

Case No. S162647

Supreme Court Copy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF SAN JOSE,

Plaintiff/Appellant,

v.

OPERATING ENGINEERS LOCAL
UNION NO. 3, et al.

Defendants/Respondents.

NO. S162647

Sixth Appellate District Case
No. H030272

(Santa Clara County Superior Court Case
No.: 1-06-CV064707)

SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE BY RESPONDENT OPERATING ENGINEERS LOCAL UNION NO. 3

After a Decision by the Court of Appeal
Sixth Appellate District
[Case No. H030272]

**SUPREME COURT
FILED**

MAR 11 2018

Frederick K. Ohlrich Clerk

Deputy

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**SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE BY RESPONDENT
OPERATING ENGINEERS LOCAL UNION NO. 3**

After a Decision by the Court of Appeal
Sixth Appellate District
[Case No. H030272]

Arthur Krantz (SBN 182629)
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Attorneys for Defendant/Respondent Operating Engineers Local Union No. 3

Respondent Operating Engineers Local Union Number Three (“Local Three”) makes this Supplemental Request for Judicial Notice under California Rules of Court 8.520(g) and 8.252(a), as well as California Evidence Code §459. Specifically, Local Three moves for judicial notice of Exhibit 1 attached to the accompanying Declaration of Arthur Krantz in support of this request. As discussed below, Local Three seeks judicial notice of an exhibit that is indisputably an appropriate subject of a request for judicial notice and that is relevant to this action.

Evidence Code Section 459(a) provides that a “reviewing court may take judicial notice of any matter specified in Section 452.” Evidence Code Section 452(d) provides that records of “any court of this state” may be judicially noticed, while Evidence Code Section 452(c) provides that “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States” may be judicially noticed.

Evidence Code Sections 452(c) and 452(d) both provide for judicial notice of Exhibit 1 to the accompanying declaration. Exhibit 1 is the Clerk’s Transcript (prepared by the Clerk of Court of the Superior Court of California, County of Santa Clara), for the appeal in *Service Employees International Union Local 521 v. City of Palo Alto*, Sixth District Court of Appeal Case No. H035006. This document constitutes a record of a California court, as well as an official act of the judicial branch of a state of the United States. Evidence Code §§ 452(c) & (d).

Furthermore, Exhibit 1 is relevant because – as explained in Local Three’s accompanying Supplemental Brief – the documents contained in

Exhibit 1 shed light on the two issues that lie at crux of the instant case: (i) the extent to which a city can successfully file an unfair practice charge and accompanying request for injunctive relief with the Public Employment Relations Board (“PERB”), alleging that “essential” employees are illegally threatening to strike and must be enjoined from striking; and (ii) the extent to which it is within PERB’s duties and capabilities to consider such a charge and act upon it as necessary.

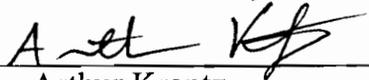
CONCLUSION

For the foregoing reasons, Respondent Local Three respectfully requests that the Court take judicial notice of Exhibit 1 to the accompanying Declaration of Arthur Krantz.

Dated: March 11, 2010

Respectfully submitted,

LEONARD CARDER, LLP

By: 
Arthur Krantz

Attorneys for Respondent
Operating Engineers Local Union
Number Three

PROOF OF SERVICE

I am employed in Alameda County, California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 1330 Broadway, Suite 1450, Oakland, CA 94612. On March 11, 2010, I served copies of the within:

SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE BY RESPONDENT OPERATING ENGINEERS LOCAL UNION NO. 3

 X

BY U.S. MAIL: I caused such envelope to be deposited in the mail at Oakland, California, addressed to the addressee(s) designated on the attachment hereto and sent via first class mail to each individual listed below:

Jonathan Weissglass & Linda Lye
Altshuler, Berzon, Nussbaum, Rubin &
Demain
177 Post Street, Suite 300
San Francisco, CA 94108

Jennifer B. Henning
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Honorable Kevin Murphy
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Mary Maloney Roberts
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Administrative Office of the Courts
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Wendi Ross
Deputy General Counsel
Public Employment Relations Board
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Michael J. Yerly, Clerk of the Court
Sixth Appellate district
333 West Santa Clara Street, Suite 1060
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Priscilla S. Winslow
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Michael R. Clancy, Chief Counsel
Arnie R. Braafladt, Deputy Chief
California State Employees Association
2045 Lundy Avenue
San Jose, CA 95131

Michael Aguirre, City Attorney
Alan Hersh, Deputy City Attorney
City of San Diego
1200 3rd Avenue #1620
San Diego, CA 92101

In addition, I caused to be filed by hand delivery an original and eight copies of the
aforementioned document, addressed as follows:

California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed at Oakland, California, on March 11, 2010



Daniella Brower

Case No. S162647

Supreme Court Copy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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NO. S162647

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(Santa Clara County Superior Court Case
No.: 1-06-CV064707)

DECLARATION OF ARTHUR KRANTZ IN SUPPORT OF SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE BY RESPONDENT OPERATING ENGINEERS LOCAL UNION NO. 3

After a Decision by the Court of Appeal
Sixth Appellate District
[Case No. H030272]

RECEIVED
MAR 11 2010
CLERK SUPREME COURT

Arthur Krantz (SBN 182629)
Margot Rosenberg (SBN 144955)
LEONARD CARDER, LLP
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Email address: akrantz@leonardcarder.com

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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**DECLARATION OF ARTHUR KRANTZ IN SUPPORT OF SUPPLEMENTAL
REQUEST FOR JUDICIAL NOTICE BY RESPONDENT OPERATING
ENGINEERS LOCAL UNION NO. 3**

After a Decision by the Court of Appeal
Sixth Appellate District
[Case No. H030272]

Arthur Krantz (SBN 182629)
Margot Rosenberg (SBN 144955)
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
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Email address: akrantz@leonardcarder.com

I, Arthur Krantz, hereby declare as follows:

1. I am an attorney at Leonard Carder, LLP, which represents Respondent Operating Engineers Local Union Number Three in this action.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Clerk's Transcript prepared by the Clerk of Court of the Superior Court of California, County of Santa Clara, for the appeal in *Public Employment Relations Board v. Service Employees International Union Local 521*, Sixth District Court of Appeal Case No. H035006. I obtained a copy of this document by requesting it from counsel for one of the parties, the Public Employment Relations Board.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge.

Executed at Oakland, California, this 11th day of March 2010.


Arthur Krantz

PROOF OF SERVICE

I am employed in Alameda County, California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 1330 Broadway, Suite 1450, Oakland, CA 94612. On March 11, 2010, I served copies of the within:

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Daniella Brower

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SIXTH APPELLATE DISTRICT

PUBLIC EMPLOYMENT RELATIONS

Plaintiff(s)

V.

SERVICE EMPLOYEES
INTERNATIONAL

Defendant(s)

NO.

SANTA CLARA COUNTY NO. 1-09
CV153088

VOL. 1 of 1

PAGES 1 thru 296

CLERK'S TRANSCRIPT

CLERK'S TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA.

HONORABLE WILLIAM ELFVING, JUDGE

APPEARANCES:

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FOR RESPONDENT/

LAURA DAVIS ESQ
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OAKLAND; CA 94612

NOTICE OF APPEAL FILED:

November 24, 2009

NOTICE OF COMPLETION FILED:

FEB 0 2010

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5	ORDER GRANTING TRO AND OSC RE: PRELIMINARY INJUNCTION	140	1
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8	DECLARATION OF ADOLFO RIEDEL IN OPPOSITION TO OSC AND TRO	209	1
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Deputy General Counsel
3 LAURA Z. DAVIS, Bar No. 196494
Regional Attorney
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5 PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
6 Sacramento, California 95811-4124
Telephone: (916) 322-3198
7 Facsimile: (916) 327-6377

8 Attorneys for State of California, Public Employment Relations Board

9
10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 PUBLIC EMPLOYMENT RELATIONS BOARD,

13 Plaintiff,

14 v.

15 SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521,

16 Defendant.
17
18
19
20
21
22

Case No. **109CV153088**

EX PARTE APPLICATION OF
PLAINTIFF PUBLIC
EMPLOYMENT RELATIONS
BOARD FOR:

1. Temporary Restraining Order;
2. Order to Show Cause Re
Preliminary Injunction
[Code Civ. Proc., §§ 526-27, Civ.
Code, §3439.07]

Date: September 23, 2009
Time: To Be Determined
Dept. To Be Determined

Exempt from Fees
(Gov. Code, § 6103.)

UCS

Wendy Ross
FILED Santa Clara Co
09/23/09 9:20am
David H. Yamasaki
Chief Executive Office
By: roser DTSCIV01013
R#200900103038
EX \$40.00
T \$40.00
Case: 1-09-CV-153088

1 1. Plaintiff Public Employment Relations Board hereby applies to this Court for a
2 temporary restraining order and order to show cause re preliminary injunction against Service
3 Employees International Union Local 521 as follows pending further order from this Court:

4 a. from calling, engaging in, continuing, sanctioning, inducing, aiding, enticing,
5 encouraging, abetting, or assisting certain General Unit employees—specifically but not limited to
6 those employed in the classifications identified in Exhibit “A” (“essential employees”)—from
7 engaging in any strike, walkout, slowdown, or work stoppage of any nature against the City of Palo
8 Alto during their working hours on or about September 24, 2009.

9 b. from continuing in effect or refusing to rescind any strike, walkout, slowdown, or
10 work stoppage, notice, call, order, or sanction heretofore issued by Defendant to or involving
11 “essential employees” with respect to the anticipated General Unit strike, walkout, slowdown, or
12 work stoppage on or about September 24, 2009.

13 2. As the accompanying declarations attached to and incorporated by reference to the
14 Declaration of Laura Z. Davis reflect, the City of Palo Alto will face irreparable harm if Plaintiff
15 does not obtain the relief it seeks. This Court must be given the opportunity to determine whether
16 the absence of services provided by the City’s essential employees (see Exhibit “A”) will cause an
17 imminent threat to public health or safety.

18 3. Plaintiff seeks to preserve the status quo pending a hearing or trial on a preliminary
19 injunction.

20 4. This application is made pursuant to Code of Civil Procedure sections 526 and 527 and
21 Civil Code section 3439.07 on the grounds that the City of Palo Alto will suffer great and irreparable
22 injury if injunctive relief is not obtained prior to hearing or trial.

23 5. This application is based on this application, the accompanying Complaint, Declaration of
24 Laura Z. Davis, Memorandum of Points and Authorities, and all pleadings, papers, and evidence as
25 will be submitted in connection with the application and hearing on the order to show cause re
26 preliminary injunction.

27 ///

28 ///

1 Dated: September 22, 2009

2

Respectfully submitted,

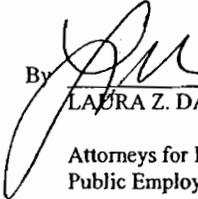
3

TAMI R. BOGERT, General Counsel
WENDI L. ROSS, Deputy General Counsel

4

5

6

By 

7

LAURA Z. DAVIS

8

Attorneys for Plaintiff
Public Employment Relations Board

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EXHIBIT A

[Faint, illegible text]

Exhibit "A"

Essential Classifications	Duties/Training Requirements	Declaration(s) in Support
PUBLIC WORKS CRITICAL POSITIONS	Chemists <ul style="list-style-type: none"> Test the City's drinking water and wastewater discharge to ensure safety and that federal and state regulations are met. Conduct approximately 14, 000 tests per year and approximately 40 tests per day. 	Roberts Decl. (09/15/09) ¶ 10.
	Senior Chemists <ul style="list-style-type: none"> Test the City's drinking water and wastewater discharge to ensure safety and that federal and state regulations are met. Conduct approximately 14, 000 tests per year and approximately 40 tests per day. 	Roberts Decl. (09/15/09) ¶ 10.
	Electricians <ul style="list-style-type: none"> Maintain electrical components, power distribution, power control, and instrumentation used to safely and effectively operate and monitor the City's Plan and its stormwater systems. Maintain electrical systems in a state of operational readiness to ensure effective treatment of sewage, sludge, stormwater, and air emissions in compliance with the Plant's permits. Repair specialized wastewater treatment system equipment, and have significant institutional knowledge about the equipment. 	Roberts Decl. (09/15/09) ¶¶ 14, 16.
	Electrician Leads <ul style="list-style-type: none"> Maintain electrical components, power distribution, power control, and instrumentation used to safely and effectively operate and monitor the City's Plan and its stormwater systems. Maintain electrical systems in a state of operational readiness to ensure effective treatment of sewage, sludge, stormwater, and air emissions in compliance with the Plant's permits. Repair specialized wastewater treatment system equipment, and have significant institutional knowledge about the equipment. 	Roberts Decl. (09/15/09) ¶¶ 14, 16.
	Maintenance Mechanics <ul style="list-style-type: none"> Maintain equipment such as pumps, pipes, compressors, and wastewater pollution control equipment used to operate the Palo Alto Regional Water Quality Control Plant. Maintain the equipment in a state of operational readiness to ensure effective treatment of sewage, sludge, and air emissions in compliance with the Palo Alto Regional Water Quality Control Plant's permits. Repair specialized wastewater treatment system equipment, and have significant institutional knowledge about the equipment. 	Roberts Decl. (09/15/09) ¶¶ 15, 16.
	Senior Mechanics <ul style="list-style-type: none"> Maintain equipment such as pumps, pipes, compressors, and wastewater pollution control equipment used to operate the Plant. Maintain the equipment in a state of operational readiness to ensure effective treatment of sewage, sludge, and air emissions in compliance with the Plant's permits. Repair specialized wastewater treatment system equipment, and have significant institutional knowledge about the equipment. 	Roberts Decl. (09/15/09) ¶¶ 15, 16.

PUBLIC WORKS CRITICAL POSITIONS (Continued)	Senior Water Quality Control Operator	<ul style="list-style-type: none"> Requires Grade III certification from the State Water Resources Control Board. Recognize when emergency corrective repairs or actions are necessary. Operating complex wastewater treatment and/or water reclamation plants, and must be able to recognize unusual, inefficient or dangerous operating conditions. 	Roberts Decl. (09/15/09) ¶ 5.
	Water Quality Control Operator IIs	<ul style="list-style-type: none"> Requires Grade II certification from the State Water Resources Control Board. Operates complex wastewater treatment and/or water reclamation systems with the Senior Water Quality Control Operator and must be able to recognize unusual, inefficient or dangerous operating conditions. Operates the Palo Alto Regional Water Quality Control Plant's sewage sludge incinerator. Take required water samples for quality analysis and quality control of the water. Perform preventative maintenance on machinery operating 24 hours a day, 7 days a week. Respond to emergency situations in the event of an earthquake, spill, or other event. 	Roberts Decl. (09/15/09) ¶ 6.
	Heavy Equipment Operators	<ul style="list-style-type: none"> Maintains the City's compost program. Operate equipment used to turn the compost. Specially trained in the proper techniques for monitoring compost temperatures as required by the City's landfill permit. 	Roberts Decl. (09/15/09) ¶ 27.
	Landfill Technician	<ul style="list-style-type: none"> Responsible for inspecting, monitoring, reporting on, and repairing landfill gas extraction and leachate collection. 	Roberts Decl. (09/15/09) ¶ 20.
	Environmental Specialist	<ul style="list-style-type: none"> Responsible for the management of hazardous wastes, which consists of the containment, movement, proper storage, inspection and labeling of hazardous wastes. Provides critical coverage for all of the City's hazardous materials spill response plans. Listed as the emergency response coordinator with the landfill's emergency response and contingency plan. The Fire Department's primary environmental contact for the landfill's hazardous materials business plan. The second emergency contact for the City's Utility Control response system and the Public Works Operations Spills and Release Emergency Procedures. 	Roberts Decl. (09/15/09) ¶ 23.

POLICE DEPARTMENT CRITICAL POSITIONS	Public Safety Dispatcher	<ul style="list-style-type: none"> Dispatch emergency personnel and equipment in response to calls from the public and other agencies for police services, fire department services, ambulances, medical emergencies, utility, public works (water, gas, electric), and animal services. Has significant and intensive training by the City on public safety dispatching. Have certification from the Police Officers Standards and Training. Have extensive knowledge of police and fire codes, the ability to operate special communication systems, the ability to receive and transmit information related to emergency calls by operating communication consoles, two-way radios, telephones, a computer-aided dispatch system, fire alarm and intrusion alarm equipment, and a number of other public safety systems. Have knowledge of how to search the California Law Enforcement Telecommunication System and transmit that information to police officers in the field when necessary. 	Burns Decl. (09/15/09) ¶¶ 4, 5
	Chief Public Safety Dispatcher	<ul style="list-style-type: none"> Dispatch emergency personnel and equipment in response to calls from the public and other agencies for police services, fire department services, ambulances, medical emergencies, utility, public works (water, gas, electric), and animal services. Has significant and intensive training by the City on public safety dispatching. Have certification from the Police Officers Standards and Training. Have extensive knowledge of police and fire codes, the ability to operate special communication systems, the ability to receive and transmit information related to emergency calls by operating communication consoles, two-way radios, telephones, a computer-aided dispatch system, fire alarm and intrusion alarm equipment, and a number of other public safety systems. Have knowledge of how to search the California Law Enforcement Telecommunication System and transmit that information to police officers in the field when necessary. 	Burns Decl. (09/15/09) ¶¶ 4, 5
	Animal Control Officer	<ul style="list-style-type: none"> Responds to calls for animal control services within the City, and for the contact cities of Mountain View, Los Altos, and Los Altos Hills. Respond to calls regarding sick, injured, or aggressive domestic animals and transport them for care and treatment. Respond to and investigate calls regarding animal bite incidents, capture and impound biting animals so that they can be quarantined and tested for rabies and other contagious diseases. Receive specialized training to do above functions. 	Burns Decl. (09/15/09) ¶¶ 8, 9, 10.

UTILITIES CRITICAL POSITIONS	Installer/Repair Leads	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Certified to work on the gas system through the Operator Qualification training necessary to meet the requirements set by the Federal Department of Transportation. 	Fong Decl (09/15/09), ¶¶ 5, 7.
	Installer/Repairers	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Certified to work on the gas system through the Operator Qualification training necessary to meet the requirements set by the Federal Department of Transportation. 	Fong Decl (09/15/09), ¶¶ 5, 7.
	Maintenance Mechanics	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Certified to work on the gas system through the Operator Qualification training necessary to meet the requirements set by the Federal Department of Transportation. 	Fong Decl (09/15/09), ¶¶ 5, 7.
	Linepersons	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Safely operate utility services. • Provide daily maintenance of overhead and underground electrical equipment. • Make safe and repair the City's electrical equipment when outages occur. 	Fong Decl (09/15/09), ¶¶ 5, 8.
	Linepersons Leads	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Safely operate utility services. • Provide daily maintenance of overhead and underground electrical equipment. • Make safe and repair the City's electrical equipment when outages occur. 	Fong Decl (09/15/09), ¶¶ 5, 8.

UTILITIES CRITICAL POSITIONS (Continued)	Electrician Leads	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Maintain power distribution substations and repair electrical and mechanical components. 	Fong Decl (09/15/09), ¶¶ 5, 9.
	Electrician Leads	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Maintain power distribution substations and repair electrical and mechanical components. 	Fong Decl (09/15/09), ¶¶ 5, 9.
	Heavy Equipment Operators	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Operate heavy equipment around the gas system. 	Fong Decl (09/15/09), ¶¶ 5, 10.
	Water Systems Operators	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • Ensure safety of the drinking water by daily sampling and monitoring of the water systems. 	Fong Decl (09/15/09), ¶¶ 5, 11.
	Field Service Persons	<ul style="list-style-type: none"> • Emergency system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks, welding on gas mains and services, repairing electrical outages on the transmission/distribution system, monitoring substations, replacing traffic signals, repairing street light outages, and restoring water services after interruptions. • First responders to emergency calls for gas, water, wastewater and electric problems or concerns. • Must meet qualification requirements set by the Department of Transportation. 	Fong Decl (09/15/09), ¶¶ 5, 12.
	Utility System Operator/Dispatcher	<ul style="list-style-type: none"> • Receives calls concerning emergencies related to the public utilities and ensures staff is deployed to respond to emergencies. • Must be familiar with the City's electrical Transmission and Distribution system in order to safely operate the Supervisory Control and Data Acquisition system and direct emergencies crews in a safe, reliable manner to restore power. 	Fong Decl (09/15/09), ¶ 13.

COMMUNITY SERVICES CRITICAL POSITIONS	Senior Ranger	<ul style="list-style-type: none"> • Patrols and responds to emergency calls and assists in emergency response and wildlife/resource management activities in the City's Open Space lands. • Perform patrol duties to provide park and open space visitor assistance and to assure compliance with park rules and regulations. • Issuing citations related to Municipal Code violations concerning city parks and open space lands, responding to citizen complaints, conflict resolution, and writing incident reports. • Trained and authorized in the use of firearms for emergency wildlife capture, control, protection or human destruction. • Provide first response emergency services within established response areas including responding to vehicle accidents, administering emergency medical first aid, providing water and marsh rescue, and fighting wildland fires. • Must be certified in emergency response first aid and professional rescuer CPR. 	Betts Decl. (09/15/09) ¶ 4.
	Producer of the Science Programs ("Zoo Keeper")	<ul style="list-style-type: none"> • Ensures the proper feeding, handling and care of over 250 specimens and 40 species of invertebrates, reptiles, birds and mammals at the Zoo. • One specimen is a federally protected, endangered species. • Critical daily care including preparing and serving diets, providing clean drinking water, washing facilities to prevent disease, shifting animals from bedroom facilities to outdoor areas, and conducting veterinary care to treat disease – including potential zoonotic disease that are a threat to human health. • Ensures public safety by monitoring to ensure that if visitors are in the zoo area, they are safely away from dangerous animals. 	Betts Decl. (09/15/09) ¶ 8.
	Inspector Field Services	<ul style="list-style-type: none"> • Inspects all 36 community playgrounds within the City on a weekly basis, as required by California State Health and Safety Code Section 15725-15750, which mandates the inspection and systematic maintenance of public playground and recreational facilities. • Responsible for closing down playgrounds and picnic areas that are deemed unsafe and in need of repair. 	Betts Decl. (09/15/09) ¶ 11.

1 TAMI R. BOGERT, Bar No. 206561
General Counsel
2 WENDI L. ROSS, Bar No. 141030
Deputy General Counsel
+3 LAURA Z. DAVIS, Bar No. 196494
Regional Attorney
4 KATHARNIE M. NYMAN, Bar No. 249067
Regional Attorney
5 PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
6 Sacramento, California 95811-4174
Telephone: (916) 322-3198
7 Facsimile: (916) 327-6377

8 Attorneys for State of California, Public Employment Relations Board

M. Rosales

UCS

FILED Santa Clara
10/23/09 8:16 AM
David H. Yamaseki
Chief Executive Officer
PERMISSIBLE DISCLOSURE
10/23/09 3:55 PM
355

9 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA

11 PUBLIC EMPLOYMENT RELATIONS BOARD,

12 Plaintiff,

13 v.

14 SERVICE EMPLOYEES INTERNATIONAL
15 UNION Local 521,

16 Defendant.

Case No. 109CV153088

COMPLAINT FOR INJUNCTIVE
RELIEF; SUPPORTING
DECLARATIONS

17 Date: September 23, 2009
18 Time: To Be Determined
19 Dept. To Be Determined

20 Exempt from Fees
21 (Gov. Code, § 6103)

- 1 1. Plaintiff, the Public Employment Relations Board (Board or PERB), is now and at all
2 times mentioned herein has been an administrative agency created by Government Code section
3 3541 for the purpose of, inter alia, promoting the development of harmonious and cooperative labor
4 relations between California's public-sector employers and their employees. This includes
5 California's local-government employers and their employees. (Gov. Code, § 3500 et seq.)
- 6 2. PERB has the power to petition the superior court for injunctive relief upon issuance of a
7 complaint charging that an employee organization or employer has engaged or is engaging in an
8 unfair practice, pursuant to Government Code sections 3541.3. (See also Gov. Code, § 3509, subd.
9 (a); California Code of Regulations, title 8, § 32450 et seq.)
- 10 3. As a public agency, PERB is not required to file a bond or undertaking (California Code
11 of Civil Procedure section 529, subdivision (b)(3)) when requesting injunctive relief.
- 12 4. As a public agency, PERB is not required to pay a filing fee. (Gov. Code, § 6103.)
- 13 5. Defendant, the Service Employees International Union Local 521 (SEIU), is and at all
14 times mentioned herein has been an employee organization in the State of California within the
15 meaning of Government Code section 3501, subdivision (a). SEIU is the recognized representative
16 within the meaning of Government Code section 3501, subdivision (b) of employees in the City of
17 Palo Alto's (City) General Bargaining Unit (General Unit.) SEIU operates offices at various
18 locations in California, including in San Jose, San Carlos, Santa Cruz, Salinas, Fresno, Bakersfield,
19 Visalia, and Watsonville.
- 20 6. The City is and at all times mentioned herein has been a public agency in the State of
21 California within the meaning of Government Code section 3501, subdivision (c) and the employer
22 of an appropriate unit of employees, including employees in the General Unit represented by SEIU.
23 The City is and at all times mentioned herein has been operating its own Gas, Water, and Electric
24 Utilities, its own Regional Water Quality Control Plant, and its own Police and Fire Departments;
25 the City services its residents as well as surrounding communities including Stanford University,
26 Mountain View, Los Altos, Los Altos Hills, and the East Palo Alto Sanitary District.
- 27 7. SEIU and the City were parties to a memorandum of agreement (MOA) for the General
28 Unit; said MOA expired on June 30, 2009. SEIU and the City commenced negotiations for a

1 successor MOA in May 2009.

2 8. Government Code section 3505 requires local-government employers and employee
3 organizations to meet and negotiate in good faith. It is an unfair labor practice for an employee
4 organization to fail or refuse to bargain in good faith under Government Code section 3505.

5 9. On or about September 15, 2009, the City requested PERB to petition the superior court
6 for an injunction pursuant to Government Code sections 3541.3, 3509, subdivision (a) and California
7 Code of Regulations, title 8, section 32450 et seq. to prohibit a strike or work stoppage by City
8 employees.

9 10. The City provided PERB with numerous declarations in support of its request
10 demonstrating that the absence of the "essential" employees in the General Unit will effectively
11 disrupt the City's ability to provide critical services, particularly relative to public-safety dispatch,
12 wastewater-quality control, and landfill and hazardous-waste management, thereby placing the
13 public's health and safety at risk of substantial and irreparable harm. (Declaration of Laura Z.
14 Davis (Decl. L. Davis).)

15 11. SEIU's conduct is an attempt to improve its position at the bargaining table and pressure
16 the City to make concessions relative to economic benefits for bargaining-unit members. (Decl. L.
17 Davis.)

18 12. Said work stoppage conceivably damages the prospect of success in the collective-
19 bargaining process. (Decl. L. Davis.)

20 13. The City's declarations attest to a threat of substantial and irreparable injury if said work
21 stoppage is not enjoined. (Decl. L. Davis.)

22 14. The instant request for injunctive relief is filed by direction of the Board. (Decl. L.
23 Davis.)

24 15. PERB has reasonable cause to believe that an unfair labor practice has been committed
25 because, under the facts of this case, SEIU's conduct during negotiations with the City—including
26 but not limited to declaring on or about August 5, 2009 a deadline for negotiations of September 15,
27 2009 and threatening to strike in the absence of an agreement by that date; taking a strike-
28 authorization vote on or about August 27, 2009; organizing, sanctioning, condoning, encouraging,

1 enticing, and/or causing General Unit employees to participate in a “sick out” on or about September
2 8, 2009; organizing, sanctioning, condoning, encouraging, enticing, and/or causing General Unit
3 employees to participate in a “walk out” on or about September 10, 2009; and/or stating on or
4 about September 19, 2009 that it was planning a strike or work stoppage on September 24,
5 2009—constitutes evidence of bad-faith bargaining and an unlawful pressure tactic in the parties’
6 negotiations.

7 16. PERB has reasonable cause to believe that an unfair labor practice has been committed
8 because, under the facts of this case, SEIU’s conduct of organizing, sanctioning, condoning,
9 encouraging, enticing, and/or causing essential personnel in the General Unit to withhold their
10 services during the anticipated strike or work stoppage constitutes an unlawful pressure tactic in the
11 parties’ negotiations.

12 17. Injunctive relief is just and proper because unless said strike or work stoppage is
13 properly enjoined, PERB will be unable to award an effective final remedy and public policy will be
14 thwarted; no adequate remedy at law exists here as damages are inadequate; and said strike or work
15 stoppage could cause great and irreparable damage to the public’s health or safety and to the parties’
16 negotiations process.

17 18. Before filing this instant request for injunctive relief, PERB notified SEIU’s counsel,
18 Vincent Harrington, before 10:00 a.m. on September 22, 2009 that PERB intended to seek injunctive
19 relief from this Court on September 23, 2009. This notification was provided by message
20 (voicemail) to Mr. Harrington via his office telephone ((510) 337-1001). PERB additionally
21 transmitted this information to Mr. Harrington via facsimile ((510) 337-1023) and electronic mail
22 (vharrington@unioncounsel.net) on the morning of September 22, 2009. PERB also transmitted a
23 copy of this Complaint, PERB’s Points and Authorities, PERB’s Order to Show Cause, and
24 Supporting Declarations via electronic mail to Mr. Harrington during the afternoon of September 22,
25 2009.

26 WHEREFORE, Plaintiff prays for judgment as follows:

27 1. That Defendant SEIU, its agents, employees, representatives, officers, organizers,
28 committee persons, stewards, members, and all corporations, unincorporated associations, and

1 natural persons acting in concert and participation with any of them, until a hearing or trial on a
2 preliminary injunction, be enjoined and restrained;

3 a. from calling, engaging in, continuing, sanctioning, inducing, aiding, enticing,
4 encouraging, abetting, or assisting certain General Unit employees—specifically but not limited to
5 those employed in the classifications identified in Exhibit “A” (“essential employees”)—from
6 engaging in any strike, walkout, slowdown, or work stoppage of any nature against the City of Palo
7 Alto during their working hours on or about September 24, 2009;

8 b. from continuing in effect or refusing to rescind any strike, walkout, slowdown, or
9 work stoppage, notice, call, order, or sanction heretofore issued by Defendant to or involving
10 “essential employees” with respect to the anticipated General Unit strike or work stoppage on or
11 about September 24, 2009.

12 2. That Defendant and its agents, employees, representatives, officers, organizers, committee
13 persons, stewards, members, and all corporations, unincorporated associations, and natural persons
14 acting in concert and participation with any of them, until a hearing or trial on a preliminary
15 injunction, be enjoined and restrained from doing or attempting to do, directly or indirectly, by any
16 means, method or device whatsoever, any of the acts enjoined in paragraph 1 hereof and each
17 subdivision thereof during the duration of this action.

18 3. That a Temporary Restraining Order be granted, enjoining and restraining SEIU, its
19 agents, employees, representatives, officers, organizers, committee persons, stewards, and members,
20 and all persons acting in concert with them or any of them, until the hearing upon an Order to Show
21 Cause, from doing or causing or permitting to be done any of the acts complained of in paragraph 1
22 of this prayer.

23 4. That upon the hearing of said Order to Show Cause, a Preliminary Injunction be granted
24 herein restraining SEIU and its agents, employees, representatives, officers, organizers, committee
25 persons, stewards, and members, and all persons acting in concert with them or any of them, from
26 doing or causing or permitting to be done any of the acts or things prayed in paragraph 1 of this
27 prayer to be enjoined and restrained.

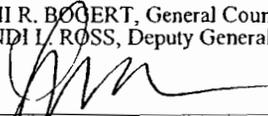
28 5. For its cost of suit herein incurred.

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6. For such other and further relief as may be just and proper.

Dated: September 22, 2009

Respectfully submitted,
TAMI R. BOGERT, General Counsel
WENDI L. ROSS, Deputy General Counsel

By 

LAURA Z. DAVIS
Attorneys for Plaintiff
Public Employment Relations Board

1 TAMI R. BOGERT, Bar No. 206561
General Counsel
2 WENDI L. ROSS, Bar No. 141030
Deputy General Counsel
3 LAURA Z. DAVIS, Bar No. 196494
Regional Attorney
4 KATHARINE M. NYMAN, Bar No. 249067
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5 PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
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Telephone: (916) 322-3198
7 Facsimile: (916) 327-6377

8 Attorneys for State of California, Public Employment Relations Board

UCS
FILED
SEP 23 2009
DAVID H. YAMASAKI
City Executive Officer/Clerk
Superior Court of CA County of Santa Clara
DEPUTY
David H. Yamasaki

9
10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 PUBLIC EMPLOYMENT RELATIONS BOARD,

13 Plaintiff,

14 v.

15 SERVICE EMPLOYEES INTERNATIONAL
16 UNION LOCAL 521,

17 Defendant.

Case No. **109CV153088**

DECLARATION OF
LAURA Z. DAVIS

18 Date: September 23, 2009
19 Time: To Be Determined
Dept. To Be Determined

20 Exempt from Fees
21 (Gov. Code, § 6103)

22 I, LAURA Z. DAVIS, declare:

23 1. I am a Regional Attorney employed by and at the Public Employment Relations Board
24 (PERB or Board). My job duties include investigating unfair practice charges and requests for
25 injunctive relief filed with PERB. I was assigned to the instant matter by PERB's General Counsel.

26 2. On or about September 15, 2009, the City of Palo Alto (City) filed with PERB an unfair
27 practice charge, alleging that the Service Employees International Union Local 521 (SEIU) violated
28 the Meyers-Milias-Brown (MMBA) (Government Code section 3500 et seq.) by engaging in bad-

1 faith negotiations, namely before the parties reached impasse, by taking a strike vote, organizing
2 and/or condoning an employee "sick out," organizing and/or condoning an employee "walk out,"
3 arbitrarily setting a deadline for the parties to reach an agreement and threatening a strike in the
4 absence of agreement on that date, and refusing to agree to exempt certain positions from any strike
5 as "essential" to public health or safety. (PERB Case No. SF-CO-210-M.)

6 3. On or about September 15, 2009, the City filed with PERB a request for injunctive relief in
7 conjunction with SF-CO-210-M to enjoin a strike or work stoppage by SEIU of employees in the
8 City's General Bargaining Unit (General Unit). (Injunctive Relief Request No. 576.)

9 4. On September 22, 2009, the Board granted Injunctive Relief Request No. 576 with regard
10 to the essential employees in the General Unit. (Attachment A to this declaration.)

11 5. On September 22, 2009, PERB's Office of the General Counsel issued a
12 complaint in SF-CO-210-M. (Attachment B to this declaration.) The complaint in SF-CO-210-M
13 alleges in part that SEIU failed/refused to meet and confer in good faith with the City by organizing,
14 condoning, enticing, encouraging, and/or causing members of the General Unit "who work in
15 critical public health and safety positions" to withdraw their services and/or by threatening to
16 withdraw the services of General Unit members "who work in critical public health and safety
17 positions."
18

19 6. During PERB's investigation of the City's request for injunctive relief, the City filed with
20 PERB declarations and other documents in support of its request for injunctive relief.

21 7. Attached hereto and incorporated herein is the declaration of Dennis Burns dated
22 September 15, 2009 and supplemental declaration of Dennis Burns dated September 17, 2009.
23 (Attachment C to this declaration.)

24 8. Attached hereto and incorporated herein is the declaration of Glenn Roberts dated
25 September 15, 2009 and supplemental declaration of Glenn Roberts dated September 18, 2009.
26 (Attachment D to this declaration.)

27 9. Attached hereto and incorporated herein is the declaration of Greg Betts dated September
28 15, 2009 and supplemental declaration of Greg Betts dated September 17, 2009. (Attachment E to this

1 declaration.)

2 10. Attached hereto and incorporated herein is the declaration of Sandra Blanch dated
3 September 15, 2009, further declaration of Sandra Blanch dated September 16, 2009, and third
4 declaration of Sandra Blanch dated September 18, 2009. (Attachment F to this declaration.)

5 11. Attached hereto and incorporated herein is the declaration of Valerie Fong dated September
6 15, 2009 and supplemental declaration of Valerie Fong dated September 17, 2009. (Attachment G to
7 this declaration.)

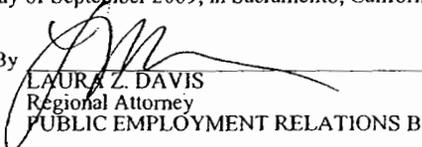
8 12. Attached hereto and incorporated herein is the declaration of Darrell Murray dated
9 September 17, 2009. (Attachment H to this declaration.)

10 13. Attached hereto and incorporated herein is the declaration of Rene Eyerly dated September
11 17, 2009. (Attachment I to this declaration.)

12 14. Attached hereto and incorporated herein is the declaration of Russell Carlsen dated
13 September 21, 2009. (Attachment J to this declaration.)

14 15. On September 22, 2009, PERB notified SEIU's counsel (Vincent Harrington) in this
15 matter that PERB intended to seek injunctive relief and appear on September 23, 2009 before the
16 Santa Clara County Superior Court. This notification was provided before 10:00 a.m. on September
17 22, 2009 by voice message from me on Mr. Harrington's office telephone ((510) 337-1001). PERB
18 additionally transmitted this information to Mr. Harrington by facsimile ((510-337-1023) and
19 electronic mail (vharrington@unioncounsel.net) on September 22, 2009. (Attachment K to this
20 declaration.) Mr. Harrington informed PERB the same day that he would oppose this matter.

21 I declare under the penalty of perjury that the foregoing is true and correct and that this
22 document was executed on the 22nd day of September 2009, in Sacramento, California.

23
24 By 
25 LAURA Z. DAVIS
26 Regional Attorney
27 PUBLIC EMPLOYMENT RELATIONS BOARD
28

ATTACHMENT A

PUBLIC EMPLOYMENT RELATIONS BOARD



Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 322-3198
Fax: (916) 327-6377



VIA FACSIMILE, U.S. MAIL, AND E-MAIL

September 22, 2009

Gary M. Baum, City Attorney
Melissa C. Tronquet, Deputy City Attorney
City of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301

Adrianna E. Guzman, Attorney
Liebert, Cassidy & Whitmore
153 Townsend Street, Suite 520
San Francisco, CA 94107

Vincent Harrington, Jr., Attorney
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Re: *City of Palo Alto v. SEIU Local 521*
Injunctive Relief Request No. 576
Unfair Practice Charge No. SF-CO-210-M

Dear Counsel:

By direction of the Board, the request for injunctive relief in the above-titled matter is granted with regard to the essential employees in the General Unit.

Sincerely,

A handwritten signature in black ink that reads "Tami R. Bogert".

TAMI R. BOGERT
General Counsel

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On September 22, 2009, I served the Letter regarding Injunctive Relief Request No. 576 (Case No. SF-CO-210-M) on the parties listed below by electronic mail and also by

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

personal delivery.

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

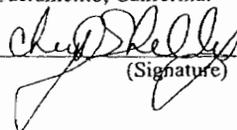
Gary M. Baum, City Attorney
Melissa C. Tronquet, Deputy City Attorney
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Gary.baum@cityofpaloalto.org
Melissa.tronquet@cityofpaloalto.org

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Vincent Harrington, Jr., Attorney
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
FAX: 510-337-1023
Vharrington@unioncounsel.net

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 22, 2009, at Sacramento, California.

