Case No. S203478 No Fee (Gov. Code, § 6103)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF SAN DIEGO,
Petitioner,

v.

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent,

SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION; SAN DIEGO 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

Real Parties in Interest.

On Petition for Writ of Review of an Order Summarily Denying Original Petition for Writ of Mandate; with Application for Immediate Stay

California Court of Appeal, Fourth Appellate District, Division One, Case No. D062090

ANSWER TO PETITION FOR REVIEW

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IN THE SUPREME COURT OF CALIFORNIA

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court, rule 8.208

Court of Appeal Case Number: S203478

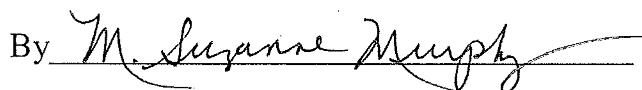
Case Name: *City of San Diego v. Public Employment Relations Board* (*San Diego Municipal Employees Association; San Diego Deputy City Attorneys Association; American Federation of State, County and Municipal Employees, AFL-CIO Local 127; San Diego City Firefighters Local 145, IAFF, AFL-CIO; April C. Boling; T.J. Zane; Stephen B. Williams*)

Respondent PUBLIC EMPLOYMENT RELATIONS BOARD is not aware of any individuals or entities, other than those named as parties or real parties in interest in this action, who may have an interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves, as defined in Rule 8.208(e)(2) of the California Rules of Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on July 3, 2012, in Sacramento, California.

Dated: July 3, 2012

M. SUZANNE MURPHY, General Counsel
WENDI L. ROSS, Deputy General Counsel

By 

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As directed by the Supreme Court on June 22, 2012, the Public Employment Relations Board (PERB or the Board) respectfully submits this Answer to the Petition for Review (Petition) filed by April C. Boling, T.J. Zane, and Stephen B. Williams (Petitioners or the Boling group), of an order by which the California Court of Appeal for the Fourth Appellate District, Division One, summarily denied an original petition for writ of mandate that was filed against PERB on June 6, 2012, by the City of San Diego (City) in *City of San Diego v. Public Employment Relations Board*, Ct.App.Case No. D062090 (hereafter Court of Appeal Case No. D062090), with the Petitioners named as real parties in interest.

I. WHY THE PETITION FOR REVIEW AND THE REQUEST FOR IMMEDIATE STAY SHOULD BE DENIED

Petitioners assert that the challenged order raises constitutional questions regarding the people's right of initiative and the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq. [MMBA]), and they invite the Court to stay all ongoing judicial and administrative proceedings in order to broadly weigh in on a number of *theoretical* factual and legal scenarios.

At issue in this case is an unfair practice charge (UPC) filed with PERB on January 20, 2012 by Real Party in Interest (RPI) San Diego Municipal Employees Association (MEA) in PERB Case No. LA-CE-746-M (hereafter, the MEA Charge). The MEA Charge alleges that the

City violated the MMBA by refusing to meet and confer before City officials and the City Council took various actions to place a proposal to amend the City charter—known as the Comprehensive Pension Reform Initiative (CPRI)—on the ballot for the June 5, 2012 election.[1] More specifically, the MEA Charge alleges that the actions of the Mayor and other City officials in drafting, promoting, circulating, and fundraising for the CPRI are attributable to the City, and that the City therefore had a duty to meet and confer with the MEA and the other RPI unions under this Court's decision in *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591 (*Seal Beach*).[2] Because the MEA Charge asserts that the CPRI is the product of the actions of various City officials, the application of the MMBA to a pure citizens' initiative—the issue which Petitioners attempt to raise here—is not at issue in this case, or in the judicial or administrative proceedings below.

Because the MEA Charge contained sufficient factual allegations to establish a prima facie case, PERB issued a complaint and the Board

[1] All further dates herein are in calendar year 2012 unless otherwise indicated.

[2] If implemented pursuant to the affirmative vote of City voters at the June 5 election, the CPRI will effect significant, irreversible changes to wages, pension benefits, and other terms and conditions of employment for current and future City employees represented by MEA and the other RPI unions.

authorized initiation of expedited administrative proceedings before a PERB Administrative Law Judge (ALJ), currently set, along with four UPCs subsequently filed by the other unions named as RPIs herein, to begin July 17. PERB also initiated an action in San Diego Superior Court, *PERB v. City of San Diego*, Case No. 37-2012-00092205 (hereafter, Superior Court Case No. 92205), and initially sought to remove the CPRI from the ballot temporarily, in order to preserve the status quo pending the administrative determination of the alleged MMBA violation.

The City not only successfully opposed PERB's request for temporary relief, but also obtained an indefinite stay of the administrative proceedings. In a thoughtful published opinion issued upon review of MEA's Petition for Writ of Mandate, however, the Fourth District Court of Appeal directed the trial court to lift the stay, and unequivocally held that PERB has *exclusive initial jurisdiction* pursuant to the MMBA (Gov. Code, § 3509, subd. (b)), to hear and decide whether MEA's Charge is justified. (*San Diego Municipal Employees Association v. Superior Court* (June 19, 2012, Case No. D061724) ___ Cal.App.4th ___ [2012 Cal.App.LEXIS 715], slip opn., pp.16-21 (hereafter, *SDMEA* or Case No. D061724).)

The Petition in this case ostensibly seeks "review" of a decision by which the same panel of the Court of Appeal summarily denied an

original petition for writ of mandate filed by the City in a different case, Court of Appeal Case No. D062090. In reality, however, the instant Petition may be more accurately deemed a further petition for writ of mandate—albeit one containing only highly selective, unverified, and unsupported statements of fact, and arguments based on nonexistent or inapposite legal authority—brought by Petitioners within the original jurisdiction of this Court. In either case, the jurisdictional and constitutional arguments presented by Petitioners herein are similar to arguments repeatedly raised by the City and *twice* rejected by the Court of Appeal, both in its summary denial of the petition in Case No. D062090, and in its recent published decision in Case No. D061724, which Petitioners fail to mention in their Petition for Review.

As the Court will readily see from the limited "record" of the proceedings in Court of Appeal Case No. D062090, that case does *not* contain a full and fair accounting of all the interrelated proceedings below, and not a single factual assertion in the Petition is supported by any type of citation to the record of that case or, for that matter, *any* case. (See Petition, pp.8-11.) More importantly, the allegations in the Petition are directly at odds with the allegations contained in MEA's Charge, and no evidentiary proceedings have yet resolved the disputed facts.

