Supreme Court No. S203478

IN THE SUPREME COURT
FOR THE STATE OF CALIFORNIA

CITY OF SAN DIEGO,
Petitioner,

vs.

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent,

and

SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION; DEPUTY CITY ATTORNEYS ASSOCIATION; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO LOCAL 127; SAN DIEGO CITY FIREFIGHTERS LOCAL 145, IAFF, AFL-CIO, CATHERINE A. BOLING, T.J. ZANE, and STEPHEN B. WILLIAMS,
Real Parties in Interest.

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from an Order Summarily Denying a Petition for
Writ of Mandate and Application for Stay of the Court of Appeal,
Fourth Appellate District, Division One, D062090

REAL PARTY IN INTEREST AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 127, AFL-CIO'S ANSWER TO PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

I certify that there are no interested entities or persons that must be listed under Rule 8.208 of the California Rules of Court.

DATED: July 3, 2012

ELLEN GREENSTONE
CONSTANCE HSIAO
ANTHONY RESNICK
ROTHNER, SEGALL & GREENSTONE

By _____
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Pursuant to the Court's order dated June 22, 2012, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127 ("AFSCME Local 127"), named as a Real Party in Interest in this Petition for Review, files this Answer to the Petition.

INTRODUCTION

Petitioners are the proponents of a local ballot initiative – the "San Diego Comprehensive Pension Reform Initiative" ("CPRI") – amending the Charter of the City of San Diego ("City") to limit compensation and retirement for City employees. They seek review of the summary denial of an original writ petition filed by the City in the Court of Appeal, Fourth Appellate District, in which Petitioner ballot proponents were named as real parties in interest.

Respondent is the California Public Employment Relations Board ("PERB"), the agency charged with administering employer-employee relations of public agencies, such as the City, in the State of California under the Meyers-Milias-Brown Act ("MMBA"). Cal. Gov't Code §§ 3500 *et seq.* Also named as Real Parties in Interest in the Court of Appeal original writ petition are the four labor organizations, including AFSCME

Local 127, which are the recognized representatives of bargaining units of City employees..

By their own account Petitioners seek immediate stays of no fewer than "two pending Superior Court actions, one appellate writ and four PERB administrative hearings dealing with challenges to their voter-approved measure while the Court of Appeals [sic] decides . . . fundamental jurisdictional issues with all affected parties present." Petition, pp. 2-3. The "fundamental jurisdiction issue" Petitioners pose is a challenge to the exclusive initial jurisdiction of PERB to "investigate unfair practice charges or alleged violations of this Chapter [the MMBA], and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter." Cal. Gov't Code § 3541.3(i). The charges, filed by Real Party in Interest City employee labor organizations, all allege that the City authored, sponsored and promoted the CPRI in order to avoid its obligation under the MMBA to meet and confer with the labor organizations representing its employees on issues within the scope of representation by those labor organizations, in violation of the MMBA. Among the actions Petitioners seek to stay are the four unfair practice charge proceedings before PERB, now set for a single consolidated hearing on July 17-23, 2012.

One of the proceedings Petitioners seek to stay is a writ proceeding arising out of a stay of PERB proceedings on one of the charges, filed by Real Party in Interest San Diego Municipal Employees Association, which was the subject of a decision by the Fourth District Court of Appeal in *San Diego Municipal Employees Ass'n v. Superior Court*, No. D061724, 2012 WL 2308142 (Cal. App. June 19, 2012). In its decision, the Court of Appeal decided issues Petitioners raise here. The Court of Appeal held that PERB has exclusive initial jurisdiction over claims that the City violated the MMBA in its actions promoting the CPRI [*id.* at *4] and that the claim that CPRI was a voter-sponsored initiative is insufficient to deprive PERB of jurisdiction in the first instance to hear and determine charges related to the City's conduct in connection with the CPRI [*id.* at *9]. AFSCME submits that the Court of Appeal's reasoning is no less persuasive because the same arguments are made here by the ballot proponents, instead of the City.