Cheryl Shelly
(Type or print name)


(Signature)

ATTACHMENT B

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
Fax: (510) 622-1027



September 22, 2009

Melissa C. Tronquet, Deputy City Attorney
City of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301

Gary M. Baum, City Attorney
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250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301

Adrianna E. Guzman, Attorney
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153 Townsend Street, Suite 520
San Francisco, CA 94107

Vincent Harrington, Jr., Attorney
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Re: *City of Palo Alto v. SEIU Local 521*
Unfair Practice Charge No. SF-CO-210-M

Dear Parties:

The Office of the General Counsel has issued the enclosed COMPLAINT in the above-entitled matter. The Respondent is required to file an ANSWER within twenty (20) calendar days from the date of service of the COMPLAINT, pursuant to PERB Regulation 32644.¹ The required contents of the ANSWER are described in PERB Regulation 32644(b). If you have not filed a Notice of Appearance form, one should be completed and returned with your ANSWER.

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95811-4124. and the text is available at www.perb.ca.gov.

SF-CO-210-M
September 22, 2009
Page 2

An informal settlement conference will be scheduled shortly. Please direct all inquiries, filings and correspondence to the undersigned.

Sincerely,



Laura Davis
Regional Attorney

Enclosure

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



CITY OF PALO ALTO,

Charging Party,

v.

SEIU LOCAL 521,

Respondent.

Case No. SF-CO-210-M

COMPLAINT

It having been charged by Charging Party that Respondent engaged in unfair practices in violation of California Government Code section 3500 et seq., the General Counsel of the Public Employment Relations Board (PERB), pursuant to California Government Code sections 3509(b) and 3541.3(i) and California Code of Regulations, title 8, section 32640, issues this COMPLAINT on behalf of PERB and ALLEGES:

1. Charging Party is a public agency within the meaning of Government Code section 3501(c) and PERB Regulation 32016(a).
2. Respondent is an exclusive representative within the meaning of PERB Regulation 32016(b) of an appropriate unit of employees, including the Charging Party's General Unit.
3. The Memorandum of Agreement (MOA) between the Charging Party and Respondent for the General Unit expired on June 30, 2009. Since May 2009, Respondent and Charging Party have met and conferred regarding a successor MOA pursuant to Government Code section 3505.
4. On or about August 5, 2009, Respondent, acting through its lead negotiator Nick Steinmeier, notified Charging Party that it "was considering a potential strike and that SEIU did not want to negotiate beyond September 15, 2009."

5. On or about August 27, 2009, Respondent “held a strike vote and reported that [95%] [of its members] voted in favor of striking.”

6. On or about September 3, 2009, Charging Party requested that Respondent agree to “have certain employees who work in critical public health and safety positions remain on the job during any labor action.” By letter dated September 8, 2009, Respondent declined Charging Party’s request and informed Charging Party that the parties’ “energies are best directed toward accomplishing the goal of negotiating an agreement, rather than communicating back and forth about ‘critical public health and safety positions’”

7. On September 4, 2009, Charging Party, in response to “rumors and other strong indications that [Respondent’s] members may be planning a ‘sick out’ for some time during the week of September 8,” requested Respondent’s “assistance in (1) renouncing any ‘sick outs’ or other actions, (2) urging members not to participate if they do hear of such actions, and (3) making every effort to ensure that employees attend work.” Respondent did not respond to Charging Party’s September 4 request.

8. On or about September 8, 2009, more than 150 employees represented by Respondent in the General Unit called-in “sick” and did not report to work. Respondent did not renounce this “sick out” or otherwise urge its members not to participate in this “sick out.”

9. On September 9, 2009, Charging Party, in response to “new rumors that [Respondent’s] members may be planning a ‘walkout’ during a workday [that] week.” urged Respondent “to ask [its members] not to participate.”

10. On or about September 10, 2009, “many [employees represented by Respondent in the General Unit] gathered in front of City Hall for a demonstration sanctioned and sponsored by [Respondent] that lasted for at least 15 minutes” including during work time.

11. On or about September 19, 2009, Respondent, acting through its Chapter Co-Secretary Joel Dino, stated in an e-mail message that it was planning a strike or work stoppage for September 24, 2009.

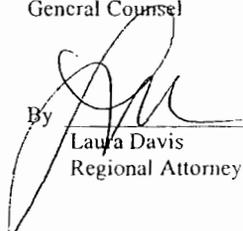
12. Based on but not limited to the acts and conduct described in paragraphs 4, 5, 6, 7, 8, 10, and 11 above, Respondent failed and refused to bargain in good faith with Charging Party in violation of Government Code section 3505.

13. Based on but not limited to the same acts and conduct described above, Respondent also violated Government Code section 3505 by organizing, condoning, enticing, encouraging, and/or causing members of the General Unit "who work in critical public health and safety positions" to withdraw their services and/or by threatening to withdraw the services of General Unit members "who work in critical public health and safety positions."

Any amendment to the complaint shall be processed pursuant to California Code of Regulations, title 8, sections 32647 and 32648.

DATED: September 22, 2009

TAMI R. BOGERT
General Counsel

By 

Laura Davis
Regional Attorney

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1330 Broadway, Suite 1532, Oakland, CA 94612-2514.

On September 22, 2009, I served the Letter regarding Case No. SF-CO-210-M on the parties listed below by

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

personal delivery.

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Melissa C. Tronquet, Deputy City Attorney
City of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301

Gary M. Baum, City Attorney
City of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301

Adrianna E. Guzman, Attorney
Liebert, Cassidy & Whitmore
153 Townsend Street, Suite 520
San Francisco, CA 94107

Vincent Harrington, Jr., Attorney
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 22, 2009, at Oakland, California.

C.E. Johnson
(Type or print name)


(Signature)

ATTACHMENT C

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13 Attorneys for Charging Party
14 CITY OF PALO ALTO

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15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,
18 Charging Party,
19 v.
20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,
22 Respondent.

Case No.
DECLARATION OF DENNIS BURNS

23 1. I, Dennis Burns, am employed by the City of Palo Alto as the Interim Police Chief of
24 the City of Palo Alto's Police Department. I have been employed by the City of Palo Alto's police
25 department for 27 years. I have personal knowledge of the facts below. If called to testify to the
26 following, I could and would competently do so.

27 2. I am submitting this Declaration in support of the City's Request for Injunctive Relief
28 to enjoin certain essential positions represented by SEIU Local 521 from striking.

1 The City's Public Safety Dispatch Center operates 24 hours a day, 7 days a week.
2 The City's Public Safety Dispatchers work a 4/11 schedule with staggered start times. The City
3 schedules four Public Safety Dispatchers to work the 0800 to 0200 shift, and schedules three Public
4 Safety Dispatchers to work the 0200 to 0800 shift. Those are the minimum staffing requirements
5 needed to safely operate the City's Public Safety Dispatcher. If a Public Safety Dispatcher calls in

1 sick, the City replaces them with a dispatcher on overtime, even if it means ordering someone come
2 to work. The Dispatch Center receives approximately 100 911 calls per day and 500 calls total.

3 4. The City's Public Safety Dispatchers dispatch emergency personnel and equipment in
4 response to calls from the public and other client agencies for police services, fire department
5 services, ambulances, medical emergencies, utility, public works (water, gas, electric), and animal
6 services.

7 5. Public Safety Dispatcher must go through at least 10 months of intensive training by
8 the City on public safety dispatching before they are allowed to dispatch without supervision. Public
9 Safety dispatchers must also obtain certification from the Police Officers Standards and Training
10 (POST) during their first year on the job. Public Safety Dispatching requires extensive knowledge
11 of police and fire codes, the ability to operate special communication systems, the ability to receive
12 and transmit information related to emergency calls by operating communication consoles, two-way
13 radios, telephones, a computer-aided dispatch system (CADS), fire alarm and intrusion alarm
14 equipment, and a number of other public safety systems (mapping, mobile, Stanford and SLAC
15 alarms). They must also know how to search the California Law Enforcement Telecommunication
16 System (CLETS) and transmit that information to police officers in the field when necessary.
17 CLETS is a highly confidential database containing criminal offender information on persons
18 throughout California. In addition, the City also has a number of other public safety systems
19 (napping, mobile, Stanford and SLAC alarms) that require training and experience to operate.

20 6. The City cannot hire temporary employees to perform the work done by Public Safety
21 Dispatchers because of the specialized nature of the job, as described above. Further, the City
22 cannot contract these services to other law enforcement agencies because they would not be familiar
23 with the City's unique protocols, procedures and radio codes that are specific to the City's Police
24 Department. Outside law enforcement agencies would also be unfamiliar with the specialized
25 responses and protocols needed for handling dispatch calls for Stanford DPS, Animal Control, and
26 Utilities.

27 7. A strike by Public Safety Dispatchers would pose a direct and imminent threat to
28 public health and safety because the City would lack sufficient staff to operate the Public Safety

1 Dispatch Center 24 hours a day, 7 days a week. A strike would negatively implicate the City's
2 ability to receive 911 calls and dispatch appropriate public safety response personnel in the
3 following areas:

- 4 a. Calls concerning crimes and police emergencies for which they dispatch appropriate
5 police patrol units by radio or mobile computer to investigate;
- 6 b. Calls concerning fire and medical emergencies, for which they dispatch appropriate
7 fire and ambulance units by radio;
- 8 c. Calls concerning utilities (electric, gas, water, wastewater) and public works
9 emergencies, for which they dispatch appropriate service units by radio to make
10 repairs;
- 11 d. Calls concerning animal-related problems, for which they dispatch appropriate animal
12 control units to investigate; and
- 13 e. Relaying information, instructions, and questions to units responding to calls
14 concerning emergencies in all the areas described above.

15 8. Animal control is a law enforcement function, and as such, under my supervision in
16 the Police Department. The City's Animal Control Officers respond to call for animal control
17 services within the City, as well as for the contract cities of Mountain View, Los Altos, and Los
18 Altos Hills.

19 9. Animal Control Officers work one of two daily shifts: either 7:00 a.m. to 4:30 p.m.,
20 or 9:00 a.m. to 6:00 p.m. They respond to calls regarding sick, injured, or aggressive domestic
21 animals and transport them to the Palo Alto Animal Shelter for care and treatment. Animal Control
22 Officers also pick up and dispose of dead domestic and wild animals. In addition, they respond to
23 and investigate calls regarding animal bite incidents, capture and impound biting animals so they can
24 be quarantined and tested for rabies and other contagious diseases.

25 10. Animal Control Officers receive specialized training to perform the above functions
26 in a manner that is safe for them, the public, and the animal. There are no other employees within
27 the City that possess that specialized training. The only people qualified to perform the duties of an
28 Animal Control Officer would be other local Animal Control personnel. But it is highly unlikely that

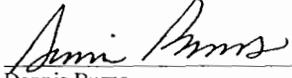
1 the City would be able to contract with those other local Animal Control authorities for animal
2 control services because the surrounding agencies are already understaffed and are taking hours to
3 respond to their own local calls.

4 11. A strike by Animal Control Officers would pose a direct and imminent threat to
5 public health and safety because the City needs sufficient staff available to respond to calls
6 concerning aggressive, biting, or dead animals.

7 12. In my professional opinion the City would need a minimum of Animal Control
8 Officer on duty in order to protect public safety. Thus, I request that the Court designate one Animal
9 Control Officer position as a critical position.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct.

12 Executed this 15th day of September, 2009, at Palo Alto, California.

13 
14 Dennis Burns

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14 CITY OF PALO ALTO

15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,
18 Charging Party,
19 v.
20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,
22 Respondent.

Case No.
**SUPPLEMENTAL DECLARATION OF
DENNIS BURNS**

23 1. I, Dennis Burns, am employed by the City of Palo Alto as the Interim Police Chief of
24 the City of Palo Alto's Police Department. I have been employed by the City of Palo Alto's police
25 department for 27 years. I have personal knowledge of the facts below. If called to testify to the
26 following, I could and would competently do so.

27 2. I am submitting this supplemental declaration in support of the City's Request for
28 Injunctive Relief to enjoin certain essential positions represented by Service Employees International
Union, Local 521("SEIU") from striking.

3. I have reviewed the Declaration of Nick Steinmeier in Opposition to Request for
Injunctive Relief and his statements regarding Public Safety Dispatchers and Animal Control
Officers in the City of Palo Alto are misleading and, in some cases, simply wrong.

///

1 4. “Supervising Dispatcher” is not a classification that exists the City of Palo Alto.
2 There are five Chief or “Lead” Dispatchers, but that classification is in the SEIU bargaining unit.

3 5. Police officers are not trained or competent to perform dispatch activities. Training
4 for public safety dispatch involves a completely different set of training protocols than those
5 required for police officers. In fact, at this time the City only employs one Police Officer who is
6 trained and competent to perform dispatch responsibilities.

7 6. Only two managers are trained in dispatch, Charles Cullen, Coordinator of Police
8 Technical Services, and Brian Van Den Broeke, Supervisor of Police Services. However, Mr.
9 Cullen has not performed dispatch duties in over 8 years, and Mr. Van Den Broeke has never
10 performed actual dispatch duties for the City of Palo Alto.

11 7. Therefore, a strike by SEIU dispatchers would pose an imminent threat to public
12 health and safety.

13 8. Police Officers are not trained to perform functions of Animal Control Officers.
14 Animal Control Officers serve multiple jurisdictions in addition to Palo Alto and have their own
15 specific training that police officers do not receive. Our officers are expected to attend and complete
16 an 80 hour Post Certified Animal Control Academy. This training includes: animal laws, animal
17 handling and use of appropriate equipment. Additionally they learn to safely restrain all types of
18 animals that may endanger public health and safety. Tools such as nets, snares and catch-poles must
19 be employed at a moments notice as hesitation can mean a missed opportunity or a human injury.
20 Palo Alto Police Officers have received no training with these tools. Animal Control Officers are
21 also State Certified Euthanasia technicians. By State law, Palo Alto Police Officers cannot use the
22 controlled substances that the Animal Control Officers use to humanely euthanize animals. While
23 police officers may have experience pets or perhaps a trained police dog, Animal Control Officers
24 are specifically trained to catch and subdue, without injury, all types of animals, including livestock

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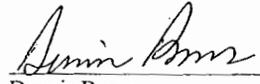
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1 and exotic pets of all kinds. Animal Control Officers are expected to respond immediately to any
2 and all threats that include an aggressive or injured animal. In addition, if there is a bite, the Animal
3 Control Officer must initiate strict state mandates.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed this 17th day of September, 2009, at Palo Alto, California.

6 
7 Dennis Burns
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ATTACHMENT D

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14 **CITY OF PALO ALTO**

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PUBLIC EMPLOYMENT RELATIONS BOARD

15 **CITY OF PALO ALTO,**
16 Charging Party,
17 v.
18 **SERVICE EMPLOYEES INTERNATIONAL**
19 **UNION, LOCAL 521,**
20 Respondent.

Case No.
DECLARATION OF GLENN ROBERTS

21 1. I, Glenn Roberts, am employed by the City of Palo Alto (City) as the Director of the
22 Public Works Department. I have held this position for the past 16 years. I have personal
23 knowledge of the facts below. If called to testify to the following, I could and would competently do
24 so.

25 2. I am submitting this Declaration in support of the City's Request for Injunctive Relief
26 to enjoin certain essential positions represented by SEIU Local 521 from striking.

27 3. In my capacity as Public Works Director, I am responsible for the operation of the
28 Palo Alto Regional Water Quality Control Plant (the "Plant"). The Plant operates 24 hours a day, 7
days a week, and services the City, Stanford University, and the cities of Mountain View, Los Altos,
Los Altos Hills, and the East Palo Alto Sanitary District. The Plant cleans biological wastes from
wastewater before the water is discharged to the San Francisco Bay. The National Pollutant
Discharge Elimination System (NPDES) is an extensive permitting system that evolved from the

1 Clean Water Act to regulate point-source discharges. The Environmental Protection Agency
2 delegates permitting authority to the states, and the state institutes federal and state discharge
3 standards. As required by the City's NPDES permit, the City must properly maintain and operate all
4 treatment and disposal facilities and systems at all times.

5 4. Pursuant to Title 23 of the California Code of Regulations, Section 3675, the Plant is
6 classified as a Class V plant because it uses biofiltration, activated sludge, and tertiary treatment
7 processes, and operates at such a high design flow rate.

8 5. As a Class V plant, the City must have a certified Grade III wastewater treatment
9 plant operator on site at all times. The City satisfies that requirement through its Senior Water
10 Quality Control Operator classification, which requires Grade III certification from the State Water
11 Resources Control Board. The City's Senior Water Quality Control Operators are responsible for
12 recognizing when emergency corrective repairs or actions are necessary. They are also responsible
13 for operating complex wastewater treatment and/or water reclamation plants, and must be able to
14 recognize unusual, inefficient or dangerous operating conditions.

15 6. The City also relies upon its Water Quality Control Operator IIs for the safe and
16 efficient operation of its Plant. Water Quality Control Operator IIs must possess a Grade II
17 certification. Together with the Senior Water Quality Control Operators, Operator IIs are
18 responsible for operating complex wastewater treatment and/or water reclamation systems, and for
19 recognizing unusual, inefficient or dangerous operating conditions. They operate the Plant's sewage
20 sludge incinerator, take required water samples for quality analysis and quality control of the water,
21 perform preventative maintenance on machinery that operates 24 hours a day, 7 days a week, and
22 respond to emergency situations in the event of an earthquake, spill, or other events.

23 7. The City could not safely and efficiently operate its Plant without the assistance of the
24 Water Quality Control Operator IIs due to the fact it is such a large facility. Without the assistance of
25 Water Quality Control Operator IIs, the City would have to require that its Senior Water Quality
26 Control Operators work 12 hour shifts, 7 day in a row.

27 8. The City cannot hire temporary employees to perform the work done by Senior Water
28 Quality Control Operators and Water Quality Operator IIs because of the specialized nature of the

1 job and because of the special certification required of the position. Title 23 of the California Code
2 of Regulations, section 3670.1 and 3670.2 specifically prohibits uncertified persons from operating
3 the Plant.

4 9. A strike by the City's Senior Water Quality Control Operators and Water Quality
5 Control Operator IIs would hinder the City's ability to safely and effectively operate the Plant, and
6 would pose a direct and imminent threat to the public's health and safety as a result of polluted and
7 contaminated water.

8 10. The City also employs Chemists and Senior Chemists in the Public Works
9 Department. The City's Chemists and Senior Chemists test the City's drinking water and
10 wastewater discharge to ensure they are safe and meeting federal and state regulations. They conduct
11 approximately 14,000 tests per year, which averages out to approximately 40 tests per day.

12 11. While the City can contract out some of the plant's laboratory testing, the City still
13 needs to have Chemists and Senior Chemists on site for testing and analyses. The City cannot
14 contract out all of its laboratory testing because (a) the sample hold time for many analyses is too
15 short to transfer to a contract lab—which is why all wastewater treatment plants have an on-site
16 laboratory; (b) the turn-around time with contract labs is too long to meet regulatory testing and
17 reporting requirements, and (c) contract labs are neither trained nor equipped for on-premises sample
18 collection and training.

19 12. A strike by the City's Chemists and Senior Chemists would pose a direct and
20 imminent threat to the public's health and safety because it would prevent the City from ensuring
21 that the City's drinking water and wastewater discharge are safe and free of pollutants and
22 contamination.

23 13. The City also employs Electricians, Lead Electricians, Senior Mechanics, and
24 Maintenance Mechanics in the Public Works Department. They work Monday through Friday, from
25 6:05 a.m. to 3:35 p.m., but are on-call at other times, and receive overtime compensation for work
26 outside of regular hours.

27 14. Employees in the Electrician classification series maintain electrical components,
28 power distribution, power control, and instrumentation used to safely and effectively operate and

1 monitor the City's Plant and its stormwater systems. They maintain electrical systems in a state of
2 operational readiness to ensure effective treatment of sewage, sludge, stormwater, and air emissions
3 in compliance with the Plant's permits.

4 15. Employees in the Mechanics classification series maintain equipment such as pumps,
5 pipes, compressors, and wastewater pollution control equipment used to operate the Plant. They
6 maintain the equipment in a state of operational readiness to ensure effective treatment of sewage,
7 sludge, and air emissions in compliance with the Plant's permits.

8 16. Due to the constant flow of sewage through the City's Plant, it cannot be shutdown
9 for maintenance and repairs. The Plant must be maintained while it is in operation. While a certain
10 amount of standard work can be deferred or contracted out, the City cannot contract out the work
11 done by the Electricians and Mechanics at the Plant. These employees repair specialized wastewater
12 treatment system equipment, and have significant institutional knowledge about the equipment (e.g.,
13 the sewage sludge incinerators, the incinerator air pollution control equipment, incinerator emissions
14 monitoring systems, wastewater treatment equipment, storm water systems, etc.)

15 17. The City cannot contract locally for these services because local contractors lack the
16 necessary experience and training to properly repair the stormwater and wastewater system
17 equipment. And while the City could contract with qualified out-of-area or out-of-state contractors
18 for any necessary repairs or maintenance, it would be impractical for the City to do so because they
19 would not be able to respond quickly enough in case of an emergency.

20 18. A strike by the electricians and mechanics in the Public Works Department would
21 present a direct and imminent threat to public health and safety because it would seriously
22 compromise the City's ability to safely and effectively operate the City's Plant.

23 19. In my capacity as Director of Public Works I am also responsible for operation of the
24 City's landfill and compost facility, and its landfill gas and leachate collection systems, hereafter
25 referred to as "environmental monitoring systems." The natural decomposition processes of
26 municipal garbage and composting creates liquids (leachate), gas and heat. Gas and leachate are by
27 products that are naturally and continuously created during the refuse (garbage) decomposition
28 process and heat is naturally and continuously created during the composting process. Gas and

1 leachate must be collected so that they will not migrate off the landfill site through the air, soil, or
2 the water table or deeper aquifers and cause environmental contamination. The City is required by
3 Titles 14 and 27 of the California Code of Regulations (CCR) and the City's landfill permit to
4 continuously operate and monitor landfill's environmental control systems and compost facility.
5 The environmental control systems and the compost facility must be inspected daily. The
6 environmental systems must be continuously operated and inspected daily to make sure that
7 automated systems are working properly as required and that monitoring data is being collected in
8 accordance with the specific provisions set forth in the regulations. These landfill processes, which
9 continuously create gas, leachate and heat continuously cannot be stopped or plugged and must be
10 properly managed at all times. Proper management requires technicians who are familiar with the
11 regulations. Failure to properly manage these systems could potentially result in significant health
12 and safety risks including fires or releases of these byproducts into water and air. The City's landfill
13 permit states when and how temperature readings of the landfill and compost must be taken. The
14 compost facility must be inspected daily and have daily temperature readings taken to ensure fires do
15 not erupt due to heat buildup. The natural process of composting creates heat. Pursuant to
16 California Code of Regulations, Title 14, Article 3, Section 18227, the City must monitor the
17 temperatures in the compost piles and turn the material when the heat created by the natural
18 composting process reaches temperatures that could—and have—caused fires. The City's landfill
19 permit requires the City to take daily temperature readings and turn the compost when it reaches 160
20 degrees.

21 20. The City's Public Works Department employs one Landfill Technician to inspect,
22 monitor, report, and repair landfill gas extraction and leachate collection.

23 21. Due to the unique nature of the City's gas and leachate management system, the job
24 duties of the Landfill Technician cannot be contracted out.

25 22. A strike by the Landfill Technician would pose a direct and imminent threat to the
26 public's health and safety. First, the City would lack sufficient staff to ensure continuous and safe
27 gas extraction and leachate collection from the landfill. Failure to operate and maintain the landfill
28 gas extraction environmental control systems and actively manage the composting operation will

1 almost certainly could result in an environmental degradation of air and surface and ground water
2 and in the worse case could result in fire and explosion. In addition, even though Contractors can
3 provide these services, they do not "own" the systems and operations or have an intimate knowledge
4 of them as the City does.

5 23. The City's Public Works Department also employs an Environmental Specialist. With
6 the exception of the Manager of the Environmental Control Program, the Environmental Specialist is
7 the only other City employee that is certified, skilled, and experienced in the management of
8 hazardous wastes, which consists of the containment, movement, proper storage, inspection and
9 labeling of hazardous wastes. The position provides critical coverage for all of the City's hazardous
10 materials spill response plans. The Environmental Specialist is listed as the emergency response
11 coordinator with the landfill's emergency response and contingency plan, and is the Fire
12 Department's primary environmental contact for the landfill's hazardous materials business plan.
13 This position is also identified as the second emergency contact with the City's Utility Control
14 response system and the Public Works Operations Spills and Release Emergency Procedures.

15 24. In dealing with a hazardous material spill timely response is critical in preventing
16 exposure to our residents as well as containment of the release. In-house staff must be available to
17 respond immediately as first responders to manage the incident.

18 25. A strike by the Environmental Specialist would pose a direct and imminent threat to
19 the public's health and safety because it would hinder the City's ability to manage hazardous waste
20 and respond to emergencies involving hazardous materials.

21 26. While the City plans on closing the landfill in the event of a strike, the City must still
22 maintain the material already on the ground, and going through the compost "cooking" process. If
23 the compost is not turned regularly, the natural decomposition process will allow the temperature to
24 rise until it reaches the combustion level and ignites a fire.

25 27. The landfill relies upon its Heavy Equipment Operators to maintain the City's
26 compost program. Not only do they operate the equipment used to turn the compost, but they are
27 also specially trained in the proper techniques for monitoring compost temperatures as required by
28 the City's landfill permit.

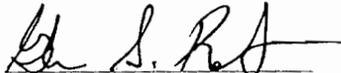
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28. The City cannot hire temporary employees or contractors to perform this task because of the uniqueness of the tasks involved. As noted above, Heavy Equipment Operators working at the landfill receive advanced and specialized training in monitoring compost temperature and the regulations governing compost programs, so the City ensures its compliance with its operating permit.

29. A strike by the Heavy Equipment Operators working at the landfill would pose a direct and imminent threat to the public's health and safety through a fire at the landfill.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of September, 2009, at Palo Alto, California.


Glenn Roberts

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CITY OF PALO ALTO

SF REGIONAL OFFICE
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STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF PALO ALTO,

Charging Party,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521,

Respondent.

Case No.

**SUPPLEMENTAL DECLARATION OF
GLENN ROBERTS**

1. I, Glenn Roberts, am employed by the City of Palo Alto (City) as the Director of the Public Works Department. I have held this position for the past 16 years. I have personal knowledge of the facts below. If called to testify to the following, I could and would competently do so.

2. I am submitting this Declaration in support of the City's Request for Injunctive Relief to enjoin certain essential positions represented by SEIU Local 521 from striking.

Water Quality Treatment Plant

3. In my capacity as Public Works Director, I am responsible for the operation of the Palo Alto Regional Water Quality Control Plant (the "Plant"). The Plant operates 24 hours a day, 7 days a week, and services the City, Stanford University, and the cities of Mountain View, Los Altos,

1 Los Altos Hills, and the East Palo Alto Sanitary District. The Plant cleans biological wastes from
2 wastewater before the water is discharged to the San Francisco Bay.

3 4. The Plant has six Senior Water Quality Operators and seven Water Quality Operator
4 IIs. This is an especially critical time for staffing because we have two Water Quality Operator IIs
5 who are currently out of service: one is on an extended vacation through October and one is out on
6 Worker's Compensation leave.
7

8 5. The five managers cannot perform all of the work required by bargaining unit
9 employees in the event of a work stoppage. Managers Jannette Huber, Kris Chat, and Stacy Peyton
10 will be assigned to operate the plant on 12 hour shifts each day, but they must be supported by senior
11 operators and water quality operator IIs. Howard Yancey's primary responsibility is to oversee
12 corrective maintenance and he cannot be retasked full-time to plant operations, which would result
13 in the neglect of essential maintenance. James Allen has overall responsibility for maintenance,
14 quality assurance/quality control of the plant's discharge, and evaluation of process control for
15 regulatory compliance with state and federal regulations. Finally, tasking any of these managers with
16 round-the-clock operation of the plant during a work stoppage is likely to lead to extreme fatigue,
17 which could potentially lead to a process upset condition endangering public health and safety.
18

19 6. There is one non-SEIU chemist who works for the City, Mr. Naidu. Mr. Naidu is a
20 skilled chemist capable of performing any individual test required by the plant's permits, however
21 Mr. Naidu is not capable of singlehandedly working at a production rate of 14,000 tests per year.
22 During a work stoppage, Mr. Naidu would require the support of a senior chemist and chemists to
23 safely and reliably provide quality assurance / quality control of wastewater treatment. Furthermore,
24 many of the tests required by the Plant's permits must be performed simultaneously, and Mr. Naidu
25 is not capable of performing multiple tests at the same time.
26

27 7. The plant has some automation but it is not "highly" automated. Unlike other smaller
28 and newer wastewater plants that have no employees onsite at night, the Palo Alto Plant staffs the

1 plant at all times with at least three or four operators. The plant has monitoring equipment (some
2 new and some old), which inform operators of process upset conditions that require a response.
3 Many operational responses must be immediate (e.g., potential chlorine discharge to the San
4 Francisco Bay). The plant must be operated to meet state and federal discharge requirements in the
5 event of an emergency (e.g., power outage, earthquake, etc.). The plant does not "run itself" and
6 requires the institutional knowledge, training, and resourcefulness of trained, certified operators at
7 all times. A quick response is needed in many situations. The plant's sewage sludge incinerators, for
8 example, require round the clock oversight by a certified operator to ensure safe, efficient thermal
9 destruction of sewage sludge. Neglect of this unit process would result in severe property damage,
10 environmental damage, and a cascading failure of liquid treatment unit processes as sludge backed
11 up into other equipment and reached San Francisco Bay. Plant operators are continually checking the
12 unit processes for outside-of-normal conditions in order to be responsive. This checking (called
13 "rounds") is a key part of operating the plant and cannot be classified as deferred maintenance
14 without great risk to health and safety.
15
16

17 **Landfill Operations**

18
19 8. In my capacity as Director of Public Works I am also responsible for operation of the
20 City's landfill and compost facility, and its landfill gas and leachate collection systems, hereafter
21 referred to as "environmental monitoring systems."
22

23 9. The landfill produces methane gas on a constant and continuous basis from waste that
24 has been placed in the ground years ago. This methane gas is collected and managed through the
25 environmental monitoring systems which must be inspected daily. If the gas is not properly
26 collected, it could migrate through the soil and find a structure where it could collect, and upon
27 exposure to an ignition source, could cause a fire or explosion.
28

1 10. The City's windrow composting system stores green waste which is continually in the
2 process of decomposing and is constantly at a temperature of 130 degrees Fahrenheit or above. The
3 City's windrow system contains four different phases and pile types as described below which if not
4 managed correctly pose a fire risk:

- 5 • Incoming (non-ground) green material -For example the incoming green material pile
6 caught on fire July 2008.
- 7 • Ground feedstock -- In the past the City has been cited for this pile exceeding 160 degrees
8 and a regular monitoring plan must be adhered to in order to avoid this risk in the future.
- 9 • Windrows -constantly at a minimum of 131 degrees -- could get hotter if not managed
- 10 • Finished compost- The City has been cited for this pile exceeding 160 degrees and a
11 regular monitoring plan must be adhered to in order to avoid this risk in the future.
12
- 13

14 11. If the compost is not turned regularly, the natural decomposition process will allow
15 the temperature to rise until it reaches the combustion level and ignites a fire. Spontaneous
16 combustion is a frequent cause of fires at compost facilities. It happens when materials self-heat to a
17 temperature high enough to cause them to ignite. No external energy source is needed. The
18 temperature increases because more heat is generated internally than lost to the surrounding
19 environment. As the composting operation currently has active piles in all four stages of
20 decomposition, the risk of a spontaneous combustion caused fire is imminent unless careful
21 monitoring is conducted.

22 12. The City is under permit conditions to monitor all of these pile types for heat. The
23 City has a pile management plan that will implement procedures to cool the material off if
24 temperatures get too hot. The landfill relies upon its Heavy Equipment Operators to maintain the
25 City's compost program. Not only do they operate the specialized equipment used to turn the
26 compost, but they are also specially trained in the proper techniques for monitoring compost
27 temperatures as required by the City's landfill permit. Firefighters would only be able to extinguish
28 a fire once it started; however, firefighters are not trained in how to monitor windrow piles or

1 operate the machinery needed to cool the piles.
2
3

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Executed this 18th day of September, 2009, at Palo Alto, California.
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Glenn Roberts

ATTACHMENT E

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STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF PALO ALTO,

Charging Party,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521,

Respondent.

Case No.

DECLARATION OF GREG BETTS

DECLARATION OF GREG BETTS

1
2
3 1. I, Greg Betts, am employed by the City of Palo Alto (City) as the Interim Director of
4 the Community Services Department. I have personal knowledge of the facts below. If called to
5 testify to the following, I could and would competently do so. I have worked for the City of Palo
6 Alto's Community Service Department for 12 years.

7 2. I am submitting this Declaration in support of the City's Request for Injunctive Relief
8 to enjoin certain essential positions represented by SEIU Local 521 from striking.

9
10 3. In my capacity as Interim Director of Community Services, I am responsible for
11 City's open space lands. The City's open space lands encompass more than 4,000 acres, and have
12 multiple access points for cars, bikes, and pedestrians with numerous remote and off-road pathways.
13 There are approximately 45 miles of open space trails, with 15 miles of trails at the Baylands alone.

14 4. The City's Community Service Department employs Senior Rangers to assist in the
15 emergency response, and wildlife/resource management activities in the City's Open Space lands.
16 The Senior Rangers perform patrol duties to provide park and open space visitor assistance and to
17 assure compliance with park rules and regulations. Enforcement duties include issuing citations
18 related to violation of the Municipal Code concerning city parks and open space lands, responding to
19 citizen complaints, conflict resolution, and writing incident reports. Senior Rangers are also trained
20 and authorized in the use of firearms for emergency wildlife capture, control, protection or humane
21 destruction. They also provide first response emergency services within established response areas
22 including responding to vehicle accidents, administering emergency medical first aid, providing
23 water and marsh rescue, and fighting wild land fires. They must be certified in emergency response
24 first aid and professional rescuer CPR.

25 5. Our rangers are "generalist" rangers, and they provide a combination of law enforcement,
26 interpretation, medical rescue, park maintenance, and resource management. Due to the strike we
27 would curtail interpretive programs, park maintenance and general law enforcement patrols in favor
28 of essential patrol and response to emergency calls. I believe based upon my professional expertise
that we must have 2 rangers working in order to protect public health and safety.

1 6. The City cannot contract out or hire temporary employees to perform these duties
2 because of the specialized nature of the job. Often trails or open spaces are unmarked with road
3 signs and a contractor or temporary employee would be unfamiliar with the 45 miles of open space
4 trails and 4,000 acres of land. It is also unlikely that a contract or temporary employee would have
5 adequate water rescue skills or fire fighting training necessary to protect natural resource areas and
6 because there are many ungated multiple access points for cars, bikes, and pedestrians to access the
City's open space lands, the City cannot "close" them down.

7 7. A strike by the Senior Ranger would pose a direct and imminent threat to the public's
8 health and safety. First, because of the very remote location of some of the trails and off-road
9 pathways, the Senior Ranger is often the first responder to the person in need of assistance. Second,
10 because the Senior Ranger patrols the entire area, and is capable of responding to remote areas with
11 specially equipped vehicles faster than police or fire. A delay of even a few minutes can have serious
12 consequences. Therefore I am requesting that 2 Senior Rangers be declared critical position and be
enjoined from striking.

13 8. The City's Community Services Department also employs a Producer for its Science
14 Programs at the City's Jr. Museum and Zoo. The Producer is the "Zoo Keeper" at the Junior
15 Museum and Zoo. This classification ensures the proper feeding, handling and care of over 250
16 specimens and 40 species of invertebrates, reptiles, birds and mammals at the Zoo. One specimen is
17 a federally protected, endangered species. Critical daily care include preparing and serving diets,
18 providing clean drinking water, washing facilities to prevent disease, shifting animals from bedroom
19 facilities outdoor areas, and conducting veterinary care to treat disease - including potential zoonotic
20 disease that are a threat to human health. The zoo keeper also ensures public safety by monitoring to
21 ensure that if visitors are in the zoo area, they are safely away from dangerous animals. Uncared for
22 animals may succumb to death or disease (a destruction of public property) and there would be a
potential for disease to manifest causing a risk to the public as it does.

23 9. The City cannot contract out these services or hire a temporary employee because the
24 proper care of exotic wild animals is specific to each specimen and facility and training of staff to
25 care for these animals is learned learn through job shadowing in addition to standardized protocol.
26 The animals could not be shipped to another facility because zoos have limited space to hold animals
27 that are not already in their collections. Quarantine protocols obligated by the U.S Department of
28 Agriculture and the American Zoo Association require all animal entering collections be quarantined
for a minimum of 30 days. I have been informed and believe and therefore allege that the quarantine

1 facilities at the San Francisco Zoo and Oakland Zoo do not have space for our animal collection.

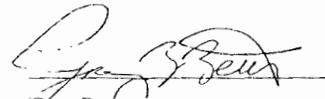
2 10. A strike by the Producer of the Science Programs would pose a direct and imminent
3 threat to the health, safety, and welfare of the wildlife species that are under permits from the US
4 Department of Agriculture (Animal Welfare Act), California State Fish and Game Department
5 (Code), and the U.S. Fish and Wildlife Service (Endangered Species Act). The City could lose its
6 operating permits if the captive animals are not properly cared for. As the guardians and caretakers
7 of the captive animals, the City must look out for their welfare.

8 11. The City also employs an Inspector Field Services in its Parks Division. The
9 Inspector Field Services inspects all of the 36 community playgrounds within the City on a weekly
10 basis, as required by California State Health and Safety Code Section 15725-115750 mandates the
11 inspection and systematic maintenance of public playground and recreational facilities. The
12 Inspector Field Services is also responsible for closing down playgrounds and picnic areas that are
13 unsafe, and in need of repair.

14 12. The City cannot contract out these inspections or hire a temporary employee to
15 perform these inspections because of the number of facilities that need on-going inspections, the
16 number of different equipment manufacturers that our inspectors are required to maintain, and the
17 specifications of nearly 200 pieces of play and recreational equipment. Orienting a new employee to
18 both our equipment and to our record keeping system takes three months of specialized training, in
19 addition to the required State certificate. It would also be very difficult to close all 36 community
20 playgrounds within the City because the time involved in procuring and installing fencing around the
21 36 playgrounds would take a contractor a minimum of seven working days. The cost of erecting and
22 maintaining the site fencing would be more than \$35,000 (based on a quote from United Site
23 Services).

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct.

26 Executed this 15th day of September, 2009, at Palo Alto, California.

27
28

Greg Betts

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STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

15 CITY OF PALO ALTO,
16 Charging Party,
17 v.
18 SERVICE EMPLOYEES INTERNATIONAL
19 UNION, LOCAL 521,
20 Respondent.

Case No.
**SUPPLEMENTAL DECLARATION OF
GREG BETTS**

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2 6. The City will have one Supervisor who has the requisite ability and training stationed
3 to patrol the Arastradero Preserve and to respond to fire and medical emergencies in that vicinity,
4 but will need one Senior Ranger to patrol the Baylands area and to respond to fire and medical
5 emergencies in that vicinity. I believe based upon my professional expertise that we must have 2
6 rangers working in order to protect public health and safety. These two large preserves are located
7 on either end of the City, consist of approximately 2,000 acres, are patrolled by different types of
8 specialty equipment and have different types of terrains, and hazards. It is essential that at least one
9 ranger be stationed at each of these preserves to monitor trails for safety, to be a first responder to
10 fires or medical emergencies, and, in the case of the Baylands, to monitor for wind surfers in
11 distress. Therefore I am requesting that 1 Senior Ranger be declared critical position and be enjoined
12 from striking.