The lack of an evidentiary record is not due to any delay or lack of

under the MMBA,[3] and that the City's conduct thus falls within the "arguably prohibited" prong of the test for PERB's exclusive initial jurisdiction. (*Id.* at pp.16, citing *City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 605-606 [*City of San Jose*].)

In addition, relying on "settled precedent" holding that PERB may consider constitutional claims while construing the public sector labor relations statutes it is charged with administering, the Court of Appeal rejected the same constitutional objections raised by Petitioners herein as to PERB's exercise of its exclusive initial jurisdiction. (*SDMEA, supra,* slip opn., pp.12-13, citing *Cumero v. Public Employment Relations Board* (1989) 49 Cal.3d 575, 583.) As the Court of Appeal explained: "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 MEA's allegations that the City's conduct violated the MMBA." (*Id.*) The City's recourse, if it thinks the ALJ's decision is flawed, is to appeal to the PERB Board and, if necessary thereafter, to the Court of Appeal. (*Ibid.*)

Needless to say, unlike the summary "post-card" denial in the

[3] Because the MEA Charge asserts that the CPRI is the product of actions by various City officials, the application of the MMBA to a legitimate citizens' initiative is not at issue in the case or in the administrative proceedings.

instant case, the thoughtful decision of the Court of Appeal in Case No. D061724 was based on a *full record* of the proceedings in the related Superior Court cases *and* the partially completed administrative proceedings before PERB—including more than twelve volumes of exhibits, full briefing, and oral argument from the parties—in which the City has mounted a robust defense of the CPRI *and* the Petitioners' interests as the formal proponents of the ballot measure every step along the way. More importantly, although never mentioned by Petitioners, in its published decision in Case No. D061724, the Court of Appeal has carefully considered the *same underlying facts* and disposed of *virtually every issue* raised by the Petition in this case. Having failed to be forthright with this Court, and having presented an unsupported, misleading Petition for Review and an inadequate record of the proceedings below, Petitioners should not be allowed to further delay PERB's administrative proceedings and the Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

A more complete account of the factual and procedural history of this case is required here because the "Statement of the Case" provided by the Petitioners provides no record citations, omits key facts, and contains numerous unsupported, false, and misleading assertions about the facts of this case and the proceedings below.

A. MEA'S UNFAIR PRACTICE CHARGE AND INJUNCTIVE RELIEF REQUEST

On January 20,[4] MEA filed a UPC against the City in PERB Case No. LA-CE-746-M, alleging, inter alia, that the CPRI was a "sham device" used by City officials to circumvent the City's meet-and-confer obligations, and that the City violated the MMBA by refusing to bargain before proposing and placing the CPRI on the ballot for the June 5 election. (Exhs. 96.)[5]

On January 31, MEA filed a request pursuant to Government Code sections 3509, subdivision (a), and section 32450 et seq. of PERB's Regulations,[6] asking PERB to petition the Superior Court for injunctive relief, including a TRO requiring the City to remove the CPRI from the ballot for the June 5 election and an OSC why a preliminary injunction should not issue (IR Request). (Exhs. 98, 100.) The City filed its

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[4] As previously indicated, the dates of all events described in this section are from calendar year 2012.

[5] All citations to the record are to exhibits contained in twelve consecutively tabbed and paginated volumes filed by MEA on April 11 in Court of Appeal Case No. D061724. For the sake of clarity and convenience, we will use the shorthand "Exh." for the relevant tab number, followed by specific Bates-stamped page numbers as appropriate. In this Court, MEA has renewed its Request for Judicial Notice of the twelve volumes of exhibits from Case No. D061724, and PERB hereby joins in that Request.

[6] PERB's Regulations are found in the California Code of Regulations, title 8, sections 31001 et seq.

response, including multiple declarations and exhibits, on February 2 (Exhs. 102-106), and on February 7, filed its position statement as to MEA's Charge (Exh.107).

Based on a prima facie showing of bad faith bargaining, PERB's General Counsel issued an administrative complaint on February 10 against the City only, *alleging* that it had violated Government Code sections 3505 and 3509, subdivision (b), and PERB Regulations, section 32603(c). The complaint alleged that the City, acting through its agents—including the City's Chief Labor Negotiator, Mayor Sanders—violated the MMBA by refusing to meet and confer in good faith with MEA regarding provisions of the CPRI that will impact wages and pension benefits for current and future bargaining unit members before it placed the CPRI on the ballot for the June 5 election. (Exh.109 [hereafter, PERB Complaint].)[7] Also on February 10, the Board granted MEA's IR Request, and directed that the administrative proceedings be expedited. (See Exh.108.)

[7] The City and MEA were simultaneously notified that an Informal Settlement Conference would be held on February 23, and that the City was required to file an answer to the PERB Complaint within 20 days of service. (Exh.110.) The City refused to participate in the Informal Conference (Exh.112), but did file an answer to the PERB Complaint on March 1 (Exh.115).

B. PERB'S COMPLAINT FOR INJUNCTIVE AND WRIT RELIEF IN SUPERIOR COURT CASE NO. 92205

On February 14, PERB filed a complaint for injunctive and writ relief in Superior Court Case No. 92205, which was assigned to Judge William S. Dato in Department 67. (Exh.1.) On February 15, PERB filed an Ex Parte Application for a TRO and OSC re Preliminary Injunction, seeking to prevent the City from taking further action to place the CPRI on the June 5 ballot, and to otherwise maintain the status quo pending completion of expedited administrative proceedings or good faith bargaining with MEA. (Exhs. 8-14.)

On February 16, City Attorney Jan Goldsmith sent a letter to PERB, claiming that PERB is "biased" against the City, and continuing a pattern of unsubstantiated, ad hominem attacks he and other City officials had already launched in the press against PERB's Board, General Counsel's office, and the General Counsel personally. (Exh.47, ¶11 [attachment D]; http://www.760kfmb.com/story/16943115/jan-goldsmith-union-case-is- [calling PERB "biased" and "a Mickey Mouse Star Chamber," and accusing the General Counsel of misusing her authority to help her "union friends"], last visited July 2, 2012.)

