsel and Director

**CERTIFICATE OF COMPLIANCE
WITH RULE 8.208 (c) (1) OF CALIFORNIA RULES OF COURT**

The attached brief consists of 1,301 words as counted by the Microsoft Office Word 2003 word processing program used to generate this brief, excepting the caption, tables, verification, and this certificate.

Dated: February 23, 2009

EDUCATION LEGAL ALLIANCE/
CA SCHOOL BOARDS ASSOCIATION

By: _____


RICHARD L. HAMILTON

DECLARATION OF SERVICE

Case Name : *Johnson v. Arvin-Edison Water Storage District*
Case No: : F056201
Court : Court of Appeal, Fifth Appellate District

I declare: I am a citizen of the United States, over the age of 18, and not a party to the within action. My business address is 555 Capitol Mall, Suite 1425, Sacramento, California, 95814. On February 23, 2009, I served a true and correct copy of the following entitled documents:

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT and BRIEF OF AMICUS CURIAE EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION

on the parties in said action as follows:

 X BY MAIL: By placing the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

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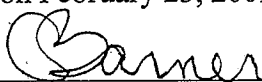
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STORAGE DISTRICT, Defendant and
Respondent*

Clerk of the Court, Attention: Appeals Unit
Kern County Superior Court
1415 Truxtun Avenue
Bakersfield, CA 93301

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

*Provided electronically in accordance with
Cal .Rules of Court, Rule 8.212 (c)(2)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 23, 2009 in Sacramento, California.



ANN BARNER