12 **Inspector Field Services**

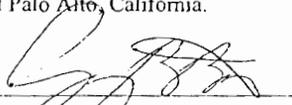
13 11. The City also employs an Inspector Field Services in its Parks Division. The
14 Inspector Field Services inspects all of the 36 community playgrounds within the City on a weekly
15 basis, as required by California State Health and Safety Code Section 15725-115750 mandates the
16 inspection and systematic maintenance of public playground and recreational facilities. The
17 Inspector Field Services is licensed by the State in playground inspections and is the only person in
18 the City who is certified to perform these inspections. Because the State requires certification, there
19 is no other manager available to perform this function.

20 12. It is infeasible to close all parks during daylight hours without fencing the perimeters.
21 Most of the city parks have multiple access points and posting notices would not provide adequate
22 notice to deter daytime use.

23 13. In addition, the Inspector Field Services routinely checks the Parks' irrigation
24 systems. If such system is tampered with by a member of the public and water is shut off to the
25 grass field, the field could die within 3 days. This is especially critical during summer months.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct.

28 Executed this 17th day of September, 2009, at Palo Alto, California.


Greg Betts

ATTACHMENT F

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15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,
18 Charging Party,
19 v.
20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,
22 Respondent.

Case No.
DECLARATION OF SANDRA BLANCH

23 1. I, SANDRA BLANCH, am employed by the City of Palo Alto as the Assistant
24 Director of the City's Human Resources Department. I have held this position for the past 2 years
25 and have worked in the City's Human Resources Department for more than 14 years. I have
26 personal knowledge of the facts below. If called to testify to the following, I could and would
27 competently do so.

28 2. I am submitting this declaration in support of the City's Request for Injunctive Relief
to enjoin certain essential positions represented by SEIU Local 521 from striking.

3. In my capacity as Assistant Director of Human Resources, I oversee all of the
employment and labor relations issues in the City, including labor agreements, classification studies
and changes, and employee benefits. I am a member of the City's negotiating team in the ongoing

1 contract negotiations with SEIU Local 521, and I am familiar with all of the City's labor agreements
2 and the City's position classification system.

3 4. The City has over 1,100 regular employees. Four bargaining units represent,
4 respectively, police, fire fighters, fire managers, and general miscellaneous employees. In addition,
5 it has a group of more than 200 management and professional employee that are not represented.

6 5. Employees in the City's general bargaining unit are exclusively represented by SEIU
7 Local 521. This unit includes more than 600 miscellaneous employees and is the largest employee
8 representative in the City.

9 6. SEIU Local 521 represents over 140 classifications, including the following:

- 10 • Senior Water Quality Control Operator
- 11 • Water Quality Control Operator II
- 12 • Senior Chemist
- 13 • Chemist
- 14 • Electrician, Lead Electrician
- 15 • Senior Mechanic, Maintenance Mechanic
- 16 • Heavy Equipment Operator
- 17 • Landfill Technician
- 18 • Environmental Specialist
- 19 • Senior Ranger
- 20 • Producer, Science
- 21 • Inspector, Field Services
- 22 • Public Safety Dispatcher, Chief Public Safety Dispatcher
- 23 • Animal Control Officer

24 7. The Memorandum of Agreement ("MOA") between the City and SEIU Local 521 for
25 the general bargaining unit expired on June 30, 2009. On May 4, 2009, the City and SEIU
26 (collectively referred to as the "Parties") began negotiations for a successor MOA. The Parties have
27 met formally 16 times since then. To date, the parties have reached tentative agreement on
28 approximately 17 items, but remain divided over economic issues including wages and levels of

1 employee benefit contributions. The Parties have full-day meetings scheduled for September 14 and
2 15, 2009, and the City continues to believe that a reasonable settlement is still possible.

3 8. On August 5, 2009, SEIU suggested to the City that representatives were considering
4 a potential strike. In the following meeting, on August 12, 2009 the parties confirmed off-the-record
5 discussions that SEIU did not want to negotiate beyond September 15, 2009. SEIU indicated that it
6 would seek strike authorization from its members. To negotiate in good faith and in an effort to
7 avoid a labor dispute, the Parties met on August 19, August 26, September 2, and September 10,
8 2009.

9 9. On August 27, 2009, SEIU held a strike vote and reported that 95% voted in favor of
10 striking.

11 10. On September 3, 2009, the City sent a letter to Adolfo Reidel, the Palo Alto Worksite
12 Organizer for SEIU Local 521, reminding SEIU of the critical health and safety services the City
13 provides, providing a preliminary list of critical positions that the City had identified, and requesting
14 that SEIU agree to exempt employees holding those positions from a strike in the interest of
15 protecting the Palo Alto public. A true and correct copy of the September 3 letter is attached to this
16 declaration as Exhibit "A". On September 10, 2009, the City received a letter rejecting the City's
17 request. A true and correct copy of SEIU's September 10 letter is attached as Exhibit "B".

18 11. On or about September 4, 2009, supervisors reported to Human Resources and the
19 negotiating team that they had heard rumors, and that some employees indicated to them that SEIU
20 employees were planning a mass absence or "sick out" on September 8, 2009. The City immediately
21 sent a letter to Mr. Reidel to inform SEIU of these concerns, and requested that SEIU, given the fact
22 that the parties were still negotiating in good faith and that impasse had not been declared, renounce
23 any "sick outs," urge members not to participate, and make every effort to ensure that employees
24 attend work. The City received no response. A true and correct copy of the City's September 4,
25 2009 letter is attached as Exhibit "C".

26 12. On September 8, 2009, 151 SEIU employees called in sick. In some departments,
27 such as the Planning Department, more than 75% of SEIU employees were absent. In my 14 years
28 with the City of Palo Alto, this level of absence is unprecedented. In contrast, only 3 employees of

1 approximately 240 in the management and professional group called in sick on September 8, 2009.
2 In September 2008, the daily average of SEIU employees calling in sick was less than thirty per day,
3 or approximately four percent of all SEIU employees. In addition, although the City's September 4,
4 2009 letter informed SEIU that the City reserved the right to request doctors' notes to ensure that
5 sick leave usage was consistent with the city's rules for use only in cases of actual personal illness,
6 at least one SEIU steward has informed managers that SEIU will be filing grievances for requesting
7 such notes.

8 13. On September 9, 2009, the City learned that employees were planning a potential
9 "walk out" from their duties during the work day at some point during the work week. The City
10 immediately notified SEIU of this information and urged SEIU to remind employees that disruptions
11 to work during assigned working times are not permitted and requesting that SEIU discourage
12 employees from participating in such disruptions. A true and correct copy of the City's September
13 9, 2009 letter is attached as Exhibit "D". SEIU replied that employees were "taking a break", which
14 they are entitled to do, in solidarity of the bargaining team and the bargaining process. On
15 September 10, 2009, at 12:55 p.m. many SEIU members gathered in front of City Hall for a
16 demonstration sanctioned and sponsored by SEIU that lasted for at least 15 minutes. The usual
17 lunch period for most employees is noon to 1:00 p.m.

18 14. On September 10, 2009, the City and SEIU met and the City presented SEIU with a
19 new proposal. On September 11, 2009, SEIU informed the Human Resources department that it will
20 begin picketing around City facilities on September 14, 2009, and confirmed to the City's negotiator
21 that it does not plan to strike on September 14 or 15, 2009. However, SEIU has not retracted its
22 August 12 position that it does not want to negotiate past September 15, 2009, and to date has not
23 agreed to give the City specific, advance notice of when or if it will go on strike.

24 I declare under penalty of perjury under the laws of the state of California that the foregoing
25 is true and correct.

26 Executed this 15th day of September, 2009, at Palo Alto, California.

27
28


Sandra Blanch

EXHIBIT "A"

City of Palo Alto
Office of the City Manager

September 3, 2009

VIA E-MAIL & U.S. MAIL

Adolfo Reidel
Worksite Organizer
SEIU, Local 521
891 Marshall Street
Redwood City, CA 94063

RE: Critical Positions for Continuity of Public Health and Safety

Dear Mr. Reidel:

I am writing on behalf of the City of Palo Alto to submit a formal request to have certain employees who work in critical public health and safety positions remain on the job during any labor action. While the city recognizes SEIU's right to strike we hope it does not reach that point. In either case, senior management believes that it is the responsibility of both management and SEIU to continue to provide services that if disrupted would cause public health and safety risks to the citizens we serve. In this spirit, the City is asking SEIU Local 521 to agree that employees in certain job classifications be defined as "critical workers."

California law provides that those who perform work that is necessary to prevent a substantial and imminent threat to public health and safety have no right to strike. The City provides many essential public health and safety functions, such as the provision of electricity, water, gas, wastewater, and certain police and fire services. The City's Executive Staff has performed a comprehensive review of City operations and identified specific positions that are critical to maintain public health and safety-related services. A strike by Palo Alto members of SEIU will create an emergency situation for these functions.

Specifically, the City has determined that the employees working in the following classifications are critical workers who are needed to perform work necessary to prevent a substantial and imminent threat to the health and safety of the residents of the City of Palo Alto.

A. Police Department Critical Positions

**Chief Public Safety Dispatchers
Public Safety Dispatchers**

Dispatchers are needed to preserve the City's ability to dispatch emergency and non-emergency equipment and personnel and are specially and extensively trained to receive and dispatch calls for police, fire, ambulance, paramedic, streets, parks, utilities and animal control services.

Adolfo Reidel
September 3, 2009
Page 2

RE: Critical Positions for Continuity of Public Health and Safety

B. Public Works Critical Positions

The Palo Alto Regional Water Quality Control Plant (WQCP) is a 24/7 operation that serves a very critical health and safety function for the public within the service area (Cities of Palo Alto, Mountain View, Los Altos, Los Altos Hills, and East Palo Alto, and Stanford University). The Regional Water Quality Control Plant cleans biological wastes from wastewater before that water is discharged to the San Francisco Bay. Operation of the WQCP requires highly trained and skilled operators to ensure proper treatment of wastewater and protect against discharges of harmful materials into the San Francisco Bay and its environs. It is imperative that the WQCP function fully and completely without interruption, and the City's NPDES permit requires that the City properly maintain and operate all treatment and disposal facilities and systems at all times. Failure to do so could potentially result in mishandling and/or releases of chemicals and/or pollutants harmful to the environment and the public, as well as violations of state and federal law.

The following positions *assigned to the WQCP* are needed to operate the WQCP to maintain public health and safety in this sensitive area:

Senior Water Quality Control Operator
Water Quality Control Operator II
Chemist
Senior Chemist
Lead Electrician
Electrician Senior Mechanic
Maintenance Mechanic

For the reasons stated above, I would like SEIU Local 521 to agree to exempt these employees from any potential labor action. The City will not hesitate to take all measures necessary to prevent a substantial and imminent threat to public health and safety. However, I know that you, as the Worksite Organizer of SEIU Local 521, understand and appreciate the special services that the City provides and the important responsibilities that City employees have to the citizens of Palo Alto.

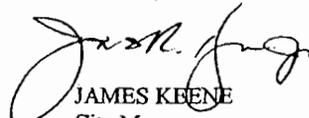
The ability for the City to conduct critical operations will in no way limit SEIU's ability to negotiate its contract in good faith. In fact, in addition to ensuring the safety of our residents, the City believes that continuing to provide critical public health and safety services without interruption can be beneficial to both parties. Your commitment to this request is paramount to maintaining essential City operations that affect the health and safety of Palo Alto residents.

Adolfo Reidel
September 3, 2009
Page 3

RE: Critical Positions for Continuity of Public Health and Safety

If exempting the employees holding the 9 critical positions listed above from a labor action in order to protect the health and safety of the public is acceptable to SEIU, please execute the letter below and return it to me by September 9, 2009. Thank you in advance for your assistance with this important matter.

Sincerely,



JAMES KEENE
City Manager

cc: Russ Carlsen
Darrell Murray
Sandra Blanch
Marcie Scott
Melissa Tronquet

SEIU Local 521 hereby agrees to exempt employees holding the 9 critical positions listed above from a labor action.

By: _____

Title: _____

Date: _____

EXHIBIT "B"

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. BOONE
VINCENT A. HARRINGTON, JR.
W. DANIEL BOONE
BETSY MICHELSON
BARRY E. HINDLE
JAMES P. PUTKOWSKI
SANDRA FINE BENSON
CHRISTIAN L. RAUSHER
JAMES WESSER
THEODORE FRANKLIN
ANTONIO RUIZ
MATTHEW J. GALKER
ANILEY K. PEDIA
LINDA BALDWIN JONES
PATRICIA A. DAVIS
ALVIN CROWLEY
CHRISTINA L. SHELMAN
EMILY P. RICH
BRUCE A. HARLAND
CONCEPCION E. LOZANO-BATISTA
CAREN P. SENDER

WEINBERG, ROGER & ROSENFELD
A PROFESSIONAL CORPORATION

1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
TELEPHONE 510.337.1001
FAX 510.337.1023

LEON K. ACURIO
ANGEL JEN
NICOLE ALPHILIPS
MARILYN CHAMLA
CHRISTINA L. ZANEN
JOHANNY V. VARGAS
MARIELA BOCLES
KESHAWN R. STEELE
JAN W. DALL PACE
GARY A. SCHWENKER
LESLIE DUNCAN
JORDAN D. HAZOR
JACOB J. WHITE
PATRICIA M. GATTEL, Of Counsel
ROBERTA D. PEREIRA, Of Counsel
RICARDO T. DUNRY, Of Counsel
SANDRA A. BRESNARTEN, Of Counsel
RITA FERRELL, Of Counsel
* Also admitted to practice
** Admitted in Hawaii
*** Also admitted in Nevada
**** Also admitted in Florida

September 8, 2009

RECEIVED

SEP 10 2009

IEDA

James Keene
City Manager
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

Re: Your September 3, 2009 Letter to Adolpho Reidel - Critical Positions

Dear Mr. Keene:

Please be advised that this office represents SEIU Local 521. I am writing at the request of our client in response to your September 3, 2009 letter.

The City has been requested in the past to direct communications regarding the ongoing collective bargaining between the City and the SEIU directly to Nick Steinmeier, not to Mr. Reidel. We request that you observe that request and direct all further communications regarding this matter directly to Mr. Steinmeier.

The Union is intent upon, and is actively engaged in, the process of negotiating in good faith with the City to reach an agreement on a successor MOU. We think the parties' energies are best directed toward accomplishing the goal of negotiating an agreement, rather than communicating back and forth about "critical public health and safety positions," the focus of your September 3 letter. Obviously, when the parties reach agreement on a Labor Agreement then the content of your letter is rendered moot and irrelevant.

Suffice it to say, as well, your claims that "California law" provides that certain employees who perform work with the City of Palo Alto have "no right to strike," is a gross overstatement of what the law actually is. In fact, only a court in the appropriate case, based on appropriate submissions, can restrict the right to strike of City of Palo Alto employees. There is no laundry list of SEIU-represented classifications whose right to strike is circumscribed in the fashion set forth in your letter.

Let me again assert on behalf of Local 521 that it is interested in negotiating a Labor Agreement with the City, and hopes that the City shares that interest. That should be the focus of the parties' time and attention in the upcoming days.

69

September 8, 2009
James Keene
Page 2

Please direct any response to this communication directly to Mr. Steinmeier.

Sincerely,


Vincent A. Harrington, Jr.

VAH/map
opeiu 3 afl-cio(1)
cc: Darrell Murray @ IEDA
Nick Steinmeier
1/543304

EXHIBIT “C”

City of Palo Alto
Department of Human Resources

SENT VIA FACSIMILE AND E-MAIL

Adolfo Reidel
Worksite Organizer
SEIU, Local 521
891 Marshall Street
Redwood City, CA 94063

September 4, 2009

RE: Potential "Sick Out" at City of Palo Alto

Administration
Employee Benefits
Risk Management

Dear Adolfo:

In the past day, the City has learned of rumors and other strong indications that Palo Alto SEIU members may be planning a "sick out" for some time during the week of September 8, in which large numbers of your members may call in "sick" at once.

The City and SEIU are still meeting and conferring and impasse has not been declared. In fact, the parties have three dates identified for negotiating between now and September 15. Given that the parties are still negotiating in good faith, we expect that SEIU does not and will not condone "sick outs" or similar actions by employees. Therefore, we are requesting SEIU's assistance in (1) renouncing any "sick outs" or other actions, (2) urging members not to participate if they do hear of such actions, and (3) making every effort to ensure that employees attend work.

Finally, as you know, use of sick leave is only allowed for actual personal sickness or disability. The City reserves the right, as provided in section 601 of the City's Merit System Rules and Regulations, to request a doctor's note for any suspected abuses of sick leave rules.

Thank you in advance for your anticipated cooperation.

Sincerely,



RUSS CARLSEN
Human Resources Director

cc:
James Keene
Sandra Blanch
Marcie Scott
Lynn Krug

(90409) mcl 8.26.155

P.O. Box 10250
Palo Alto, CA 94303
415.329.2401
415.329.2696 Fax

72

EXHIBIT "D"

City of Palo Alto
Department of Human Resources

SENT VIA FACSIMILE AND E-MAIL

Adolfo Riedel, Worksite Organizer
Nick Steinmeier, Negotiator
SEIU, Local 521
891 Marshall Street
Redwood City, CA 94063

September 9, 2009

RE: Potential "Walkout" at City of Palo Alto

Dear Adolfo and Nick:

The City was pleased to see that the massive number of SEIU¹ employees who called in "sick" yesterday returned to work this morning. However, we have now learned of new rumors that Palo Alto SEIU members may be planning a "walkout" during a workday this week.

As you are well aware, the City and SEIU are still meeting and conferring and impasse has not been declared. The City is committed to serving the public and will not tolerate disruptions to work. Employees are required to remain at their duties during assigned working times. The City will consider participation in disruptions during assigned working times abandonment of duties, and participating employees will not be paid. We again urge you to remind Union employees that such disruptions are not allowed and ask them not to participate.

Thank you in advance for your cooperation.

Sincerely,



Russ Carlsen
Human Resources Director

cc:
James Keene
Sandra Blanch
Marcie Scott
Lynn Krug

080409 met 8261155

P.O. Box 10250
Palo Alto, CA 94303

74

RECEIVED
P.E.R.B.
SF REGIONAL OFFICE
2009 SEP 17 AM 8:18

1 Adrianna E. Guzman, SBN 188812
2 **LIEBERT CASSIDY WHITMORE**
3 A Professional Law Corporation
4 153 Townsend Street, Suite 520
5 San Francisco, CA 94107
6 T: (415) 512-3000, F: (415) 856-0306

7 **GARY M. BAUM**, City Attorney SBN 117200
8 **MELISSA C. TRONQUET**, Deputy City Atty. SBN 234768
9 **CITY OF PALO ALTO**
10 250 Hamilton Ave., 8th Floor
11 Palo Alto, CA 94301
12 T: (650) 329-2171; F: (650) 329-2646

13 Attorneys for Charging Party
14 CITY OF PALO ALTO

15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,

Case No. SF-CO-210-M

18 Charging Party,

**FURTHER DECLARATION OF
SANDRA BLANCH**

19 v.

20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521.

22 Respondent.

23 1. I, SANDRA BLANCH, am employed by the City of Palo Alto as the Assistant
24 Director of the City's Human Resources Department. I have held this position for the past 2 years
25 and have worked in the City's Human Resources Department for more than 14 years. I have
26 personal knowledge of the facts below. If called to testify to the following, I could and would
27 competently do so.

28 2. I am submitting this declaration in support of the City's Request for Injunctive Relief
to enjoin SEIU Local 521 from striking.

3. In my capacity as Assistant Director of Human Resources, I oversee all of the
employment and labor relations issues in the City, including labor agreements, classification studies
and changes, and employee benefits. I am a member of the City's negotiating team in the ongoing

1 contract negotiations with SEIU Local 521, and I am familiar with all of the City's labor agreements
2 and labor relations rules, including the City Charter and other rules.

3 4. I have reason to believe that a strike by Palo Alto employees who are members of
4 SEIU Local 521 is imminent.

5 5. Article V, Section 4 of the Palo Alto City Charter contains impasse resolution procedures
6 for fire fighters and police officers. A certified copy of the City Charter provision is attached as
7 **Exhibit A.**

8 6. Police Dispatchers are not fire fighters or police officers and are not subject to the
9 Charter's impasse resolution procedure.

10 7. For all employees other than Fire and Police Department employees covered by the City
11 Charter's impasse procedures, impasse procedures are established in the City's Merit System Rules
12 and Regulations, Chapter 12, section 1208. The procedures in section 1208 provide that if, after a
13 reasonable amount of time, the bargaining representatives of management and the employee
14 organization fail to reach agreement, they may agree to a method of resolving the dispute. A true
15 and correct copy of Chapter 12 of the City's Merit System Rules and Regulations is attached as
16 **Exhibit B.**

17 8. On August 5, 2009, SEIU suggested to the City that representatives were considering
18 a potential strike. In the following meeting, on August 12, 2009 the parties confirmed off-the-record
19 discussions that SEIU did not want to negotiate beyond September 15, 2009. SEIU indicated that it
20 would seek strike authorization from its members. To negotiate in good faith and in an effort to
21 avoid a labor dispute, the Parties met on August 19, August 26, September 2, and September 10,
22 2009.

23 9. On August 27, 2009, SEIU held a strike vote and reported that 95% voted in favor of
24 striking.

25 10. On September 3, 2009, the City sent a letter to Adolfo Reidel, the Palo Alto Worksite
26 Organizer for SEIU Local 521, reminding SEIU of the critical health and safety services the City
27 provides, providing a preliminary list of critical positions that the City had identified, and requesting
28 that SEIU agree to exempt employees holding those positions from a strike in the interest of

1 protecting the Palo Alto public. On September 10, 2009, the City received a letter rejecting the
2 City's request.

3 11. On September 15, 2009, the City received a letter from the South Bay Labor Council
4 formally notifying the City that a strike sanction has been granted to SEIU local 521 against the City
5 to direct 110 affiliated unions to support the strike. A true and correct copy of this letter is attached
6 as **Exhibit C**.

7 12. Although SEIU agreed on September 15, 2009 to meet and negotiate on September
8 17, 2009, and agreed to set a "placeholder" to meet on Friday, September 18, 2009, SEIU has not
9 scheduled any meetings beyond September 18, 2009.

10 13. Although SEIU has stated to the City's negotiating team that it will notify the City
11 when it plans to strike, it still has not stated how far in advance of a strike it will notify the City.

12 14. I am informed and believe and based thereon allege that SEIU had three meetings
13 scheduled with City SEIU employees on September 16, 2009 to update employees on the status of
14 negotiations, and that they told employees in the 6:00 a.m. and 12:00 p.m. meetings to plan to strike
15 next Thursday, September 24, 2009.

16 15. Based on the September 10, 2009 letter sent by SEIU Local 521's legal counsel in
17 response to the City's request that SEIU Local 521 agree to exempt critical positions from
18 participating in the strike, I believe and based thereon allege that SEIU is refusing to acknowledge
19 that the positions identified in the City's request for injunctive relief are critical to public health and
20 safety.

21 16. I am informed and believe and based thereon allege that some SEIU employees have
22 been scheduling meetings and completing other work this week and cautioning co-workers that they
23 are completing these tasks in case they are not here next week.

24 ///

25 ///

26 ///

27 ///

28 ///

EXHIBIT A

CHARTER OF THE CITY OF PALO ALTO

Sec. 12. Duties of appointive officers.

The duties of the city clerk and attorney shall be those normally exercised by such officers as provided in this charter and in the administrative code.

It shall be the duty of the city auditor to ensure that the city departments and officers responsible for accounting and financial management activities comply with statutory requirements and accounting standards. It shall be the duty of the auditor to conduct internal audits of all the fiscal transactions of the city including, but not limited to, the examination and analysis of fiscal procedures and the examination, checking, and verification of accounts and expenditures; and the city auditor shall provide other analyses of financial and operating data as directed by the city council. The city auditor shall conduct internal audits in accordance with a schedule approved by the city council and may conduct unscheduled audits from time to time. The results of these audits shall be reported in writing to the city council and the city manager. In addition, the auditor shall have such other duties as the council may by ordinance direct.

(Amended by Stats. 1968, Ch. 163, 7-8-68 and by amendment filed with the Secretary of State, December 9, 1983)

Sec. 13. Audits.

In addition to the audits conducted by the city auditor, the city council shall engage an independent certified public accounting firm to conduct an annual external audit and report the results of this audit in writing to the city council. The city auditor shall coordinate the annual external audit.

(Amended by amendment filed with the Secretary of State, December 9, 1983)

Article V. Compulsory Arbitration for Fire and Police Department Employee Disputes

Sec. 1. Declaration of policy.

It is hereby declared to be the policy of the city of Palo Alto that strikes by firefighters and police officers are not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.

Sec. 2. Prohibition against strikes.

If any firefighter or peace officer employed by the city of Palo Alto willfully engages in a strike against the city, said employee shall be dismissed from his or her employment and may not be reinstated or returned to city employment except as a new employee. No officer, board, council or commission shall have the power to grant amnesty to any employee charged with engaging in a strike against the city.

Sec. 3. Obligation to negotiate in good faith.

The city, through its duly authorized representatives, shall negotiate in good faith with the recognized fire and police department employee organizations on all matters relating to the wages, hours, and other terms and conditions of city employment, including the establishment of procedures for the resolution of grievances submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances. Unless and until agreement is reached through negotiations between the city and the recognized employee organization for the fire or police department or a determination is made through the arbitration procedure hereinafter provided, no existing benefit or condition of employment for the members of the fire department or police department bargaining unit shall be eliminated or changed.

THE FOREGOING DOCUMENT IS CERTIFIED TO BE A CORRECT COPY OF THE ORIGINAL ON FILE

CITY CLERK
CITY OF PALO ALTO

"I certify (or declare) under penalty of perjury that the foregoing is true and correct."

September 14, 2009
Date & Place
City of Palo Alto, CA

Signature

CH-10

Sec. 4. Impasse resolution procedures.

All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations between the city and either the fire or police department employee organization shall be submitted to a three-member board of arbitrators upon the declaration of an impasse by the city or by the recognized employee organization involved in the dispute.

Representatives designated by the city and representatives of the recognized employee organization involved in the dispute, controversy or grievance shall each select one arbitrator to the board of arbitrators within three days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the arbitration board shall be selected by agreement between the two arbitrators selected by the city and the employee organization, and shall serve as the neutral arbitrator and chairman of the board. In the event that the arbitrators selected by the city and the employee organization cannot agree upon the selection of the third arbitrator within ten days from the date that either party has notified the other that it has declared an impasse, then either party may request the State of California Conciliation Service to provide a list of seven persons who are qualified and experienced as labor arbitrators. If the arbitrators selected by the city and the employee organization cannot agree within three days after receipt of such list on one of seven to act as the third arbitrator, they shall alternately strike names from the list of nominees until only one name remains and that person shall then become the third arbitrator and chairman of the arbitration board.

Any arbitration convened pursuant to this article shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure.

At the conclusion of the arbitration hearings, the arbitration board shall direct each of the parties to submit, within such time limit as the board may establish, a last offer of settlement on each of the issues in dispute. The arbitration board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the city and its ability to meet the cost of the award.

After reaching a decision, the arbitration board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the arbitration board shall not be publicly disclosed and shall not be binding until ten days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the arbitration board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the arbitration board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. The city and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the award.

The expense of any arbitration convened pursuant to this article, including the fee for the services of the chairman of the arbitration board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

CHARTER OF THE CITY OF PALO ALTO

(Added by amendment filed with the city clerk, July 17, 1978)

Article VI. The Recall, Initiative and Referendum

Sec. 1. Recall.

Proceedings may be commenced for recall of any council member by the service, filing and publication of a notice of intention to circulate a recall petition. Proceedings may not be commenced unless, at the time of commencement, such council member has held office for at least six months and no recall petition has been filed against such council member within the preceding six months.

The petition demanding the recall of the council member sought to be recalled, signed by registered voters equal in number to at least twelve percentum of the number of registered voters at the last general municipal election, shall be filed with the clerk. One election is sufficient for the recall of one or more council members, but a separate petition is necessary to propose the recall of each council member.

No signature may be affixed to the petition until the proponents have served, filed and published a notice of intention to circulate a recall petition, containing the name of the council member sought to be recalled, a statement in not more than five hundred words of the grounds on which the recall is sought, and the name and address of at least one proponent. The notice of intention shall be served, personally or by certified mail, on the council member sought to be recalled, and a copy thereof with a certificate of the time and manner of service shall be filed with the clerk. A separate notice of intention shall be filed for each council member sought to be recalled.

Within seven days after the filing of the notice of intention, the council member sought to be recalled may file with the clerk an answer in not more than five hundred words to the statement of the proponents

and, if an answer is filed, shall serve a copy thereof, personally or by certified mail, on one of the proponents named in the notice of intention. The statement and answer are intended solely for the information of the voters and no insufficiency in the form or substance thereof shall affect the validity of the election or proceedings. The notice, statement and answer, if any, shall then be published in a newspaper of general circulation by the city clerk.

No signature may be affixed to a recall petition until the county registrar of voters has received two blank copies of the petition and has advised the proponents in writing that the form and wording are in order.

Seven days after the publication of the notice, statement and answer, if any, by the city clerk and provided all the requirements of this section re Notice of Intention, answers, and form of petition have been met, the recall petition may be circulated and signed. The petition shall bear a copy of the notice of intention, statement and answer, if any. If the council member has not answered, the petition shall so state. Signatures shall be secured and the petition filed within ninety days from the filing of the notice of intention. If such petition is not filed within the time permitted by this section, the same shall be void for all purposes.

The signatures to the petition need not all be appended to one paper, but said petition may be presented in sections. The number of signatures to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified voter of the municipality shall be competent to solicit said signatures. Unless and until it be proven otherwise by official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of qualified voters. Each signer of said petition shall at the time of signing the petition include his printed name and his place of residence, giving street and number, and if no street or number exists, then a designation of his place of residence which will en-

EXHIBIT B

CHAPTER 12
EMPLOYER AND EMPLOYEE RELATIONS AND
EMPLOYEE REPRESENTATIVES

Sections:

- 1201 Right to join or abstain
- 1202 Right to choose representation
- 1203 Definitions
- 1204 Registration of employee organizations
- 1205 Representation units
- 1206 Recognized employee organizations
- 1207 Rights, obligations and limitations
- 1208 Inpasse procedures

1201. Right to join or abstain. In the interest of improving the efficiency of City services and the promotion of sound personnel management, it is the purpose of this chapter to establish uniform procedures for employees, whether individually or in organization, to participate in the process of communication toward establishing wages, hour and other terms and conditions of employment, and to provide the means for amicable discussion and adjustment of matters of mutual interest, with the intent of fostering harmonious employer-employee relations.

1202. Right to choose representation. Employees of the City of Palo Alto, except as may be otherwise provided herein or by law, shall have the right to form, join and participate in the activities of employee organizations of their own choosing as provided in Sections 3500-3510 of the Government Code of the State of California. Employees of the City of Palo Alto shall have the right to refuse to join or participate in the activities of any employee organization and shall have the right to represent themselves individually in their employment relations with the City.

1203. Definitions.

- (a) **Employee.** The term "employee" shall mean any regular full- or part-time employee, as defined in these rules and regulations.
- (b) **Employee organization.** The term "employee organization" shall mean any organization which includes employees and which has as one of its primary purposes representing such employee in his/her employment relations with the City and which has registered with the Director of Human Resources as provided for in Section 1204.

- (c) **Recognized employee organization.** The term "recognized employee organization" shall mean an employee organization that has been registered pursuant to Section 1204, and has been certified pursuant to Section 1206.
- (d) **Scope of representation.** The term "scope of representation" shall pertain to matters relating to wages, hours and other terms and conditions of employment.
- (e) **Management; management employee.** The terms "management" or "management employee" shall mean any City Council Member, or any employee having the authority to exercise independent judgment in the interests of the City to hire, transfer, suspend, promote, discharge, assign, reward or discipline other employees, or effectively to recommend such action.
- (f) **Management representative.** The term "management representative" shall mean the City Manager or his/her designated representative(s).

For purposes of Section 1962 1964 of the Labor Code of the State of California, the City Manager is designated as the "governing body" to whom employees of the Fire Department or any other department or division of the City or employee organizations may address grievances and recommendations regarding wages, salaries, hours and working conditions. For the purposes of Sections 3500-3510 of the Government Code of the State of California, the City Manager or his/her designated representative(s) will act to represent the City to meet and confer in good faith with representatives of employee organizations.

- (g) **Confidential employee.** The term "confidential employee" shall mean an employee who is privy to decisions of City management affecting employee relations.
- (h) **Proof of employee approval.** "Proof of employee approval" of a petition is demonstrated under this chapter by either of the following:
 - (1) Signed and dated signatures on the petition.
 - (2) Signed and dated employee organization authorization cards.

Only signatures of employees currently employed with signatures having been executed within six months prior to the date of filing of the petition or authorization card presentation, shall be accepted as proof of employee approval. The total number of employees in a proposed representation unit shall be determined by using the Council-approved City budget, adjusted to reflect the positions actually occupied as of the date of the petition and excluding such classifications or individuals as may be limited from membership in the unit by the provisions of this chapter.

- (i) **Days.** The term "days" shall mean calendar days.

- (j) **Mediation.** The term "mediation" shall mean the process by which an impartial third party assists the parties in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of management and the recognized employee organization.

1204. Registration of employee organizations.

- (a) **Application for registration.** An organization that desires to be registered as an employee organization shall file with the Director of Human Resources the following documents, signed by its presiding officer, showing:
 - (1) Name and mailing address of the organization.
 - (2) Names and titles of officers and representatives.
 - (3) A copy of its constitution and/or by-laws which shall contain a statement that the organization has as one of its primary purposes representing employees in their employment relations.
 - (4) Verification of employee membership in the organization which may be shown by signed and dated signatures on a petition or on authorization cards.
 - (5) A statement that the organization has no restriction on membership based on race, color, creed, national origin or sex.
 - (6) A designation of those persons, not exceeding three in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the organization for all purposes.
- (b) **Registration.** Upon receipt and verification of all the information required by Section 1204(a), the Director of Human Resources shall, in writing, notify the organization that it has been registered as an employee organization. A copy of this notice shall be filed with the City Manager's office.
- (c) **Organizational changes.** A registered employee organization shall notify the Director of Human Resources of any change the organization makes in those items required by Section 1204(a)(1), (2) and (6) in writing within ten days of any such change.

1205. Representation units.

- (a) **Appropriateness of unit.** The appropriateness of a representation unit shall be governed by the following factors: That it is the broadest feasible grouping based upon internal and occupational community of interest; that the history of representation is used in the determination; that the unit does not contain classifications or individuals restricted or limited by this chapter; and that no City classification shall be in more than one representation unit.
- (b) **Establishment.** A representation unit is established by petition of eligible employees within the proposed unit. A petition must be accompanied by proof of employee approval equal to at least thirty percent of the eligible employees within the proposed unit. The petition shall be filed with the Director of Human Resources, who will review the appropriateness of the representation unit. He/she shall also give notice of the filing to the employees in the proposed unit and to any recognized employee organization that has filed a written request for such notice. A petition for the establishment of a representation unit may be combined with a petition that seeks to certify an employee organization as a recognized employee organization. Petition for establishment of a representation unit which would involve modification of an existing unit may be made only during the thirty-day period between ninety and sixty days prior to the expiration date of a memorandum of agreement to which the existing unit is a party.
- (c) **Challenge by employee organization.** If an employee organization desires to challenge the appropriateness of the proposed representation unit and seeks to establish a different unit, it shall, within thirty days of the filing of the petition it seeks to challenge, file a petition with the Director of Human Resources requesting a unit determination through further action.
- (d) **Challenge by the Director of Human Resources.** If the Director of Human Resources decides to challenge the appropriateness of the proposed representation unit, he/she shall within thirty days of filing the original petition give notice to the petitioner concerned of such challenge.
- (e) **Certification of unchallenged unit.** If there has been no petition or notice filed challenging a petition to establish a representation unit within thirty days, the director of human resources shall certify to the petitioner that the representation unit has been established.
- (f) **Amendment of petitions.** If a challenge is lodged, the Director of Human Resources shall notify the original petitioner in writing. If an amended petition is not filed within seven days of such notice, the petition and challenge shall be transmitted to the State Mediation and Conciliation Service as provided below. Upon the filing of an amended petition, the original petition shall be deemed revoked and the amended petition shall be processed as an original petition as set forth above.

- (g) **Determination of dispute.** If a challenging petition has been duly filed, and the challenge has not been resolved by amendment or withdrawal, the Director of Human Resources shall first transmit the petition and challenge with a request for determination to the State Mediation and Conciliation Service, which shall utilize its procedures to determine the appropriate representation unit or units. On suggestion of the State Mediation and Conciliation Service, an alternate agency may be used.

In resolving representation unit disputes, it is recommended that the State Mediation and Conciliation Service, or alternate agency, shall in each case determine the broadest feasible grouping based upon such factors as internal and occupational community of interest and the history of representation. No City classification shall be included in more than one representation unit. The State Mediation and Conciliation Service, or alternate agency, may adopt rules governing its process of determination and may consolidate petitions for hearing. The decision of the State Mediation and Conciliation Service, or those of an alternate agency if used, shall be transmitted to the Director of Human Resources and petitioner. The decision of the State Mediation and Conciliation Service, or alternate agency, shall be final.

- (h) **Professional employee's right to separate unit.** Professional employees shall not be denied the right to be represented separately from non-professional employees by a professional employees' organization consisting of such professional employees. The term "professional employees" for the purposes of this section shall mean employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including but not limited to physicians, registered nurses, engineers, architects, teachers, librarians and various types of physical, chemical and biological scientists. In further definition, all of the following requirements are necessary in meeting the definition of professional employees:

- (1) Primary duties consist of work:
 - a. requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, or
 - b. original and creative in character in a recognized field or artistic endeavor, and the results of which depend primarily on the invention, imagination, or talent of the employee.
- (2) Work requires the consistent exercise of discretion and judgment.
- (3) Work is predominantly intellectual and varied in character, and the output or result cannot be standardized.
- (4) He/she does not devote more than twenty percent of his/her hours worked in work week to activities not an essential part of and necessarily incident to such professional duties.

1206. Recognized employee organizations.

- (a) **Petition.** An employee organization that seeks certification as a recognized employee organization shall file a petition with the Director of Human Resources. The petition shall identify the representation unit requested or established pursuant to Section 1205, for which petitioner seeks recognition, and shall include a statement of reasons for the composition of the unit, including a community of interest. The petition shall be accompanied by all of the documents required by Section 1204(a), in request for registration.
- (b) **Majority and minority petitions.** The Director of Human Resources shall determine the percent of proof an employee approval greater than fifty percent of the employees within the representation unit which shall be certified as a majority petition. A petition accompanied by proof of employee approval of between thirty and fifty percent of the employees within the representation unit shall be certified as a minority petition.
- (c) **Challenge.** The Director of Human Resources shall give written notice of his/her certification of a majority or minority petition to the petitioner, to the employees involved, and to any employee organization that has filed a written request for the receipt of such notice. Another employee organization may file a challenging petition seeking to become the recognized employee organization within the representation unit.
- (d) **Certification without election.** If no challenging petition is filed against a majority petition, the Director of Human Resources shall certify the petitioner as the recognized employee organization of the representation unit.
- (e) **Election - challenged majority petition.** If a minority petition is filed against a majority petition and is accompanied by proof of employee approval equal to at least thirty percent of the employees within the representation unit, the Director of Human Resources shall refer the matter in request for an election to the State Mediation and Conciliation Service or their suggested alternate, who shall call and conduct a secret ballot election pursuant to Section 1206(g).
- (f) **Election - minority petition.** If a minority petition is filed, the Director of Human Resources shall, whether or not a challenging petition is filed, request the State Mediation and Conciliation Service, or their suggested alternate, to conduct a secret ballot election pursuant to Section 1206(g). If a challenging petition is filed against a minority petition and is accompanied by proof of employee approval equal to at least ten percent of the employees within the representation unit, the election agency shall include the challenging employee organization on the ballot.