In a February 18 letter to Goldsmith, PERB's General Counsel responded to the City's claims of bias, explaining that they are unfounded,

that PERB's actions in processing the UPC and bringing this litigation were undertaken in accordance with the MMBA and PERB's own regulations, and that the handling of this matter was no different than in cases where PERB has been asked to seek injunctive relief against unions. (Exh.47, ¶12 [attachment H].)[8]

The City vigorously opposed PERB's application for a TRO/OSC, but did not file or serve PERB with its papers until the morning of the hearing on February 21. (Exhs.12-27.) At the conclusion of that hearing, Judge Dato denied PERB's request for temporary relief, without prejudice to renewal of a request for preliminary injunction after the election, saying: "If the [I]nitiative passes, its validity can be considered at that point in quo warranto proceedings and the appropriateness of preliminary injunctive relief can be addressed at that time." (Exh.32.)

C. THE CITY'S CROSS-COMPLAINT AND PETITIONERS' EX PARTE REQUEST TO INTERVENE IN SUPERIOR COURT CASE NO. 92205

Also on February 21, the City filed a Cross-Complaint for injunctive relief against PERB in Case No. 92205, alleging it cannot

[8] In a February 21 letter to PERB, Goldsmith reiterated his claims of "bias," contending that PERB "assumed an adversarial role" by filing the instant action, and that any administrative hearing conducted by PERB could not be impartial and would violate the City's due process rights. (Exh.47, ¶14 [attachment G.) The City Attorney's public attacks on PERB continue to the present. (http://calpensions.com/2012/06/11/san-jose-san-diego-pension-reforms-go-to-court/, last visited July 2, 2012.)

receive a fair administrative hearing from PERB, and including a prayer for a TRO and OSC re preliminary injunction, and a permanent injunction against all proceedings on MEA's Charge. (Exh.30.)[9]

On February 23, Judge Dato conducted another ex parte hearing, this time on application of the three individuals who filed the CPRI petitions with the City—Petitioners here—for leave to intervene *immediately* in Case No. 92205, to obtain a stay of the proceedings on MEA's Charge in PERB Case No. LA-CE-746-M. (Exhs.16, 33.) Petitioners' application included a Peremptory Challenge to Judge Dato pursuant to Code of Civil Procedure section 170.6. (*Ibid.*) During the February 23 hearing, Judge Dato made it clear that by denying PERB's request for a TRO/OSC, it was "certainly" not his intention to interfere with the ongoing administrative proceedings on MEA's Charge. (Exh.34 at pp.3-4.) Judge Dato denied the ex parte request, but scheduled a hearing for a noticed motion to intervene on April 20. (Exh.35.) Judge Dato declined to rule on the Petitioners' Peremptory Challenge because

[9] Also on February 21, the City served PERB with a small mountain of discovery, including hundreds of form and special interrogatories and documents requests directed to PERB, requests for admissions, and notices of deposition of General Counsel Suzanne Murphy, Board Member Eugene Huguenin, Board Member Alice Dowdin-Calvillo, former Board Member Sally McKeag, and Board Chair Anita Martinez. (See Exhs.45-48.) At an ex parte hearing on March 13, Judge Dato issued a stay of all the improper discovery propounded by the City, which remains in effect. (Exh.54.)

they were not parties to the case. (*Ibid.*)

D. COMMENCEMENT OF PERB'S FORMAL HEARING PROCESS

On February 28, after MEA and City representatives participated in a telephonic scheduling conference, ALJ Donn Ginoza issued a Formal Hearing Notice, informing the parties that an expedited evidentiary hearing on the PERB Complaint would be convened on April 2-5. (Exhs.110-114.) On March 12, at MEA's request, ALJ Ginoza issued subpoenas requiring attendance of witnesses and production of documents at the hearing set for April 2. (Exh.119.)

E. PETITIONERS' COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES IN SUPERIOR COURT CASE NO. 93347

On March 5, Petitioners filed a separate complaint in Department 72, the Honorable Timothy Taylor presiding, in *Boling v. PERB*, San Diego Sup. Ct. Case No. 37-2012-00093347 (hereafter, Superior Court Case No. 93347), seeking a TRO, a preliminary and permanent injunction against PERB, and damages against the individual Board Members. (Exh.38.) In essence, Petitioners sought to enjoin PERB from conducting its normal administrative proceedings on MEA's Charge, and to intimidate the individual Board members with a threat of personal liability if those proceedings were to continue. (*Ibid.*)

F. PETITIONERS' AND THE CITY'S EX PARTE APPLICATIONS FOR AN INDEFINITE STAY OF PERB'S ADMINISTRATIVE PROCEEDINGS ON THE MEA CHARGE

On March 12, Petitioners filed yet another ex parte application, this time in Superior Court Case No. 93347, seeking the same relief they seek here: an indefinite stay of PERB's administrative proceedings as to MEA's Charge. (Exhs.49-52.) The City—as a named defendant, but without having filed any type of pleading in Case No. 93347 affording PERB notice of the legal basis for its request—simultaneously filed its own an ex parte application, asking Judge Taylor to stay PERB's administrative proceedings. (Exhs.55-62.) PERB and MEA opposed both of these ex parte applications (Exhs.63-64), which were denied without prejudice by Judge Taylor on March 15, along with an order that Case Nos. 93347 and 92205 be "related" and transferred to Judge Dato for all further proceedings. (Exhs.53,65.)

Apparently, on March 19, Petitioners filed a further motion to disqualify Judge Dato under Code of Civil Procedure section 170.6. (See Exh.71.) Although PERB was never served with this request, Judge Dato granted it on March 20, and directed that the case be transferred. (*Ibid.*) On March 22, Superior Court Case Nos. 92205 and 93347 were transferred to the Honorable Luis Vargas, in Department 63, and all

hearing dates previously calendared in Department 67—including Petitioners' motion to intervene—were vacated. (*Ibid.*) Petitioners took no further action to reset that motion for hearing.

On or about March 21, the City filed with ALJ Ginoza a "Motion to Revoke Subpoenas" pursuant section 32150(d) of PERB's Regulations, a "Motion to Strike the Complaint," and a "Motion for a Continuance" of the April 2 administrative hearing. (Exh.125.)

One day later, without having afforded the ALJ even the most minimal opportunity to rule on these motions, the City filed two separate ex parte applications in Superior Court Case No. 92205: one to stay PERB's administrative proceedings and one to quash the administrative subpoenas. (Exhs.72-86.) PERB and MEA had less than 24 hours to respond to the numerous grounds asserted by the City for the stay before the hearing on March 23, but managed to file preliminary oppositions on the morning of the hearing. (Exh.86-87.)