Petitioners frame the issues they present to the Court, and their arguments, as if their citizen initiative arguments and PERB's jurisdiction over unfair practices were two sides of the same coin. Although the ballot proponents have offered the citizen initiative process as a complete defense to unfair practice charges filed with PERB and although petitioners characterize the Elections Code and the MMBA as an either/or proposition,

as the Court of Appeal recognized in its examination of the procedural posture of the litigation surrounding the PERB charges, *all* that is before PERB at this stage are questions of whether or not actions of the City, as a public employer, violated the MMBA. There is no question that PERB has initial jurisdiction to determine these questions. Until PERB does so, neither the ballot proponents nor a court can know if PERB's interpretation of the MMBA intersects with the Elections Code and, if so, how and to what extent they can be reconciled. In short, the Petitioners' overwrought claims, if they ultimately exist, are premature.

STATEMENT OF THE CASE

AFSCME Local 127 is the exclusive representative of individual bargaining units of employees of the City. AFSCME Local 127 filed an unfair practice charge against the City with the PERB on February 24, 2012. The unfair practice charge alleged that the City sponsored, promoted, and funded the CPRI, that the City voted to place the CPRI on the June 2012 ballot, and that the City's actions violated the terms of the Memorandum of Understanding between AFSCME Local 127 and the City. The unfair practice charge further alleged that the City engaged in all of these actions without meeting and conferring with AFSCME Local 127, in

violation of the MMBA and PERB Regulations, and requested an order requiring the City to meet and confer in good faith with AFSCME Local 127 regarding the CPRI. The unfair practice charge did not seek injunctive relief. The City filed a position statement on March 12, 2012 in opposition to AFSCME Local 127's unfair practice charge.

On March 13, 2012, AFSCME Local 127 filed a Motion to Consolidate, or, in the Alternative, to Join as a Party to Case No. LA-CE-746-M, Municipal Employees Association's ("MEA"), a PERB case against the City addressing the same legal issues and allegations. At that time, MEA's case was scheduled to go forward to hearing on April 2, 2012.

PERB issued a Complaint on AFSCME Local 127's unfair practice charge on March 16, 2012, pursuant to the MMBA, Cal. Gov't Code §§ 3509(b) and 3541(i) and PERB Regulations, Cal. Code Regs. tit. 8 § 32640, alleging the facts outlined in AFSCME Local 127's charge.

On March 27, 2012, the Superior Court issued a stay on MEA's case before PERB, and on March 28, 2012, PERB issued an order placing MEA's case before PERB in abeyance, copying AFSCME Local 127's counsel. On June 19, 2012, the Fourth District Court of Appeal issued an opinion directing the Superior Court to vacate its order staying PERB proceedings. At this time, four unions had filed related charges against the

City before PERB: AFSCME Local 127, MEA, Deputy City Attorneys' Association, and San Diego City Firefighters Local 145. PERB consolidated the four cases on June 29, 2012, ordering that the cases proceed to hearing on July 17, 2012.

Over four months have passed since AFSCME Local 127 filed its charge with PERB, and, to date, AFSCME Local 127 has not had any hearing nor the opportunity to present any evidence to PERB on its allegations. Petitioners here present issues to the Court on the MMBA meet-and-confer process, the activities of elected officials charged with responsibilities under the MMBA, and agency issues under the MMBA [Petition at pp. 1-2]; yet there is no evidentiary record whatsoever before the Court. Whereas AFSCME Local 127 and the other City labor organizations have invoked the jurisdiction of, and seek a full hearing before, the State agency charged with deciding the questions raised by Petitioners directly to this Court, Petitioners and the City have tag-teamed each other filing actions to halt administrative processes before they can take place.

PERB'S EXCLUSIVE INITIAL JURISDICTION OVER AFSCME'S CHARGE IS CLEARLY ESTABLISHED.

Several of Petitioners' arguments are variations of the claim that PERB does not have jurisdiction to adjudicate AFSCME Local 127's charge because a citizen-sponsored ballot initiative is beyond PERB's reach. Petition Section V.A-D. Petitioners obscure the issue by arguing as though AFSCME Local 127 and the other unions are asking PERB to decide a general challenge to the CPRI, rather than to decide the specific issue of whether the City's conduct with respect to the CPRI violated the MMBA. Properly framed, the question of whether PERB is empowered to decide whether the City violated the MMBA with respect to the development, promotion, and processing of the CPRI is clearly yes. As Fourth District Court of Appeal held in directing the Superior Court to vacate its order staying PERB proceedings in this matter:

> City's argument [that PERB lacks jurisdiction] ignores settled precedent that PERB may construe employee relations laws considering constitutional precedent. The mere fact that constitutional rights may be implicated or have some bearing on this dispute is not in and of itself sufficient to divest PERB of its exclusive *initial* jurisdiction to consider [the unions'] allegations that City's conduct violated the MMBA.