- (g) **Election procedure.** Whenever an election agency calls an election pursuant to this chapter, it shall include the choice of no organization on the ballot. Employees entitled to vote in a representation election shall be those employees within the representation unit whose names appeared on the payroll immediately prior to the date of election. An employee organization shall be certified by the Director of Human Resources as the recognized employee organization within the representation unit if the majority of those casting valid ballots at the election chooses said organization. If an election where none of the choices receives a majority of the valid ballots cast, a runoff election shall be conducted between the two choices receiving the largest number of ballots cast. There shall be no more than one representation election in a twelve-month period within the same representation unit.
- (h) **Decertification procedure.** A decertification petition may be filed with the Director of Human Resources by employees or an employee organization to determine whether or not a recognized employee organization continues to represent a majority of the employees within the representation unit. Such petition must be accompanied by proof of employee approval equal to at least thirty percent of the employees within the representation unit. Such a petition may be received by the Director of Human Resources only during the thirty-day period between ninety and sixty days prior to the expiration date of an existing memorandum of agreement. When such a valid petition has been filed, the State Mediation and Conciliation Service, or its suggested alternate, shall conduct an election to determine whether or not the incumbent recognized employee organization shall be decertified if a majority of those casting valid ballots vote for decertification, or in appropriate cases, if a majority vote for the petitioning organization. In the absence of decertification, the certification of the recognized employee organization shall continue on a year-to-year basis.

1207. Rights, obligations and limitations.

- (a) **Employee organizations.** Employee organizations may represent their members in employment relations only in the matters and to the extent provided by the Government Code of the State of California.
- (b) **Unit representation.** Upon prior agreement with the appropriate representatives of management, a reasonable number of employees may be designated by an employee organization to act as unit representatives. With advance permission, and conditions permitting, unit representatives may be given reasonable time away from their duties to act in representing an employee on matters within the scope of representation.

Each employee organization shall provide the Director of Human Resources with the name(s) of the person(s) currently authorized to represent such organization.

- (c) **Limitation; management and confidential employees.** No management or confidential employee may be represented in their employment relations with the City by an employee organization which represents other types of employees. However, nothing in this chapter should be interpreted as prohibiting management and confidential employees from joining and holding office in an employee organization.
- (d) **Rules no abrogation of rights.** By the adoption of the provisions of this chapter, City management shall not be deemed to abrogate its right to establish policy and procedure and make whatever changes it considers necessary for the good and efficient services of the City. The exclusive rights of city management include, but are not limited to: determine the missions of its constituent departments, sections, groups and individuals; set standards of services; determine the standards of selection for employment and promotions; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means, time and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its missions and exercise complete control and discretion over its organization and technology of performing its work.
- (e) **Meet and confer in good faith.** Recognized employee organizations, only, shall have access to the meet and confer process. Upon request, representatives of a recognized employee organization shall have the right to meet and confer in good faith with the appropriate representatives of management regarding wages, hours, and other terms and conditions of employment. Representatives of recognized employee organizations may participate in such meetings without loss of compensation or other benefits. "Meet and confer in good faith" shall mean the mutual obligation personally to meet and confer in order to freely exchange information, opinions and proposals and to endeavor to reach agreement on matters within the scope of representation.

If agreement is reached by management and a recognized employee organization, or recognized employee organizations, they shall jointly prepare a written memorandum to such understanding, which shall not be binding, and present it to the City Manager's office.

If a memorandum of agreement contains an expiration date, either party to the memorandum may declare its intention to initiate meet and confer sessions with regard to revision of the memorandum only during a thirty-day period between ninety and sixty calendar days prior to the expiration date of the memorandum of agreement. Notice of intention must be in writing and be accompanied by a written statement setting forth the revisions desired by the party serving notice. Meeting and conferring in good faith on proposed revisions shall begin between parties within a reasonable time following the filing of notice.

In the event neither party declares its intention to revise the memorandum of agreement within the specified period of time, the memorandum will be automatically renewed for one year.

- (f) **Access of organizations to work locations.** Conditions permitting, representatives of employee organizations are authorized access to City work locations for the purpose of conducting business within the scope of representation, provided that no disruption of work is involved; the business at hand includes direct members of the particular employee organization; the business transacted is other than the recruiting of members or the collection of dues. Any business representative of a recognized employee organization may have access to City work locations for purposes as indicated above, provided that he/she receives prior clearance from the Director of Human Resources or his/her office before entering the work location. The Director of Human Resources or his/her representative may accompany the business representative. Employee organizations shall hold all organizational meetings at times other than during working or duty hours of those present, and at locations other than on City work premises. Employee organizations may post notices on bulletin boards, provided that such notices are stamped by the Human Resources Department before posting. The notices are restricted to recreational and social affairs, election or appointment of officers and representatives, and notices of meetings. Requests for the posting of other material shall be directed to the Director of Human Resources.
- (g) **Prohibition; recognizing picket lines.** Employees shall not have the right to recognize a picket line of a labor or employee organization while in the performance of their official duties.
- (h) **Adoption of rules and regulations.** Any rules and regulations adopted to further the administration of employer-employee relations and for the implementation or clarification of the provisions of this chapter, shall be consistent with the Charter of the City of Palo Alto, the Palo Alto Municipal Code, and with the City's Merit System Rules and Regulations as established in these rules and as may be further defined by administrative directives.

1208. Impasse procedures.

- (a) **Mutual agreement.** If, after a reasonable period of time, the appropriate representatives of management and recognized employee organizations fail to reach agreement, unless otherwise provided in the City Charter, the parties together may mutually agree upon a method of resolving the dispute including, but not limited to, mediation.
- (b) **Mediation procedure.** If the parties agree upon mediation but are unable to agree on the mediator, the parties shall request the services of the State Mediation and Conciliation Service, or suitable alternate, to provide a mediator. Costs of mediation shall be divided one-half to the City and one-half to the recognized employee organization or recognized employee organizations. The mediator or mediating agency shall make no public

recommendations nor take any public position concerning the issues, but shall work directly with the parties involved.

EXHIBIT C



SOUTH BAY
AFL-CIO
LABOR
COUNCIL

EXECUTIVE BOARD

Cindy Chavez, EXECUTIVE OFFICER
IAM and AW Local Lodge 93

Ron Lind, PRESIDENT
UFCW Local 5

Kristy Sermersheim, 1ST VICE PRESIDENT
SEIU Local 521

Bill Brill, 2ND VICE PRESIDENT
IBEW Local 1245

Louie Rocha, Jr., RECORDING SECT.
CWA Local 9423

Sam Saiu, SERGEANT AT ARMS
IAM and AW Lodge 93

Enrique Fernandez, TREASURER
UNITE / HERE! Local 19

Sheiliana Brunton, ATU Local 265
IAM and AW Lodge 93

Yolanda Cruz
AFSCME Local 101

Larry Dougherty
Teamsters Local 350

Tom Linebarger
Painters and Tapers Local 913

Malinda Markowitz
CNA/NNOC

Bill Meyer
Plumbers and Steamfitters
Local 393

Jeremy Ray
IAFF Local 1171

Albert Rousma
IIRC Carpenters Local 405

Ronald Smith
CSEA Chapter 187

Neil Struthers
Building and Construction Trades Council

Mark Van Don Heuvel
Sheetmetal Workers Local 104

Sal Ventura
IBEW Local 332

David Yancey
AFL Local 6157

September 15, 2009

VIA EMAIL & U.S. MAIL

Russ Carlsen
Director of Human Resources
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

Dear Mr. Carlsen:

This letter serves as formal notification that a strike sanction has been granted to SEIU Local 521 against City of Palo Alto at 250 Hamilton Avenue, Palo Alto, California. Strike sanction was granted on September 14, 2009.

The effect of this sanction is to direct our 110 affiliated unions representing over 110,000 workers to support this sanctioned strike at your facility. This includes honoring and joining union picket lines and providing financial support to striking families.

This sanction also means that we will contact our elected officials at every level to intervene on our behalf. Furthermore, we will invoke a full scale lobbying effort to pursue all appropriate actions including revocation of tax breaks, review of workplace practices, and cancellation of any government contracts.

In short, we will do everything in our legal power to ensure that these working women and men are successful in their request for workplace dignity and adequate compensation.

This is not a threat, but an affirmation of our moral commitment to protecting working families in our community. As always, we prefer to resolve these issues in an amicable manner and are always available to assist in the resolution of this dispute.

Sincerely,


Cindy Chavez
Executive Officer

cc: Rome Aloise, Teamsters Joint Council 7
Tom Dalzell, IBEW Local 1245
Bill Hoyt, Teamsters Local 287
Dan Laffan, NALC Local 193
Kristy Sermersheim, SEIU Local 521
Loretta Springer, ATU Local 265
South Bay AFL-CIO Labor Council Executive Board

95

2102 ALMADEN ROAD, SUITE 107 SAN JOSE, CA 95125
P 408 266.3790 F 408 266.2653 <http://www.atwork.org>



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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is City of Palo Alto, 250 Hamilton Avenue, 8th Floor, Palo Alto, CA 94301.

On September 16, 2009, I served the within documents:

FURTHER DECLARATION OF SANDRA BLANCH

on the parties listed below by the applicable methods:

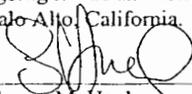
- by causing such documents to be delivered to Federal Express for First Overnight Courier service.
- facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).
- by transmitting via e-mail the documents listed above to the persons at the e-mail addresses set forth below.

Wendy Ross, General Counsel
 Public Employment Relations Board (PERB)
 Office of the General Counsel
 1031 18th Street
 Sacramento, CA 95811-4124
 Facsimile No.: 916-327-6377
 Email Address: WRoss@perb.ca.gov

Laura Davis, Regional Counsel
 Public Employment Relations Board (PERB)
 Office of the General Counsel
 1330 Broadway, Suite 1532
 Oakland, CA 94612-2514
 Facsimile No.: (510) 622-1027
 Email Address: LDavis@perb.ca.gov

Vin Harrington, Esq.
 Weinberg Roger & Rosenfeld
 1001 Marina Village Parkway, Ste. 200
 Alameda, CA 94501-1091
 Facsimile No.: 510-337-1023
 Email Address: vharrington@unioncounsel.net

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 16, 2009, at Palo Alto, California.



 Sharon M. Hanks

FILED
SEP 21 2009
SF REGIONAL OFFICE
2009 SEP 21 PM 3:28

1 Adrianna E. Guzman, SBN 188812
2 **LIEBERT CASSIDY WHITMORE**
3 A Professional Law Corporation
4 153 Townsend Street, Suite 520
5 San Francisco, CA 94107
6 T: (415) 512-3000, F: (415) 856-0306

7 **GARY M. BAUM**, City Attorney SBN 117200
8 **MELISSA C. TRONQUET**, Deputy City Atty. SBN 234768
9 **CITY OF PALO ALTO**
10 250 Hamilton Ave., 8th Floor
11 Palo Alto, CA 94301
12 T: (650) 329-2171; F: (650) 329-2646

13 Attorneys for Charging Party
14 CITY OF PALO ALTO

15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,
18 Charging Party,
19 v.
20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,
22 Respondent.

Case No. SF-CO-210-M

**THIRD DECLARATION OF
SANDRA BLANCHI**

- 23 1. I, SANDRA BLANCHI, am employed by the City of Palo Alto as the Assistant
24 Director of the City's Human Resources Department. I have held this position for the past 2 years
25 and have worked in the City's Human Resources Department for more than 14 years. I have
26 personal knowledge of the facts below. If called to testify to the following, I could and would
27 competently do so.
28 2. I am submitting this declaration in support of the City's Request for Injunctive Relief
to enjoin SEIU Local 521 from striking.
3. In my capacity as Assistant Director of Human Resources, I oversee all of the
employment and labor relations issues in the City, including labor agreements, classification studies

1 and changes, and employee benefits. I am a member of the City's negotiating team in the ongoing
2 contract negotiations with SEIU Local 521.

3 4. On September 17, 2009, the negotiating teams for the City and SEIU met from
4 approximately 10:30 a.m. to 9:00 p.m. I attended that meeting

5 5. Today, September 18, 2009 the negotiating teams for the City and SEIU met from
6 approximately 10:00 a.m. to 1:00 p.m. I attended that meeting.

7 6. Toward the end of today's meeting, SEIU presented the City with a proposal and
8 stated that it was their last proposal and will not take anything worse than what is in it to their
9 members.

10 7. The City is facing a budget shortfall for the 2009-2010 fiscal year. The negotiating
11 team reviewed SEIU's final proposal and determined that it remains at least one million dollars
12 lower than the minimum amount the City needs toward balancing the City budget for 2009-2010.
13 As such, at this time, I believe it is unlikely that the City will be financially able to accept this
14 proposal.

15 8. The City has a closed session meeting with the City Council scheduled for Monday
16 night, September 21, 2009, to discuss the negotiations between the City and SEIU.

17 9. The City asked SEIU to schedule meetings on Tuesday, September 22, 2009 and
18 Thursday, September 24, 2009. SEIU's lead negotiator, Nick Steinmeier, specifically refused to
19 meet on September 24. Further, Mr. Steinmeier would not agree today to schedule a meeting for
20 September 22, and instead told the City's negotiators to call him after the City Council closed session
21 if Council will move its direction.

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10. Based on today's meeting, and the information conveyed in my earlier declarations in support of the City's request for injunctive relief, I have reason to believe that a strike by Palo Alto employees who are members of SEIU Local 521 is imminent and substantially likely to occur during the week of September 21, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of September, 2009, at Hayward, California.

Sandra Blanch
Sandra Blanch

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is City of Palo Alto, 250 Hamilton Avenue, 8th Floor, Palo Alto, CA 94301.

On September 21, 2009, I served the within documents:

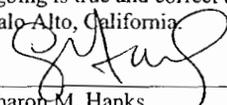
THIRD DECLARATION OF SANDRA BLANCH

on the parties listed below by the applicable methods:

Personal Delivery:

Laura Davis, Regional Counsel
Public Employment Relations Board (PERB)
Office of the General Counsel
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Facsimile No.: (510) 622-1027
Email Address: LDavis@perb.ca.gov

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 21, 2009, at Palo Alto, California.



Sharon M. Hanks

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On September 21, 2009, I served the within documents:

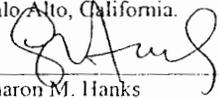
THIRD DECLARATION OF SANDRA BLANCH

on the parties listed below by the applicable methods:

by causing such documents to be delivered to Federal Express for First Overnight Courier service.

Tani Bogert, General Counsel
Wendy Ross, Deputy General Counsel
Public Employment Relations Board (PERB)
Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Facsimile No.: 916-327-6377
Email Address: WRoss@perb.ca.gov
Email Address: tbogert@perb.ca.gov

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 21, 2009, at Palo Alto, California.



Sharon M. Hanks

ATTACHMENT G

1 **ADRIANNA E. GUZMAN**, SBN 188812
2 **LIEBERT CASSIDY WHITMORE**
3 A Professional Law Corporation
4 153 Townsend Street, Suite 520
5 San Francisco, CA 94107
6 T: (415) 512-3000, F: (415) 856-0306

7 **GARY M. BAUM**, City Attorney SBN 117200
8 **MELISSA C. TRONQUET**, Deputy City Atty. SBN 234768
9 **CITY OF PALO ALTO**
10 250 Hamilton Ave., 8th Floor
11 Palo Alto, CA 94301
12 T: (650) 329-2171; F: (650) 329-2646

13 Attorneys for Charging Party
14 CITY OF PALO ALTO

15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,
18 Charging Party,
19 v.
20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,
22 Respondent.

Case No.

DECLARATION OF VALERIE FONG

23 1. I, VALERIE FONG, am employed by the City of Palo Alto as the Director of
24 Utilities for the City's Utilities department. I have served in this position since October 2006.
25 Previously I have worked for 29 years in similar positions for various utility providers, including
26 Pacific Gas and Electric and the City of Alameda. I have personal knowledge of the facts below. If
27 called to testify to the following, I could and would competently do so.

28 2. I am submitting this Declaration in support of the City's Request for Injunctive Relief
to enjoin certain essential positions represented by SEIU Local 521 from striking.

3. The City of Palo Alto is the only City in the State operating its own Electric, Gas and
Water Utility, providing services to businesses and residents. Through the City's provision of utility
services, the City is charged with the protection of the public's health, safety and welfare. All of
these utilities are heavily regulated by the State and/or Federal government. It is the City's duty to

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1 maintain these essential services for the public. Thus, the City must have a certain number of
2 employees present to conduct day-to-day operations, as well as to respond to emergencies that might
3 occur at either the City's facilities, or at a local business or residence. The positions that provide
4 daily and emergency services are crucial to safely providing utility service. Without skilled
5 employees to perform these duties, the delivery of electricity, gas or water could be interrupted or
6 delivered in an unsafe fashion.

7 4. Based on my experience, in order to deliver services and keep the systems operational
8 the City must have a minimum of:

- 9 · 4 Installer-Repairer Leads
- 10 · 9 Installer-Repairers
- 11 · 2 Maintenance Mechanics
- 12 · 3 Lineperson Leads
- 13 · 6 Linepersons
- 14 · 5 Electrician Leads
- 15 · 9 Electricians
- 16 · 6 Heavy Equipment Operators
- 17 · 6 Water Systems Operators
- 18 · 6 Field Service Persons
- 19 · 3 Utility System Operators.

20 This constitutes sufficient staff needed by the City to repair and maintain gas distribution systems,
21 wastewater collection systems, and electrical systems and equipment. In the event of a strike, the
22 City could delay new services to unoccupied buildings; however it cannot stop or delay repairs and
23 maintenance without jeopardizing the safe delivery of water, gas or electricity.

24 5. The staffing of these positions is critical to maintaining the health and safety of the
25 citizens of Palo Alto. Examples of critical employee duties they perform include: Emergency
26 system repairs on sewer backups, cleaning contaminated spills, controlling and repairing gas leaks,
27 welding on gas mains and services, repairing electrical outages on the transmission/distribution
28

1 system, monitoring our substations, replacing traffic signals, repairing street light outages, and
2 restoring water service after interruptions.

3 6. Contractors could perform certain limited work on power, water and wastewater
4 services, however contractors can not work on or weld gas lines due to the requirements set by the
5 Federal Department of Transportation (DOT). Also, the City has been unable to locate a contractor
6 that can perform the duties at our electric substations.

7 7. The needed Installer-Repairers (9 Installer-Repairers and 4 Leads) and 2 Maintenance
8 Mechanics must be certified to work on the gas system through the Operator Qualification training
9 necessary to meet the requirements set by the Federal Department of Transportation (DOT).

10 8. The City requires 3 Linesperson Leads and 6 Linepersons to safely operate utility
11 services. A minimum amount of linespersons is necessary for public safety in order to provide daily
12 maintenance of overhead and underground electrical equipment. Linespersons also make safe and
13 repair the City's electrical equipment when outages occur. With live electrical wires, response time
14 is critical to mitigate the threat to public safety. Fulfilling this position requires knowledge of the
15 day-to-day operation of the City's electrical equipment including transformers, switches, conductors,
16 street lights, traffic signals, and fire alarm circuits.

17 9. In order to continue the safe delivery of utility service, the City requires at least 5
18 Electrician Leads and 5 Electricians. Electricians maintain power distribution substations and repair
19 electrical and mechanical components. The City could not contract out this position because safe
20 operation of the circuitry within a substation requires knowledge of the City's systems that would
21 take too much time to develop. Minimum staffing is required in order to continue to provide electric
22 services to the City's residents and businesses, as well as to ensure public safety.

23 10. The 6 Heavy Equipment Operators are critical because it would not be prudent or safe
24 to have outside contractors operating heavy equipment around the gas system. The City could
25 potentially contract out or hire temporary staff to operate heavy equipment to perform emergency
26 duties; however it will be difficult to locate qualified staff as there are few, if any, contractors that
27 operate heavy equipment and are trained and familiar with the Gas System.

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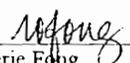
1 11. Water Systems Operators are critical positions in order to ensure the safety of the
2 drinking water. Contaminated water is a direct threat to public health and safety. If the 6 minimally
3 required positions are not staffed, daily maintenance including the sampling and monitoring of the
4 system will suffer. Training a contractor is impracticable because adjusting the essential parts of the
5 water system (reservoirs, pumps/stations, regulators and valves) requires time and familiarity with
6 the system. If a problem with the water system occurred, the City cannot simply turn the water off.
7 Turning the water off would endanger the public for many reasons, including the loss of fire
8 suppression water.

9 12. We are requesting the designation of 6 Field Service Persons as critical. These Field
10 Service employees are the first responders to emergency calls for gas, water, wastewater and electric
11 problems or concerns. The City's Utility requires sufficient staff to respond to any emergencies such
12 as gas leaks or water breaks. Daily, a Field Service Person responds to approximately 20 calls. This
13 position also has to meet the qualification requirements set by the Department of Transportation
14 (DOT). The City has not been able to locate a contractor that can perform the duties due to the
15 requirements set by the Department of Transportation (DOT).

16 13. The City's Utility requires 3 Utility System Operators. Utility System Operators are
17 akin to dispatchers. A Utility System Operator receives calls concerning emergencies related to the
18 public utilities and ensures staff is deployed to respond to emergencies. These positions are very
19 critical to the electric utilities operation. A qualified person must be familiar with the City's
20 electrical Transmission and Distribution system in order to safely operate the Supervisory Control
21 and Data Acquisition system (SCADA) and direct emergencies crews in a safe, reliable manner to
22 restore power. Because of the familiarity with City specific systems required for this position, the
23 City is not able to contract out this position.

24 I declare under penalty of perjury under the laws of the state of California that the foregoing
25 is true and correct.

26 Executed this 15th day of September, 2009, at Palo Alto, California.

27 
28 Valerie Fong

1 **ADRIANNA E. GUZMAN**, SBN 188812
2 **LIEBERT CASSIDY WHITMORE**
3 A Professional Law Corporation
4 153 Townsend Street, Suite 520
5 San Francisco, CA 94107
6 T: (415) 512-3000, F: (415) 856-0306

7 **GARY M. BAUM**, City Attorney SBN 117200
8 **MELISSA C. TRONQUET**, Deputy City Atty. SBN 234768
9 **CITY OF PALO ALTO**
10 250 Hamilton Ave., 8th Floor
11 Palo Alto, CA 94301
12 T: (650) 329-2171; F: (650) 329-2646

13 Attorneys for Charging Party
14 CITY OF PALO ALTO

15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,

18 Charging Party,

19 v.

20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,

22 Respondent.

Case No.

**SUPPLEMENTAL DECLARATION OF
VALERIE FONG**

23 1. I, VALERIE FONG, am employed by the City of Palo Alto as the Director of
24 Utilities for the City's Utilities department. I have served in this position since October 2006.
25 Previously I have worked for 29 years in similar positions for various utility providers, including
26 Pacific Gas and Electric and the City of Alameda. I have personal knowledge of the facts below. If
27 called to testify to the following, I could and would competently do so.

28 2. I am submitting this Supplemental Declaration in support of the City's Request for
Injunctive Relief to enjoin certain essential positions represented by SEIU Local 521 from striking.

3. The City's Utilities Department maintains a Field Service Representative, who is
required to be on the job to keep the utility systems operational. The Field Service Representative
acts as a first responder for all trouble calls (electric, water, wastewater collection and gas).

///

1 together as a unit, and multiple workers are required to respond to emergencies depending on the
2 emergency. Crews are stationed in different locations during an emergency to operate equipment as
3 needed at different locations to ensure the system is safe for all customers and workers.
4 11. The city has emergencies such as electric outages, gas leaks, water main breaks,
5 wastewater collection system breaks, fiber system breaks, and crews are utilized for the emergencies
6 for which they are qualified and for which their services are required to "make safe" of any situation
7 and to restore service to customers. These emergencies, as history has shown, can occur at any time
8 of the day or night, and any day of the week. Because of the lifeline nature of utility services, the
9 business is a round-the-clock business with crews needed to respond to emergencies as they occur
10 regardless of the hour of the day or day of the week.
11 I declare under penalty of perjury under the laws of the state of California that the foregoing
12 is true and correct.
13 Executed this 17th day of September, 2009, at Palo Alto, California.
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15 Valerie Fong
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ATTACHMENT H

RECEIVED
FILED
SF REGIONAL OFFICE
2009 SEP 21 AM 10:06

1 Adrianna E. Guzman, SBN 188812
2 **LIEBERT CASSIDY WHITMORE**
3 A Professional Law Corporation
4 153 Townsend Street, Suite 520
5 San Francisco, CA 94107
6 T: (415) 512-3000, F: (415) 856-0306

7 **GARY M. BAUM**, City Attorney SBN 117200
8 **MELISSA C. TRONQUET**, Deputy City Atty. SBN 234768
9 **CITY OF PALO ALTO**
10 250 Hamilton Ave., 8th Floor
11 Palo Alto, CA 94301
12 T: (650) 329-2171; F: (650) 329-2646

13 Attorneys for Charging Party
14 CITY OF PALO ALTO

15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,
18 Charging Party,
19 v.
20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,
22 Respondent.

Case No.
**DECLARATION OF DARRELL
MURRAY**

23 I, DARRELL MURRAY, am employed by IEDA, a labor relations company that
24 represents approximately 150 private and public sector employers. Prior to joining IEDA, I worked
25 as a labor relations professional for a variety of agencies since 1976, including serving as Labor
26 Relations Director for Bay Area Rapid Transit, Labor Relations Manager for Multnomah County,
27 Oregon, and as a mediator for the Oregon Employment Relations Board. The City of Palo Alto
28 ("City") has contracted with IEDA for labor relations and negotiation services since 2005, and I have
been assigned as chief negotiator for the City of Palo Alto since 2006. I am the chief negotiator in
the ongoing negotiations between the City and Service Employees International Union Local 521
("SEIU"). I have personal knowledge of the facts below. If called to testify to the following, I
could and would competently do so.

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Meeting ended: 12:30 pm

(9) **Meeting #9 – July 7, 2009**
Negotiation Started approximately: 10:00 a.m.
No end time noted but calendar indicates approximately 4:00 p.m.

(10) **Meeting #10 – July 20, 2009**
Negotiation Started: 1:30 pm
Meeting ended: 3:40 pm

(11) **Meeting #11 – July 29, 2009**
Negotiation Started: 9:30 am
Meeting ended: 5:00 pm

(12) **Meeting #12 – August 5, 2009**
Negotiation Started: 10:00 am
Meeting ended: 5:00 pm

(13) **Meeting #13 – August 12, 2009**
Negotiation Started: 2:30 pm
Meeting ended: 4:30 pm

(14) **Meeting #14 – August 19, 2009**
Negotiation Started: 1:15 pm
Meeting ended: 3:00 pm

(15) **Meeting #15 – August 26, 2009**
Negotiation Started: 10:00 am
Meeting ended: 2:30 pm

(16) **Meeting #16 – September 2, 2009**
Negotiation Started: 2:00 pm
Meeting ended: 5:30 pm

(17) **Meeting #17 – September 10, 2009**
Negotiation Started: 12:00 p.m.
Meeting ended: 3:00 pm

(18) **Meeting #18 – September 14, 2009**
Negotiation Started: 12:00 pm
Meeting ended: 4:00 pm

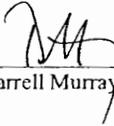
(19) **Meeting #19 – September 15, 2009**
Negotiation Started: 12:30 pm
Meeting ended: 1:30 am (9/16/09)

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6. An additional meeting is in progress and started at approximately 10:30 a.m. today,
September 17, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of September, 2009, at Palo Alto, California.



Darrell Murray

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is City of Palo Alto, 250 Hamilton Avenue, 8th Floor, Palo Alto, CA 94301.

On September 17, 2009, I served the within documents:

DECLARATION OF DARRELL MURRAY

on the parties listed below by the applicable methods:

by causing such documents to be delivered to Federal Express for First Overnight Courier service.

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

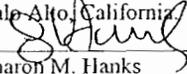
by transmitting via e-mail the documents listed above to the persons at the e-mail addresses set forth below.

Tami Bogert, General Counsel
Wendy Ross, Deputy General Counsel
Public Employment Relations Board (PERB)
Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Facsimile No.: 916-327-6377
Email Address: WRoss@perb.ca.gov
Email Address: tbogert@perb.ca.gov

Laura Davis, Regional Counsel
Public Employment Relations Board (PERB)
Office of the General Counsel
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Facsimile No.: (510) 622-1027
Email Address: LDavis@perb.ca.gov

Vin Harrington, Esq.
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Ste. 200
Alameda, CA 94501-1091
Facsimile No.: 510-337-1023
Email Address: vharrington@unioncounsel.net

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 17, 2009, at Palo Alto, California.


Sharon M. Hanks

ATTACHMENT I

RECEIVED
P.E.R.B.
SF REGIONAL OFFICE

2009 SEP 21 PM 3:28

1 Adrianna E. Guzman, SBN 188812
2 **LIEBERT CASSIDY WHITMORE**
3 A Professional Law Corporation
4 153 Townsend Street, Suite 520
5 San Francisco, CA 94107
6 T: (415) 512-3000, F: (415) 856-0306

7 **GARY M. BAUM**, City Attorney SBN 117200
8 **MELISSA C. TRONQUET**, Deputy City Atty. SBN 234768
9 **CITY OF PALO ALTO**
10 250 Hamilton Ave., 8th Floor
11 Palo Alto, CA 94301
12 T: (650) 329-2171; F: (650) 329-2646

13 Attorneys for Charging Party
14 CITY OF PALO ALTO

15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,
18 Charging Party,
19 v.
20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,
22 Respondent.

Case No. SF-CO-210-M

DECLARATION OF RENE EYERLY

- 23 1. I, RENE EYERLY, am employed by the City of Palo Alto ("City") as the Manager of
24 Solid Waste for the City's Public Works Department. I have held this position with the City since
25 June 2009. Prior to working for the City, I worked as an environmental consultant in Portland, OR.
26 I have personal knowledge of the facts below. If called to testify to the following, I could and would
27 competently do so.
28 2. I am submitting this declaration in support of the City's Request for Injunctive Relief
to enjoin certain essential positions represented by Service Employees International Union, Local
521("SEIU") from striking.
3. I am assigned to Work at the City's Municipal Services Center, Building C, located at
3201 East Bayshore Road in Palo Alto, California.

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is City of Palo Alto, 250 Hamilton Avenue, 8th Floor, Palo Alto, CA 94301.

On September 21, 2009, I served the within documents:

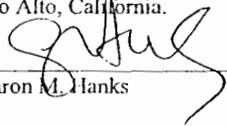
DECLARATION OF RENE EYERLY

on the parties listed below by the applicable methods:

Personal Delivery:

Laura Davis, Regional Counsel
Public Employment Relations Board (PERB)
Office of the General Counsel
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Facsimile No.: (510) 622-1027
Email Address: LDavis@perb.ca.gov

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 21, 2009, at Palo Alto, California.



Sharon M. Hanks

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is City of Palo Alto, 250 Hamilton Avenue, 8th Floor, Palo Alto, CA 94301.

On September 21, 2009, I served the within documents:

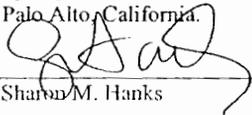
DECLARATION OF RENE EYERLY

on the parties listed below by the applicable methods:

by causing such documents to be delivered to Federal Express for First Overnight Courier service.

Tami Bogert, General Counsel
Wendy Ross, Deputy General Counsel
Public Employment Relations Board (PERB)
Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Facsimile No.: 916-327-6377
Email Address: WRoss@perb.ca.gov
Email Address: tbogert@perb.ca.gov

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 21, 2009, at Palo Alto, California.



Sharon M. Hanks

ATTACHMENT J

RECEIVED
SF REGIONAL OFFICE
2009 SEP 21 PM 3:28

1 Adrianna E. Guzman, SBN 188812
2 **LIEBERT CASSIDY WHITMORE**
3 A Professional Law Corporation
4 153 Townsend Street, Suite 520
5 San Francisco, CA 94107
6 T: (415) 512-3000, F: (415) 856-0306

7 **GARY M. BAUM**, City Attorney SBN 117200
8 **MELISSA C. TRONQUET**, Deputy City Atty. SBN 234768
9 **CITY OF PALO ALTO**
10 250 Hamilton Ave., 8th Floor
11 Palo Alto, CA 94301
12 T: (650) 329-2171; F: (650) 329-2646

13 Attorneys for Charging Party
14 CITY OF PALO ALTO

15 STATE OF CALIFORNIA
16 PUBLIC EMPLOYMENT RELATIONS BOARD

17 CITY OF PALO ALTO,
18 Charging Party,
19 v.
20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521,
22 Respondent.

Case No. SF-CO-210-M

**DECLARATION OF RUSSELL
CARLSEN IN SUPPORT OF THE CITY
OF PALO ALTO'S REQUEST FOR
INJUNCTIVE RELIEF**

- 23 1. I, RUSSELL CARLSEN, am employed by the City of Palo Alto as its Director of
24 Human Resources. I have held this position with the City for more than four years. I have personal
25 knowledge of the facts below. If called to testify to the following, I could and would competently do
26 so.
27 2. I am submitting this declaration in support of the City's Request for Injunctive Relief
28 to enjoin certain essential positions represented by Service Employees International Union, Local
521 ("SEIU") from striking.
3. In my capacity as Director of Human Resources, I am copied from time to time on e-
mail messages that SEIU sends to its Palo Alto members.
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4. On Saturday, September 19, 2009, at 11:20 a.m., SEIU Chapter Co-Secretary Joel Dino sent an e-mail from his City e-mail account to City SEIU members and copying me. In his message, Mr. Dino stated "We are planning a concerted work action for Thursday September 24th. Please contact your CATs for full details." A true and correct copy of the e-mail I received from Mr. Dino is attached as Exhibit "A".

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 21st day of September, 2009, at Palo Alto, California.


Russell Carlsen

EXHIBIT "A"

From: "Dino, Joel" <joel.dino@cityofpaloalto.org>
Date: September 19, 2009 11:20:22 AM PDT
To: "SEIU" <SEIU@CityofPaloAlto.org>
Cc: "Carlsen, Russ" <Russ.Carlsen@CityofPaloAlto.org>, <Adolfo.Reidel@seiu521.org>
Subject: Negotiation Update

Friends,

A message from your Negotiation Team,

Joel Dino
Chapter Co-Secretary

Negotiations Update:

The Union and the City met Thursday to continue negotiations. The City made no significant movement on our two most important issues: healthcare and retirement.

The Union and the City continue negotiations today (Friday) and we will have updates to you.

We are planning a concerted work action for Thursday September 24th. Please contact your CATs for full details.

Also, you will be contacted by members during the next few days at home or cell to continue to inform you on negotiations

In Solidarity,

Negotiation Team

9/21/2009

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is City of Palo Alto, 250 Hamilton Avenue, 8th Floor, Palo Alto, CA 94301.

On September 21, 2009, I served the within documents:

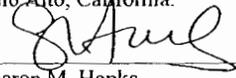
DECLARATION OF RUSSELL CARLSEN

on the parties listed below by the applicable methods:

Personal Delivery:

Laura Davis, Regional Counsel
Public Employment Relations Board (PERB)
Office of the General Counsel
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Facsimile No.: (510) 622-1027
Email Address: LDavis@perb.ca.gov

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 21, 2009, at Palo Alto, California.



Sharon M. Hanks

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is City of Palo Alto, 250 Hamilton Avenue, 8th Floor, Palo Alto, CA 94301.

On September 21, 2009, I served the within documents:

DECLARATION OF RUSSELL CARLSEN

on the parties listed below by the applicable methods:

by causing such documents to be delivered to Federal Express for First Overnight Courier service.

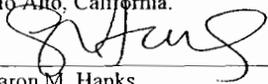
facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

by transmitting via e-mail the documents listed above to the persons at the e-mail addresses set forth below.

Tami Bogert, General Counsel
Wendy Ross, Deputy General Counsel
Public Employment Relations Board (PERB)
Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Facsimile No.: 916-327-6377
Email Address: WRoss@perb.ca.gov
Email Address: tbogert@perb.ca.gov

Vin Harrington, Esq.
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Ste. 200
Alameda, CA 94501-1091
Facsimile No.: 510-337-1023
Email Address: vharrington@unioncounsel.net

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 21, 2009, at Palo Alto, California.



Sharon M. Hanks

ATTACHMENT K

PUBLIC EMPLOYMENT RELATIONS BOARD



Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 322-3198
Fax: (916) 327-6377

**VIA FACSIMILE AND E-MAIL**

September 22, 2009

Melissa C. Tronquet, Deputy City Attorney
City of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301

Adrianna E. Guzman, Attorney
Liebert, Cassidy & Whitmore
153 Townsend Street, Suite 520
San Francisco, CA 94107

Vincent Harrington, Jr., Attorney
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Re: *City of Palo Alto v. SEIU Local 521*
Injunctive Relief Request No. 576 (Unfair Practice Charge No. SF-CO-210-M)

Dear Counsel:

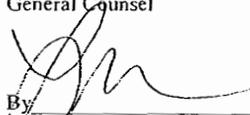
As you were informed telephonically this morning before 10:00 a.m., the Public Employment Relations Board (PERB or Board) presently intends to appear on Wednesday, September 23, 2009, in the Santa Clara County Superior Court to make an ex parte application for temporary restraining order, order to show cause re temporary restraining order and preliminary injunction. The court has multiple locations; civil matters such as this are generally heard at 191 N. First Street, San Jose, California 95113 and/or 161 N. First Street, San Jose, California 95113. We will be informed by the court tomorrow after 8:00 a.m.—and will notify you promptly thereafter—regarding at which court location, in which department, and at what time this matter is scheduled to be heard.

Please inform whether counsel for SEIU Local 521 will oppose PERB's ex parte application.

Sincerely,

TAMI R. BOGERT
General Counsel

By


Laura Z. Davis
Regional Attorney

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1330 Broadway, Oakland, CA 94612.

On September 22, 2009, I served the Letter re Ex Parte Notice (Injunctive Relief Request No. No. 576; UPC Case No. SF-CO-210-M) on the parties listed below by electronic mail and also by

___ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

___ personal delivery.

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Gary M. Baum, City Attorney
Melissa C. Tronquet, Deputy City Attorney
City of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301
FAX: 650-329-2646
Gary.baum@cityofpaloalto.org
Melissa.tronquet@cityofpaloalto.org

Adrianna E. Guzman, Attorney
Liebert, Cassidy & Whitmore
153 Townsend Street, Suite 520
San Francisco, CA 94107
FAX: 415-856-0306
Aguzman@lcwlegal.com

Vincent Harrington, Jr., Attorney
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
FAX: 510-337-1023
Vharrington@unioncounsel.net

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 22, 2009, at Oakland, California.