On March 23, Judge Vargas heard oral argument from counsel for the City, PERB, the MEA, *and* Petitioners, who were allowed to participate as "defendant proposed intervenors." (Exh.89.) On March 27, Judge Vargas entered an order granting the City's ex parte applications in full, without stating any reasons, entirely shutting down the PERB administrative proceedings. (Exh.92.)

G. MEA'S PETITION FOR WRIT OF MANDATE IN COURT OF APPEAL CASE NO. D061724

On April 11, MEA filed a petition for writ of mandate in Court of Appeal Case No. D061724, seeking immediate relief from the stay, and a writ of mandate directing Judge Vargas to vacate his stay order. On May 3, the Court of Appeal issued an OSC as to the requested relief, denied Petitioners' request to join the writ proceedings as parties or amici, rejected their proposed briefs, and held oral argument on June 13.

On June 19, the Court of Appeal issued its published decision in *SDMEA*, *supra*, ordering issuance of the writ of mandate to vacate the Superior Court stay order.

H. THE CITY'S ORIGINAL PETITION FOR WRIT OF MANDATE IN COURT OF APPEAL CASE NO. D062090.

On June 8, the City filed an original proceeding, Court of Appeal Case No. D062090, of which Petitioners now seek review, against PERB as the sole respondent, and naming as RPIs the Petitioners here, the MEA, and the three other employee organizations who had by then filed UPCs based on essentially the same facts alleged in the MEA Charge. In that case, the City asked the Court of Appeal to issue a writ of mandate, prohibiting PERB from conducting any further administrative proceedings

as to MEA's Charge, as well as PERB Case Nos. LA-CE-752-M (the Deputy City Attorneys' Charge), LA-CE-755-M (AFSCME Local 127's Charge), and LA-CE-758-M (San Diego City Firefighters Local 145's Charge), on the same grounds asserted by Petitioners here: i.e., that PERB has no jurisdiction to adjudicate the pending charges and that the City had no duty to meet and confer with MEA under the MMBA or *Seal Beach* because, as a matter of law, the CPRI is a bona fide citizens' initiative. In reality, however, the City merely fragmented and multiplied the proceedings, effectively asking the Court of Appeal to "reconsider" the decision the City *anticipated* in Case No. D061724 based on the May 3 OSC, and to preemptively dismiss all four PERB charges and complaints.

On June 14, the day after it heard oral argument in Case No. D061724, a majority of the same panel of the Court of Appeal summarily denied the City's petition in its Case No. D062090, without requesting a response from PERB or any of the RPIs.

III. ARGUMENT

A. THIS CASE IS A POOR VEHICLE FOR REVIEW BY THIS COURT OF THE DISPUTED FACTUAL AND LEGAL ISSUES RAISED BY THE MEA CHARGE, WHICH ARE MATTERS WITHIN PERB'S EXCLUSIVE INITIAL JURISDICTION AND ARE YET TO BE DETERMINED.

It is well settled that this Court may order review of a Court of

Appeal decision when necessary to secure uniformity of decision or to settle an important question of law. (Cal. Rules of Court, rule 8.500(a).) While we recognize that the litigation involving the CPRI may raise a number of novel legal issues, this case is a poor vehicle for resolving them for numerous reasons.

In seeking review from the order summarily denying the City's writ petition in Court of Appeal Case No. D062090, Petitioners are proceeding in this Court without an adequate record below, have made unsupported factual assertions without proper citations to the record below, have omitted key facts, have not provided any admissible evidence of their own, have made unverified factual assertions that disputed by admissible evidence in the record of Court of Appeal Case No. D061724,[10] and have made arguments based on erroneous or distorted interpretations of relevant case law. As the Court of Appeal held in its published decision

[10] For example, Petitioners assert that they themselves "drafted" the CPRI, and that the City's only involvement in the development of the initiative was mere "political support" by three elected officials who do not control City labor relations. (Petition, pp.2-4.) These statements are not only unsupported by any admissible evidence or citations to the record, but directly contradict verified allegations and documentary evidence in the MEA Charge regarding the conduct of and statements made by "Strong Mayor" Jerry Sanders, who is the City's Chief Labor Negotiator, and Councilmembers Carl DeMaio and Kevin Faulconer, all of whom have claimed authorship of the CPRI. (See, e.g., Exh.96, pp.2367-2433

in that case, the disputed facts and legal theories, and the "mixed questions of law and fact" presented, are properly adjudicated and resolved in the first instance, in administrative proceedings conducted by PERB, the expert public sector labor relations agency charged with administering the MMBA. (*SDMEA v. Superior Court*, *supra*, slip opn., at pp.18-21.) Only after a full evidentiary record is developed, and the Board has had an opportunity to apply its administrative expertise, will the issues raised by the Petition for Review be ripe and ready for judicial review. (*Ibid.*)

B. A REMAND TO THE COURT OF APPEAL IS NEITHER NECESSARY NOR APPROPRIATE.

As we have noted, the same Court of Appeal panel that summarily denied the City's writ petition in Case No. D062090 on June 14, subsequently issued a published decision in Case No. D061724, holding that PERB has *exclusive initial jurisdiction* to hear and decide whether MEA's verified UPC, which includes allegations that City officials—including "Strong Mayor" and Chief Labor Negotiator Jerry Sanders and Councilmembers Carl DeMaio and Kevin Faulconer—drafted and promoted the CPRI and acted in concert with the Petitioners here to pursue the measure as a "sham" citizens' initiative, for the express purpose of circumventing the City's obligations under *Seal Beach* to meet

and confer about ballot measures involving mandatory subjects of bargaining, is justified. (See *SDMEA*, *supra*, slip opn. at pp.16-21.) Moreover, the Court of Appeal was well aware of the constitutional concerns raised herein by Petitioners, but nevertheless ordered that a writ of mandate should issue, directing the Superior Court to lift the stay imposed on March 27, so that the PERB administrative proceedings could move forward. (*Id.* at pp.12-13.) This Court should carefully examine the reasoning of the Court of Appeal in Case No. D061724 and, accordingly, deny the Petition for Review.

1. PERB Has Exclusive Initial Jurisdiction to Adjudicate the Violations of the MMBA Alleged in MEA's Charge, and Those of the Other RPI Unions.