San Diego Municipal Employees Ass'n, 2012 WL 2308142 at *5 (internal citations omitted, emphasis in original).

A. The Possibility that PERB Will Need to Interpret Other Constitutional and Statutory Provisions Along With the MMBA Does Not Deprive PERB of Jurisdiction.

As the Court of Appeal recognized, Petitioners' arguments ignore extensive case law confirming that PERB has not only the right but the duty to perform its statutory mandate of investigating, adjudicating, and remedying unfair practices, even when doing so requires PERB to harmonize the statutes under its jurisdiction with other statutory and constitutional provisions. *See State of California (State Personnel Bd.)*, PERB Decision No. 1491-S at p. 10, 26 P.E.R.C. ¶ 33012 (2002). Even when an alleged unfair practice implicates a statutory scheme that explicitly supersedes "the general law of the state," "PERB is charged with the exclusive initial jurisdiction to consider the alleged unfair practice while harmonizing the purposes of [the bargaining statute] with those of [the implicated statutory provisions]." *Wilmar Union Elementary School Dist.*, PERB Decision No. 1371 at p. 12-14, 24 P.E.R.C. ¶ 31053 (2000). As recognized by the California Supreme Court:

> The inquiry is properly not which statutory scheme prevails [over the other], but rather how each can be harmonized to give them reasonable and full effect. Each agency operates under different statutory schemes, but not to defeat each other's authority. . . . PERB . . . has been given a [specialized and focused] task: to protect both employees and [public employers] from violations of the organizational and collective bargaining rights guaranteed by [collective

> bargaining statutes]. . . . [T]he legislature evidently thought it important to assign the task of investigating potential violations of [the bargaining statutes] to an agency which possesses and can further develop specialized expertise in the labor relations field.

Pacific Legal Found. v. Brown, 29 Cal. 3d. 168, 197-98 (1981) (internal quotations and citations omitted).

PERB also maintains jurisdiction over the unfair practice charge at issue here despite the Petitioners' contention that the constitutional rights of citizens to propose ballot initiatives are implicated. PERB has authority to interpret the statutes under its jurisdiction in light of constitutional standards. *Cumero v. PERB*, 49 Cal. 3d 575, 583 (1989). "The mere fact that constitutional rights may be implicated or have some bearing on this dispute does not in and of itself divest PERB of jurisdiction to consider [an alleged violation of a statute under PERB's jurisdiction]." *Wilmar*, PERB Decision No. 1371 at p. 15.

The key inquiry in this case is whether the City violated its meet and confer obligations under the MMBA, either through the role of its agents in promoting the CPRI or the City's actions in placing the CPRI on the ballot. This is a question within the *exclusive* initial jurisdiction of PERB. As the cases above indicate, PERB can answer this question while harmonizing the MMBA with the Elections Code and the California Constitution.

Furthermore, *only PERB* can determine, in the first instance, whether the MMBA has been violated. If PERB were to decline jurisdiction to resolve the alleged unfair practices, it would be relinquishing its statutory responsibilities under the MMBA; such an action "would conflict with legal principles requiring exhaustion of administrative remedies and PERB's preemptive jurisdiction." *State of California (State Personnel Bd.)*, PERB Decision No. 1491a-S at p. 5, 27 P.E.R.C. ¶ 17 (2002).

B. That The City Acted in Concert With Private Citizens Does Not Deprive PERB of Jurisdiction Over Deciding Whether The City Violated the MMBA.

Through their framing of the issues [Petition Section I] and their arguments presented [Petition Section V.A, pp. 12-13], Petitioners appear to suggest that PERB has no authority to adjudicate the unfair practice charges against the City because doing so would involve hearing evidence about the political activities of individuals arguably outside of PERB's jurisdiction. However, the fact that the City and its agents acted in concert with individuals arguably outside the reach of the MMBA does not strip PERB of its exclusive initial jurisdiction to determine whether the City violated the MMBA. PERB could find that the proponents of the ballot initiative effectively acted as agents of the City. *See Inglewood Teachers Ass'n v.*

Public Employment Relations Board, 227 Cal. App. 767, 775-777 (1991) (approving PERB's case-by-case approach to determining agency).