C.E. Johnson

(Type or print name)



(Signature)

UCS

1 TAMI R. BOGERT, Bar No. 206561
 General Counsel
 2 WENDI L. ROSS, Bar No. 141030
 Deputy General Counsel
 3 LAURA Z. DAVIS, Bar No. 196494
 Regional Attorney
 4 KATHARINE M. NYMAN, Bar No. 249067
 PUBLIC EMPLOYMENT RELATIONS BOARD
 5 1031 18th Street
 Sacramento, California 95811-4124
 6 Telephone: (916) 322-3198
 Facsimile: (916) 327-6377

FILED
 2009 SEP 23 AM 9:08
 David H. Yarnes, Clerk of the Superior Court
 County of Santa Clara, California
 By: [Signature]

7 Attorneys for State of California, Public Employment Relations Board

9 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 10 COUNTY OF SANTA CLARA

11 PUBLIC EMPLOYMENT RELATIONS BOARD,
 12 Plaintiff,
 13 v.
 14 SERVICE EMPLOYEES INTERNATIONAL
 15 UNION LOCAL 521,
 16 Defendant.

109CV153088
Case No.

MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 SUPPORT OF EX PARTE
 APPLICATION OF PLAINTIFF
 PUBLIC EMPLOYMENT
 RELATIONS BOARD FOR:
 1. Temporary Restraining Order;
 2. Order to Show Cause Re
 Preliminary Injunction
 [Code Civ. Proc., §§ 526-27, Civ.
 Code, § 3439.07]

Date: September 23, 2009
 Time: To Be Determined
 Dept. To Be Determined

Exempt from Fees
 (Gov. Code, § 6103.)

28

1 **INTRODUCTION**

2 On September 19, 2009, the Service Employees International Union Local 521 (SEIU or
3 Union) confirmed that its members employed by the City of Palo Alto (City) intend to engage in a
4 concerted work action on or about September 24, 2009. The Union has been preparing for an
5 employee strike since August 27, 2009, when 95% of its voting members authorized a strike due to
6 their dissatisfaction with the progress of ongoing contract negotiations with the City. The SEIU-
7 represented employees in the City's General Bargaining Unit (General Unit) comprise more than
8 half of the City's workforce and include employees who occupy positions critical to public health or
9 safety. These essential employees include Police Dispatchers, Animal Control Officers, specially
10 certified Water Plant Technicians, and critical employees of the City's public utilities and landfill
11 operations.

12 The City's numerous declarations establish that the absence of these essential employees due
13 to a strike or work stoppage would cripple City operations and pose substantial, imminent danger to
14 the residents of Palo Alto and surrounding communities. Among many other perils, calls to 9-1-1
15 would go unanswered, certain fire-prevention activities would be curtailed, polluted wastewater
16 could be dumped in the ocean, and the City's ability to respond to an emergency—such as an
17 earthquake—would be entirely compromised.

18 While conceding that public employees generally may strike, the City asked SEIU to ensure
19 that a small number of essential employees remain on the job to protect public health and safety, and
20 to ensure the City is able to preserve a basic level of emergency service to its residents. SEIU
21 declined to do so, asserting in essence that its members have a plenary right to strike without regard
22 to the consequences. Accordingly, the City asked the Public Employment Relations Board (PERB
23 or Board) to seek injunctive relief to prohibit its essential employees from engaging in any strike or
24 work stoppage during their working hours on or about September 24, 2009.

25 **STATEMENT OF FACTS**

26 SEIU and the City were parties to a collectively bargained Memorandum of Agreement
27 (MOA) that expired on June 30, 2009. (Declaration of Laura Z. Davis (Decl. L. Davis), ¶ 10,
28 Attachment F.) Since May 4, the parties have held approximately 19 bargaining sessions to meet

1 and confer¹ over a successor MOA, but have not yet reached agreement. (Decl. L. Davis, ¶ 12 ,
2 Attachment H.)

3 In a bargaining session on August 5, 2009 and again on August 12, 2009, SEIU's lead
4 negotiator advised the City that SEIU was considering an employee strike and stated that SEIU did
5 not wish to continue to meet and confer beyond September 15, 2009. (Decl. L. Davis, ¶ 10,
6 Attachment F.) On August 27, 2009, SEIU held a strike vote and reported that 95% of its members
7 voted in favor of striking. (Decl. L. Davis, ¶ 10, Attachment F.)

8 On September 3, 2009, the City wrote to SEIU seeking an agreement that employees
9 designated by the City as essential would not participate in a strike. (Decl. L. Davis, ¶ 10,
10 Attachment F.) SEIU declined the City's request. (Decl. L. Davis, ¶ 10, Attachment F.)

11 On September 8, 2009, approximately 25% of the SEIU-represented workforce failed to
12 report to work in an apparent sick-out. (Decl. L. Davis, ¶ 10, Attachment F.) On September 10,
13 2009, SEIU held a rally during work time, causing a walkout of employees during the
14 demonstration. (Decl. L. Davis, ¶ 10, Attachment F.)

15 On September 11, 2009, SEIU informed the City that it would begin picketing City facilities
16 on September 14, 2009 and that it did not plan to strike on September 14 or 15, 2009. (Decl. L.
17 Davis, ¶ 10, Attachment F.) SEIU reiterated its position that it would not bargain after September
18 15, 2009. (Decl. L. Davis, ¶ 10, Attachment F.)

19 On September 15, 2009, the City received a letter from the South Bay Labor Council stating
20 that its affiliated unions (representing approximately 110,000 workers) would support the strike
21 threatened by SEIU, including honoring picket lines. (Decl. L. Davis, ¶ 10, Attachment F.)

22 On September 15, 2009, the City filed an Unfair Practice Charge with the Public
23 Employment Relations Board (PERB or Board or Plaintiff) alleging in part that SEIU violated its
24 duty to bargain in good faith with the City by: (1) arbitrarily setting September 15, 2009 as a
25 deadline for agreement; (2) threatening an employee strike if agreement is not reached by September
26 15, 2009; and (3) refusing to agree to exempt certain essential personnel from said strike.

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¹ The parties are meeting and conferring pursuant to Government Code section 3505.

1 Simultaneously, the City filed with PERB a request pursuant to California Code of
2 Regulations, title 8, section 32450, asking PERB to seek injunctive relief in Superior Court to
3 prevent a strike or work stoppage of the City's employees in the General Unit. PERB uses a two-
4 part standard when making such a determination: (1) is there "reasonable cause" to believe that the
5 concerted activity constitutes an unfair practice; and (2) is injunctive relief "just and proper."
6 (*Public Employment Relations Bd. v. Modesto City School District* (1982) 136 Cal.App.3d 881,
7 891.) On September 22, 2009, PERB granted the City's request for injunctive relief with regard to
8 the essential employees in the General Unit.

9 The City has identified 108 positions in 27 classifications it deems essential to maintaining
10 City operations in the event of a strike or work stoppage.² (Decl. L. Davis, ¶¶ 7, 8, 9, 10, and 11;
11 Attachments C, D, E, F, and G.) These include employees who staff the City's Wastewater
12 Treatment Plant, Landfill, Public Works Department, and Police Department, along with the City's
13 Animal Control Officers, Park Rangers, Parks Division Inspectors, and Zoo Keeper. (Decl. L.
14 Davis, ¶¶ 7, 8, 9, 10, and 11; Attachments C, D, E, F, and G.) The City has submitted evidence to
15 support its determination that these employees are essential to protect public health or safety and that
16 a strike or work stoppage including these essential employees would pose a substantial and imminent
17 danger to public health or safety. (Decl. L. Davis, ¶¶ 7, 8, 9, 10, and 11; Attachments C, D, E, F,
18 and G.)

19 The parties most recently met and negotiated on September 14, 15, 17, and 18, 2009. (Decl.
20 L. Davis, ¶ 10 and 12; Attachments F and H.) SEIU has not agreed to meet beyond September 18,
21 2009. (Decl. L. Davis, ¶¶ 10 and 12; Attachments F and H.) Neither SEIU nor the City has declared
22 that bargaining is at impasse or that the parties should use mediation to resolve the dispute.

23 ARGUMENT

24 PERB's powers under the Meyers-Milias-Brown Act (MMBA),³ include the authority to
25

26 ² The General Unit (the bargaining unit at issue) includes approximately 600 employees,
27 slightly more than half of the City's total workforce of approximately 1,100 employees. (Decl. L.
28 Davis, ¶ 10, Ex. F.)

³ The MMBA is codified at Government Code section 3500 et seq. Unless otherwise
specified, all statutory references herein are to the Government Code.

1 seek judicial intervention when appropriate. (Gov. Code, §3509(a) and California Code of
2 Regulations, title 8, section 32450 et seq.) Recognizing that after-the-fact remedies are not always
3 adequate, the Legislature authorized PERB to seek injunctive relief, prior to an administrative
4 hearing, to halt alleged unfair practices. (Gov. Code, §§ 3509(a), 3541.3(j).) Following applicable
5 federal precedent, the Court of Appeal has applied a two-pronged test in determining the
6 appropriateness such requests for injunctive relief:

7 Before injunctive relief may be granted on the request of [these
8 administrative agencies], the trial court must determine [1] that there
9 exists *reasonable cause* to believe an unfair labor practice has
 committed and [2] that the relief sought is *just and proper*. (Citations
 omitted.)

10 (*Public Employment Relations Bd. v. Modesto City School District, supra*, 136 Cal.App.3d 881, 891;
11 emphasis added.) To meet the first prong (“reasonable cause”) of the test, the Board need only
12 establish that the reasons why it believes an unfair labor practice has been committed are neither
13 insubstantial nor frivolous. (*Id.* at 896-897.) Even application of novel theories of law will establish
14 “reasonable cause,” so long as the theories are arguable. (*Ibid.*) The second prong of the test is met
15 when a court determines that injunctive relief is “just and proper.”

16 Although injunctive relief is an extraordinary remedy, it may be used whenever either an
17 employer or union has committed unfair practices that, under the circumstances, would render any
18 final order of PERB meaningless. Moreover, preservation and restoration of the status quo are
19 appropriate considerations in granting temporary relief. (*Modesto, supra*, 136 Cal.App.3d 881, 891.)

20 PERB need not establish the existence of “irreparable injury,” as the term is defined in
21 traditional equitable proceedings involving private parties, as a prerequisite to obtaining injunctive
22 relief. (Code Civ. Proc., § 526, subd. (3); see also CEB, *California Civil Procedure Before Trial*, §
23 15.11.) Application of the two-pronged *Modesto* test to the present case demonstrates that PERB’s
24 requested interim remedy is appropriate.

25 **I. Strikes by Essential Public Employees are Unlawful if Public Health or Safety is at Stake**

26 The California Supreme Court has held that strikes by public employees are not unlawful at
27 common law unless or until it is demonstrated that such strike creates a substantial and imminent
28 threat to public health or safety. (*County Sanitation District No. 2 of Los Angeles v. Los Angeles*

1 *County Employees Assn.* (1985) 38 Cal.3d 564, 573 (*County Sanitation*.) The Court specifically
2 found that employers may prohibit strikes involving “essential public services, the disruption of
3 which would seriously threaten the public health and safety.” (*County Sanitation, supra*, 38 Cal.3d
4 564, 580; see in accord, *Sonoma County Organization of Public Employees, Local 707, SEIU, AFL-*
5 *CIO v. County of Sonoma* (1991) 1 Cal.App.4th 267, 279 (*Sonoma County*); *City of Santa Ana v.*
6 *Santa Ana Police Benevolent Association* (1989) 207 Cal.App.3d 1568, 1572 (*City of Santa Ana*.)
7 As the Supreme Court explained, “the right of public employees to strike is by no means unlimited.
8 Prudence and concern for the general public welfare require certain restrictions.” (*County*
9 *Sanitation, supra*, 38 Cal.3d 564, 585-586.) Thus, a strike is unlawful if it “creates a substantial and
10 imminent threat to the health or safety of the public.” (*Ibid*) The courts are to determine on a case-
11 by-case basis whether the public interest overrides the right of employees to strike. (*Ibid*)

12 The courts have identified several factors to consider in determining whether employees are
13 essential, including the length of the expected strike, the likelihood that replacement personnel could
14 be found to provide basic public services (*County Sanitation, supra*, 38 Cal.3d 564, 585-586), and
15 whether there is sufficient notice of the strike to find temporary replacements (*Sonoma County,*
16 *supra*, 1 Cal.App.4th 267, 279). The overriding consideration is whether there is an immediate
17 threat to public health or safety. (*Id. at* 270.)

18 Here, the City has reviewed its operations and identified specific dangers that will be
19 triggered if its essential employees are allowed to engage in a strike or work stoppage. The City’s
20 declarations demonstrate that the absence of the essential employees will significantly threaten the
21 public welfare. For example, a strike or work stoppage by its specially trained and certified Police
22 Dispatchers will require the City to shut down or severely limit its 9-1-1 and police dispatch service.
23 (Decl. L. Davis, ¶ 7, Attachment C.) There are no replacement workers available to perform this
24 work and the City’s inability to respond to 9-1-1 calls poses an obvious and immediate threat to
25 public safety and well-being. (Decl. L. Davis, ¶ 7, Attachment C.) As another example, a strike or
26 work stoppage by the City’s specially trained Wastewater Plant workers will cripple the City’s
27 ability to process and treat sewage, resulting in the immediate potential for pollution, contamination,
28 fire, and disease. (Decl. L. Davis, ¶ 8, Attachment D.) The Wastewater Plant must comply with

1 stringent state and federal requirements to monitor waste discharge from the plant, and its workers
2 must be able to respond to emergency situations in the event of an earthquake, spill, or other events.
3 These workers cannot be replaced due to the specialized and unique nature of the work performed.
4 (Decl. L. Davis, ¶ 8, Attachment D.) There are no reasonable alternatives that would allow the City
5 to continue to provide these and other essential public services in the event of the anticipated strike
6 or work stoppage. (Decl. L. Davis, ¶ 8, Attachment D.) As a further example, a strike or work
7 stoppage by essential employees would impact and potentially shut down the public utilities
8 (electric, gas, and water) operated by the City. (Decl. L. Davis, ¶ 11, Attachment G.) Essential
9 employees of the utilities perform emergency system repairs on sewer backups, clean contaminated
10 spills, control and repair gas leaks, and respond to power outages. (Decl. Davis, ¶ 11, Attachment
11 G.) Again, replacement workers for these essential employees are unavailable. (Decl. L. Davis, ¶
12 11, Attachment G.)

13 Accordingly, the City has supplied evidence sufficient to establish that the absence of its
14 essential employees, due to said strike or work stoppage, will imperil public health or safety and
15 pose an imminent threat to the public welfare.

16 **II. Reasonable Cause Exists that SEIU's Threatened Strike of Essential Employees During**
17 **Bargaining is an Unlawful Pressure Tactic and an Unfair Labor Practice**

18 PERB has held that certain conduct during bargaining may constitute an unlawful pressure tactic
19 and therefore fall within the confines of unlawful bad-faith bargaining. (*Compton Unified School*
20 *District* (1987) PERB Order No. IR-50 [11 PERC 18076]; see also, *Vallejo City Unified School*
21 *District* (1993) PERB Decision No. 1015 [17 PERC 24166].) Good-faith negotiations are those free
22 from coercive tactics. (*Ibid.*)

23 Here, it is argued that SEIU's action of encouraging, condoning, enticing, and/or causing the
24 City's essential employees to engage in a strike or work stoppage constitutes an unlawful pressure
25 tactic and consequently amounts to bad-faith bargaining. (See, e.g., *San Diego Teachers Association*
26 (1979) 24 Cal.3d 1, 8.) The City contends that SEIU has taken overt action demonstrating that it
27 intends to hold a strike or work stoppage on or about September 24, 2009 with regard to the General
28 Unit, which includes essential City employees. In particular, SEIU's members voted

1 overwhelmingly to strike, the South Bay Labor Council has advised the City that its affiliates are
2 prepared to honor a strike, and SEIU has recently advised its members in meetings and e-mail that it
3 plans to engage in "concerted work action" on or about September 24, 2009. (Decl. L. Davis, ¶ 10,
4 13, and 14; Attachments F, I, and J.)

5 As discussed above, said strike or work stoppage is unlawful to the extent it includes
6 employees essential to ensure the public's health or safety. The City asked SEIU to agree that any
7 strike or work stoppage will exclude those essential employees, but SEIU refused. (Decl. L. Davis, ¶
8 10, Attachment F.) The City fully expects that the anticipated strike or work stoppage will include
9 those essential employees.

10 The Board has required unions of public employees to give reasonable notice of a strike and
11 has found that even a lawful strike may be an unlawful pressure tactic—warranting injunctive
12 relief—if it is a "surprise" strike held without notice to the employer. (*San Ramon Valley Unified*
13 *School District* (1984) PERB Order No. IR-46 [requiring 60 hours' notice prior to a strike by school
14 employees].) Here, SEIU has been threatening and alluding to a strike for some time. SEIU has
15 already held a sick-out and a short work stoppage over bargaining issues, demonstrating that it is
16 ready and willing to take economic action against the employer. The uncertainty, until just recently,
17 of when and how SEIU will strike, especially when combined with the threat that such concerted
18 work action will involve essential City employees, constitutes an unlawful pressure tactic and
19 amounts to bad-faith bargaining by SEIU in violation of the MMBA.

20 **III. Injunctive Relief is Just and Proper**

21 In *City of Santa Ana, supra*, 207 Cal.App.3d 1568, the Court of Appeal held that police work
22 stoppages are illegal and did not require the City of Santa Ana to establish that actual harm would
23 occur. Noting that "hindsight" was not an appropriate test in these circumstances, the Court stated:

24 On most days, a work slowdown or stoppage by the police will not
25 pose a threat to the public health or safety. On good days, there are no
26 murders, no grid lock, and no chemical spills. A work slowdown by
27 the graveyard shift on a quiet night might never be noticed. How
28 wonderful hindsight. Appellate courts can look back months or years
and conclude that a police strike did or did not imperil public safety.
Unfortunately, trial judges asked to enjoin police strikes are not
blessed with clairvoyant powers—they cannot foresee an earthquake,
a madman's shooting spree, or a riot. If a disaster occurs during a
police slowdown or strike, the inevitable investigation which will

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follow will undoubtedly point to the absent dispatcher or tardy patrol car as a cause.

(*Id.* at 1572-1573.) Therefore, courts cannot speculate that adequate coverage will be sufficient where health or safety concerns are involved.

The City has set forth ample evidence to establish that—to avoid posing substantial and irreparable harm to the public’s health or safety—it must maintain certain minimum staffing levels for essential positions and City operations. As discussed in *Santa Ana, supra*, 207 Cal.App.3d 1568, the City does not have the benefit of hindsight in making this determination, and must consider the reasonably foreseeable consequences of disaster, accident, and civil unrest to ensure it can continue to protect and defend the public it serves. The City simply cannot let 9-1-1 calls go unanswered, risk a fire at its landfill, or allow its public utilities to fail. Accordingly, certain City employees must be enjoined by court order from engaging in the anticipated strike or work stoppage during their working hours.

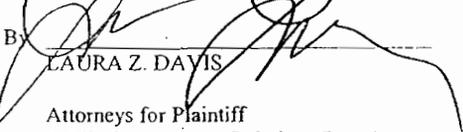
CONCLUSION

In this proceeding, involving a limited standard of review, PERB has plainly met its burden of showing that “reasonable cause” exists to believe that SEIU’s conduct constitutes an unfair labor practice and that injunctive relief is “just and proper” given the serious threat of substantial and irreparable harm that will occur absent injunctive relief in this situation.

For these reasons, PERB asks this Court to enjoin the essential City employees represented by SEIU in the General Unit from engaging during their working hours in any strike or work stoppage on or about September 24, 2009.

Dated: September 22, 2009

Respectfully submitted,
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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

PUBLIC EMPLOYMENT RELATIONS BOARD,
Plaintiff,
v.
SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521
Defendant.

FILED
SEP 23 2009

David H. ...
County of Santa Clara, California
By: *J. Cao-Nguyen*

109CV153088

Case No.

~~(PROPOSED)~~
ORDER GRANTING
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION

Date: September 23, 2009
Time: To Be Determined
Dept. To Be Determined

1 Upon reading the application, complaint, supporting declarations, and points and authorities
2 on file in this action, the Court finds that:

3 1. Plaintiff has established the probable validity of its claims and the probability that
4 there is an immediate danger that Defendant Service Employees International Union Local 521
5 (SEIU) will violate the Government Code by engaging in a strike or work stoppage on or about
6 September 24, 2009.

7 2. This is a proper case for issuance of an Order to Show Cause and a Temporary
8 Restraining Order, and unless a Temporary Restraining Order issues, the City of Palo Alto will face
9 substantial and irreparable injury before the matter can be heard on notice.

10 Accordingly, IT IS HEREBY ORDERED:

11 1. That Defendant SEIU, its agents, employees, representatives, officers, organizers,
12 committee persons, stewards, members, and all corporations, unincorporated associations, and
13 natural persons acting in concert and participation with any of them, until a hearing or trial on a
14 preliminary injunction, be enjoined and restrained;

15 a. from calling, engaging in, continuing, sanctioning, ~~inducing~~, aiding, ~~enticing~~,
16 ~~encouraging~~, abetting, or assisting certain General Unit employees—specifically but not limited to
17 ~~those employed in the classifications identified in Exhibit "A" ("essential employees")~~—from
18 AS
19 those employed in the classifications identified in Exhibit "A" ("essential employees")—from

20 engaging in any strike, walkout, slowdown, or work stoppage of any nature against the City of Palo
21 Alto during their working hours on or about September 24, 2009; ~~AND CONTINUING~~
22 THROUGH OCTOBER 13, 2009

23 b. from continuing in effect ~~or refusing to rescind~~ any strike, walkout, slowdown, or work
24 stoppage, notice, call, order, or sanction heretofore issued by Defendant to or involving "essential
25 ~~employees~~ with respect to the anticipated General Unit strike, walkout, slowdown, or work
26 stoppage on or about September 24, 2009, ~~AND CONTINUING THROUGH OCTOBER~~
27 13, 2009

28 2. That Defendant and its agents, employees, representatives, officers, organizers, committee
persons, stewards, members, and all corporations, unincorporated associations, and natural persons
acting in concert and participation with any of them, until a hearing or trial on a preliminary
injunction, be enjoined and restrained from doing or attempting to do, directly or indirectly, by any

1 means, method or device whatsoever, any of the acts enjoined in paragraph 1 hereof and each
2 subdivision thereof during the duration of this action.

3 3. That a Temporary Restraining Order be granted, enjoining and restraining SEIU, its
4 agents, employees, representatives, officers, organizers, committee persons, stewards, and members,
5 and all persons acting in concert with them or any of them, until the hearing upon an Order to Show
6 Cause, from doing or causing or permitting to be done any of the acts complained of in paragraph 1
7 hereof.

8 4. That Defendant SEIU appear before this Court in the courtroom of DEPT. 2, on
9 OCTOBER 13, 2009, at 1:30 p.m., then and there to show cause why a
10 preliminary injunction should not be issued enjoining SEIU and its agents, employees,
11 representatives, officers, organizers, committee persons, stewards, and members, and all persons
12 acting in concert with them or any of them, from engaging in or performing the following acts prior
13 to such time:

14 a. from calling, engaging in, continuing, sanctioning, ~~inducing~~, aiding, ~~enticing~~,
15 ~~encouraging~~, abetting, or assisting certain General Unit employees ~~specifically but not limited to~~
16 ~~those employed in the classifications~~ ^{AS} identified in Exhibit "A" ("essential employees")—from
17 engaging in any strike, walkout, slowdown, or work stoppage of any nature against the City of Palo
18 Alto during their working hours;

19 b. from continuing in effect or ~~refusing to rescind~~ any strike, walkout, slowdown, or work
20 stoppage, notice, call, order, or sanction heretofore issued by Defendant ^{DIRECTED TO} to or involving "essential
21 employees" with respect to the anticipated General Unit strike, walkout, slowdown, or work
22 stoppage. ^{AS IDENTIFIED IN EXHIBIT A}

23 IT IS FURTHER ORDERED that a copy of the complaint, together with a copy of this Order
24 to Show Cause and Temporary Restraining Order, accompanying declarations, and points and
25 authorities must be filed and served on SEIU not later than SEPT. 23, 2009. The opposition papers
26 must be filed and served on Plaintiff by mail no later than OCT. 8, 2009 BY ELECTRONIC
27 SERVICE
28 A reply brief must be filed and served on SEIU by mail no later than _____

1 Dated: September 2009

WM

2 City of Palo Alto's Motion to Intervene
3 by Ex Parte Application is denied.

4 9/23/09

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JUDGE OF THE SUPERIOR COURT

William J. Elfving

EXHIBIT A

~~Attachment A~~

1 action, the supporting declarations, points and authorities, it appears to the satisfaction of the court
2 that this is a proper case for granting a temporary restraining order and Order to Show Cause re:
3 Preliminary Injunction.

4 1. CITY has established the probable validity of its claims and the probability that there is an
5 immediate danger that SEIU will violate the Government Code by engaging in a strike or work
6 stoppage on or about September 24, 2009. Failure to issue this Temporary Restraining Order would
7 result in an imminent threat to public health, safety and welfare.

8 2. This is a proper case for issuance of an Order to Show Cause and a Temporary
9 Restraining Order, and unless a Temporary Restraining Order issues, the City of Palo Alto and its
10 residents will face substantial and irreparable injury before the matter can be heard on notice.

11 IT IS HEREBY ORDERED:

12 1. That Defendant SEIU, its agents, employees, representatives, officers, organizers,
13 committee person, stewards, members, and all corporations, unincorporated associations, and natural
14 persons acting in concert and participation with any of them, until a hearing or trial on a preliminary
15 injunction, be enjoined and restrained;

16 a. from calling, engaging in, continuing, sanctioning, inducing, adding, enticing,
17 encouraging, abetting, or assisting SEIU employees – specifically those employed in the
18 classifications listed below from engaging in any strike, walkout, slowdown, or work stoppage of
19 any nature against the City of Palo Alto during their work hours on or about September 24, 2009,

20 b. from continuing in effect or refusing to rescind any strike, walkout, slowdown, voluntary
21 furlough, or work stoppage, notice, call order, or sanction heretofore issued by SEIU to involving
22 “essential employees” with respect to the anticipated strike, walkout, slowdown, or work stoppage
23 on or about September 24, 2009.

24 2. This Order applies to these employees represented by SEIU in the following job
25 classifications:

26 a. **Police Department**

27 (1) Five Chief Public Safety Dispatchers: Steve Baca, John Clum, Brian Furtado,

28 Sean Smith, and Sheavounda Walker;

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(2) Twelve Public Safety Dispatchers: Terry Anderson, Audrey Bates, Mark Chase, Christine Czerniec, Brina Elmore, Rich Gordon, Melissa Kirkland, Marissa Longoria, Lisa Sandoval, Erika Spencer, Teresa Jo Strickland, and Patricia Whitman; and

~~(3) Two Animal Control Officers: Casey Cushman, and Bill Warrior.~~

WJM
WJM

b. Public Works

(1) ~~Six~~ ^{Five} Senior Water Quality Control Operators: Brad Biehl, ~~Carlton 'Dennis' Black,~~ Richard Brown, David Delzer, Adam Nowak, and Ignacio Paez-Rincon;

WJM

(2) Five Water Quality Control Operator IIs: Narine 'Lenny' Dass, Richard Dass, Thomas Hejza, Michael Olsen, and Corey Walpole;

(3) Two Chemists: Ryan Hoang, and Mei Wong;

(4) One Senior Chemist: Jong 'JJ' Jhun;

(5) Two Lead Electricians: Paul Saini, and Tuan Vu;

(6) One Electrician: Gabor Szegedy;

(7) One Senior Mechanic: Pedro Zalbidea;

(8) Four Maintenance Mechanics: Terrence Condon, Marc dela Cruz, Aaron Miller, and Jerzy Siegenfeld;

(9) Two Heavy Equipment Operators, assigned to Landfill: Eric VanZandt, and Roland Wilson;

(10) One Landfill Technician: Charles Risen; and

(11) One Environmental Specialist: Charles Muir.

c. Utilities

(1) Four Installer/Repair Leads: Doug Bohna, Daniel Mendoza, Dan Sema, and Jackey Wilson;

(2) Nine Installer/Repairers: Richard Anderson, Filiberto Castro, Oscar Garcia, Michael Haynes, Robert Justus, Anthony Meneses, Kevin Odom, Pedro Perez, and Eric Talley;

(3) Two Maintenance Mechanics: Steve Giovannetti, and Jordan Hart,

- 1 (4) Six Heavy Equipment Operators: Brian Bingham, James Givens, Paul
- 2 Gutierrez, Kenneth Hanks, Francisco Ramirez, and Sekou Wiggins;
- 3 (5) Six Water Systems Operators: David Cordova, Chi Du, Dave Ostello, Miguel
- 4 Perez, Marco Torres, and Jason Weir;
- 5 (6) Six Field Service Persons: Mike Akins, Alex Gonzalez, James Jensen, Ruben
- 6 Salas, Abel Silva, and Jorge Silva;
- 7 (7) Three Utility System Operators/Dispatchers: Jesus Cruz, Lani Cubillo, and
- 8 Michael Keate;
- 9 (8) Three Lineperson Leads: George 'Tom' Haupert, Alonzo Nelson, and
- 10 Gregory Schulz;
- 11 (9) Six Linepersons: Mike Bearden, David Johns, Craig Lindquist, Samuel
- 12 Rincon, Adrian Solis, and Anthony Taylor;
- 13 (10) Five Electrician Leads: Richard Baptist, Mark Briseno, Surendra Prasad,
- 14 Pamela Turpen, and Scott Yahne; and
- 15 (11) Seven Electricians: Isaac Armenta, Ryan Johnson, Gene Lindsey, Jayant
- 16 Mishra, Anthony Mouton, Nelson Primeaux, and Kenneth Schwab.

17 d. Community Services

- 18 (1) One Senior Ranger: Daren Anderson;
- 19 (2) One Producer/Science: Rob Steble; and
- 20 (3) Inspector, Field Services: James Moss.

21 These positions represent essential functions that cannot strike due to the negative effective
22 upon public health, safety and welfare. These positions include Real Party in
23 Interest's employees who work in the following job classifications that provide
24 essential services to protect the public health and safety: Chief Public Safety
25 Dispatchers; Public Safety Dispatchers; Animal Control Officers; Senior Water
26 Quality Control Operators; Water Quality Control Operator IIs; Chemists; Senior
27 Chemists; Lead Electricians; Electricians; Senior Mechanics; Public Works
28 Department Maintenance Mechanics; Heavy Equipment Operators, assigned to

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8 Attorneys for State of California, Public Employment Relations Board

9
 10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 11 COUNTY OF SANTA CLARA

12 PUBLIC EMPLOYMENT RELATIONS BOARD,
 13 Plaintiff,
 14 v.
 15 SERVICE EMPLOYEES INTERNATIONAL
 UNION LOCAL 521,
 16 Defendant.

Case No. 109CV153088

SECOND DECLARATION OF LAURA Z. DAVIS

Date: October 13, 2009
 Time: 1:30 p.m.
 Dept. Two

Exempt from Fees (Gov. Code, § 6103)

22 I, LAURA Z. DAVIS, declare:

- 23 1. I am a Regional Attorney employed by and at the Public Employment Relations Board
 24 (PERB or Board). My job duties include investigating unfair practice charges and requests for
 25 injunctive relief filed with PERB. I was assigned to the instant matter by PERB's General Counsel.
 26 2. During PERB's investigation of the City of Palo Alto's request for injunctive relief, the
 27 City filed with PERB declarations and other documents in support of its request for injunctive relief.
 28 3. Since the Ex Parte Hearing for Temporary Restraining Order and Order to Show Cause,

1 held on September 23, 2009, the City has submitted additional declarations to PERB.

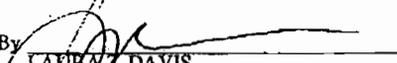
2 4. These declarations support a finding that the City has 87 essential employees. This is a
3 reduction from the 99 essential employees covered by the Temporary Restraining Order issued on
4 September 23, 2009.

5 5. Attached hereto and incorporated herein is the Third Declaration of Glenn Roberts dated
6 October 6, 2009. (Attachment A to this declaration.)

7 6. Attached hereto and incorporated herein is the Third Declaration of Dennis Burns dated
8 October 6 2009. (Attachment B to this declaration.)

9 7. Attached hereto and incorporated herein is the Third Declaration of Valerie Fong dated
10 October 7, 2009. (Attachment C to this declaration.)

11 I declare under the penalty of perjury that the foregoing is true and correct and that this
12 document was executed on the 8th day of October 2009, in Oakland, California.

13
14 By 
15 LAURA Z. DAVIS
Regional Attorney
PUBLIC EMPLOYMENT RELATIONS BOARD

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ATTACHMENT A

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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF PALO ALTO,
Charging Party,
v.
SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521,
Respondent.

Case No. SF-CO-210-M

**THIRD DECLARATION OF GLENN
ROBERTS IN SUPPORT OF
APPLICATION OF PLAINTIFF PUBLIC
EMPLOYMENT RELATIONS BOARD
FOR PRELIMINARY INJUNCTION**

Date: October 13, 2009
Time: 1:30 p.m.
Dept.: 2
The Honorable William J. Elfving

1 "The Discharger shall operate and maintain its wastewater collection,
2 treatment, and disposal facilities in a manner to ensure that all facilities are
3 adequately staffed, supervised, financed, operated, maintained, repaired, and
4 upgraded as necessary, in order to provide adequate and reliable transport,
5 treatment, and disposal of all wastewater from both existing and planned
6 future wastewater sources under the Discharger's service responsibilities.
7 The Discharger shall at all times properly operate and maintain all facilities
8 and systems of treatment and control (and related appurtenances) which are
9 installed or used by the Discharger to achieve compliance with the conditions
10 of this Order. Proper operation and maintenance also includes adequate
11 laboratory controls and appropriate quality assurance procedures." (40 C.F.R.
12 § 122.41(e)). [Regional Water Quality Control Board Order No. R2-2009-
13 0032 (pp. 24, 38)]

14 5. The Plant's normal staff includes employees working in the following areas:
15 administration, engineering, permitting, outreach, operations, maintenance, and laboratory. Only
16 portions of the operations, maintenance, and lab group SEIU staff are absolutely necessary. There is
17 no request for any of the 16 SEIU staff members serving as industrial waste investigators/inspectors,
18 program assistants, engineers, environmental specialists, business analysts, buyers, or storekeepers;
19 this work can be performed by managers or be deferred. However, the work of some water quality
20 control operators, electricians, mechanics, and chemists within SEIU is crucial and absolutely
21 necessary for the operation and maintenance of the Plant.

22 **Plant Operations**

23 6. Pursuant to Title 23 of the California Code of Regulations, Section 3675, the Plant is
24 classified as a Class V plant because it uses biofiltration, activated sludge, and tertiary treatment
25 processes, and operates at such a high design flow rate. As a Class V plant, the City must have a
26 certified Grade III wastewater treatment plant operator on site at all times. The City satisfies that
27 requirement through its Senior WQC Operator classification, which requires Grade III certification
28 from the State Water Resources Control Board. The City's Senior WQC Operators are responsible
for recognizing when emergency corrective repairs or actions are necessary. They are also
responsible for operating complex wastewater treatment and/or water reclamation plants, and must
be able to recognize unusual, inefficient or dangerous operating conditions.

7. The City relies upon its WQC Operator IIs for the safe and efficient operation of its
Plant. WQC Operator IIs must possess a Grade II certification. Together with the Senior WQC
Operators, Operator IIs are responsible for operating complex wastewater treatment and/or water

1 reclamation systems, and for recognizing unusual, inefficient or dangerous operating conditions.
2 They operate the Plant's sewage sludge incinerator, take required water samples for quality analysis
3 and quality control of the water, perform preventative maintenance on machinery that operates 24
4 hours a day, 7 days a week, and respond to emergency situations in the event of an earthquake, spill,
5 or other events.

6 8. A strike by the City's Senior WQC Operators and WQC Operator IIs would hinder
7 the City's ability to safely and effectively operate the Plant, and would pose a direct and imminent
8 threat to the public's health and safety as a result of polluted and contaminated water. The margin of
9 safety needed to operate and maintain a complex, industrial plant is significant, and the operation
10 depends on certified, trained staff to ensure protection of health and safety.

11 9. The City could not safely and efficiently operate its Plant without the assistance of the
12 WQC Operator IIs due to the fact it is such a large facility. Operating the Plant without WQC
13 Operators could result in a failure of the plant and harm to other employees.

14 10. Plant maintenance required by the NPDES permit and necessary for the operation of
15 the Plant consists of preventative, predictive, and corrective maintenance. As the eyes and ears of
16 plant, the WQC operations group provides a significant portion of the predictive maintenance (e.g.,
17 an overheating motor, pump vibration, etc.). WQC Operators also perform a significant portion of
18 the routine preventative maintenance (e.g., oil change, filter change, etc.). The plant's maintenance
19 group performs some preventative/predictive maintenance and the majority of the corrective
20 maintenance, and plant operators depend on the skill of maintenance group staff members to repair
21 damaged machinery. Without the designated plant operators monitoring and maintaining equipment
22 and treatment processes, equipment would fail and cause a sewage spill, illegal bypass, and/or upset
23 condition imperiling health and safety as well as causing severe property and environmental damage.

24 11. There are six operations shifts needing coverage. These shifts are called "Day 1,"
25 "Day 2," "Day 3," "Day 4," "Night 1," and "Night 2." Day 1 and 2 and Night 1 and 2 shifts operate
26 the plant as well as providing preventative maintenance. The Day 3 shift operates the plant on
27 Thursdays and provides preventative maintenance for the plant on other days. The Day 4 shift also
28 provides preventative maintenance and completes special projects, but the Day 4 shift does not

1 operate the plant on any day of the week. The minimum staffing to protect health and safety needed
2 for the Day 1, 2, and 3 and Night 1 and 2 shifts is three persons each. During a labor action, the Day
3 4 shift can be eliminated and its activities covered by the Day 3 shift.

4 12. The plant's existing WQC operations shift schedules are as follows:

5 WQC Operator Schedule (all start times are on days indicated)

- 6 • Day 1 shift -- Sa, Su, We, Th, Mo, Tu, Fr (6:00 a.m. to 6:00 p.m. -- except Thursdays,
7 6:00 a.m. to 2:00 p.m.)
- 8 • Night 1 shift -- Sa, Su, We, Th, Mo, Tu, Fr (6:00 a.m. to 6:00 p.m. -- except
9 Thursdays, 10:00 p.m. to 6:00 a.m.)
- 10 • Day 2 shift -- Mo, Tu, Fr, Sa, Su, We, Th (6:00 a.m. to 6:00 p.m. -- except Thursdays,
11 6:00 a.m. to 2:00 p.m.)
- 12 • Night 2 shift -- Mo, Tu, Fr, Sa, Su, We, Th (6:00 a.m. to 6:00 p.m. -- except
13 Thursdays, 10:00 p.m. to 6:00 a.m.)
- 14 • Day 3 shift -- Mo, Tu, We, Th (6:00 a.m. to 4:00 p.m. -- except Thursdays, 12:00 p.m.
15 to 10:00 a.m.)
- 16 • Day 4 shift -- Tu, We, Th, Fr (6:00 a.m. to 4:00 p.m. every day), which WQC
17 Operators from Day 3 shift could cover.