As this Court and the Courts of Appeal have repeatedly affirmed, PERB has *exclusive* initial jurisdiction to interpret and administer the provisions of the MMBA with respect to local governmental employers and their employees, including the authority to determine whether an unfair practice charge is justified and, if so, what remedies are most appropriate to effectuate the purposes of the Act. (*City of San Jose*, *supra*, 49 Cal.4th at pp.605-606; *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1077 [*Coachella*]; *International Association of Firefighters, Local 230 v. City of San Jose* (2011) 195 Cal.App.4th 1179, 1208-1209

[*IAFF Local 230*]; see also, *San Diego Teachers Assn. v. Superior Court of San Diego County* (1979) 24 Cal.3d 1, 10-12 [*San Diego Teachers*].)

As discussed most recently by the Court of Appeal in Case No. D061724, PERB is the quasi-judicial administrative agency initially created by the Legislature through the enactment of Government Code section 3541 for the purpose, inter alia, of promoting harmonious and cooperative labor relations between California's public sector employers and their employees. (See *SDMEA v. Superior Court*, *supra*, slip opn., at p.8.) Although claimed violations of the MMBA originally had to be brought in Superior Court, in 2001 the Legislature explicitly vested PERB with exclusive initial jurisdiction over alleged violations of the statute. (*Id.* at pp.8-9.) In that regard, Government Code section 3509, subdivision (b), now provides that "[a] complaint alleging any violation of [MMBA] shall be processed as an unfair practice charge by the board. *The initial determination as to whether the charge of unfair practice is justified ... shall be a matter within the exclusive jurisdiction of the board.*" (Emphasis added.)

One of the "key provisions" of the MMBA is its meet-and-confer requirement, which requires the governing bodies of local agencies to "meet and confer [with employee representatives] in good faith regarding wages, hours, and other terms and conditions of employment." (*IAFF*

Local 230, *supra*, 195 Cal.App.4th at p.1210.) Both this Court and the Courts of Appeal have also repeatedly affirmed that PERB—as the expert public sector labor relations agency—is vested with authority to determine in the first instance whether a party's conduct constitutes a failure to meet and confer in good faith. (*Ibid.*; *City of San Jose*, *supra*, 49 Cal.4th at p.606; *San Diego Teachers*, *supra*, 24 Cal.3d at pp.12-14.)

When a UPC is filed with PERB, it is assigned to a Board agent in the General Counsel's office, who must determine whether the facts alleged in the charge state a prima facie case, and whether the charging party is capable of providing admissible evidence in support of the allegations. (*Kings In-Home Supportive Services Public Authority* (2009) PERB Decision No. 2009-M; see also Gov. Code, §§ 3514.5, 3541.5 & 3563.2; PERB Regulations, § 32620(b)(5).) Although the respondent must be given an opportunity to state its position, the Board agent *must* issue an administrative complaint if the allegations and evidence in the charge—which must be signed by the charging party or its agent under penalty of perjury—are sufficient to establish a prima facie case. (PERB Regulations, §§ 32620(b)(4), (b)(7) & 32640(a); see also *Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453, 460 [*Lazan*].)

Where there is a dispute about the factual allegations or the parties assert conflicting theories of law, the facts *must* be accepted as true and

the matter *must* be resolved through the administrative process. (*County of Inyo* (2005) PERB Decision No. 1783-M; *Eastside Union School District* (1984) PERB Decision No. 466.) In processing a charge, the Board agent does not make credibility determinations, and resolution of any factual conflicts must be left to the ALJ, who makes findings after a formal hearing. (See *Golden Plains Unified School District* (2002) PERB Decision No. 1489.) The Board agent does not judge the ultimate merits of the dispute. (*Service Employees International Union, Local 221* (2008) PERB Decision No. 1982.)

In the formal administrative hearing before the ALJ, both the charging party and the respondent have the right to subpoena, call, examine, and cross-examine witnesses, and to introduce documentary and other evidence. (PERB Regulations, § 32180.) Individuals may apply to be joined as parties to the formal administrative hearing if they have an interest relating to the subject of the action that will not be adequately protected by any of the parties, and if they will not unduly impede the proceedings. (PERB Regulations, § 32164(d); *Sacramento City Unified School District* (1994) PERB Order No. Ad-252.) The General Counsel's office does not represent the charging party or participate in the formal hearing. (*Id.*, § 32178.) Nor does the General Counsel's office advise the ALJ in his or her decision-making process or advise the Board itself if

the ALJ's decision is appealed to the Board.

Ultimately, the parties have the option of appealing the ALJ's proposed decision to the Board itself, which reviews *de novo* both the factual record and the legal arguments and makes a final decision. (PERB Regulations, §§ 32300, 32320.) While a final decision of the Board is subject to review by the Court of Appeal (Gov. Code, § 3509.5, subds. (a), (b)), this Court and the Courts of Appeal have repeatedly affirmed that the expertise and specialized knowledge of quasi-judicial labor agencies such as PERB, and the need for judicial uniformity in labor relations, entitle agencies such as PERB to great deference. (See *San Mateo City School Dist. v. PERB* (1983) 33 Cal.3d 850, 856; *Paulsen v. Local No. 856 of Int'l Brotherhood of Teamsters* (2011) 193 Cal.App.4th 823, 830.)

Thus, given PERB's expertise in public sector labor relations and its exclusive jurisdiction to adjudicate violations of the MMBA it is appropriate for PERB not only to determine in the first instance whether an unfair practice complaint should issue, but also to ensure that the necessary administrative proceedings are conducted and that a sufficient factual record is developed to allow the Board to resolve any dispute as to an alleged violation of the MMBA in a final decision, and, ultimately, to allow for meaningful judicial review of its decision.

2. The Doctrine of Exhaustion of Administrative Remedies Requires That Factual and Legal Disputes About a UPC Be Presented Initially in the Administrative Proceedings, Prior to Judicial Review.

With few exceptions, the courts require that the administrative process be exhausted before judicial review. (3 Witkin, Cal. Procedure (2008) Actions, § 339, p.442; *City of San Jose*, *supra*, 49 Cal.4th at p.609; *Coachella*, *supra*, 35 Cal.4th at p.1080.) The exhaustion doctrine precludes judicial remedy until the administrative agency has made a final decision. (*Public Employment Relations Board v. Superior Court* (1993) 13 Cal.App.4th 1816, 1825.)

The exhaustion requirement, which is also discussed in the related context of administrative preemption, is particularly important in the context of labor relations disputes, in order to avoid conflicting interpretations of labor law principles and also to allow a "centralized, expert agency" such as PERB to provide "an informed and coherent basis for stabilizing labor relations conflict and for equitably and delicately structuring the balance of power among competing forces so as to further the common good." (*Public Employment Relations Board v. Modesto City School District* (1982) 136 Cal.App.3d 881, 893 [*Modesto*].)