Even if PERB did not find the ballot proponents to be agents of the City, it could find that the City's interactions with the ballot proponents constituted a violation of the MMBA. For instance, in *Redwoods Community College Dist.*, PERB Dec. No. 1242, 22 P.E.R.C. ¶ 29029 (1997), the charging party alleged that a community college district violated the applicable bargaining statute by failing to bargain over contracting out food services in dormitories to a non-profit affiliated with the district, which in turn contracted out those services to a third party. *Id.* at 12-13. PERB held that the non-profit was a separate entity from the district, that its actions could not be attributed to the district, and that PERB had no jurisdiction over the non-profit. *Id.* at 23. Nonetheless, PERB held that the district's own actions in contracting services to the non-profit without bargaining with the charging party violated the district's statutory bargaining obligations. *Id.* at 23-24. Likewise in this case, even if certain of the proponents of the CPRI are found to be outside of PERB's reach, PERB could nonetheless find that the actions of the City and its agents in conjunction with the ballot proponents violated *the City's* obligations under the MMBA.

In the specific context of placing an initiative on the ballot, a public agency may violate its statutory obligations by acting in concert with private citizens. In *League of Women Voters of California v. Countywide Criminal Justice Coordination Comm.*, 203 Cal. App. 3d 529, 540 (1988), the court addressed whether a county committee and certain county officials violated the prohibition on expending public funds on an election campaign by, among other things, recruiting citizen proponents for a proposed ballot initiative. The court held that the county's agents did not "cross the line of improper advocacy," and in reaching that conclusion it found the nature of communications between county officials and potential citizen proponents highly relevant. *Id.* at 553-54. The court found that whether the county's task force strayed into unlawful advocacy "depend[ed] largely on the approach the task force employed in identifying a willing proponent." *Id.* The court then examined the record on communications between the county's agents and potential initiative proponents. *Id.* PERB's task in determining whether the City violated the MMBA will almost certainly involve hearing evidence on communications between the City's agents and citizen proponents of the CPRI; Petitioners cite no authority for why this would justify stripping PERB of the exclusive authority bestowed on it by the legislature to adjudicate the instant unfair practice charges.

Petitioners' analogy to *Friends of Sierra Madre v. City of Sierra Madre*, 25 Cal. 4th 165 (2001), and the distinction drawn between citizen-sponsored and City Council-sponsored initiatives in applying the California Environmental Quality Act ("CEQA") is inapposite, and the distinction is instructive. There is no public agency charged with exclusive initial jurisdiction over CEQA compliance. *See* Public Resources Code §§ 21167 *et seq.* Furthermore, because *Sierra Madre* involved what was undisputedly a City Council-sponsored initiative, the Court did not address the possibility of a public agency manipulating the citizen-initiative process to evade its statutory obligations, as is alleged here.[1] PERB's determination of whether

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[1]The Court's reasoning in *Sierra Madre* for distinguishing between citizen-sponsored and City Council-sponsored initiatives is also distinguishable. Petitioners highlight a passage from *Sierra Madre* in which the Court writes: "[In contrast to initiatives which voters are informed have been placed on the ballot by the City Council], voters have no reason to assume that the impact of a voter-sponsored initiative has been subjected to the same scrutiny and, therefore, will consider the potential environment impacts more carefully in deciding whether to support or oppose the initiative." Petition at p. 15, *quoting Sierra Madre*, 25 Cal. 4th at 90. The bargaining requirements of the MMBA, unlike the environmental impact studies of CEQA, are not designed to generate information that could be useful in assessing a proposed action, but rather to prescribe rules for full communication, meeting and conferring, and dispute resolution between public agencies and their employees regarding the terms and conditions of employment. While a voter may theoretically be able to compensate for a public agency's failure to conduct an environmental impact study by carefully considering for herself what the environmental impact may be, individual voters cannot themselves engage in collective bargaining with public employees. Thus, *Sierra Madre* is not analogous to

or not the City and its agents were sufficiently involved in bringing forward the CPRI to trigger a violation of the MMBA is ultimately reviewable by this Court. But such a determination, in the first instance, is for PERB and PERB exclusively to make.

C. The Speculative Possibility of PERB Granting an Impermissible Remedy Is Not Grounds For Depriving PERB of Jurisdiction Over this Matter.