18 13. The 3 WQC Operations Supervisors are managers who can support the minimal
19 staffing provided by SEIU WQC Operations workers. The Plant's 3 WQC Operations Supervisors
20 (Jannette Huber, Kris Chat, and Stacy Peyton) will initially work 12 hour shifts, 7 days a week, and
21 this workload will be evaluated for safety as a labor action progresses. The managers cannot
22 perform all of the work required by bargaining unit employees in the event of a work stoppage, they
23 must be supported by Senior WQC Operators and WQC Operator IIs. It is essential that the 3 WQC
24 Operations Supervisors are supported by 6 SEIU WQC Senior Operators and 4 SEIU WQC Operator
25 IIs. The list below shows the expected minimum coverage schedule.

- 26 • Night 1: 2 WQC Senior Operators (SEIU), 1 WQC Supervisor (Management)
- 27 • Night 2: 1 WQC Senior Operator (SEIU), 1 WQC Operator II (SEIU), 1 WQC
28 Supervisor (Management)

1 "rounds") is a key part of operating the plant and cannot be classified as deferred maintenance,
2 rounds must be conducted regularly to avoid great risks to health and safety.

3 17. The City cannot hire temporary employees to perform the work done by Senior WQC
4 Operators and WQC Operator IIs because of the specialized nature of the job and because of the
5 special certification required of the position. Title 23 of the California Code of Regulations, section
6 3670.1 and 3670.2 specifically prohibits uncertified persons from operating the Plant.

7 18. The designated operators performed essential work on September 24, 2009 between
8 12:01 a.m. and 10:00 p.m. during the SEIU labor action. The following employees operated and
9 maintained the plant on their assigned shift: Dave Delzer (Day 2), Corey Walpole (Day 2), Mike
10 Olsen (Day 3), Adam Nowak (Day 3), Tom Hezja (Day 3), Richard Brown (Day 4), Richard Dass
11 (Day 4), and Nacho Paez-Rincon (Night 2). These employees covered the Day 2, 3, and 4, and Night
12 2 shifts with support from three WQC Supervisors. Two WQC Supervisors covered the Night 2 shift
13 with Nacho Paez-Rincon, and the other WQC Supervisor covered the Day 2, 3, and 4 shifts. During
14 future labor actions, it will be important to reshuffle workers from team to team to ensure consistent
15 coverage.

16 **Plant Maintenance**

17 19. The City also employs 5 Electricians, 2 Lead Electricians, 1 Senior Mechanic, and 7
18 Maintenance Mechanics in the Public Works Department. They work Monday through Friday, from
19 6:05 a.m. to 3:35 p.m., but are on-call at other times, and receive overtime compensation for work
20 outside of regular hours. These employees predict, prevent, and correct damage to a large array of
21 industrial equipment such as pumps, furnaces, large rotating machines, pipes, blowers, compressors,
22 control systems, circuit breakers, electrical wiring, and so forth. The 13 mechanics and electricians
23 employed by Public Works are overseen by a non-SEIU Assistant Plant Manager who coordinates,
24 plans, and arranges for corrective maintenance in conjunction with operational priorities, safety, and
25 health.

26 20. Employees in the Electrician classification series maintain electrical components,
27 power distribution, power control, and instrumentation used to safely and effectively operate and
28 monitor the City's Plant. A Lead Electrician also maintains the electrical components, power

1 distribution, power control and instrumentation in the City's separate stormwater systems (e.g., flood
2 protection pump stations). These employees maintain electrical systems in a state of operational
3 readiness to ensure effective treatment of sewage, sludge, stormwater, and air emissions in
4 compliance with the Plant's permits.

5 21. Employees in the Mechanics classification series maintain equipment such as pumps,
6 pipes, compressors, and wastewater pollution control equipment used to operate the Plant. They
7 maintain the equipment in a state of operational readiness to ensure effective treatment of sewage,
8 sludge, and air emissions in compliance with the Plant's permits. At a minimum, the City requires a
9 Senior Mechanic, Pedro Zalbidea, and 4 Maintenance Mechanics, Terrence Condon, Marc dela
10 Cruz, and Aaron Miller to operate the Plant safely and in compliance with its permits.

11 22. Due to the constant flow of sewage through the City's Plant, it cannot be shutdown
12 for maintenance and repairs. The Plant must be maintained while it is in operation. While a certain
13 amount of standard work can be deferred or contracted out, the City cannot contract out the work
14 done by the Electricians and Mechanics at the Plant. These employees repair specialized wastewater
15 treatment system equipment, and have significant institutional knowledge about the equipment (e.g.,
16 the sewage sludge incinerators, the incinerator air pollution control equipment, incinerator emissions
17 monitoring systems, wastewater treatment equipment, storm water systems, etc.)

18 23. A strike by all electricians and mechanics in the Public Works Department would
19 present a direct and imminent threat to public health and safety because it would seriously
20 compromise the City's ability to safely and effectively operate the City's Plant. In the maintenance
21 group, mandatory ongoing predictive/preventative maintenance and outstanding corrective
22 maintenance requires the following persons be designated essential workers:

- 23 • Senior Mechanic, 1 of 1: Pedro Zalbidea
- 24 • Maintenance Mechanic, 3 of 7: Marc dela Cruz, Terry Condon, Aaron Miller
- 25 • Lead Electricians, 2 of 2: Paul Saini and Tuan Vu
- Electricians, 1 of 3: Gabor Szegedy

26 24. The list above has one less maintenance mechanic than previously requested based on
27 the experience of the September 24, 2009 labor action by SEIU. Jerzy Siegenfeld (Maintenance
28 Mechanic), worked but not on essential tasks, and therefore the total number of maintenance

1 mechanics needed has been reduced by one. In the Laboratory, Jerzy repaired the de-ionized water
2 production unit and repaired a fume hood sink. Jerzy also worked on reconfiguring the Number 5
3 chlorine residual analyzer plumbing to improve the reliability of the unit.

4 25. On September 24, 2009, Pedro Zalbidea (Senior Mechanic) and Aaron Miller
5 (Maintenance Mechanic), performed essential work. Pedro and Aaron evaluated and repaired the
6 Number 4 Primary Sedimentation Tank. Primary sedimentation tanks are removed from service,
7 inspected, and repaired each year during the dry season in preparation for the wet season that brings
8 higher plant flows. It is essential that all Primary Sedimentation Tanks are in good working order
9 prior to the wet-season. Aaron also repaired the front gate which had become inoperable so that the
10 security officer, hired by the Palo Alto Police Department to control the demonstrating SEIU
11 workers, could close it and secure the Plant.

12 26. During the September 24, 2009 labor action, Marc Dela Cruz (Maintenance
13 Mechanic), performed essential work. Marc continued corrective repairs on the Number 1 Raw
14 Sewage Pump, which conveys raw sewage from incoming sanitary sewers into the primary
15 sedimentation tanks. Without reliable raw sewage pumps in service or in standby, a sewage spill is
16 possible, endangering public health and safety.

17 27. Marc also worked with Tuan Vu (Lead Electrician), on September 24, 2009 on the
18 essential task of repairing the Continuous Emissions Monitoring System (CEMS) on the exhaust
19 stack of the sewage sludge incinerators. A properly operating and maintained emissions monitoring
20 system is required by the U.S. Environmental Protection Agency (EPA) whenever sludge is
21 incinerated.

22 28. On September 24, 2009, Pradeep Saini (Lead Electrician) worked on the necessary
23 task of configuration testing for storm pump station monitoring telemetry in preparation for this
24 winter's wet-weather. The transmission of monitoring and control signals is a vital part of the storm
25 water control system. Paul's work was essential for the long-term reliability of the storm system.

26 29. Gabor "Gabe" Szegedy (Electrician) fabricated a test unit for programmable logic
27 controller (PLC) programming, controlling industrial machinery, during the September 24, 2009
28 SEIU labor action. This unit will allow for the development of PLC programming changes in a test

1 environment rather than on a live PLC unit. This makes it possible to test programming changes
2 without risking the reliability of the existing program. While important, this was not essential work,
3 but Mr. Szegedy is an essential employee because different needs may exist on the day of a future
4 labor action.

5 30. The three designated critical electricians were able to perform whatever work was
6 needed on September 24th. Tuan, Gabe, and Paul were supported by two additional SEIU
7 electricians who reported to work although they were not covered by the injunction, making overall
8 work more routine that day because all five electricians in the electrical group reported to work.

9 31. The City cannot contract locally for these services because local contractors lack the
10 necessary experience and training to properly repair the stormwater and wastewater system
11 equipment. And while the City could contract with qualified out-of-area or out-of-state contractors
12 for any necessary repairs or maintenance, it would be impractical for the City to do so because they
13 would not be able to respond quickly enough in case of an emergency.

14 32. Without the designated senior mechanic and lead electricians monitoring and
15 repairing wastewater treatment and stormwater equipment, it is highly probable that the equipment
16 will fail and cause upset conditions imperiling health and safety, in addition to causing severe
17 property and environmental damage.

18 Laboratory

19 33. The City also employs 3 Chemists and a Senior Chemist in the Public Works
20 Department who are overseen by a non-SEIU Laboratory Manager. The City's Chemists and Senior
21 Chemist test the City's drinking water and wastewater discharge to ensure they are safe and meeting
22 federal and state regulations. They conduct approximately 14,000 tests per year, which averages out
23 to approximately 40 tests per day. In the laboratory, 3 out of 7 SEIU employees are essential
24 workers needed for the laboratory to function.

25 34. The laboratory provides essential laboratory controls and quality control pursuant to
26 the Plant's discharge permit. At minimum staffing levels during a labor action, the Plant does not
27 need its 3 SEIU WQC Laboratory Technicians. But, without a Senior Chemist and Chemists, the
28 analytical tests required for quality assurance and quality control would not be completed.

1 Consequently, the Plant would not have information needed to ensure that public health is being
2 protected in the discharges from the Regional WQC Plant, from industrial dischargers, in recycled
3 water, and in drinking water.

4 35. The laboratory manager, Changam Naidu, is a skilled chemist capable of performing
5 any individual test required by the plant's permits. The laboratory manager, however, is not capable
6 of singlehandedly working at a production rate of 14,000 tests per year. Many of the tests required
7 by the Plant's permits must be performed simultaneously, and the lab manager is not capable of
8 performing multiple tests at the same time. The support of a Senior Chemist and Chemists would be
9 required to safely and reliably provide quality assurance/quality control.

10 36. A strike by the City's Chemists and Senior Chemists would pose a direct and
11 imminent threat to the public's health and safety because it would prevent the City from ensuring
12 that the City's drinking water and wastewater discharge are safe and free of pollutants and
13 contamination. Therefore, the following lab workers are needed as essential workers:

- 14 • Senior Chemist, 1 out of 1: Jong Jhun
- 15 • Chemists, 2 out of 3: Ryan Hoang, and Geoff Wong

16 37. While the City can contract out some of the plant's laboratory testing, the City still
17 needs to have the above Chemists and Senior Chemist on site for testing and analyses. The City
18 cannot contract out all of its laboratory testing because: (a) the sample hold time for many analyses
19 is too short to transfer to a contract lab—which is why all wastewater treatment plants have an on-
20 site laboratory; (b) the turn-around time with contract labs is too long to meet regulatory testing and
21 reporting requirements, and (c) contract labs are neither trained nor equipped for on-premises sample
22 collection and training.

23 38. The work of the Plant's laboratory follows a recurring pattern and is scheduled.
24 Laboratory controls are included in the proper operation and maintenance required by the Plant's
25 NPDES permit. Tests required less frequently (e.g., monthly, quarterly, and semi-annually) would
26 likely be deferred, depending on the timing of the labor action. Due to workload restrictions,
27 however, daily and weekly testing cannot be deferred.

28 ///

1 39. During the September 24, 2009 SEIU labor action, Mei Wong, Chemist, worked on
2 collecting samples around the plant as well as performing required laboratory tests including metals
3 analysis and industrial waste testing. Two of the enjoined chemists (Jong Jhun and Ryan Hoang)
4 were out on approved sick leave, however the lab was supported by two WQC Laboratory
5 Technicians who reported to work despite the labor action that day. The Senior Chemist and Chemist
6 positions are needed to be designated as essential workers because WQC Laboratory employees may
7 choose not to report to work in a future labor action.

8 **Landfill and Compost Facility**

9 40. In my capacity as Director of Public Works I am also responsible for operation of the
10 City's landfill and compost facility, and its landfill gas and leachate collection systems, hereafter
11 referred to as "environmental monitoring systems."

12 41. The landfill and composting facility operations are accomplished by 11 total staff
13 members:

- 14 • 1 Landfill Supervisor, Monday through Friday;
- 15 • 5 Heavy Equipment Operators: 1 Sunday through Thursday 7-3:30, 2 Sunday through
16 Thursday 7:45-5:15, and 2 Tuesday through Saturday 7:45-5:15;
- 17 • 4 Refuse Disposal Attendants: 2 Sunday through Thursday 7:45-5:15, and 2 Tuesday
18 through Saturday 7:45-5:15; and
- 19 • 1 Landfill Technician, Monday through Friday 6:30-4:00.

20 The above staff work on 9/80 shift schedules (i.e. 9 days on comprising 80 hours worked during a
21 two-week pay period). The landfill is open 7-days a week. All of these positions, except for the
22 Landfill Supervisor, are SEIU held positions.

23 42. The natural decomposition processes of municipal garbage and composting creates
24 liquids (leachate), gas and heat. Gas and leachate are by products that are naturally and continuously
25 created during the refuse (garbage) decomposition process and heat is naturally and continuously
26 created during the composting process. Gas and leachate must be collected so that they will not
27 migrate off the landfill site through the air, soil, or the water table or deeper aquifers and cause
28 environmental contamination.

1 43. The City is required by Titles 14 and 27 of the California Code of Regulations (CCR)
2 and the City's landfill permit to continuously operate and monitor landfill's environmental control
3 systems and compost facility. The environmental control systems and the compost facility must be
4 inspected daily. The environmental systems must be continuously operated and inspected daily to
5 make sure that automated systems are working properly as required and that monitoring data is being
6 collected in accordance with the specific provisions set forth in the regulations. These landfill
7 processes, which continuously create gas, leachate and heat cannot be stopped or plugged and must
8 be properly managed at all times. Proper management requires technicians who are familiar with the
9 regulations. Failure to properly manage these systems could potentially result in significant health
10 and safety risks including fires or releases of these byproducts into the water and air.

11 44. While the City plans on closing the landfill in the event of a strike, the City must still
12 maintain the material already on the ground, and going through the compost "cooking" process. If
13 the City closes the landfill, waste would not need to be compacted and covered with soil. The
14 landfill could also stop accepting recyclable materials such as concrete, asphalt, clean soil, untreated
15 wood, and waste tires. The City could stop accepting yard trimmings at the composting facility.
16 The City could stop the mixing of compost blends and selling and loading of the compost products
17 to customers. If the landfill and compost facility discontinued the above tasks, then no Refuse
18 Disposal Attendants would be needed to work.

19 45. As part of its landfill operations, the City runs a compost yard and accepts material
20 daily to run through the composting process. Once the material is received it begins a composting
21 process on its own in which the material decomposes naturally until the final product is ready to
22 market. At any one time the City has between 15,000 and 25,000 cubic yards of green material on-
23 site going through the composting process.

24 46. The City's landfill permit states when and how temperature readings of the landfill
25 and compost must be taken. The compost facility must be inspected daily and have daily temperature
26 readings taken to ensure fires do not erupt due to heat buildup. The natural process of composting
27 creates heat and managing that heat is critical to avoid fires. If the compost is not turned regularly,
28 the natural decomposition process will allow the temperature to rise until it reaches the combustion

1 level and ignites a fire. Spontaneous combustion is a frequent cause of fires at compost facilities. It
2 happens when materials self-heat to a temperature high enough to cause them to ignite. No external
3 energy source is needed. The temperature increases because more heat is generated internally than
4 lost to the surrounding environment. Pursuant to California Code of Regulations, Title 14, Article 3,
5 section 18227, the City must monitor the temperatures in the compost piles and turn the material
6 when the heat created by the natural composting process reaches temperatures that could—and
7 have—caused fires. Several small fires (or smoldering events if extinguished early enough) can
8 occur within each of the piles or windrows in a typical year. This green material is monitored,
9 watered and processed 7-days per week. The City's landfill permit requires the City to take daily
10 temperature readings and turn the compost when it reaches 160 degrees.

11 47. As the composting operation currently has active piles in all four stages of
12 decomposition, the risk of a spontaneous combustion caused fire is imminent unless careful
13 monitoring is conducted. The City's windrow composting system stores green waste which is
14 continually in the process of decomposing and constantly at a temperature of 130 degrees Fahrenheit
15 or above. The City's windrow system contains all four different phases and pile types as described
16 below:

- 17 • (1) Incoming (non-ground) green material - For example, the City's incoming green
18 material pile caught on fire in July 2008.
- 19 • (2) Ground feedstock - In the past, the City has been cited for this pile exceeding 160
20 degrees and a regular monitoring plan must be adhered to in order to avoid this risk in the
21 future.
- 22 • (3) Windrows - constantly at a minimum of 131 degrees - could get hotter if not
23 managed.
- 24 • (4) Finished compost - The City has been cited for this pile exceeding 160 degrees
25 Fahrenheit and a regular monitoring plan must be adhered to in order to avoid this risk in
the future.

26 48. The City is under permit conditions to monitor all of these pile types for heat. As
27 well, state regulations require the maintenance of operational procedures so as to not cause a
28

1 nuisance. The City has a pile management plan that will implement procedures to cool the material
2 off if temperatures get too hot.

3 49. The landfill relies upon its 5 Heavy Equipment Operators to maintain the City's
4 compost program. Not only do they operate the specialized equipment used to turn the compost, but
5 they are also specially trained in the proper techniques for monitoring compost temperatures as
6 required by the City's landfill permit. Firefighters would only be able to extinguish a fire once it
7 started; however, firefighters are not trained in how to monitor windrow piles or operate the
8 machinery needed to cool the piles.

9 50. To prevent overheating and fire, the City's compost must be turned, cooled, and
10 monitored by at least 2 of the 5 Heavy Equipment Operators: Eric VanZandt, and Roland Wilson.
11 The 2 Heavy Equipment Operators would be required to maintain coverage of the compost operation
12 7 days a week, along with the Landfill Supervisor. Each day the risk of fire is possible and leaving
13 the material in place without monitoring, watering, and or moving the material will result in a fire.
14 These 2 Heavy Equipment Operators would work on compost piles and windrows everyday.

15 51. In place of the Heavy Equipment Operators, Refuse Attendants can drive the water
16 truck to water the piles, but they are not trained to operate the other equipment at the compost
17 facility needed to maintain safe temperatures. Regardless, in the event of a labor action, we cannot
18 plan on having any of the SEIU Refuse Attendants available.

19 52. Risks from not having, at a minimum, 2 Heavy Equipment Operators to perform
20 critical composting tasks would be immediately present and negative consequences could occur at
21 any time. The critical tasks Heavy Equipment Operators perform in the composting process include
22 the following:

23 1) Grinding of the pile of yard trimmings brought in within the last week using a
24 loader and a horizontal grinder. If this raw material is not processed and moved into
25 windrows it will compost in place and develop into a fire hazard. This is the pile that
26 caught fire July 2008 at the Palo Alto Composting Facility.

27 2) Once the material is ground, the material needs to be put into a compost windrow
28 for processing using a bulldozer or a loader. These windrows (up to 12 windrows 200

1 feet in length) are watered and turned (mixed) everyday to evenly distribute heat from
2 biological activity.

3 3) After 1.5 to 3 months a windrow is finished and the material from it is pushed with
4 a dozer into a pile. This pile is a finished unscreened compost pile and still
5 considered biologically active. Pile temperatures can get greater than 160 degrees.
6 The material in this pile must be screened daily, utilizing a front end loader and a
7 trommel screener because the screening is much slower than grinding. If
8 temperatures get too high then the operator must open up the pile with heavy
9 equipment to release the heat and add water to the material using a water truck.

10 4) Temperatures need to be taken and recorded every day at each of these piles and
11 windrows. State law requires achieving a minimum of 15 consecutive days at 131
12 degrees to ensure that harmful levels of bacteria are killed during the process.

13 5) These compost piles must be watered everyday, except during rain events, using
14 the site's 3,500 gallon water truck.

15 53. The City's Public Works Department employs one Landfill Technician, Charles
16 Risen, to inspect, monitor, report, and repair landfill gas extraction and leachate collection. Leachate
17 is contaminated liquid produced naturally and continuously at a landfill.

18 54. The landfill produces methane gas on a constant and continuous basis from waste that
19 has been placed in the ground years ago and is decomposing. This methane gas is collected and
20 managed through the environmental monitoring systems which must be inspected daily. It can not
21 be turned off or plugged to be repaired at a later time. The Landfill's Air District Permit and
22 regulations (Rule 8, Regulation 34) require continuous operation of the gas extraction systems. If
23 the gas is not properly collected, it could migrate through the soil and find a structure where it could
24 collect, and upon exposure to an ignition source, could cause a fire or explosion.

25 55. The landfill contains 93 methane gas extraction wells, a landfill gas flare, and 21
26 leachate extraction wells that must extract gas and liquids everyday. The landfill's Waste Discharge
27 Requirements (Water Quality permit) issued by the Regional Water Quality Control Board require
28 continuous leachate removal.

1 56. Critical tasks that are managed by the Landfill Technician must be completed, or else
2 the risks described below, are immediately present and negative consequences may occur at any
3 time.

4 1) Monitoring of these systems for methane or leachate leaks. Methane leaks are an
5 explosion risk and leachate leaks can violate clean water laws and pollute the nearby
6 waterways.

7 2) Monitoring, analyzing and recording of data related to volumes of leachate
8 extracted. If volumes of leachate extracted are down, then it may mean the pump
9 pathway is blocked, raising the pressure within the pipes, and thereby increasing risk
10 of a release of leachate. This can occur at any time which is why it's important to
11 monitor the system regularly.

12 3) Maintain Flare operation for landfill gas system. The Air District permit and
13 regulations require continuous burning/flaring of the landfill gas. The flaring is either
14 accomplished on a part time basis at the adjacent Water Quality Control Plant
15 (Sewage Treatment Plant) or at the onsite landfill flare. The Landfill Technician
16 ensures that the landfill flare operates properly at its minimum permitted temperature
17 1,420 degrees Fahrenheit.

18 4) Capping of leaks. The Landfill Technician is certified to operate the HDPE pipe
19 welder machine and therefore can readily replace broken or leaking gas or leachate
20 piping.

21 5) Monitoring compost. The Landfill Technician is also trained to monitor compost
22 facility temperatures and recording of the information, but is not trained to operate the
23 heavy equipment needed to process/move the material.

24 57. Due to the unique nature of the City's gas and leachate management system, the job
25 duties of the Landfill Technician cannot be contracted out. Contractors do not "own" the systems
26 and operations or have an intimate knowledge of them as the City does. Contractors can be called to
27 contain a leak, but contractor personnel are not always familiar with the landfill site and could miss a
28 critical defect with one of the systems within the 126 acre landfill. Additionally, in the time it could

1 take a contractor to get to the landfill after being contacted, the damage and regulatory violations
2 resulting from a leachate or methane release would be worse than having staff on-site to respond
3 promptly to control the leak from causing health and environmental damage. Contractor staff would
4 not be able to provide services for the composting operations because they are neither trained nor
5 familiar with compost facility monitoring and heavy equipment operation.

6 58. A strike by the Landfill Technician would pose a direct and imminent threat to the
7 public's health and safety. The City would lack sufficient staff to ensure continuous and safe gas
8 extraction and leachate collection from the landfill. Failure to operate and maintain the landfill gas
9 extraction environmental control systems and actively manage the composting operation will almost
10 certainly could result in an environmental degradation of air and surface and ground water and in the
11 worse case could result in fire and explosion.

12 **Hazardous Material Management**

13 59. The City's Public Works Department employs an Environmental Specialist, Charles
14 Muir. With the exception of the Manager of the Environmental Control Program, the Environmental
15 Specialist is the only other City employee that is certified, skilled, and experienced in the
16 management of hazardous wastes, which consists of the containment, movement, proper storage,
17 inspection and labeling of hazardous wastes. The position provides critical coverage for all of the
18 City's hazardous materials spill response plans. The Environmental Specialist is listed as the
19 emergency response coordinator with the landfill's emergency response and contingency plan, and is
20 the Fire Department's primary environmental contact for the landfill's hazardous materials business
21 plan. This position is also identified as the second emergency contact with the City's Utility Control
22 response system and the Public Works Operations Spills and Release Emergency Procedures.

23 60. Because Palo Alto has the unique situation of running its own utilities, there are
24 hazardous materials to maintain that other Cities would not have to deal with. Our Electric Division
25 maintains and repairs electrical transformers and responds to emergencies which can involve
26 management of Polychlorinated Biphenyl (PCB). The Environmental Specialist also helps to move,
27 consolidate and properly store, inspect and label hazardous wastes generated by the City at a
28 hazardous waste storage area at the Municipal Services Center.

1 61. In dealing with a hazardous material spill timely response is critical in preventing
2 exposure to our residents as well as containment of the release. In-house staff must be available to
3 respond immediately as first responders to manage the incident. The Environmental Specialist is
4 available to be called out seven days a week, 24 hours a day to respond to hazardous occurrences
5 ranging from transformer explosions, to accidental releases of hazardous material from traffic
6 accidents, or equipment failure from unknown sources. From an environmental health and safety
7 standpoint, it is critical to have trained staff available to respond to these callouts.

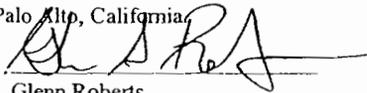
8 62. A strike by the Environmental Specialist would pose a direct and imminent threat to
9 the public's health and safety because it would hinder the City's ability to manage hazardous waste
10 and respond to emergencies involving hazardous materials.

11 63. Overall, the following Public Works employees are needed as essential workers:

- 12 • 6 WQC Senior Operators: Dennis Black, Bradley Biehl, David Delzer, Nacho Paez-
13 Rincon, Richard Brown, Adam Nowak
- 14 • 4 WQC Operator IIs: Corey Walpole, Richard Dass, Narine Dass, Mike Olsen
- 15 • 1 Senior Mechanic: Pedro Zalbidea
- 16 • 3 Maintenance Mechanic: Marc dela Cruz, Terry Condon, Aaron Miller
- 17 • 2 Lead Electricians: Paul Saini and Tuan Vu
- 18 • 1 Electrician: Gabor Szegedy
- 19 • 1 Senior Chemist: Jong Jhun
- 20 • 2 Chemists: Ryan Hoang, and Geoff Wong
- 21 • 2 Heavy Equipment Operators: Eric VanZandt, and Roland Wilson.
- 22 • 1 Landfill Technician: Charles Risen
- 23 • 1 Environmental Specialist

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct.

26 Executed this 6th day of October, 2009, at Palo Alto, California.

27 
28 Glenn Roberts

ATTACHMENT B

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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF PALO ALTO,
Charging Party,
v.
SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521,
Respondent.

Case No. SF-CO-210-M
**THIRD DECLARATION OF DENNIS
BURNS IN SUPPORT OF APPLICATION
OF PLAINTIFF PUBLIC
EMPLOYMENT RELATIONS BOARD
FOR PRELIMINARY INJUNCTION**
Date: October 13, 2009
Time: 1:30 p.m.
Dept.: 2
The Honorable William J. Elfving

1 1. I, Dennis Burns, am employed by the City of Palo Alto (the "City") as the Police
2 Chief of the City of Palo Alto's Police Department. I have been employed by the City of Palo Alto's
3 police department for 27 years. I have personal knowledge of the facts below. If called to testify to
4 the following, I could and would competently do so.

5 2. I am submitting this Declaration in support of the Plaintiff Public Employment
6 Relations Board's ("PERB") Application for Preliminary Injunction to enjoin certain essential
7 positions represented by SEIU Local 521 ("SEIU") from striking.

8 3. The City's Public Safety Dispatch Center operates 24 hours a day, 7 days a week.
9 The City requires 12 Public Safety Dispatchers and 4 Chief Dispatchers to maintain minimum but
10 continuous dispatch coverage. A 5th Chief Public Safety Dispatcher is required to provide critical
11 technical support for the City's specialized public safety systems.

12 4. Twelve Public Safety Dispatchers and Five Chief Public Safety Dispatchers are the
13 minimum staff needed to safely operate the City's Public Safety Dispatch Center.

14 Five Chief Public Safety Dispatchers: Steve Baca, John Clum, Brian Furtado, Sean
15 Smith, and Sheavounda Walker.

16 Twelve Public Safety Dispatchers: Terry Anderson, Audrey Bates, Mark Chase,
17 Christine Czerniec, Brina Elmore, Rich Gordon, Melissa Kirkland, Marissa Longoria,
18 Lisa Sandoval, Erika Spencer, Teresa Jo Strickland, and Patricia Whitman.

19 5. The City's Public Safety Dispatchers dispatch emergency personnel and equipment in
20 response to calls from the public and other client agencies for police services, fire department
21 services, ambulances, medical emergencies, utility, public works (water, gas, electric), and animal
22 services. Dispatchers answer emergency calls from the City of Palo Alto and Stanford University.
23 Dispatchers also respond to inquiries and requests from outside public safety agencies. The
24 Dispatch Center receives approximately 100 9-1-1 calls per day and 500 calls total.

25 6. Public Safety Dispatchers maintain the unit status of Police, Fire, and Medical
26 response resources in the field, and respond to inquiries from police officers, fire fighters, and
27 paramedics. Public Safety Dispatchers confirm warrants, enter property and stolen vehicles reports,
28 and alert various local, state and federal databases about missing persons. In addition, the Public

1 Safety Dispatcher Center monitors all fire and intrusion alarms for Stanford University and the
2 Stanford Linear Accelerator.

3 7. Public Safety Dispatcher must go through at least ten months of intensive training by
4 the City on public safety dispatching before they are allowed to dispatch without supervision. Public
5 Safety Dispatchers must also obtain certification from the Police Officers Standards and Training
6 (POST) during their first year on the job. Public safety dispatching requires extensive knowledge of
7 police and fire codes, the ability to operate special communication systems, the ability to receive and
8 transmit information related to emergency calls by operating communication consoles, two-way
9 radios, telephones, a computer-aided dispatch system (CAD), fire alarm and intrusion alarm
10 equipment, and a number of other public safety systems (mapping, mobile, Stanford and SLAC
11 alarms). Dispatchers must also know how to search the California Law Enforcement
12 Telecommunication System (CLETS) and transmit that information to police officers in the field
13 when necessary. CLETS is a highly confidential database containing criminal offender information
14 on persons throughout California. In addition, the City also has a number of other public safety
15 systems such as Automatic Vehicle Location (AVL) mapping, mobile, Stanford and SLAC alarms,
16 and Central Premise Equipment (CPE), that only individuals with required and proper training and
17 experience may operate.

18 8. If a Public Safety Dispatcher calls in sick, the City replaces them with a dispatcher on
19 overtime, even if it means ordering someone to come to work. The Public Safety Dispatch Center
20 maintains the same schedule and staffing every day of the year, including holidays.

21 9. Police officers are not trained or competent to perform dispatch activities. Training
22 for public safety dispatch involves a completely different set of training protocols than those
23 required for police officers. At this time, the City employs one Police Officer who is trained and
24 competent to perform dispatch responsibilities.

25 10. Only two managers are trained in dispatch, Charles Cullen, Coordinator of Police
26 Technical Services, and Brian Van Den Broeke, Supervisor of Police Services. However, Mr.
27 Cullen has not performed dispatch duties in over eight years, and Mr. Van Den Broeke has never
28 performed dispatch duties for the City of Palo Alto. The specialized public safety systems require a

1 high level of training and skill to operate such that having the two managers working at the Public
2 Safety Center could risk public safety. "Supervising Dispatcher" is not a classification that exists in
3 the City of Palo Alto. There are five Chief or "Lead" Dispatchers, but that classification is in the
4 SEIU bargaining unit.

5 11. The City cannot hire temporary employees to perform the work done by Public Safety
6 Dispatchers because of the specialized nature of the job, as described above. Further, the City
7 cannot contract these services to other law enforcement agencies because they would not be familiar
8 with the City's unique protocols, procedures and radio codes that are specific to the City's Police
9 Department. Outside law enforcement agencies would also be unfamiliar with the specialized
10 responses and protocols needed for handling dispatch calls for Stanford DPS, Animal Control, and
11 Utilities.

12 12. A strike by Public Safety Dispatchers would immediately endanger public safety.
13 Failure to staff the Public Safety Dispatch Center poses a direct and imminent threat to public health
14 and safety because the City would lack sufficient staff to operate the Center 24 hours a day, 7 days a
15 week. Overall, a strike would impede the City's ability to receive 911 calls and dispatch appropriate
16 public safety response personnel in the following areas:

- 17 a. Calls concerning crimes and police emergencies for which they dispatch appropriate
18 police patrol units by radio or mobile computer to investigate;
- 19 b. Calls concerning fire and medical emergencies, for which they dispatch appropriate
20 fire and ambulance units by radio;
- 21 c. Calls concerning utilities (electric, gas, water, wastewater) and public works
22 emergencies, for which they dispatch appropriate service units by radio to make
23 repairs;
- 24 d. Calls concerning animal-related problems, for which they dispatch appropriate animal
25 control units to investigate; and

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e. Relaying information, instructions, and questions to units responding to calls concerning emergencies in all the areas described above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of October, 2009, at Palo Alto, California.


Dennis Burns

ATTACHMENT C

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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF PALO ALTO,
Charging Party,
v.
SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521,
Respondent.

Case No. SF-CO-210-M
**THIRD DECLARATION OF VALERIE
FONG IN SUPPORT OF APPLICATION
OF PLAINTIFF PUBLIC
EMPLOYMENT RELATIONS BOARD
FOR PRELIMINARY INJUNCTION**
Date: October 13, 2009
Time: 1:30 p.m.
Dept.: 2
The Honorable William J. Elfving

1 1. I, VALERIE FONG, am employed by the City of Palo Alto (the "City") as the
2 Director of Utilities for the City's Utilities department. I have served in this position since October
3 2006. Previously I worked for 26 years for Pacific Gas and Electric and the City of Alameda's
4 Utility department. I have personal knowledge of the facts below. If called to testify to the
5 following, I could and would competently do so.

6 2. I am submitting this Declaration in support of the Plaintiff Public Employment
7 Relations Board's ("PERB") Application for Preliminary Injunction to enjoin certain essential
8 positions represented by SEIU Local 521 ("SEIU") from striking.

9 3. The City of Palo Alto is the only City in the State operating its own Electric, Fiber
10 Optics, Gas, Water and Wastewater Collection Utilities, providing services to businesses and
11 residents. Through the City's provision of utility services, the City is charged with the protection of
12 the public's health, safety and welfare. Electric, gas, water and wastewater are heavily regulated by
13 the State and/or Federal government. It is the City's duty to maintain these essential services for the
14 public. Thus, the City must have a certain number of employees present to conduct day-to-day
15 operations, as well as to respond to emergencies that might occur at either the City's facilities, or at a
16 local business or residence. Essential SEIU utilities employees will first make safe dangerous
17 conditions, and then restore utility service. Without skilled and appropriately trained employees to
18 perform these duties, the delivery of electricity, fiber optic, gas, water or wastewater collection
19 services could be interrupted or delivered in an unsafe fashion.

20 4. Minimal staffing of certain positions is critical to maintaining the health and safety of
21 the citizens of Palo Alto. Examples of critical employee duties staff perform include: emergency
22 system repairs on sewer backups, cleaning contaminated sewage spills, controlling and repairing gas
23 leaks, welding on gas mains and services, repairing electrical outages on the
24 transmission/distribution system, monitoring our substations, replacing traffic signals, repairing
25 street light outages, and restoring water service after interruptions.

26 5. The City's Utilities Department needs an emergency core of workers to deliver
27 services to our customers and residents. Workers have skill sets which qualify them to work on
28 different parts of the electric, water, gas, wastewater collection and fiber utilities. Often workers

1 work together as a unit, and multiple workers are required to respond to emergencies depending on
2 the emergency. Crews are stationed in different locations during an emergency to operate equipment
3 as needed at different locations to ensure the system is safe for all customers and workers.

4 6. The City has emergencies such as electric outages, gas leaks, water main breaks,
5 wastewater collection system breaks and fiber system breaks, and crews are utilized for the
6 emergencies for which they are qualified and for which their services are required to "make safe" of
7 any situation and to restore service to customers. These emergencies, as history has shown, can
8 occur at any time of the day or night, and any day of the week. Because of the lifeline nature of
9 utility services, the business is a round-the-clock business with crews needed to respond to
10 emergencies as they occur regardless of the hour of the day or day of the week.

11 7. Managers Dean Batchelor, Russ Kamiyama, Scott Williams and Juan Colin do not
12 have any certifications for working on the water, wastewater collection or gas systems.
13 Furthermore, two of these persons have no certifications or licenses to operate heavy equipment and
14 have not climbed electric poles for several years. Two of these persons have on rare occasion
15 responded to emergencies and performed emergency repairs on the system, and only one of these
16 persons has a current license to operate heavy equipment.

17 8. All crew members are required to respond to emergencies, even if their normal job
18 duties involve routine maintenance. The City maintains a callout list that is utilized to mobilize
19 crews during emergencies with a weekly rotation noting which employee will be the first to be called
20 out. If emergency work requires construction activities, then contractors would be utilized. But
21 even if and when additional help is available, the following electric and water gas wastewater
22 minimal staffing levels must be met to meet federal and state laws, and ensure the public health and
23 welfare.

24 Electric

25 9. The City's SEIU electric utility workers provide essential services that cannot be
26 delayed including:

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1 (1) emergency response to incidents/outages for primary and secondary distribution
2 circuits, residential/commercial services, substations, traffic signals, fiber, and street
3 lights;
4 (2) overhead and underground line inspections/maintenance, including infrared
5 inspections on underground equipment and cables;
6 (3) underground substructure inspections;
7 (4) substation inspections and general maintenance;
8 (5) utility locating; and
9 (6) pursuant to California Public Utility Commission (CPUC) General Orders 95,
10 128, and 165, visual and detailed inspections of all electric infrastructure both
11 overhead and underground, including all associated equipment.

12 10. In the event of a labor action, tasks including the following general electric operations
13 can, and therefore will, be delayed:

14 (1) scheduled service repairs/replacements;
15 (2) metering repairs/replacements; and
16 (3) Capital Improvement Program (CIP) overhead voltage conversions, system
17 rebuilds, and new business installations.

18 11. The City's Electric Utility requires at least 3 Utility System Operators. Utility
19 System Operators are akin to dispatchers. A Utility System Operator receives calls concerning
20 emergencies in multiple ways including directly from citizens, and calls forwarded from 911 Public
21 Safety Dispatchers. Utility System Operators take the information about the emergency and make
22 decisions on how to respond and with whom. Utility System Operators ensure that staff is deployed
23 to respond to emergencies. These positions are very critical to the electric utilities operation.