Although the law recognizes an exception in cases of "futility," or where the agency's jurisdiction is implicated, neither of these exceptions

apply simply because the parties *disagree* about the scope of the meet-and-confer obligation or the proper application of the provisions of the MMBA. If that were the case, PERB's exclusive jurisdiction would be largely eviscerated. Case law illustrates precisely the opposite: so long as the dispute involves action "*which is arguably prohibited or protected* under the MMBA," it is subject to PERB's initial exclusive jurisdiction and the administrative process must be exhausted. (*Modesto*, *supra*, 136 Cal.App.3d at p.894; see also *Paulsen*, *supra*, 193 Cal.App.4th 823.)

With UPCs that involve alleged violations of the duty to meet and confer, exhaustion of administrative remedies is especially important. The allegations typically assert specific, critical facts and the ultimate legal conclusions may, in turn, depend on the actual facts developed in administrative proceedings. Those proceedings allow the ALJ to develop a full factual record, and to apply a legal analysis to a clear set of facts, rather than to speculative or ambiguous allegations. The ALJ may reach a conclusion in favor of the respondent. Even if the matter is appealed to the PERB Board, there is an additional opportunity for each side to raise claims of error as to any procedural, factual, legal, or policy matter that may be relevant to PERB's interpretation of the MMBA. Ultimately, the MMBA provides for review of PERB's determination by the Court of Appeal. However, the statutory scheme is carefully crafted to ensure that

the Court will be presented not only with abstract legal arguments, but with a full factual record. If PERB's initial analysis is incorrect, there are a number of opportunities to correct it.

3. Petitioners' Concerns About the Nature and Scope of Permanent Relief PERB May Eventually Seek Are Based on a Cramped Reading of PERB's Court Complaint, Mischaracterize PERB's Actions in the Litigation Below, and Are in Any Event Premature.

Petitioners offer this Court a distorted interpretation of PERB's complaint in Case No. 92205, and misrepresent the nature of the relief PERB has sought in that action, when they argue that "PERB has already decided that it has authority over all initiatives, whether council sponsored, citizen sponsored or circulated initiatives by secret 'agents' of the City [sic]," and that "PERB has, in its Superior Court Complaint, already sought an order that it be granted permanent authority for pre-election review of any San Diego citizen initiative concerning 'compensation' as defined in Article XI, Section 5(b) of the California Constitution." (Petition, p.10.) PERB has done no such thing.

As we have noted, almost thirty years ago, this Court ruled that local governments must satisfy the "meet and confer" requirements of the MMBA before proposing to the electorate a charter amendment that would impact a subject within the scope of representation. (*Seal Beach*,

supra, 36 Cal.3d 591.) More recently, PERB itself affirmed that this bargaining obligation must be satisfied *before* a public agency employer—such as the City—can ask voters to decide a matter that impacts employees' wages, hours, or any other terms and conditions of employment. (*County of Santa Clara* (2010) PERB Decision No. 2120-M; *County of Santa Clara* (2010) PERB Decision No. 2114-M [*Santa Clara Cases*].)[11]

Most recently, in rejecting the City's claim that it was excused from exhausting its administrative remedies because PERB has already made a final determination as to the merits of MEA's charge—an argument echoed herein by Petitioners—the Court of Appeal in *SDMEA*, *supra*, explained that PERB's actions to date in the Superior Court have been to seek temporary injunctive relief to preserve the status quo, which "is not necessarily premised on a determination the unfair labor practice has in fact occurred." (Slip opn., p.15 & fn. 4.) Moreover, the Court of Appeal observed that the City's argument, if credited, would effectively strip PERB of its statutorily enumerated power to seek temporary

[11] The County's petitions for writ of extraordinary relief as to the *Santa Clara Cases* were summarily denied by the California Court of Appeal for the Sixth District on December 29, 2011. (See *County of Santa Clara v. PERB (Santa Clara County Correctional Peace Officers Assn.)*, Cal.Ct.App.Case No. H035791; *County of Santa Clara v. PERB (Santa Clara County Registered Nurses Professional Assn.)*, Cal.Ct.App.Case No. H035846.)

injunctive relief, because any invocation of that power would divest PERB of any further jurisdiction under the "futility" exception to the exhaustion doctrine. (Slip opn., p.15.)

In short, the mere fact that PERB has *alleged* that a permanent injunction or writ of mandate may be necessary down the road, in the event that Board and the Courts sustain the *allegations* of the MEA Charge and PERB's court complaint as to the CPRI, in order to bind the City in future cases involving allegations that similar measures will affect matters within the scope of bargaining, does not mean that the Board has "predetermined" that it *has* the authority "to pre-approve any citizen ballot measure before placement on the ballot in San Diego forever." (Petition, p.3.) This argument is meritless, and should be rejected.

C. THE ELECTIONS CODE DID NOT REQUIRE THE CITY TO "IMMEDIATELY" PRESENT THE CPRI TO THE VOTERS AT THE JUNE 2012 ELECTION.

Petitioners repeatedly assert that Elections Code sections 9214, subdivision (b), and 9255, subdivision (a)(3), *required* the City Council to "immediately" place the CPRI on the June 2012 ballot "without alteration." (See Petition, pp.11, 17, 24.) This assertion is incorrect.

Section 9214 applies to initiative petitions that: (1) are signed by 15 percent or more of the city's voters; (2) seek enactment of a city *ordinance*; and (3) contain a request that "*the ordinance* be submitted

immediately to a vote of the people at a special election." (Italics added.) A legislative body presented with an initiative measure that meets these three criteria must either: (a) adopt "*the ordinance*" measure without alteration; (b) immediately order a special election at which "*the ordinance*," without alteration, shall be submitted to the voters; *or* (c) order a 30-day report on the effect of "*the ordinance.*" (Elec. Code § 9214, subds. (a)-(c), emphasis added.)

The CPRI did *not* enact any City ordinance, nor did the initiative petition for the CPRI include a request that the City Council "immediately" submit the measure to voters at a special election. Thus, Petitioners' reliance on Elections Code section 9214 is completely misplaced.

