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STATE COURT ADMINISTRATOR

JAN 18 2006

IN THE SUPREME COURT OF THE STATE OF OREGON

D. GRANT WALTER and SERVICE  
EMPLOYEES INTERNATIONAL UNION  
LOCAL 140,

Petitioners and Petitioners  
on Review,

v.

JAMES SCHERZINGER and PORTLAND  
SCHOOL DISTRICT NO. 1J,,

Respondents and  
Respondents-on-Review.

Supreme Court No. S51669

Court of Appeals No. A118491

Employment Relations Board  
Case No. DR-4-02

SUPREME COURT  
— COURT OF APPEALS  
— DEPUTY  
- 43  
FILED  
1-17-06

REPLY TO RESPONSE TO DISTRICT'S  
MEMORANDUM OF ADDITIONAL AUTHORITY

Petition to Review the Decision of the Supreme Court,  
Reversing Decisions of the Court of Appeals and  
the Employment Relations Board

Date of Opinion: October 13, 2005  
Author of Opinion: DeMuniz, J.  
Dissenting: Balmer, J., joined by  
Carson, C. J., and Gilette, J.

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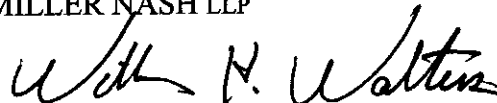
On December 20, 2006, the District filed a Petition for Reconsideration, and shortly thereafter also filed a Memorandum of Additional Authority bringing to the Court's attention a quite recent decision of a sister court of a strikingly similar issue to that raised by the District's petition. Respondents have now taken the occasion of the District's memorandum to state in brief their argument as to why the Court should deny the District's petition. The District requests the Court's permission to file this brief reply.

Respondents acknowledge that the District's petition (i) observes that the Custodial Civil Service Law, as interpreted by this Court, conflicts with the Public Employee Collective Bargaining Act and (ii) reasons that where these two statutory schemes conflict PECBA should control. Respondents' "fundamental position" in response is that "there is no conflict between the CCSL and PECBA." Respondents reason that this is so because, although the CCSL "requires" the District to employ custodians and "therefore prohibits contracting out, PECBA says nothing at all about contracting out." So how could there be any conflict?

This response is confused. Granted that PECBA does not, in so many words, address contracting out, neither does the CCSL. Nonetheless these statutes are in conflict on this topic. On the one hand, the CCSL, as interpreted by this Court, requires the District to employ a custodial workforce and therefore would prohibit the District from contracting out custodial services in this case. On the other hand, PECBA, as interpreted and applied by ERB, treats contracting out as a mandatory subject of bargaining and permitted the District to contract out for custodial services in this case. Thus one statute would prohibit what the other permits. This conflict necessarily poses the question of which statute should control in this instance. In this

way Respondent's response actually highlights the importance of the Court allowing reconsideration to address this conflict and others (see pages 8-12 of the District's petition) between the CCSL and PECBA.

MILLER NASH LLP

A handwritten signature in black ink, appearing to read "William H. Walters". The signature is written in a cursive, flowing style.

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I hereby certify that I served the foregoing Reply to Response to District's Memorandum of Additional Authority on January 17, 2006, by mailing the original and nine copies thereof by first-class mail via the U.S. Postal Service to:

Ms. Kingsley W. Click  
State Court Administrator  
Records Section  
Supreme Court Building  
1163 State Street  
Salem, Oregon 97301-2563

I further certify that I served the foregoing Reply to Response to District's Memorandum of Additional Authority on January 17, 2006, by mailing two correct copies thereof by first-class mail via the U.S. Postal Service to:

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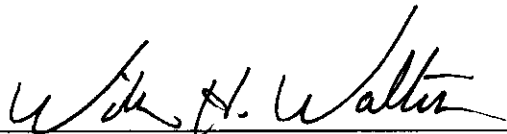
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DATED this 17th day of January, 2006.

  
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