24 12. A Utility System Operator holds specialized skills including familiarity with the
25 City's electrical Transmission and Distribution system allowing the Operator to safely operate the
26 Supervisory Control and Data Acquisition system (SCADA) which permits monitoring and
27 operation of certain key field equipment from the dispatch office, and direct emergencies crews in a
28 safe, reliable manner to restore service. With SCADA the Utility System Operators can detect

1 abnormal conditions on the electrical system and dispatch appropriate crews to make safe and/or
2 repair the abnormality. The Utility System Operators oversee and monitor the entire electrical
3 system. This requires particularly specialized skills to accurately and appropriately diagnose
4 electrical problems, work SCADA, and understand the mapping system.

5 13. Because of the familiarity with City specific systems required for this position, the
6 City is not able to contract out this position if a labor action occurs. The City's system is unlike any
7 other power distribution system, and so someone who worked in a similar position for another utility
8 could not work as a Palo Alto Utility System Operator without significant retraining on the City's
9 console. The Utility System Operators also must have detailed knowledge of electric voltage
10 regulation and load allocation to manage the electrical system to avoid risking harm to the public's
11 health and safety.

12 14. The City requires, at a minimum, 3 of its Linesperson Leads and 5 Linepersons to
13 report to work in order to safely operate utility services. A minimum amount of Linepersons are
14 absolutely necessary to ensure public safety because the Linepersons will provide the required daily
15 maintenance of overhead and underground electrical equipment, and respond to electrical
16 emergencies.

17 15. Linesperson Leads direct electric crews, who during a labor action will alone inspect,
18 maintain, make safe, and repair the City's electrical infrastructure. A typical electric crew consists
19 of a Lead Linesperson, multiple Linepersons, a Lineperson apprentice, and a Heavy Equipment
20 Operator. Electric Operations has in the past scheduled crewmembers (a minimum of a 3 person
21 crew for construction and 2 person crew for Traffic Signal and Communications) to cover major
22 holiday weekends such as the 4th of July, Thanksgiving, Christmas, and New Year's. It is only
23 absolutely necessary that a Lead Linesperson and Linepersons be available to man a crew to carry
24 out electrical maintenance and repairs.

25 16. The City is not requesting all Linepersons or Leads be enjoined from striking, nor is
26 the City requesting any Apprentices in the three year training program, or Heavy Equipment
27 Operators, whom normally assist in electrical operations in the field, but the City requires at a bare
28

1 minimum, 3 electric crews. These crews may likely work together in the event of an emergency,
2 because of the need for additional hands to quickly and safely resolve an electrical situation.

3 17. The City's 3 Linesperson Leads and 5 Linepersons, in the event of a labor action,
4 would alone be tasked with the jobs handled ordinarily by all 14 Linespersons, the 5 Inspectors, and
5 the electric Heavy Equipment Operators. These classifications are all within SEIU, but the 8
6 Linespersons minimally required could perform all tasks without unreasonable risk when absolutely
7 necessary.

8 18. Linespersons will have to pull tools, operate a crane, use assorted other heavy
9 equipment, drive, and hand tools up or down to other Linespersons – all tasks ordinarily carried out
10 by an electric Heavy Equipment Operator.

11 19. Linesperson Leads will also carry out the tasks of 5 Inspectors not requested under
12 the injunction whom generally work as a Compliance Team to meet the requirements of CPUC
13 General Orders 95, 128, and 165 to inspect and maintain the electrical infrastructure. Pursuant to
14 General Order 165, for instance, the City must meet the state's minimum requirements for
15 inspection, scheduling and performance of corrective action, record-keeping, and reporting, in order
16 to ensure safe electrical service. During a labor action, along with their electric crew leading duties,
17 Linesperson Leads are essential to take on the Inspectors work of continuing the City's inspection
18 cycles required by Appendix A, General Order 165, including patrol and detailed inspection of the
19 City's 3,152 transformers, 1,275 switch/protective devices, 16 overhead regulators/capacitors, 12
20 miles of 60,000 volt transmission lines, 639 miles of 12,000 volt overhead and underground
21 transmission lines, 6,670 street lights, 6,119 wooden poles, and 97 main traffic intersections. For
22 instance, the inspection of a transformer requires the worker to access the transformer and use an
23 infrared gun on connections to determine if connections are overheating. The detection of
24 overheating is crucial to preventing outages.

25 20. Linespersons are sent by the Utility System Operators to make safe and repair the
26 City's electrical equipment when outages or emergencies occur. With live electrical wires, response
27 time is critical to mitigate the threat to public safety. Linespersons go up electric power poles and
28 steel towers as well as conduct below ground electrical work.

1 21. Fulfilling the position of a Linesperson or Lead requires knowledge of the day-to-day
2 operation of the City's electrical equipment including transformers, switches, conductors, street
3 lights, traffic signals, and fire alarm circuits. The City cannot contract out such work, and requires
4 Linespersons and Leads to fulfill the task of multiple other striking Utilities worker positions.

5 22. In order to continue the safe delivery of utility service, the City requires at least 5
6 Electrician Leads and 5 Electricians. Electricians for the City are split into three tasks: high voltage
7 electricians at the City's 9 electrical substations, metering, or traffic light work.

8 23. High voltage electricians work in pairs to maintain power distribution substations.
9 They monitor and repair electrical and mechanical components which take the 69,000 Volts of
10 power transmitted into each substation and transformed it into either 12,000 Volts or 4,000 Volts for
11 distribution. Generally, 3 Electrician Leads and 7 Electricians do substation work. At a minimum,
12 the City must have at least the requested 2 Electrician Leads and 2 Electricians to conduct preventive
13 maintenance and emergency response. At a substation, transformers could malfunction, wires could
14 go bad, and the amount of voltage and importance of substations for distributing power to large areas
15 of the City make the presence of a minimal number of Electricians and Leads knowledgeable of the
16 system and skilled at monitoring and repairing the systems crucial.

17 24. The City could not contract out these Electrician positions because safe operation of
18 the circuitry within a substation requires knowledge of the City's systems that would take too much
19 time to develop. Also, the City has been unable to locate a contractor that can perform the duties at
20 our electric substations. Minimum staffing is required in order to continue to provide electric
21 services to the City's residents and businesses, as well as to ensure public safety. If an emergency
22 occurred beyond the scope of what the minimal Electrician Leads and Electricians could handle
23 during the labor action, the Electrician Leads would be crucial in directing those not trained to work
24 in the City's substations in where it would be appropriate and safe to have them assist.

25 25. The 2 Electrician Leads who work substations and are at a minimum, necessary to
26 work are: Richard Baptist and Mark Briseno. As well, two Electricians: Gene Lindsey, and
27 Anthony Mouton, are required. The Electricians would work in pairs with the help of a supervisor to
28 safely oversee and maintain the safe operation of the City's 9 electrical substations.

1 26. Another group of the Electricians work individually on metering in the field. On an
2 ordinary day, 2 Lead Electricians and 6 Electricians respond to citizen calls, inspect meter panels, set
3 commercial and residential meters, and change out metering panels. During a labor action, the City
4 requires 1 Lead Electrician and 2 Electricians to operate as a crew to restore power to residences and
5 customers when electrical issues at buildings and meters arise. No contractors do this type of
6 electrical work.

7 27. The 2 Electrician Leads who work metering and are at a minimum necessary are:
8 Surendra Prasad and Pamela Turpen, along with 1 Electrician: Jayant Mishra.

9 28. The final group of Electricians, also high voltage Electricians, are assigned to the
10 traffic light section. These Electricians install traffic signals, repair and replace existing damaged
11 signals, install and maintain traffic controllers and the power distribution to traffic lights and street
12 lighting circuits. Traffic light section Electricians also maintain and repair the coaxial
13 communication circuits, fiber optics system, and SCADA system. The SCADA system allows
14 Utility System Operators to detect problem conditions on the electrical system and dispatch
15 appropriate crews to make safe dangerous emergency conditions and make repairs, so the
16 maintenance and proper operation of the SCADA system by Electricians is essential to the safe
17 delivery of utility service.

18 29. 1 Electrician Lead: Scott Yahne, and 2 Electricians: Ryan Johnson and Nelson
19 Primeaux are essential minimum staff required for the traffic light section.

20 30. Ken Boyd's electrical business is not involved with electric transmission or
21 distribution and his outside employment is not relevant to City Utilities Department operations and
22 service.

23 **Water Gas Wastewater (WGW)**

24 32. WGW Operations essential services include, but are not limited to:

- 25 (1) responding to emergencies requiring the repairing of gas leaks, water leaks and
26 broken sewer pipes. For example, the DOT requires prompt and continuous remedial
27 action for a grade 1 gas leak (includes any gas leak that can be seen, heard, or felt, as
28

1 well as gas leaks above a certain ppm) because of the immediate hazard to persons or
 2 property. There are 207 miles of gas main alone within the City;

3 (2) maintaining and monitoring gas receiving stations to ensure compliance with
 4 Department of Transportation (DOT) mandates. The City of Palo Alto received a
 5 warning letter from the DOT dated June 4, 2008 about keeping up with valve
 6 maintenance necessary for the safe operation of the gas distribution system as
 7 required by 49 CFR §192.747;

8 (3) collecting daily water quality samples as required by the California Department of
 9 Health and Safety (DHS);

10 (4) monitoring the water system and reservoirs; and

11 (5) monitoring the wastewater system and flushing the sewer collection system to
 12 meet the maintenance deadlines under the Sanitary Sewer Management Plan (SSMP)
 13 per the State Water Resources Control Board (SWRCB). Any sewer overflows
 14 within the collection system requires response and clean up by the crew, and the
 15 filing of a report with the regulatory agencies (SWRCB Monitoring and Reporting
 16 Program No. 2006-0003-DWQ).

17 33. Services SEIU WGW employees perform that will be delayed during any labor actions
 18 include:

19 (1) installation of new services to the utilities customers; and

20 (2) completing the Tie-ins and releasing the contractors work on CIP projects.

21 34. The City Utilities Department needs Installer-Repairers and Heavy Equipment
 22 Operators to respond and repair to gas, water, and wastewater, main and service leaks. The
 23 minimum 4 Leads and 9 Installer-Repairers make safe gas, water, or wastewater systems, while a
 24 Heavy Equipment Operator works equipment, such as the back hoe, to allow the Installer-Repairers
 25 access to the below ground (street, sidewalk) gas, water, or wastewater systems.

26 35. Installer-Repairers necessary for the safe operation of a WGW crew vary depending
 27 upon the emergency. A leak in a main line requires a large number of skilled and trained crew
 28 members, and if a gas emergency, then only DOT certified individuals may do the work. The

1 Installer-Repairers are certified under the City's Gas Operator Qualification Plan, which the DOT
2 requires the City to have and comply with. (49 CFR Part 192, Subpart N *Qualification of Pipeline*
3 *Personnel*) To qualify to work with gas lines, a combination of performance evaluations, written
4 tests, and simulations of tasks are used to certify the City's workers in compliance with the DOT.
5 Therefore, only the City Installer-Repairers have the ability to conduct necessary operations,
6 whereas contractors do not have the federal government mandated qualifications.

7 36. The 4 Heavy Equipment Operators are critical because it would not be prudent or safe
8 to have outside contractors operating heavy equipment around the gas system. The City could
9 potentially contract out or hire temporary staff to operate heavy equipment to perform emergency
10 duties; however it will be difficult to locate qualified staff as there are few, if any, contractors that
11 operate heavy equipment and are trained and familiar with the Gas System.

12 37. WGW Heavy Equipment Operators do not complete paving and concrete work to
13 repair the street or sidewalk after the WGW has gone out. Instead, Installer Repairers not requested
14 as essential would normally repave and repair the condition of the sidewalks or streets after the gas,
15 water, or wastewater problem has been made safe and repaired. If a labor action occurs, the City
16 would hire contractors to repair the condition of roads and sidewalks after necessary WGW crew
17 work.

18 38. The City requests the designation of 3 Field Service Persons as critical. These Field
19 Service employees are the first responders to emergency calls for gas, water, wastewater and electric
20 problems or concerns. The City's Utility requires sufficient staff to respond to any emergencies such
21 as gas leaks or water breaks. Once a Field Service Person has diagnosed the problem, for further
22 assistance the Field Service Person calls out a WGW crew for assistance.

23 39. Employees in the City's Utilities Department Field Service Person position are
24 required to be on the job to keep the utility systems operational. Ordinarily, the City Utilities
25 Department operates a 15 hour shift on weekdays (6:00AM to 9:00PM) and an 8 hour shift on
26 weekends and holidays. In addition to these regular shifts, on a weekly basis, one Field Service
27 Representative is scheduled to respond to emergencies and service disruptions after hours. The Field
28 Service Representative acts as a first responder for all trouble calls such that daily about 120 calls

1 are divided between Field Service Persons for response. Field Service Persons may receive calls
2 passed off directly from 911 dispatchers. The City must have at the very least 3 Field Service
3 Persons to respond to these calls, and take appropriate initial actions to make safe emergency and
4 call out WGW crews as necessary.

5 40. Just like Installer-Repairers, because Field Service Persons work with gas, employees
6 in this position must meet the operator qualification requirements of the City set to comply with the
7 DOT. (49 CFR Part 192, Subpart N *Qualification of Pipeline Personnel*) The City has not been able
8 to locate a contractor able to perform the crucial emergency response duties of a Field Service
9 Person due to the requirements set by the Department of Transportation (DOT).

10 41. As well, contractors cannot do emergency first response work that the Field Service
11 Person does, even for water or wastewater services. Contractors generally can fill in for construction
12 tasks utility employees do, but contractors lack the emergency shut off, diagnostic ability, and skills
13 to receive emergency calls and pass on necessary information about what WGW crews are needed
14 that a Field Service Person has obtained through training and experience.

15 42. Water Systems Operators are critical positions in order to ensure the safety of the
16 drinking water. Contaminated water is a direct threat to public health and safety. If the 3 minimally
17 required positions are not staffed, daily maintenance including the sampling and monitoring of the
18 system, and especially the City's 6 reservoirs and 7 pump stations, will suffer. Daily the Water
19 System Operators go out and test the water, as well as inspect the reservoirs and pump stations.

20 43. Pursuant to State WQCB regulations, it is mandatory that the City test the water
21 quality. Every day, the City must test 11 locations for residual chlorine. The City is required to test
22 18 locations weekly for coliform bacteria, 20 locations monthly with a general physical test, and 20
23 locations quarterly for trihalomethane (THM), a byproduct of chlorinated water. Water System
24 Operators perform these and other water quality tests which are essential to maintain the health and
25 safety of the public's water supply.

26 44. Training a contractor is impracticable because adjusting the essential parts of the
27 water system (reservoirs, pumps/stations, regulators and valves) requires time and familiarity with
28 the system. If a problem with the water system occurred, the City cannot simply turn the water off.

1 Turning the water off would endanger the public for many reasons, including the loss of fire
2 suppression water.

3 45. Water Systems Operators also respond to water quality emergencies. If for instance,
4 a water pipe breaks, a Water System Operator is needed to disinfect the water and maintain positive
5 flow. Water is not totally shut off when a break occurs because then dirt and bacteria will more
6 easily contaminate the inside of the pipe. If a water emergency occurs, Water System Operators go
7 with WGW crews to maintain the flow of water, and therefore its quality and safety.

8 46. Along with breaks or leaks, Water System Operators respond to water emergencies
9 including water pump malfunctions, power outages at pump stations, and alarms in the water system
10 at reservoirs and pump stations signaling problems. Water System Operators are alerted to
11 emergencies from 911 dispatch, as well as Utility System Operators, and citizen calls.

12 47. Water System Operators require at least a D-3 level license from the WQCB.
13 Contractors cannot fix or maintain the water systems because of the level of license required. The
14 Supervisor of the Water System Operators, who is not a union member has the highest grade license,
15 D-5, but alone cannot respond to all Water System Operator tasks. Therefore, at least 3 of the 7
16 union Water System Operator positions are required to conduct both state mandated water quality
17 testing and maintenance to ensure safe drinking water, as well as water emergency operation
18 response and repairs.

19 48. The City must also have 2 Maintenance Mechanics to respond to emergencies,
20 conduct gas welding, and carry out valve maintenance. Mechanics conduct gas welding, so if a gas
21 emergency occurs requiring any welding on pipe, the Maintenance Mechanics are the only people
22 qualified to carry out such work. The Maintenance Mechanics weld up gas manifolds, and weld
23 mains or services in accordance with DOT requirements.

24 49. As mentioned previously, the DOT also requires the City to maintain key valves
25 which control gas flow pursuant to 49 CFR §§192.745, 192.747. The City has over 100 key valves
26 that Maintenance Mechanics inspect and maintain to keep gas safely flowing.

27 50. Maintenance Mechanics must be certified to work on the gas system through the
28 Operator Qualification training necessary to meet the requirements set in numerous regulations by

1 the DOT located in 49 CFR Subpart E *Welding of Steel in Pipelines*. This testing process involves
2 annual requalification tests, and a field test where the Mechanics must weld 12 inch pipe and cut out
3 'coupons' which test the perfection of the weld and submit the weld to stress. (49 CFR Appendix C
4 to Part 192 *Qualification of Welders for Low Stress Level Pipe*.) Contractors could perform certain
5 limited work on power, water and wastewater services, however contractors can not work on or weld
6 gas lines due to the testing requirements set by the Federal Department of Transportation (DOT).

7 51. The City is not requesting its union Senior Maintenance Mechanic because he lacks
8 the DOT qualification. Therefore, for non-gas related tasks, the 2 Maintenance Mechanics will have
9 to take on the Senior Maintenance Mechanics responsibilities, including working out of the general
10 shop. The Maintenance Mechanics will also fulfill the role of Equipment Operators, whom the City
11 is not requesting be designated as essential. Equipment Operators work out of the general utility
12 shop on tasks such as handling power tools. Contractors are also available to assist with these tasks.

13 52. On September 24, 2009 during the labor action, the WGW employees were called to
14 respond to 3 gas, and 3 wastewater priority calls. Priority calls are emergencies which the City
15 needs to respond to right away, a response cannot wait. Appropriate utility employees were
16 dispatched by System Operators.

17 53. The September 24, 2009 gas emergencies included two incidents where Field Service
18 Persons went to the scene and shut off gas and electric services. In the third gas emergency, a gas
19 regulator was struck by a motorist. Field Service Persons called in WGW crew workers (including
20 Installer-Repairers, Lead, and Heavy Equipment Operator) to rebuild and replace the regulator,
21 conduct a clock test, set pressure and restore gas service.

22 54. On September 24, 2009 the 3 wastewater emergencies all were blocked sewer
23 laterals, which WGW crews (Installer-Repairers, Lead, Heavy Equipment Operator) successfully
24 repaired after Field Service Persons initial response.

25 55. Based on my experience, in order to deliver services and keep the systems operational
26 the City must have at least the following staff:

27 **Electric**

28 3 of 5 Utility System Operators: Jesus Cruz, Lani Cubillo, and Michael Keate.

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PROOF OF SERVICE
Code of Civil Procedure §1013

I declare that I am a resident of or employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1330 Broadway, Suite 1532, Oakland, California, 94612.

On September 23, 2009, I served the following documents pertaining to *Public Employment Relations Board v. Service Employees International Union Local 521*, County of Santa Clara Superior Court Case No. 109CV153088:

SECOND DECLARATION OF LAURA Z. DAVIS

regarding the parties listed below by

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

overnight courier by causing each envelope, with postage fully prepaid, to be delivered to an authorized courier authorized by Federal Express to receive documents, in an appropriate package designated by Federal Express with delivery fees paid or provided for and sent by Federal Express for overnight delivery to the address below, such delivery being made at the location and on the date set forth below.

personal delivery.

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Vincent Harrington
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Ste. 200
Alameda, CA 94501-1091

Kristy Sermersheim, President
SEIU Local 521
2302 Zanker Road
San Jose, CA 95131

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on October 8, 2009, at Oakland, California.

Camille Johnson
(Type or print name)



(Signature)

ORIGINAL

1 VINCENT A. HARRINGTON, JR., Bar No. 071119
2 KERIANNE R. STEELE, Bar No. 250897
3 WEINBERG, ROGER & ROSENFELD
4 A Professional Corporation
5 1001 Marina Village Parkway, Suite 200
6 Alameda, California 94501-1091
7 Telephone 510.337.1001
8 Fax 510.337.1023

9 Attorneys for Respondent, SEIU Local 521, CTW, CLC
10 Special Appearance

FILED
2009 OCT -8 PM 4:08

UCS

David H. Yarnes, Clerk of the Superior Court
County of Santa Clara, California

E. Mach

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SANTA CLARA

13 CALIFORNIA PUBLIC EMPLOYMENT
14 RELATIONS BOARD

) Case No. 109 CV 153088

15 Petitioner,

) DECLARATION OF VINCENT A.
16 HARRINGTON, JR. IN OPPOSITION
17 TO MOTION FOR PRELIMINARY
18 INJUNCTIVE RELIEF

19 v.

20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 521, CTW, CLC

) Date: October 13, 2009
22) Time: 1:30 p.m.
23) Dept: 2
24) Judge: Judge Elfving

25 Respondent.

26 Now comes Vincent A. Harrington, Jr. and declares as follows:

27 1. I am an attorney licensed to practice in all the courts of the State of California, and I
28 am representing the Respondent SEIU Local 521, in making a special appearance in opposition to
29 the application by the California Public Employment Relations Board for an injunction against
30 certain employment classifications of the City of Palo Alto represented by the Union.

31 2. If called as a witness I could testify competently to the facts set forth in this
32 declaration.

33 3. Attached to this declaration as Exhibit 1 is a true and correct copy of a declaration
34 of Declaration of Nick Steinmeier, previously submitted by the SEIU in opposition to the City of
35 Palo Alto's request to the PERB that it seek an injunction against the Union.

WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501-1091
510.337.1001

DECLARATION OF VINCENT A. HARRINGTON IN OPPOSITION TO MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF
CASE No. 109 CV 153088

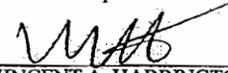
FAXED

1 4. Attached hereto as Exhibit 2 and incorporated herein by reference is a true and
2 correct copy of the unfair labor practice charge filed by the SEIU against the City of Palo Alto,
3 asserting that the City was bargaining in bad faith by failing and refusing to meet and bargain at
4 reasonable times and places, by adopting a fixed, unyielding position on mandatory subjects of
5 bargaining.

6 I declare under penalty of perjury pursuant to the laws of the State of California that the
7 foregoing is correct of my own personal knowledge.

8 Dated: October 7, 2009

9
10 WEINBERG, ROGER & ROSENFELD
A Professional Corporation

11 By: 

12 VINCENT A. HARRINGTON, JR.
13 KERLANNE R. STEELE
Attorneys for Respondent, SEIU, Local 521

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WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1881 Marston Village Parkway
Alameda, CA 94501-1001
916.747.1888

- 2 -

DECLARATION OF VINCENT A. HARRINGTON IN OPPOSITION TO MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF
CASE No. 109 CV 153088

Exhibit # 1

1 VINCENT A. HARRINGTON, JR., Bar No. 071119
WEINBERG, ROGER & ROSENFELD
2 A Professional Corporation
1001 Marina Village Parkway, Suite 200
3 Alameda, California 94501-1091
Telephone 510.337.1001
4 Fax 510.337.1023

5 Attorneys for SEIU Local 521
6
7

8 BEFORE THE CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD
9

10 CITY OF PALO ALTO,
Charging Party,
11
12 v.
13 SEIU LOCAL 521,
Respondent.
14

) Case No. SF-CO-210-M
) (Injunctive Relief Request)
)
) **DECLARATION OF NICK**
) **STEINMEIER IN OPPOSITION TO**
) **REQUEST FOR INJUNCTIVE RELIEF**
)
)
)

15
16 Now comes Nick Steinmeier, and declares as follows:

17 1. I am currently employed by SEIU Local 521 in the capacity of Internal Organizing
18 Director. I have been employed by the Union in this capacity since January 2005. Prior to
19 assuming this job, I was employed by the Union as Worksite Organizer beginning in November
20 2002. Prior to becoming an employee of the Union I was an activist with the Union, working for
21 the County of San Mateo. In that capacity I was a Shop Steward of the predecessor Union to Local
22 521, Local 715.

23 2. If called as a witness I could testify competently to the facts set forth in this
24 Declaration.

25 3. I have been involved as the lead negotiator in the City of Palo Alto negotiations
26 since May, 2009. I have also had ongoing contact with issues in the City of Palo Alto since the
27 time I assumed my position as Director of the Northern Field Office of our Local. I am familiar
28 with the departmental organization of the City Departments where SEIU-represented employees

WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1001 Marina Village Parkway

EXHIBIT /

1 are assigned, and with the job duties and functions of employees in those various Departments.

2 4. I have reviewed the various Declarations submitted by the City of Palo Alto
3 ("City") in support of their application for injunctive relief.

4 5. Contrary to the claims made in the Declaration of Sandra Blanch, at paragraph 11
5 and 12, the Union had nothing to do with organizing a "sick out" among City of Palo Alto
6 employees. The Union did not direct or organize any sick out on September 8. The parties met for
7 bargaining purposes on September 2, and the parties met for bargaining purposes on September 10,
8 2009. Additionally, the parties bargained on September 14, and September 15. At the meeting of
9 September 15, I proposed to the City's chief negotiator, Darrell Murray, that we were prepared to
10 bargain as long as it took to get an agreement. The City team left the table at around 12:30PM, and
11 did not return until after 6 PM. We also agreed to bargain on Thursday September 17 and the
12 Union is holding September 18 as the City has not gotten back to us with their availability.

13 6. Contrary to the suggestion by the City that the Union intends to strike on
14 "September 15," on September 11, I called Darrell Murray and the City Manager James Keene and
15 advised both of them that the Union would not be striking this week, and wished to bargain with
16 the City in the hope of reaching an agreement. It has always been our hope that the parties could
17 reach an agreement and avoid the necessity of a work stoppage.

18 7. I have consistently advised the City that we would not engage in a "quickie strike"
19 when and if the bargaining reached that point. I am not aware that there is any specific "amount"
20 of notice which the City must be given, and we have agreed to give a "reasonable notice" under the
21 circumstances if necessary.

22 8. I will now turn to the facts reflected in the various Declarations submitted to PERB.

23 A. The Dennis Burns Declaration—the City Police Department.

24 The staffing in the Public Safety Dispatch Center is five Chief Dispatchers and 13 Public
25 Safety Public Dispatchers. All of the Supervising Dispatchers and Managers are outside of
26 the unit and are qualified to perform the work of Dispatcher. Additionally, all Police
27 Officers of the City of Palo Alto are also trained and competent to perform dispatch
28 activities.

1 B. It is my understanding there are four Animal Control Officers in the employ of the
2 City. They are not peace officers, and are covered in our miscellaneous unit. It is my
3 understanding that all Police Officers in the City of Palo Alto are trained and competent to
4 perform any and all functions of the Animal Control Officers should there be a work
5 stoppage.

6 C. Declaration of Valerie Fong—Utilities Department.

7 The Union represents miscellaneous employees in the electric, gas and water utility areas.
8 The Utilities Department operates on a 6:30 a.m. to 4:00 p.m. schedule. After 4:00 p.m.,
9 there is no one on duty, but there is an established on-call system. During any given week
10 there is one on-call Electrician after 4:00 p.m. The City does not have an established on-
11 call rotation, and there is no work group which must in fact be available to take off-hour
12 calls. It is my direct understanding, based on conversations with the unit employees,
13 including employees on the Union's bargaining team, that there are managers in the employ
14 of the City who can perform electrical work: Norman Brown, and Ken Boyd. Indeed, Ken
15 Boyd runs his own electrical business and is a licensed electrical contractor.

16 With respect to the Utilities Department, as it relates to Linemen, there are four managers
17 or supervisors, outside of the unit, who previously worked as linemen for the City and or
18 other agencies and to our understanding contain certifications or licenses which qualify
19 them to operate heavy equipment, and do other work at the water, waste water and gas
20 facilities, as necessary. These persons are: Dean Batchlor, Russ Kamiyama, Scott
21 Williams, and Juan Colin

22 I have reviewed the Fong Declaration as it relates to the claim, page 2, paragraph 4, that all
23 of these individuals identified, in all these classifications are "safety critical." This is not
24 true. The vast majority of the jobs identified on this list are engaged in routine
25 maintenance, not emergency response. Again, there is no standby or call out crew which is
26 established for this Department. Essentially, the City in this particular instance is listing the
27 entire work crew, not an emergency core of workers. Again, since there is no established
28 emergency call out system, the City does not staff this service on an emergency basis. We

1 therefore question why they would be entitled to staff it on this basis in the event of any
2 potential job action.

3 D. Water Quality Control Plant – Roberts Declaration

4 The normal work group in the Plant is six Senior Water Quality Operators and five Water
5 Quality Operators IIs. There are five managers who work in this Plant who have
6 certifications ranging from Level 3 through Level 5 that can perform all of the work
7 performed by bargaining unit employees in the event of a work stoppage. These
8 individuals are: James Allen – Grade V, Howard Yancey – Grade V, Jannette Huber –
9 Grade IV, Kris Chat – Grade III and Stacy Peyton – Grade III

10 At the Water Plant there are three Chemists and one Senior Chemist as the regular work
11 group, to my understanding. There is a manager not in the unit, who is a licensed Chemist
12 and can perform any work that might be necessary during any work stoppage. That
13 individual is: Changan Naidu

14 The Plant is a highly automated plant which has state of the art monitoring equipment and
15 essentially “runs itself” throughout the vast majority of most hours of most shifts. The
16 work of many of the Water Plant Control employees consists of maintenance, rather than
17 ongoing operational activity. There is no reason to believe that that maintenance could not
18 be deferred or postponed in the event there was to be a work stoppage.

19 E. Community Services Department – Declaration of Betts

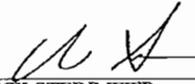
20 I have reviewed the Betts Declaration as it relates to Rangers. There is one Senior Ranger
21 and five Rangers. There is a supervising Ranger, not in the unit, and the Fire Department
22 could do any other work necessary in the event of a work stoppage. The Rangers work
23 only during the daylight hours. In non-daylight savings time, an 8 hour shift, and in
24 daylight savings time, roughly a 10 hour shift. The City of Palo Alto Fire Station No. 8 is
25 located in Foothill Park and could respond to any fire-related emergencies if they existed.
26 Additionally, I am advised that there are mutual response and aid agreements with
27 surrounding Fire Departments, the Sheriff’s Department, and California Department of
28 Forestry, all of which could respond in the event that there were actually to be any sort of

1 fire-related emergency within the park areas patrolled by the Rangers.
2 With respect to the claims in the Betts' Declaration regarding "Inspector Field Services" in
3 Parks Division, the City employs managers throughout that Department who oversee
4 various parks. Those individuals could perform any of the jobs that became necessary
5 should there be a work stoppage. The City playgrounds are typically closed after daylight
6 hours, and there is no one who regulates access to them during that period of time, with the
7 exception of the City Police Department. If there were to be a work stoppage, the issues
8 addressed by Betts in his Declaration as it relates to this service, could be alleviated simply
9 by closing all of the parks in the same fashion that they are closed after hours.

10 9. The Union continues to work for, and hopes for, a labor contract from the current
11 negotiations. We are willing and able to bargain around the clock to reach an agreement and have
12 so indicated to the City. Our activity in supporting a "solidarity break" among interested City
13 employees was in aid of the bargaining process, not to interfere or disrupt it. In fact, it was our
14 expectation that employees would participate in that "solidarity break" during their regular break
15 time, on non-work time. I do not find in the Declarations any evidence that this expectation was
16 not achieved by the participating employees.

17 I declare under penalty of perjury, pursuant to the laws of the State of California, that the
18 foregoing is true and correct.

19 Executed this 16th day of September 2009, in San Carlos, California.

20 
21 _____
22 NICK STEINMEIER

1 **PROOF OF SERVICE**
2 (CCP 1013)

3 I am a citizen of the United States and an employee in the County of Alameda, State of
4 California. I am over the age of eighteen years and not a party to the within action; my business
5 address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On
6 September 16, 2009, I served upon the following parties in this action:

7 Adrianna Guzman
8 Liebert, Cassidy, Whitmore
9 153 Townsend Street, Suite 520
10 San Francisco, CA 94107
11 Fax: (415) 856-0306

12 copies of the document(s) described as:

13 **Opposition to Request for Injunction Relief and Declaration Nick Steinmeier in**
14 **Opposition to Request for Injunctive Relief**

15 **BY MAIL** I placed a true copy of each document listed herein in a sealed envelope,
16 addressed as indicated herein, and caused each such envelope, with postage thereon fully
17 prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar
18 with the practice of Weinberg, Roger & Rosenfeld for collection and processing of
19 correspondence for mailing, said practice being that in the ordinary course of business, mail
20 is deposited in the United States Postal Service the same day as it is placed for collection.

21 **BY PERSONAL SERVICE** I placed a true copy of each document listed herein in a
22 sealed envelope, addressed as indicated herein, and caused the same to be delivered by
23 hand to the offices of each addressee.

24 **BY OVERNIGHT DELIVERY SERVICE** I placed a true copy of each document listed
25 herein in a sealed envelope, addressed as indicated herein, and placed the same for
26 collection by Overnight Delivery Service by following the ordinary business practices of
27 Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice
28 of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery
Service correspondence, said practice being that in the ordinary course of business,
Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service
offices for next day delivery the same day as Overnight Delivery Service correspondence is
placed for collection.

BY FACSIMILE I caused to be transmitted each document listed herein via the fax
number(s) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda,
California, on September 16, 2009.


Mary Piro

AMENDED PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On September 16, 2009, I served upon the following parties in this action:

Adrianna Guzman Licbert, Cassidy, Whitmore 153 Townsend Street, Suite 520 San Francisco, CA 94107 Fax: (415) 856-0306	Melissa Tronquet, Deputy City Attorney City of Palo Alto 250 Hamilton Avenue, 8 th Floor Palo Alto, CA 94301 Fax: (650) 329-2646
---	--

copies of the document(s) described as:

**Opposition to Request for Injunction Relief and Declaration Nick Steinmeier in
Opposition to Request for Injunctive Relief**

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

BY PERSONAL SERVICE I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused the same to be delivered by hand to the offices of each addressee.

BY OVERNIGHT DELIVERY SERVICE I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.

BY FACSIMILE I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on September 16, 2009.



Mary Piro

Exhibit # 2



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES

NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC

a. Full name: Service Employees International Union, Local 521
 b. Mailing address: 2302 Zanker Road, San Jose, CA 95131
 c. Telephone number: Phone: (408) 678-3300; Fax: (408) 954-1538
 d. Name, title and telephone number of person filing charge: Vincent A. Harrington, Jr., Attorney, (510) 337-1001
 e. Bargaining unit(s) involved: Miscellaneous SEIU-Represented Unit, City of Palo Alto

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

EMPLOYER

a. Full name: City of Palo Alto
 b. Mailing address: P.O. Box 10250, Palo Alto, CA 94303
 c. Telephone number: Phone: (650) 329-2563; Fax: (650) 325-5025
 d. Name, title and telephone number of agent to contact: Russ Carlsen, Human Resources Manager

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:
 b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:
 b. Mailing address:
 c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

APPENDIX A - STATEMENT OF THE CHARGE (6.d)

1. The Charging Party, SEIU, Local 521 ("SEIU") is, and has been at all times material hereto, a recognized employee organization in the meaning of Government Code Section 3501(b), which has been recognized by the City of Palo Alto as an employee organization that represents its employees in a miscellaneous employee bargaining unit in their employment relations with the City.
2. The City of Palo Alto ("City") is a governmental subdivision of the State of California, and is a "Public Agency" within the meaning of Government Code Section 3501(c), which employs numerous members of SEIU, and which has recognized the SEIU as the collective bargaining representative of said employees.
3. At all time material hereto, Russ Carlsen (hereinafter "Carlsen") has occupied the position of Human Resource Manager for the City, and in that capacity is a managerial agent and representative of the City.
4. At all times material hereto, James Keene (hereinafter "Keene") has been the City Manager of the City in the capacity as a managerial representative and agent of the City.
5. At all times material hereto, Sandra Blanch ("Blanch") has been employed by the City in a managerial capacity with authority in the Human Resources area. In that capacity, Blanch is an authorized agent and managerial representative of the City.
6. During the period of July 1, 2006, through and including June 30, 2009, SEIU and the City were parties to a written Memorandum of Agreement, which established the wages, hours, and terms and conditions of employment of SEIU-represented employees in the employ of the City. On expiration of that Agreement, the City was obligated to maintain the terms and conditions expressed in said Memorandum of Agreement as the "status quo" pending negotiations for a successor MOU, or the establishment of a bona fide impasse.
7. At all times material hereto, the SEIU and the City and each of them have been obligated to meet and bargain in good faith with the other pursuant to Government Code Section 3505, with respect to all matters within the scope of representation as defined in Government Code Section 3504.5. In May of 2009, the City and the SEIU commenced their negotiations for a successive memorandum to that which expired on June 30, 2009. The bargaining continues.
8. At all times material hereto, the City has been obligated pursuant to Government Code Section 3505 to meet at reasonable times and places with the SEIU, in order to exchange information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation.

9. Notwithstanding the duty and obligation of the City to bargain with the SEIU as the certified collective bargaining representative, in the month of July, through a series of ongoing direct written and verbal communications with SEIU unit members, Keene, in his capacity as City Manager directly solicited city employees with respect to "budget challenges," "fiscal challenges," "capital and service needs of the City," and "funding availability," and contacted employees to attend open meetings with him to "discuss these issues." The communications to workers and the meetings themselves were interactive two hour meetings occurring at and parallel to the time that the City and the SEIU were meeting and bargaining concerning wages, hours and terms and conditions of employment. As reflected in page 2 of an e-mail message sent to employees regarding "employee town hall meetings" (attached hereto as Exhibit "D"), Keene specifically indicated that he wanted to "share a few thoughts with you and then spend the remainder of each meeting, listening to and talking with those gathered together." (emphasis supplied) See attached Exhibit "D," page 2 of 2, first full paragraph. Additionally, Keene solicited employees directly about "what changes," the City may need to make as they face a "difficult financial future for our City." This direct communication with bargaining unit employees in which Keene solicited their input about these matters constitutes improper direct dealing with the unit members about matters which are within the scope of representation, and has the effect of undermining the status of the Union as the certified collective bargaining agent of these employees.
10. Notwithstanding its obligation to meet and bargain in good faith concerning all matters within the scope of representation with the intent of reaching agreement, the City has failed and refused, and continues to fail and refuse to meet its obligation under Government Code Section 3505 by an ongoing series of actions including, but not limited to the following:
 - a. Among the subjects under negotiations between the parties is Article XIV of the now expired Memorandum of Understanding, concerning the "benefits program." Among the issues under discussion was whether or not the City would give affected employees notice of modifications or changes to existing retirement and health plan coverage issues. Notwithstanding the fact that no proposal had been made to the Union concerning the subject matter, in late June, and continuing into early July Blanch, in her managerial capacity, advised numerous individual employees of the City represented by the SEIU, that the City would give a thirty-day notice to affected employees of any changes in retirement or health plan coverages. At the time Blanch made such a communication to unit members, the City had made no proposal to the Union concerning notices of any changes in the retirement benefits, although it had presented a proposal concerning notice in connection with changes in health plan coverages. The individualized communication by Blanch with unit members, at the time when no proposal had been made to the Union constitutes direct dealing, in violation of the City's obligation to deal

directly, and only with the SEIU concerning matters within the scope of representation.