Instead, the CPRI is an initiative-proposed *city charter amendment*. The process for amending a city charter is a matter of statewide concern governed by Elections Code section 9255. (See *District Election etc. Committee v. O'Connor* (1978) 78 Cal.App.3d 261 [*O'Connor*].) Amendments to a city charter proposed by a petition signed by 15 percent or more of the registered voters of a city are governed by Elections Code section 9255, subdivision (b)(2).[12] That provision does not require a city

[12] Petitioners' citation to Elections Code section 9255, subdivision *(a)(3)*, is clearly a typo, since no such provision exists.

council to "immediately" submit an initiative-proposed city charter amendment to voters "without alteration" at a "special election." Rather, Elections Code section 9255, subdivision (b), affords the city council of a charter city (such as San Diego) flexibility in deciding when to present initiative-proposed *charter amendments* to voters.

Elections Code section 9255, subdivision (b), states that a city charter amendment proposed by initiative "shall be presented to voters at an established statewide general, statewide primary, *or* regularly scheduled municipal election . . . provided that there are at least 88 days before the election." (Italics added.) While subdivision (b) requires a *minimum* of 88 days between the order calling an election on an initiative-proposed charter amendment and the date of that election, it does *not* prescribe any *maximum* timeframe in which a city council must act to present an initiative-proposed ordinance to voters. That is, "nothing [in section 9255] requires a city council to 'order' the election at the *next* available opportunity. Indeed, the very fact that [section 9255] allows *options* in election dates refutes that idea." (*Jeffrey v. Superior Ct.* (2002) 102 Cal.App.4th 1, 6, emphasis original.) Addressing the theoretical prospect that section 9255 could allow a city council to indefinitely delay placing an initiative-proposed charter amendment on the ballot, the *Jeffrey* case contains dicta stating that it would be an abuse of discretion for a city

council to select an election date that does not respect the "effective date" contained in an initiative-proposed charter amendment. (*Id.* at pp.9-10.)

Contrary to what Petitioners contend, therefore, the Elections Code did *not* require the City Council to "immediately" place the CPRI on the ballot "without alteration." The Elections Code imposes such a requirement *only* for initiative-proposed *ordinances* that meet the requirements of section 9214. Moreover, the above-mentioned dicta in *Jeffrey* does not apply here because the CPRI does not provide that it shall take effect upon a specific date. Under section 9255, the City Council had *the option* to place the CPRI on the ballot for any statewide primary or general election, or a regular municipal election.

Petitioners' failure to grasp the different treatment the Elections Code affords initiative-proposed *ordinances* versus initiative-proposed *charter amendments* also defeats their assertion that the Elections Code affords "no option" for the meet-and-confer process to occur. (Petition, p.17.) That assertion is premised entirely on Elections Code provisions that allow a city council, upon being presented with an initiative petition that proposes *an ordinance*, to refer the proposed measure to any city agency for a report on its impacts to be issued within 30 days. (Elec. Code, §§ 9212; 9214, subds. (b),(c).) Petitioners assert that this 30-day study period is the only authorized delay in the city council "immediately"

placing a qualified initiative measure on the ballot and that period would be insufficient to accommodate a meet and confer process. (Petition, pp.17-18.)

As explained above, however, the 30-day study period authorized has no application to initiative-proposed city *charter amendments*, which are governed exclusively by Elections Code section 9255. By affording a city council several "options" for when to present an initiative-proposed city charter amendment to the voters, section 9255 actually facilitates and accommodates both the people's right to initiative and the city council's obligation under the MMBA to meet and confer regarding changes to wages, hours, and other terms and conditions of employment.

D. NEITHER THE COURTS OF APPEAL NOR THE SUPERIOR COURT WERE REQUIRED TO ALLOW PETITIONERS GROUP TO INTERVENE IN THE PROCEEDINGS BELOW.

Petitioners have repeatedly suggested that they have been wrongfully shut out of the proceedings below, and have had no forum other than this Court in which to raise and vindicate their argument that PERB has no jurisdiction to conduct administrative proceedings on MEA's Charge, and to assert their "constitutional" rights as citizen proponents of the CPRI. (See, e.g., Petition, pp.2, 4-5, 24-25.) Petitioners further contend that this Court's decision in *Perry v. Brown* (2011) 52

Cal.4th 1116 (*Perry*), recognized their unquestioned "right" to participate as parties in the Superior Court litigation and the PERB proceedings, to defend the CPRI. Petitioners' overstate the "right" recognized in *Perry*, which has no application in the present circumstances, and overlook several other inconvenient facts that help explain why they have not obtained party status in Superior Court Case No. 92205, Court of Appeal Case No. D061724, or the PERB administrative proceedings, and have not received a ruling on their jurisdictional and constitutional arguments.

Perry concerned the following question certified to this Court by the United States Court of Appeal for the Ninth Circuit:

> "[Under California state law, do] the official proponents of an initiative measure possess either a particularized interest in the initiative's validity or the authority to assert *the State's interest in the initiative's validity*, which would enable them to *defend the constitutionality of the initiative* upon its adoption or appeal a judgment invalidating the initiative, *when the public officials charged with that duty refuse to do so*."

(*Perry, supra*, 52 Cal.4th at p.1127 [italics added].) The Ninth Circuit certified this question in the context of a post-election challenge to the constitutionality of Proposition 8, an initiative-proposed constitutional amendment. After the named defendants—various state officials—declined to appeal the district court's order declaring Proposition 8 unconstitutional, a controversy arose over whether Proposition 8's

proponents had standing to appeal. In *Perry*, this Court answered the certified question in the affirmative, stating that:

> "In a postelection challenge to a voter-approved initiative measure, the official proponents of the initiative are *authorized* under California law to appear and assert the state's interest in the initiative's validity and to appeal a judgment invalidating the measure *when the public officials who ordinarily defend the measure or appeal such a judgment decline to do so.*"

Unlike *Perry*, the PERB proceedings at the heart of the present controversy regarding the CPRI is not a post-election legal challenge to the substantive validity of the measure. The PERB proceedings involve the narrow question whether the City Council committed an unfair labor practice in violation of the MMBA by failing to meet and confer before the City Council placed the CPRI on the ballot. Underlying the UPCs that gave rise to the PERB proceeding is the contention that the CPRI is, in fact, a City-sponsored measure. The complaining parties before PERB thus assert that under this Court's decision in *Seal Beach*, *supra*, 36 Cal.3d 591, the process by which the City placed the measure on the ballot constituted an unfair labor practice. Neither PERB nor any of the complaining parties has asserted that the CPRI is unconstitutional; rather, the issue is simply whether the CPRI could lawfully be presented to voters *before* the City Council engaged in the meet-and-confer process. Resolution of the question concerning the City's duties under the MMBA

will turn on facts adduced during the PERB proceedings and whether they support a finding that the CPRI is a City-sponsored measure.

