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OPINION	:	No. 86-606
	:	
of	:	<u>NOVEMBER 25, 1986</u>
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THE HONORABLE JOHN SEYMOUR, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

May a school district implement, pursuant to a collective bargaining agreement, an additional one-time salary adjustment unrelated to the negotiated salary schedule for certificated employees?

CONCLUSION

A school district may implement, pursuant to a collective bargaining agreement, an additional one-time salary adjustment unrelated to the negotiated salary schedule for certificated employees?

ANALYSIS

Education Code section 45028, pertaining to the compensation of certificated personnel of a school district, provides as follows:

"Effective July 1, 1970, each person employed by a district in a position requiring certification qualifications except a person employed in a position requiring administrative or supervisory credentials, *shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience.* Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.

"In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section, nor shall any superintendent draw any requisition for the salary of any teacher in violation thereof.

"This section shall not apply to teachers of special day and evening classes in elementary schools, teachers of special classes for elementary pupils, teachers of special day and evening high school classes and substitute teachers." (Emphasis added.)

The inquiry now presented is whether a school district may implement, pursuant to a collective bargaining agreement, an additional one-time salary adjustment unrelated to the negotiated salary schedule for certificated employees. Inasmuch as the "adjustment" has been agreed to and made part of a collective bargaining agreement, the provisions of the Rodda Act (Gov. Code, § 3540 *et seq.*) must be examined. At the outset, it is clear that matters relating to wages comprise an integral aspect of a collective agreement. Government Code section 3543.2, subdivision (a) provides:

"The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment.

"."

Further, the basis of distribution (e.g., whether provided in a single increment, or pursuant to a uniform allowance for years of training and experience) falls within the scope of representation if it is a "matter relating to wages" within the meaning of Government Code section 3543.2, subdivision (a). (*San Mateo City School District v.*

Pub. Emp. Rel. Bd. (1983) 33 Cal.3d 850; *Healdsburg Union High Sch. Dist., et al.* (1984) PERB Decision No. 375.¹) In *San Mateo*, the court adopted the following test (p. 858):

" . . . [A] subject is negotiable even though not specifically enumerated if (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment, (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not significantly abridge his freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission."

In our view, the basis of distribution is negotiable as part of a collective agreement within the purview of Government Code section 3543.2, subdivision (a), *supra*.

We next examine, however, whether the payment under that section of an off-schedule single increment would conflict with Education Code section 45028, set forth initially, and if so, which would prevail. It shall first be assumed that the distribution would be based on a uniform allowance for years of training and experience, i.e., consistent with the criterion established in Education Code section 45028. We are advised that the one-time negotiated adjustment is in the nature of a bonus² drawn from an extraordinary fund³ the recurrence of which, from year to year, is uncertain. For this reason, the adjustment is distinct and separate from the regularly negotiated salary schedule. Again, the second paragraph of section 45028 provides that "In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section . . ." The statute

¹ Interpretation of the statutory provision defining scope of representation falls squarely within PERB's legislatively designated field of expertise. Under established principles PERB's construction is to be regarded with deference by a court performing the judicial function of statutory construction, and will generally be followed unless it is clearly erroneous. (*Highland Ranch v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 848, 859; *J.R. Norton Co. v. Agricultural Labor Relations Bd.* (1979) 26 Cal.3d 1, 29; *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 325.)

² It may be argued that a bonus is not "salary" within the meaning of section 45028, and therefore is not subject to the specifications of that section. While the term "salary" is not defined in part 25 of the Education Code governing school employees, its definition for purposes of retirement expressly excludes money paid as a bonus. (Ed. Code, § 22114.) Nevertheless, we predicate our conclusion on alternative grounds.

³ We express no opinion respecting the appropriate use of funds allocated under the California State Lottery Act (*cf.* Gov. Code, § 8880.5), or any other provision of law.

has a twofold purpose of (1) requiring that teachers be *classified* for salary purposes, and (2) establishing that such classification proceed wholly on a *uniform basis* of years of training and years of experience. (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unif. Sch. Dist.* (1978) 21 Cal.3d 650, 661.) We find nothing in the proposed adjustment, whether or not denominated a "bonus," which is inherently inconsistent with the purposes of section 45028, i.e., that teachers be classified for salary purposes and compensated on a uniform basis. Hence, we perceive no ostensible conflict between the respective statutory schemes where distribution is based on years of training and experience.

On the other hand, a distribution based on a criterion other than years of training and experience would create an apparent conflict. However, by the enactment of the Statutes of 1983, chapter 498, section 128, the Legislature added subdivision (d) to Government Code section 3543.2 as follows:

"Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate regarding the payment of *additional compensation based upon criteria other than years of training and years of experience*. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply." (Emphasis added.)

Thus, assuming that a negotiated sum *in addition* to the base salary schedule were based upon a criterion *other than* training and experience, e.g., an equal distribution, the payment of that amount would be valid "[n]otwithstanding section 45028 . . ."⁴

Finally, we find no merit in the contention that, in spite of the later enacted and specific provisions of Government Code section 3543.2, subdivision (d), such provisions, in the event of a conflict, are superseded by the Education Code, pursuant to Government Code section 3540 which provides in part as follows:

⁴ Further, the Legislature, in its amendment of section 13506 (now § 45028) of the Education Code, added the following uncodified provision (Stats. 1969, ch. 1314, § 3):

"It is the intent of the Legislature . . . to establish a uniform *base* salary schedule in each school district. It is not the intent of the Legislature in this act to limit a school district governing board in developing *pay incentive programs*." (Emphasis added.)

Hence, under the provisions of the Education Code itself, a pay incentive program may be implemented in addition to the base schedule, pursuant to a criterion (e.g., performance) other than years of training and experience.

"Nothing contained herein shall be deemed to supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, *so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.*" (Emphasis added.)

This section pertains generally to the regulation of tenure or a merit or civil service system, and to the administration of employment relations. Insofar as such matters relate specifically to wages, the court, in *Sonoma County Bd. of Educ. v. Pub. Emp. Rel. Bd.* (1980) 102 Cal.App.3d 689, 702, holding that a county board of education was under a duty to bargain in good faith with a public employees' organization concerning proposals related to the salaries or wages of the represented unit within the classified service, stated in part:

". . . there can be no rational doubt as to the meaning and purpose intended by the Legislature. We construe the statutory intentment as manifesting a legislative policy that in the areas of collective bargaining authorized under the provisions of the Rodda Act, those provisions prevail over conflicting enactments and rules and regulations of the public school merit or civil service system relating to the matter of wages or compensation of its classified service."

Nor is there any other statutory or constitutional impediment to a salary increase during a school year. Education Code section 45032 provides:

"The governing board of a school district may at any time during any school year increase the salaries of persons employed by the district in positions requiring certification qualifications, such increase to be effective on any date ordered by the governing board."

We have previously examined the interrelationship between this provision and article IV, section 17 of the California Constitution (prohibiting the grant of extra compensation to a public employee or contractor), and concluded that section 45032 (then § 13510) is constitutional. (53 Ops.Cal.Atty.Gen. 16 (1970).)

It is concluded that a school district may implement, pursuant to a collective bargaining agreement, an additional one-time salary adjustment unrelated to the negotiated salary schedule for certificated employees, whether or not based upon the criteria set forth in section 45028 of the Education Code. *****