Several of Petitioners' arguments are premised on the contention that PERB will issue a remedy in this matter that is beyond its constitutional authority. *See* Petition Sections V.C and V.D. As shown above, PERB has exclusive initial jurisdiction in determining whether the City has violated the MMBA. As shown below, PERB also has broad authority in fashioning the appropriate remedy if it finds an MMBA violation. Before PERB has had the opportunity to hear the charges against the City, determine whether the MMBA was violated, and, if so, the appropriate remedy, it would be premature to find that the mere speculative possibility of an unconstitutional remedy strips PERB of its exclusive initial jurisdiction to decide the unfair practice charges against the City.

PERB scrutiny of whether the City as a public agency is using the citizen-initiative process to evade its statutory obligations.

MMBA provides that the "initial determination as to whether the charge of unfair practice is justified *and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter*, shall be a matter within the exclusive jurisdiction of the board." Cal. Gov't Code § 3509 (emphasis added).

> PERB possesses broad discretion to take action and issue orders as necessary to effectuate the purposes and policies of the MMBA. In carrying out this statutory mandate, PERB is authorized to issue a decision and order directing an offending party to cease and desist from the unfair practice. In addition to a cease and desist order, PERB has the authority and long standing practice of ordering a restoration of the status quo ante for unilateral change violations. This is typically accomplished by requiring the employer to rescind the unilateral change and make employees whole for losses suffered as a result of the unlawful unilateral change.

County of Sacramento, PERB Decision No. 2045-M at p. 3, 33 P.E.R.C. ¶ 127 (2009).

Petitioners' arguments regarding PERB's ability to issue a particular remedy are premature. PERB's remedies must be properly tailored to the specific nature of the violation found. *See Palm Springs Unified School Dist.*, PERB Decision No. 249, 6 P.E.R.C. ¶ 13234 (1982). PERB's remedial authority in this case will be known only after it is determined whether the City in fact violated the MMBA and what is the precise nature of the violation. Even if the Petitioners were correct that PERB cannot

issue the specific remedy sought by the charging parties, that would not divest PERB of its exclusive initial jurisdiction to determine whether the City violated the MMBA and, if so, what the appropriate remedy should be.

D. PERB Has Exclusive Jurisdiction to Make the Initial Determination of Balancing Petitioners' and the City's First Amendment Rights With the City's Bargaining Obligations Under the MMBA.

Petitioners assert that a possible impingement on their First Amendment rights justifies removing this matter from PERB's hands. Petition Section V, pp. 12-13. As shown above, PERB does not lose jurisdiction over an alleged violation of one of the statutes under PERB's jurisdiction merely because constitutional rights may be implicated. PERB is sensitive to the need for public agencies to be "entitled to express [their] views on employment related matters over which [they have] legitimate concerns in order to facilitate full and knowledgeable debate." *Rio Hondo Community College Dist.*, PERB Decision No. 128 at p. 19, 4 P.E.R.C. ¶ 11089 (1980). PERB has thus developed standards for balancing free speech rights with the collective bargaining obligations it is empowered to enforce. *Id.* at 19-20.

Nonetheless, under the MMBA, an employer's speech is not protected if it is used a means for violating the MMBA. *City of San Diego*

(Office of the City Attorney), PERB Decision No. 2103-M, 34 P.E.R.C. ¶ 63 (2010). In *City of San Diego*, PERB held that the City violated the MMBA when its City Attorney bypassed the exclusive bargaining representative in encouraging employees to rescind their purchase of service credits from the City's retirement service. *Id.* at p. 8. The City Attorney's actions violated the MMBA because he went beyond merely communicating existing facts, views, arguments, or opinions, and "advocate[d] a course of action in circumvention of the exclusive representative." *Id.* at p. 12.

Likewise, in this case, the charges allege that the Mayor and the councilmembers circumvented the City's meet and confer obligations and advocated a specific course of action. As indicated by *City of San Diego* and the cases discussed therein, the rights of any City agent to express an opinion on matters affecting bargaining rights is limited by the City's obligations under the MMBA. Harmonizing the free speech rights of City's agents with the City's bargaining obligations to determine whether an unfair practice has been committed is a matter within the exclusive initial jurisdiction of PERB, and the free speech interest asserted by Petitioners is not a ground for depriving PERB of its jurisdiction. The mere presence of a

constitutional defense does not strip PERB of its exclusive initial jurisdiction over AFSCME Local 127's charge.

E. Petitioners Do Not Have a Right, as Ballot Proponents, to Participate in PERB Proceedings which Concern the City's Labor Relations Conduct under the MMBA.