There is also no doubt that if the City participates in the PERB proceedings, it will vigorously defend its actions placing the CPRI on the June 2012 statewide primary election ballot, including by contending that the CPRI is not a City-sponsored measure. Petitioners also may well be required to participate in the PERB proceedings as percipient witnesses. The nature of the PERB proceedings regarding the CPRI is vastly different from the situation underlying *Perry*. Any "right" recognized in *Perry* has no application here.

As to their inability to obtain party status and secure a favorable ruling on their jurisdictional and "constitutional" claims in the proceedings below, Petitioners have only themselves to blame. They were free to, but did not diligently pursue their permissive rights of intervention in Case No. 92205. Had they themselves not precipitated the disqualification of Judge Dato, necessitating the removal from his calendar of the motion to intervene that was scheduled to be heard on April 20, and then *failed* to reset that motion for hearing before Judge Vargas, Petitioners might well have obtained limited party status in that case, and would have been in a much stronger position to "join," if not to participate as a matter of right, in the writ proceedings initiated by MEA

in Court of Appeal Case No. D061724. Also, pursuant to section 32164 of PERB's Regulations, they are free to apply for joinder as parties to the administrative hearing scheduled for July 17, but have not done so to date.

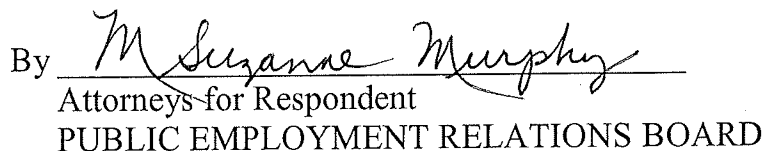
In sum, while Petitioners may have "standing" to defend the CPRI under *Perry*, neither the Superior Court nor the Court of Appeal was *required* to grant their requests to "join" the cases. Unlike the circumstances of *Perry*, the City has vigorously asserted and defended the CPRI *and* the Petitioners' interests as the formal proponents of the ballot measure at every turn in the litigation and administrative proceedings below, and it has shown no signs of relenting. Indeed, the City has already announced that it is proceeding full steam ahead with implementation of the CPRI, notwithstanding the uncertainty about the lawfulness of the procedures by which it was adopted.

IV. CONCLUSION

For all the foregoing reasons, PERB respectfully submits that the Petition for Review and the Request for an Immediate Stay be DENIED.

Dated: July 3, 2012 Respectfully submitted,

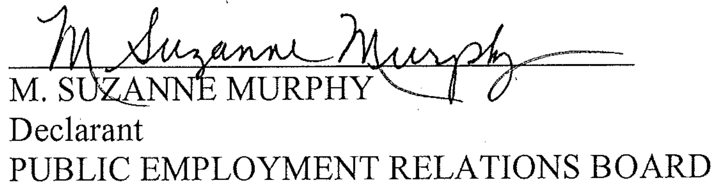
M. SUZANNE MURPHY, General Counsel
WENDI L. ROSS, Deputy General Counsel

By 
Attorneys for Respondent
PUBLIC EMPLOYMENT RELATIONS BOARD

COUNSEL'S CERTIFICATE OF COMPLIANCE
WITH CALIFORNIA RULES OF COURT, RULE 8.504(d)(1)

Counsel of Record hereby certifies that pursuant to rule 8.504(d)(1) of the California Rules of Court, the Answer of Respondent Public Employment Relations Board to the Petition for Review was produced using 13-point Roman-type font and contains, including footnotes, 8,315 words, which is less than the maximum—8,400 words—permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: July 3, 2012



M. SUZANNE MURPHY
Declarant
PUBLIC EMPLOYMENT RELATIONS BOARD

PROOF OF ELECTRONIC SERVICE
Cal. Rules of Court, Rule 2.251

COURT NAME: In the Supreme Court for the State of California

CASE NUMBER: Supreme Court: S203478
Appellate Court: D062090
Superior Court: Case No. 37-2012-00092205-CU-MC-CTL
Case No. 37-2012-00093347-CU-MC-CTL

CASE NAME: *City of San Diego v. California Public Employment Relations Board; San Diego Municipal Employees Association et al.*

I declare that I am a resident of or employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within entitled cause. I am an employee of the Public Employment Relations Board, 1031 18th Street, Sacramento, California 95811. I am readily familiar with the ordinary practice of electronic service requirements under California Rules of Court, rule 2.251, 2.256(a)(4), 2.304 and 2.306

On July 3, 2012, I served the ANSWER TO PETITION FOR REVIEW in the above-referenced case on the parties listed below via my electronic service address at 1031 18th Street, Sacramento, CA 95811.

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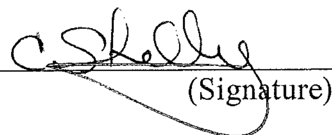
I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 3, 2012, at Sacramento, California.

C. Shelly
(Type or print name)


(Signature)

PROOF OF SERVICE BY MAIL
C.C.P. 1013a

COURT NAME: In the Supreme Court for the State of California

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Case No. 37-2012-00093347-CU-MC-CTL

CASE NAME: *City of San Diego v. California Public Employment Relations Board; San Diego Municipal Employees Association et al.*

I declare that I am a resident of or employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within entitled cause. I am an employee of the Public Employment Relations Board, 1031 18th Street, Sacramento, California 95811. I am readily familiar with the ordinary practice of the business of collecting, processing, and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

On July 3, 2012, I served the document entitled, ANSWER TO PETITION FOR REVIEW in the above-referenced case on the parties listed below via United States Postal Service.

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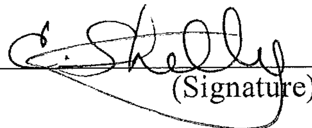
Clerk of the Court
Superior Court of California
County of San Diego
330 West Broadway
San Diego, CA 92101
Case No. 37-2012-00092205-CU-MC-CTL
Case No. 37-2012-00093347- CU-MC-CTL

Clerk of the Court
California Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101
Case No. D062090

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 3, 2012, at Sacramento, California.

C. Shelly
(Type or print name)


(Signature)