Petitioners cite *Perry v. Brown*, 52 Cal. 4th 1116 (2011), for the proposition that, as proponents of the CPRI, they must allowed to participate in any proceeding in which the CPRI is implicated. Petition Section V.E. *Perry v. Brown* does not stand for so broad a proposition. *Id.* at 1162 ("The issue before us is limited to the question whether official initiative proponents are authorized to appear as parties to assert the state's interest in the validity of an initiative measure *when the public officials who ordinarily provide such a defense have declined to do so.*") (emphasis added). Once again, Petitioners mischaracterize the PERB proceedings as a general challenge to the CPRI rather than a specific challenge to City's conduct and whether the actions of the City and its agents with respect to the CPRI violated the MMBA. Because the sole issue in the PERB proceedings will be whether or not the City acted lawfully, there is no reason to believe that the City will not vigorously defend its own actions.

The Court in *Perry v. Brown* recognized that the proponents of ballot measures have been permitted to participate as parties "in numerous lawsuits in California courts challenging the validity of the initiative measure the proponents sponsored." *Id.* at 1125. The PERB proceedings at issue are not lawsuits challenging the validity of the CPRI, but unfair practice charges challenging the City's conduct with respect to the CPRI. Part of the rationale for allowing ballot proponents to participate in lawsuits challenging their initiatives is because of concern that "public officials who ordinarily defend a challenged state law in court may not, in the case of an initiative measure, always undertake such a defense with vigor or with the objectives and interests of those voters paramount in mind." *Id.* The Court in *Perry v. Brown* was particularly concerned with the consequences of not allowing initiative proponents to participate where state officials totally decline to defend the initiative, as was the case there. *Id.* at 1160. Here, there is no question that the City will vigorously defend its own actions with respect to the CPRI, as evidenced by the lengths the City itself has already gone to to prevent PERB from hearing this matter. Nothing in *Perry v. Brown*, or any of the cases cited therein, affects PERB's exclusive initial jurisdiction to determine whether the City's conduct violated the MMBA.

CONCLUSION

For the foregoing reasons, Real Party in Interest AFSCME Local 127 respectfully requests that this Court deny the Petition for Review and deny Petitioners' request for an immediate stay of the seven other pending actions in this matter.

DATED: July 3, 2012

ELLEN GREENSTONE
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ROTHNER, SEGALL & GREENSTONE

By 
ANTHONY RESNICK
Attorneys for Real Party in Interest
American Federation of State, County and
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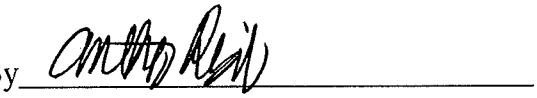
CERTIFICATE OF COMPLIANCE

I, Anthony Resnick, as the attorney of record for Real Party in Interest American Federation of State, County and Municipal Employees, Local 127, AFL-CIO, hereby certify that, pursuant to California Rule of Court Rule 8.204(c)(1), this brief was prepared with 13-point, proportionally spaced Times New Roman typeface, and that the number of words in the brief does not exceed 14,000 words, and that the actual word count, per the computer program used to prepare the brief, was 4,224 words.

I certify under penalty of perjury that the foregoing is true and correct and that this certification was executed on July 3, 2012, at Pasadena, California.

DATED: July 3, 2012

ELLEN GREENSTONE
CONSTANCE HSIAO
ANTHONY RESNICK
ROTHNER, SEGALL & GREENSTONE

By 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 510 South Marengo Avenue, Pasadena, California 91101.

On July 3, 2012, I served the foregoing document described as **REAL PARTY IN INTEREST AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 127, AFL-CIO'S ANSWER TO PETITION FOR REVIEW** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE SERVICE LIST

[X] **(By Telecopier)**
On July 3, 2012, I telecopied the foregoing document from my telecopy machine, number (626) 577-0124, to the addressee(s) noted above at their indicated telecopier number(s). The transmission report(s) was/were complete and without error.
Executed on July 3, 2012.

[X] **(By Mail)**
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice I place all envelopes to be mailed in a location in my office specifically designated for mail. The mail then would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.
Executed on July 3, 2012.

(By Electronic Mail)

[X] Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused such documents described herein to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.
Executed on July 3, 2012.

(State Court)

[X] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Jerry Cohen

JERRY COHEN

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