- b. Notwithstanding its duty to meet and bargain in good faith with the Union concerning all matters within the scope of representation pursuant to Government Code Section 3505, in its obligation under Section 3505.3, to allow a reasonable number of Public Agency employee representatives" of the SEIU reasonable time off without loss of compensation and other benefits when engaging in the meet and confer process, in the earlier segment of the bargaining, the City failed and refused to meet at reasonable times and places, it failed to authorize the release of a number of City employees on the SEIU bargaining team without loss of compensation. This action on the part of the City delayed and interfered with the process of bargaining in the period of May and early June 2009. This action by the City interfered with and restrained employees in their rights to be represented by the SEIU pursuant to Government Code Section 3502, interfered with the right of the SEIU pursuant to Government Code Section 3503 to represent its members in their employment relations with the City, and violated Government Code Section 3505.3, and constituted a failure to meet and bargain in good faith pursuant to Government Code Section 3505.
- c. Notwithstanding its obligation to bargain in good faith with the Union concerning all subjects within the scope of representation as described in Government Code Section 3504.5, since on or about August 5, 2009, the City has maintained a fixed, unyielding position in its negotiations with the SEIU by maintaining on the table a "package proposal" which contained substantial cost shifts, wage reductions, and reductions of other benefits. Attached hereto as Exhibit "A" and incorporated herein by reference is a copy of that August 5, 2009 proposal. As indicated, at page 1, Article VII, Section 1, the City proposed a 1.2% wage reduction; in Article XIV, Benefits, it capped the City's contribution for medical and retiree medical and shifted all additional costs to SEIU unit members. This proposal, for the first time, added the thirty day notice of "implementations" in health insurance coverage (Article XIV, page 3 of 5 of Exhibit "A"). Pursuant to Article XV the proposal imposed an increased contribution of 3% of pay to the employee contribution toward the PERS Retirement Plan, effective August 1, 2009, and included a "poison pill," provision that to the extent that there was a delay in the ratification or implementation of this change that there should be a "recovery" of the increased employee contribution retroactive to August 1, 2009. See Exhibit "A" attached hereto, page 4 of 5, Article XV. A summary of the costs sought to be imposed by the City on unit employees is set forth on page 5 of attached Exhibit "A."

- 11. On or after August 5, 2009, at the bargaining sessions of August 12, August 19, August 26, and September 2, 2009, the City maintained its fixed, unyielding

position on this economic proposal and indeed failed and refused to discuss economics with the Union despite the fact that the Union modified its position on August 12, 2009 by dropping any proposal for any wage increases, made a 1% furlough proposal, and offered an additional voluntary "furlough" program. A true copy of the Union's August 5, 2009 proposal is marked as Exhibit "B" and incorporated herein by reference. The Union's August 12, 2009 proposal is attached as Exhibit "C" and is incorporated herein by reference as though set forth at length.

12. At the September 2 session, the SEIU further modified its proposal by eliminating any "new money," and modifying other provisions. Exhibit "E" hereto is the SEIU proposal of September 2. The City has still failed to counter or change its August 5 proposal.
13. At each of the meetings of August 12, August 19, August 26, and September 2, 2009, the Union requested the City counter the Union movement, discuss economics. Notwithstanding its obligation to meet and bargain in good faith with the Union, the City failed and refused and continues to fail and refuse to counter in any way, and maintained its fixed unyielding position as reflected in its August 5, 2009 "package proposal."

Wherefore, it is requested that a Complaint issue against the City alleging that it has violated its duty to meet and confer in good faith with the Union as required by Government Code Section 3505, has interfered and restrained employees in their rights to be represented by the Union in the bargaining process as guaranteed by Government Code Section 3502, and has violated the Union's rights to represent the members of the Unit in the bargaining process as provided by Government Code Section 3503. The City should be ordered to cease and desist from its unlawful behavior, should be ordered to meet and bargain in good faith with the Union, and should be ordered to post appropriate notices and mail notices to bargaining unit employees advising of their wrongful conduct and the remedial steps which they have been required to take. We request, as well, any other appropriate remedies.

I declare under penalty of perjury that the foregoing is true and correct of my own personal knowledge.

Nick Steinmeier, Director
SEIU 521

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ORIGINAL

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2009 OCT -8 PM 4:08

VINCENT A. HARRINGTON, JR., Bar No. 250897
KERIANNE R. STEELE, Bar No. 250897
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501-1091
Telephone 510.337.1001
Fax 510.337.1023

David H. Wasson, Clerk of the Superior Court
County of Santa Clara, California

By: E. Wlach Deputy Clerk

Attorneys for Respondent
SEIU Local 521
SPECIAL APPEARANCE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

CALIFORNIA PUBLIC EMPLOYMENT	) Case No.	1-09-CV-153088
RELATIONS BOARD)	
)	
Petitioner,	)	DECLARATION OF ADOLFO
	)	RIEDEL IN OPPOSITION TO ORDER
v.	)	TO SHOW CAUSE AND
	)	TEMPORARY RESTRAINING
SERVICE EMPLOYEES INTERNATIONAL	)	ORDER
UNION, LOCAL 521, CTW, CLC)	
	)	Date: October 13, 2009
Respondent.	)	Time: 1:30 p.m.
	)	Judge: Hon. Judge William J. Elfving
	)	Dept.: Department 2

I, Adolfo Riedel, hereby declare:
I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would competently testify as follows:

- I have been employed as Worksite Organizer with Service Employees International Union, Local 521 (hereafter "SEIU") for two (2) years. I have been assigned to the City of Palo Alto (hereafter "City") worksite for a year and a half.
- As the Worksite Organizer assigned to the City, I am familiar with the status of the current contract negotiations, and the proposals which the City has presented at the bargaining table. I am aware of the contentiousness of the contract negotiations as a result of the City advancing proposals that are highly detrimental to SEIU members. For example, the City is

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DECLARATION OF ADOLFO RIEDEL IN SUPPORT OF SEIU LOCAL 521'S OPPOSITION TO OSC AND TRO

FAXED

1 proposing that employees be responsible for paying health care premiums in the amount of \$300-
2 \$600 per month. The City has also advanced a proposal that would increase the amount of retirees'
3 health care premiums. Many SEIU members who work for the City have a hard time making ends
4 meet, and the City's proposal to significantly increase employees' share of health care premiums
5 would make it even harder to do so. The City is refusing to bargain in good faith about these
6 crucial matters. Due to the City's unfair practices, approximately ninety-five (95%) percent of
7 voting SEIU members who work for the City voted to authorize SEIU to call a strike if necessary.

8 3. On September 24, 2009, SEIU members participated in a one-day voluntary
9 furlough. The purpose of the one-day voluntary furlough was for the members to express their
10 displeasure with the City's unfair bargaining proposals, while simultaneously demonstrating their
11 willingness to assist the City in balancing its budget. Approximately, seventy (70%) percent of the
12 employees participated in the one-day voluntary furlough. None of the employees who were
13 served with the Court's September 23, 2009 order participated in the one-day voluntary furlough.
14 However, approximately fifteen (15) to twenty (20) of the employees who were subject to the
15 Court's order participated in a showing of solidarity in the Municipal Service Center ("MSC") yard
16 during their lunch break only.

17 4. After September 24, 2009, I interviewed SEIU members in the Public Works and
18 Utilities Departments who were subject to the Court's order. I asked them what work they
19 performed on September 24, 2009, the day that they were judicially prohibited from participating
20 in the one-day voluntary furlough.

21 5. The Utility System Operators/ Dispatchers did not work on September 24th. Their
22 supervisor, Ken Boyd ran the operation as he previously held that position.

23 6. SEIU member, Richard Brown, who is a Senior Water Quality Control Operator in
24 the Water Quality Control Plant, informed me that on September 24, 2009, he made rounds around
25 the plant to verify that all systems were working. He made minor adjustments if needed. He
26 relieved the Incinerator Operators for their breaks. He stated that it was a "smooth day." From the
27 information he provided me, it is apparent that none of the work he performed that day was urgent
28 or essential to the public health and safety.

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1 7. SEIU member, Corey Walpole, who is a Water Quality Control Operator in the
2 Water Quality Control Plant, informed me that he worked on the incinerator from 6:00 a.m. to
3 12:00 p.m. He stated that he did not do much after that. From the information he provided me, it
4 is apparent that none of the work he performed that day was urgent or essential to the public health
5 and safety.

6 8. SEIU member, Jersey Siegenfeld, who is a Maintenance Mechanic in the Water
7 Quality Control Plant, informed me that he worked on regular work orders, none of which were
8 urgent. He stated that he did not believe that public health or safety would be put at risk if he had
9 not worked on the regular work orders on September 24, 2009.

10 9. SEIU member, Daniel Mendoza, who is an Installer/Repairer Lead, informed me
11 that he practiced his welding all day. He did not leave the shop. From the information he provided
12 me, it is apparent that none of the work he performed that day was urgent or essential to the public
13 health and safety.

14 10. SEIU member, Eric Talley, who is an Installer/Repairer, informed me that he
15 answered two calls to clean up lines and went out for broken water serves into a building. This
16 took him four hours. He stayed in the yard for the remainder of the day. I have personal
17 knowledge that a number of the managers and supervisors in the Utilities Department are qualified
18 to perform the work that Mr. Talley performed on September 24, 2009, as many of them have
19 moved up through the ranks of the Department.

20 11. I interviewed SEIU member, Steve Giovannetti, who is a Maintenance Mechanic in
21 the Utilities Department. He informed me that he had clean up duty in the morning. He took dirt
22 from one bin and put it in another. After doing so, he cleaned the bin. He also cleaned up the
23 shop. He went to a meeting in the morning that lasted one hour. He also helped prepare pipe
24 cutter. From the information he provided me, it is apparent that none of the work he performed
25 that day was urgent or essential to the public health and safety.

26 12. SEIU member, Brian Bingham, who is a Heavy Equipment Operator in the Utilities
27 Department, informed me during my interview of him that he operated a backhoe throughout the
28 day. Specifically, he operated the backhoe in conjunction with a group of workers during a gas

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- 3 -

DECLARATION OF ADOLFO RIEDEL IN SUPPORT OF SEIU LOCAL 521'S OPPOSITION TO OSC AND TRO

1 main installation and gas lateral replacement. From the information he provided me, it is apparent
2 that none of the work he performed that day was urgent or essential to the public health and safety.

3 13. I interviewed SEIU member, Chi Du, who is a Water System Operator in the
4 Utilities Department. He informed me that he performed minimal service checks at five water
5 receiving stations. He left after four hours of work to handle personal matters. From the
6 information he provided me, it is apparent that none of the work he performed that day was urgent
7 or essential to the public health and safety. This is particularly evident from his ability to leave
8 work to attend to an urgent personal errand.

9 14. I am personally aware that Field Service Persons do not perform functions that are
10 essential to the health and safety of the public. Field Service Persons primarily respond to calls
11 that customers' pilot lights are out. I am personally aware that managers and supervisors who
12 work in the Utilities Department are qualified to work as Field Service Persons, as many managers
13 and supervisors have moved up through the ranks in the Department.

14 15. I interviewed SEIU member, Greg Schultz, who is a Lineperson Lead. He informed
15 me that when he came to work on Thursday, the manager pulled the workers in for an "all hands"
16 meeting. The manager told the workers that they could sit in the yard for the day or do regular
17 work. He and others decided that they did not want to have to drive past their fellow employees
18 who were not judicially prohibited from participating in the voluntary furlough, so they stayed in
19 the yard all day. A truck entered the yard carrying two switches, which he and others helped
20 unload. He stated that they and the other Linepersons did not emergency, or even regular, work
21 that day. From the information he provided me, it is apparent that none of the work he performed
22 that day was urgent or essential to the public health and safety.

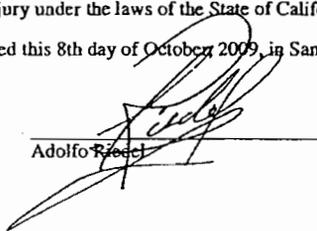
23 16. I interviewed SEIU member, Pamela Turpen, who is an Electrician Lead for the
24 Utilities Department. She told me that on September 24, 2009, she stayed in the office and sorted
25 through her emails. She also did some paperwork. From the information she provided me, it is
26 apparent that none of the work she performed that day was urgent or essential to the public health
27 and safety.

28 17. The Water Quality Control Plant and Utilities Department schedule skeletal crews

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764-1110

1 to be on-call after hours. The on-call crew responds to urgent calls that occur after 4:00 p.m. and
2 on the weekends. I believe that the Water Quality Control Plant and Utilities Department could
3 have scheduled a skeletal crew to work on September 24, 2009 without there being any threat to
4 public health or safety. Instead, the City appears to have scheduled a crew that day that is designed
5 to work on long-term, non-urgent projects.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct. Executed this 8th day of October 2009, in San Jose, California.

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10 Adolfo Riedel

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I, Steve Giovannetti hereby declare:

I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would competently testify as follows:

I had clean up duty in the morning. I took dirt from one bin to another to then clean them. I also took the time to clean up the shop. I went to a meeting in the morning that lasted for one hour. I also helped ~~prepare~~ pipe cutter.
SG → repair

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of October, 2009, in Palo Alto, CA.


Signature

Steve Giovannetti
Print

10/8/2009
Date

I, Chi Du, hereby declare:

I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would competently testify as follows:

I performed minimal service checks at five water receiving stations. I left after four hours of work to handle personal matter. (on 9/20/2009) *cd*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of October, 2009, in Palo Alto, CA.

Chi Du
Signature

CHI DU
Print

10 / 8 / 2009
Date

I, Eric Talley, hereby declare:

I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would competently testify as follows:

I answered two sewer calls to clean up lines and went out for broken water serves.
Total amount of time was four hours. ~~Stayed at the yard for the remainder of the day.~~
was in stand by hood for remainder of shift.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of October, 2009, in Palo Alto, CA.



Signature

Eric Talley

Print

10-6-09

Date

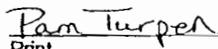
I, Pamela Turpen, hereby declare:

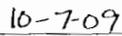
I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would competently testify as follows:

I worked on cleaning out my email back log and doing paper work.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of October, 2009, in Palo Alto, CA.


Signature


Print


Date

I, Brian Bingham, hereby declare:

I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would competently testify as follows:

I operated equipment throughout the day. I worked with a group of workers during a gas main installation and gas lateral replacements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of October, 2009, in Palo Alto, CA.



Signature

Brian Bingham

Print

10-7-09

Date

I, Daniel Mendoza, hereby declare:

I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would competently testify as follows:

I practiced on my welding all day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of October, 2009, in Palo Alto, CA.

Daniel Mendoza
Signature

DANIEL MENDOZA
Print

10, 8, 09
Date

1 Thornhill v. State of Alabama
2 (1940) 310 U.S. 88 B

3 Dated: October 8, 2009

4 WEINBERG, ROGER & ROSENFELD
5 A Professional Corporation

6 By: *Vincent A. Harrington*
7 VINCENT A. HARRINGTON, JR. *(att)*
8 KERIANNE R. STEELE
9 Attorneys for Respondent
10 SEIU Local 521, CTW, CLC

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1001 Mission College Parkway
Suite 200
Alhambra, CA 91801-1101
714-377-1001

- 2 -

Notice of Lodging Federal Authority in Support of SEIU Local 521's Opposition to Motion
for Preliminary Injunctive Relief
Case No. 109 CV 153088

EXHIBIT A

19 F.3d 449, 145 L.R.R.M. (BNA) 2769, 62 USLW 2591, 128 Lab.Cas. P 11,104
(Cite as: 19 F.3d 449)

United States Court of Appeals,
Ninth Circuit
Robert H. MILLER, Regional Director of Region 20
of the National Labor Relations Board, for and on
Behalf of the NATIONAL LABOR RELATIONS
BOARD, Petitioner-Appellant/Cross-Appellee,
v.
CALIFORNIA PACIFIC MEDICAL CENTER, Re-
spondent-Appellee/Cross-Appellant.
Nos. 92-15721, 92-15746.
Argued Oct. 14, 1993.
Submission Deferred Oct. 14, 1993.
Submitted Oct. 28, 1993.
Decided March 21, 1994.

Regional Director of National Labor Relations Board (NLRB) sought preliminary injunction under § 10(j) of the National Labor Relations Act (NLRA) pending disposition of unfair labor practice charge against employer. The United States District Court for the Northern District of California, Barbara A. Caulfield, J., 788 F.Supp. 1112, granted injunction, and employer appealed. The Court of Appeals, 991 F.2d 536, reversed and, upon taking case en banc, held, per Rymer, Circuit Judge, that district court considering request for injunction under § 10(j) must determine whether temporary relief requested is "just and proper" in accordance with traditional equitable criteria, considered in context of federal labor laws and underlying purposes of statute, which are to protect integrity of collective bargaining process and to preserve NLRB's remedial powers.

Vacated.

Schroeder, Circuit Judge, with whom James R. Browning and Trott, and Tang, Circuit Judges, joined, concurred in part, dissented in part, and filed opinion.

West Headnotes

[1] Federal Courts 170B ⇨724

170B Federal Courts

170BVIII Courts of Appeals
170BVIII(D) Dismissal, Withdrawal or Abandonment

170Bk723 Want of Actual Controversy
170Bk724 k. Particular Cases. Most Cited Cases

"Capable of repetition, yet evading review" exception to mootness doctrine applied to issue of proper standard to be applied by district court in considering request by National Labor Relations Board (NLRB) for preliminary injunction under § 10(j) of the National Labor Relations Act (NLRA) pending disposition of unfair labor practice charge, even though NLRB had rendered decision on merits of complaint; it could be difficult for Supreme Court to reach final decision on propriety of such injunction before NLRB's adjudication was finished, and there was reasonable expectation that dispute would recur. National Labor Relations Act, § 10(j), 29 U.S.C.A. § 160(j).

[2] Federal Courts 170B ⇨723.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Dismissal, Withdrawal or Abandonment

170Bk723 Want of Actual Controversy
170Bk723.1 k. In General. Most Cited Cases

"Evading review" under "capable of repetition, yet evading review" exception to mootness doctrine means evading Supreme Court review.

[3] Federal Courts 170B ⇨723.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Dismissal, Withdrawal or Abandonment

170Bk723 Want of Actual Controversy
170Bk723.1 k. In General. Most Cited Cases

Under "capable of repetition, yet evading review" exception to mootness doctrine, controversy "evades review" where underlying action is almost certain to run its course before either Court of Appeals or Su-

EXHIBIT A

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preme Court can give case full consideration.

[4] Federal Courts 170B ⇨ 851

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk850 Clearly Erroneous Findings of Court or Jury in General
170Bk851 k. Conflicting Evidence; Undisputed Evidence. Most Cited Cases

Federal Courts 170B ⇨ 862

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk855 Particular Actions and Proceedings, Verdicts and Findings
170Bk862 k. Equity in General and Injunction. Most Cited Cases
 Grant or denial of preliminary injunction will be reversed only where district court abused its discretion or based its decision on erroneous legal standard or on clearly erroneous findings of fact.

[5] Federal Courts 170B ⇨ 776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases

Court of appeals reviews de novo issues of law underlying district court's preliminary injunction.

[6] Labor and Employment 231H ⇨ 1694

231H Labor and Employment
231HXXII Labor Relations
231HXXII(I) Labor Relations Boards and Proceedings
231HXXII(I)1 In General
231Hk1692 Interim Relief
231Hk1694 k. Grounds. Most Cited

Cases

(Formerly 232Ak518 Labor Relations)
 When presented with petition by National Labor Relations Board (NLRB) for preliminary injunction under National Labor Relations Act (NLRA) pending disposition of unfair labor practice charge, district court need not determine whether there is reasonable cause to believe that unfair labor practice charge has been committed, and must instead determine only whether relief requested is "just and proper," considering traditional equitable criteria, bearing in mind that underlying purposes of statute are to protect integrity of collective bargaining process and to preserve NLRB's remedial power while NLRB resolves unfair labor practice charge; overruling Scott ex rel. NLRB v. El Farra Enters., Inc., 863 F.2d 670, and Aguayo ex rel. NLRB v. Tomco Carburetor Co., 853 F.2d 744. National Labor Relations Act, § 10(j), 29 U.S.C.A. § 160(j).

[7] Injunction 212 ⇨ 138.21

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.21 k. Likelihood of Success, or Presence of Substantial Questions, Combined with Other Elements. Most Cited Cases
 Traditionally, in determining whether to grant preliminary injunction, court considers: (1) likelihood of moving party's success on merits; (2) possibility of irreparable injury to moving party if relief is not granted; (3) extent to which balance of hardships favors respective parties; and (4) in certain cases, whether public interest will be advanced by granting preliminary relief.

[8] Labor and Employment 231H ⇨ 1693

231H Labor and Employment
231HXXII Labor Relations
231HXXII(I) Labor Relations Boards and Proceedings
231HXXII(I)1 In General
231Hk1692 Interim Relief
231Hk1693 k. In General. Most Cited Cases
 (Formerly 232Ak518 Labor Relations)
 Whenever National Labor Relations Board (NLRB)

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develops "reasonable cause" to believe that one of types of labor violations specified in National Labor Relations Act (NLRA) has occurred, it must petition district court for appropriate injunctive relief pending final adjudication of NLRB with respect to such matter. National Labor Relations Act, § 10(l), 29 U.S.C.A. § 160(l).

[9] Labor and Employment 231H ↔ 1694

231H Labor and Employment
231HXII Labor Relations
231HXII(D) Labor Relations Boards and Proceedings

231HXII(D) In General
231HK1692 Interim Relief

231HK1694 k. Grounds. Most Cited

Cases

(Formerly 232Ak518 Labor Relations)
In considering request by National Labor Relations Board (NLRB) for preliminary injunction under National Labor Relations Act pending disposition of unfair labor practice charge, public interest is important factor in exercise of court's equitable discretion, and court must consider extent to which public interest in ensuring that unfair labor practice will not succeed because NLRB takes too long to investigate and adjudicate charge is implicated under circumstances of particular case. National Labor Relations Act, § 10(j), 29 U.S.C.A. § 160(j).

[10] Labor and Employment 231H ↔ 1694

231H Labor and Employment
231HXII Labor Relations
231HXII(D) Labor Relations Boards and Proceedings

231HXII(D) In General
231HK1692 Interim Relief

231HK1694 k. Grounds. Most Cited

Cases

(Formerly 232Ak518 Labor Relations)
In considering request by National Labor Relations Board (NLRB) for preliminary injunction pending disposition of unfair labor practice charge, court must weigh likelihood of success against possibility of irreparable injury. National Labor Relations Act, § 10(j), 29 U.S.C.A. § 160(j).

[11] Labor and Employment 231H ↔ 1694

231H Labor and Employment
231HXII Labor Relations
231HXII(D) Labor Relations Boards and Proceedings

231HXII(D) In General
231HK1692 Interim Relief

231HK1694 k. Grounds. Most Cited

Cases

(Formerly 232Ak518 Labor Relations)
In determining whether National Labor Relations Board (NLRB) has met its burden of demonstrating fair chance of success on merits so as to justify preliminary injunction pending disposition of unfair labor practice charge, it is necessary to factor in district court's lack of jurisdiction over unfair labor practices, and deference accorded to NLRB determinations by Courts of Appeal; while district court is not required to defer to NLRB in deciding whether interim relief is just and proper, it should evaluate probabilities of complaining party prevailing in light of fact that ultimately, NLRB's determination on merits will be given considerable deference; by same token, because it is NLRB and not district court that has primary responsibility for declaring federal labor policy, district court should be hospitable to views of general counsel, however novel, even on issue of law; in short, NLRB can make threshold showing of likelihood of success by producing some evidence to support unfair labor practice charge, together with arguable legal theory. National Labor Relations Act, § 10(j), 29 U.S.C.A. § 160(j).

[12] Labor and Employment 231H ↔ 1694

231H Labor and Employment
231HXII Labor Relations
231HXII(D) Labor Relations Boards and Proceedings

231HXII(D) In General
231HK1692 Interim Relief

231HK1694 k. Grounds. Most Cited

Cases

(Formerly 232Ak518 Labor Relations)
In context of request for preliminary injunction under National Labor Relations Act (NLRA) pending disposition of unfair labor practice charge by National Labor Relations Board (NLRB), if substance of unfair labor practice charge is conceded, or if NLRB demonstrates that it is likely to prevail on the merits, irreparable injury will be presumed; if charge is dis-

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puted, or if NLRB has only fair chance of succeeding on the merits, court must consider possibility of irreparable injury. National Labor Relations Act, § 10(j), 29 U.S.C.A. § 160(j).

[13] Labor and Employment 231H ⇌ 1694

231H Labor and Employment
231HXII Labor Relations
231HXII(D) Labor Relations Boards and Proceedings

231HXII(D) In General
231HK1692 Interim Relief

231HK1694 k. Grounds. Most Cited

Cases

(Formerly 232Ak518 Labor Relations)

In connection with both irreparable injury and balance of hardships components of preliminary injunction under National Labor Relations Act (NLRA) pending disposition of unfair labor practice charge by National Labor Relations Board (NLRB), court must take into account probability that declining to issue injunction will permit allegedly unfair labor practice to reach fruition and thereby render meaningless NLRB's remedial authority, where NLRB and alleged violator each makes showing of hardship, court must exercise its sound discretion to determine whether balance tips in NLRB's favor. National Labor Relations Act, § 10(j), 29 U.S.C.A. § 160(j).

*451 Appeal from the United States District Court for the Northern District of California, Barbara A. Caulfield, District Judge, Presiding. Ellen A. Farrell, Assistant General Counsel, National Labor Relations Board, Washington, DC, for the petitioner-appellant/cross-appellee.

Jerome B. Falk, Jr., Howard, Rice, Nemerovski, Canady, Robertson & Falk, San Francisco, California, for the respondent-appellee/cross-appellant.

Before: WALLACE, Chief Judge, BROWNING, TANG, SCHROEDER, D.W. NELSON, HALL, WIGGINS, BRUNETTI, THOMPSON, TROTT, and RYMER, Circuit Judges.

RYMER, Circuit Judge:

To return nurses who worked at Children's Hospital of San Francisco to the collective bargaining status

they had before Children's and Pacific Presbyterian Medical Center were merged into a single health care provider, California Pacific Medical Center (CPMC), the Regional Director of the National Labor Relations Board sought a preliminary injunction under § 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j), pending disposition of an unfair labor practice charge by the NLRB. Section 10(j) permits the Board to petition any United States district court for an appropriate restraining order and confers jurisdiction on the court to grant such temporary relief "as it deems just and proper."

Applying our circuit's two-part standard for § 10(j) relief—determining first whether the factual allegations supporting the Board's petition are not insubstantial and frivolous, such that there is "reasonable cause" to believe the employer has violated the NLRA, and second, whether the requested relief is necessary to prevent a frustration of the remedial purposes of the Act and is thus "just and proper," Scott ex rel. NLRB v. El Farra Enters., Inc., 863 F.2d 670, 673-74 (9th Cir.1988); Aguayo ex rel. NLRB v. Tomco Carburetor Co., 853 F.2d 744, 747 (9th Cir.1988), the district court granted the Board's request for injunctive relief in a published opinion. Miller ex rel. NLRB v. California Pac. Medical Ctr., 788 F.Supp. 1112 (N.D.Cal.1992). The district court rejected, as incompatible with Ninth Circuit law, CPMC's argument that an injunction should issue only after a finding of irreparable harm and likely success on the merits. *Id.* at 1115 n. 1. On appeal, a panel of this court reversed, distinguishing El Farra and Tomco on their facts and holding that, whereas the "reasonable cause" prong goes to the maturity of the Board's proof and requires the district court to assess whether there has been a sufficient investigation into the circumstances requiring injunctive relief, the "just and proper" inquiry invokes traditional equitable criteria. Miller ex rel. NLRB v. California Pac. Medical Ctr., 991 F.2d 536 (9th Cir.1993).

We took this case en banc to clarify the standards to be applied in reviewing § 10(j) petitions. We conclude that the "reasonable cause" inquiry has no place in § 10(j) analysis, and that in deciding whether the Board's *452 requested relief is "just and proper," district courts should consider traditional equitable principles, bearing in mind that the underlying purposes of § 10(j) are to protect the integrity of the collective bargaining process and to preserve the

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NLRB's remedial power while the Board resolves an unfair labor practice charge.

I

For more than 45 years, California Nurses Association (CNA) has represented nurses at Children's. In July 1990, Children's and Pacific Presbyterian Medical Center (PPMC), a nearby hospital, decided to merge into a single health care provider, California Pacific Medical Center. The merger agreement provided that PPMC would be merged into Children's, that Children's would be the surviving corporation, that it would change its name to CPMC, and that CPMC would succeed to the rights and property (and assume the debts and liabilities) of PPMC. The merger was effective June 16, 1991.

CPMC advised six of the seven unions that had represented employees at Children's and PPMC that CPMC intended to recognize those unions' status as the collective representatives of covered employees and to honor its obligations under those contracts. The lone exception was CNA.

CNA had been the bargaining representative for the Children's nurses since 1947. At the time of the merger, it represented 568 registered nurses at Children's; PPMC's 802 registered nurses were not represented by any union.

On March 1, 1991, in accordance with the terms of the collective bargaining agreement, Children's notified CNA that it was terminating the agreement as of its expiration on June 1, 1991. On the date of the merger (June 16), CPMC notified CNA that it would no longer recognize the union as the bargaining agent for nurses of the new entity because CNA did not represent a majority of nurses at the combined facility. CPMC invited CNA to join in a request to the NLRB for a secret-ballot election of all registered staff nurses. CNA declined, and instead filed an unfair labor practice charge with the Board.

Since the merger, CPMC has centralized managerial and administrative functions. Labor relations and human relations are centralized under a single Vice President for Human Resources. Both campuses, as the former Children's facility (California Campus) and PPMC (Pacific Campus) are now called, use a common payroll system and follow identical job-

posting procedures. For the most part, nurses on the two campuses are on the same wage scale, resulting in an increase in wages for the nurses at the California Campus.

Eight months after CNA filed the unfair labor practice charge, the Regional Director, acting at the Board's direction, petitioned the district court for a preliminary injunction under § 10(j). The district court found that the Board had shown "reasonable cause" inasmuch as the Board's allegations that CPMC was little more than the "continuing existence" of Children's and therefore had an obligation to bargain in good faith with CNA were not insubstantial and frivolous. It also determined that restoration of the pre-merger status quo was necessary to prevent a frustration of the remedial purposes of the NLRA and therefore was "just and proper" given CPMC's unilateral withdrawal of CNA's recognition, the length of time the unfair labor charge would be pending, and the fact that if an injunction were not issued, CNA would cease to exist at the California Campus after 45 years of representing nurses at Children's. The district court accordingly directed CPMC to recognize CNA as the collective bargaining representative for nurses at the California Campus and to restore those nurses' terms and conditions of employment to their pre-merger status quo.

On April 15, 1992, the district court denied the Board's request to modify the preliminary injunction so as to make the restoration order contingent upon CNA's request. Both sides appealed.

On May 6, 1992, we granted CPMC's motion for a stay pending appeal insofar as the preliminary injunction required a rollback of the California Campus nurses' terms and conditions of employment to the pre-merger *453 status quo. However, we left standing that part of the order requiring CPMC to recognize and bargain with CNA.

The appeals were briefed on an expedited schedule and the case was argued before the panel on August 19, 1992. The panel's opinion was filed on April 13, 1993. On August 27, 1993, the full court granted the Board's Petition for Rehearing En Banc and set argument for October 14. The Board issued its final decision on the merits of the underlying unfair labor practices charge on September 30, 1993.

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In light of this development, we asked for supplemental briefing on the issue of mootness. Both sides complied, though they did not disagree at argument that the controversy was capable of repetition, yet evading review, and thus was not moot for purposes of jurisdiction. The court appreciates this extra assistance by counsel.

II

[1] We have previously held that resolution of a § 10(j) injunction proceeding is rendered moot by the NLRB's decision on the merits of an unfair labor practice complaint. *Johansen ex rel. NLRB v. Queen Mary Restaurant Corp.*, 522 F.2d 6, 7 (9th Cir.1975) (per curiam). Just as both sides in *Johansen* agreed that the matter raised in that case was moot, both sides in this case agree that the issue raised in CPMC's appeal falls within the "capable of repetition, yet evading review" exception to the mootness doctrine. This appeal differs from *Johansen* in that it involves the propriety of the standard applied by district courts in § 10(j) proceedings. Therefore, while a § 10(j) injunction exists only so long as the charges are pending (and we therefore have no call to revisit *Johansen* on this account), we are presented with an important legal issue that we are persuaded will continue to come up, and escape review, unless we provide it in this case. ^{FN1}

^{FN1} In *Johansen ex rel. NLRB v. San Diego County District Council of Carpenters*, 745 F.2d 1289 (9th Cir.1984) (per curiam), we held that a union's appeal from a § 10(j) injunction ordering a 10-day hiatus in picketing and leafletting allegedly barred under § 8(b)(4)(ii)(B) of the Act was the type of order that is capable of repetition, yet evading review. The 10-day order expired by its own terms well before review in this court was complete. We held that such an order could not be fully litigated, and that the same union reasonably could expect to find itself embroiled in litigation with the NLRB over the same issue. *Id.* at 1292-93.

In *Eisenberg ex rel. NLRB v. Holland Rantos Co.*, 583 F.2d 100 (3d Cir.1978), the Third Circuit held that the Board's resolution of the underlying unfair labor practice charge didn't moot the appeal of a

§ 10(j) injunction. *Id.* at 103 n. 6.

For such circumstances the Supreme Court has recognized a "capable of repetition, yet evading review" exception to the mootness doctrine. In *Weinstein v. Bradford*, 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975) (per curiam), the Court summarized the doctrine and set forth two requirements:

[T]he "capable of repetition, yet evading review" doctrine [is] limited to the situation where two elements combine[]: (1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again.

Id. at 149, 96 S.Ct. at 349.

[2][3] There is no question that a § 10(j) injunction meets the first criterion. "Evading review" means evading Supreme Court review. See *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 547, 96 S.Ct. 2791, 2797, 49 L.Ed.2d 683 (1976) ("[I]f we decline to address the issues in this case on grounds of mootness, the dispute will evade review, or at least considered plenary review in this Court[.]"). The progress of this case illustrates that it may be difficult for a court of appeals—much less the Supreme Court—to reach a final decision on the propriety of a § 10(j) injunction before the Board's adjudication is finished. The Board took nearly 28 months to resolve CNA's unfair labor practice charge; almost 20 of those overlapped with the injunction proceedings from the filing of the petition in the district court to the eve of oral argument before the en banc court. Even if the Board hadn't filed a suggestion for rehearing en banc, but had *454 immediately petitioned for certiorari, the Supreme Court could not have received briefing, heard argument, and rendered an opinion before the Board issued its decision. See *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 774, 98 S.Ct. 1407, 1414, 55 L.Ed.2d 707 (1978) (18 months too short for "complete judicial review"). Plenary Supreme Court review of most cases in the federal system necessarily includes plenary review in a court of appeals. Review in a court of appeals, in turn, necessarily includes the prospect of rehearing en banc. See *Fed.R.App.P.* 35. In these circumstances, where the underlying action is almost certain to run its course before either this court or the Supreme Court can give the case full

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consideration, the controversy evades review. See Christian Knights of the Ku Klux Klan Invisible Empire, Inc. v. District of Columbia, 972 F.2d 365, 369-70 (D.C.Cir.1992) (where District refused Klan's request for a march permit, but march occurred more than 14 months prior to argument in court of appeals, case fell within exception: "[M]erits ... cannot be expected to receive considered, plenary review even in this court, much less the Supreme Court, prior to events overtaking the litigation.") (quotation marks omitted).

Likewise, there is a reasonable expectation that this dispute will recur. The complaining party "need only show that it is reasonable to expect that [it] will engage in conduct that will once again give rise to the assertedly moot dispute; [it] need not show that there is a 'demonstrated probability' that the dispute will recur." Barilla v. Ervin, 886 F.2d 1514, 1520 (9th Cir.1989) (discussing Honig v. Doe, 484 U.S. 305, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988)).

We have no need to decide whether CPMC or the Board is the "complaining party" ^{FN2} because both meet this threshold here. As CPMC is a large employer that currently deals with five other unions in addition to CNA and is still in the process of restructuring, there is a reasonable expectation that another labor dispute will arise and the Board may again seek § 10(j) relief against it. See, e.g., Burlington N.R.R. v. Brotherhood of Maintenance of Way Employees, 481 U.S. 429, 436 n. 4, 107 S.Ct. 1841, 1846 n. 4, 95 L.Ed.2d 381 (1987) (exception applicable to labor dispute that Congress had resolved through legislation: "Because [the] same parties are reasonably likely to find themselves again in dispute over the issues raised in [the petition for certiorari], and because such disputes typically are resolved quickly by executive or legislative action, this controversy is one that is capable of repetition yet evading review."); Brock v. Roadway Express, Inc., 481 U.S. 252, 258, 107 S.Ct. 1740, 1745, 95 L.Ed.2d 239 (1987) (plurality opinion) (exception applicable to merits of due process challenge to Secretary of Labor's procedures for temporarily reinstating discharged employees pursuant to Surface Transportation Assistance Act of 1982 given that it could reasonably be expected that employer, one of country's largest interstate trucking companies, would be subject to similar reinstatement orders in future).

^{FN2}. The complaining party is "the party who is raising the challenge." Gates v. Deukmejian, 987 F.2d 1392, 1408 (9th Cir.1992). By virtue of its filing the § 10(j) petition and seeking a preliminary injunction, the NLRB was the complaining party in the district court. Both CPMC and the Board appealed the district court's ruling, and the Board sought rehearing en banc.

By the same token, it is certain the Board will continue to litigate § 10(j) injunctions in district courts throughout the circuit. The same issue, arising from confusion over the appropriate standard to be applied in § 10(j) proceedings, will recur in future litigation. It is important for the Board and for employers such as CPMC to know what criteria will be applied when the Board requests interim relief under § 10(j). Thus, the public interest weighs heavily in favor of our resolving this appeal. See Greenpeace Action v. Franklin, 982 F.2d 1342, 1348 (9th Cir.1992).

We conclude that the Board's issuance of its final order does not render this appeal moot. The dispute over standards is within the "capable of repetition, yet evading review" exception to the case-and-controversy requirement. We therefore consider what standards the district court should apply in § 10(j) requests.

*455 III

[4][5] The grant or denial of a preliminary injunction will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact. Senate of Cal. v. Mosbacher, 968 F.2d 974, 975 (9th Cir.1992); see also Tomco, 853 F.2d at 748 ("We review the 'just and proper' prong of the section 10(j) analysis for abuse of discretion."). "Where the district court is alleged to have relied on erroneous legal premises, review is plenary." America W. Airlines, Inc. v. National Mediation Bd., 986 F.2d 1252, 1258 (9th Cir.1992). We review de novo issues of law underlying the district court's preliminary injunction. MAL Sys. Corp. v. Peak Computer, Inc., 991 F.2d 511, 516 (9th Cir.1993), cert. dismissed, 510 U.S. 1033, 114 S.Ct. 671, 126 L.Ed.2d 640 (1994).

IV

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Section 10(j) is unusual in federal labor law insofar as it authorizes the federal courts to grant injunctive relief in labor disputes. The broad anti-injunction provisions of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. §§ 101-115, precluded federal courts from enjoining labor union activities while charges were pending before the Board. In 1947, however, Congress passed the Taft-Hartley Act, Pub.L. No. 80-101, 61 Stat. 136, in part to alleviate the threat that delay in the Board's processing of unfair labor practice complaints would otherwise pose to the NLRA's remedial goals.^{FN3} Taft-Hartley added § 10(j) to the NLRA. It provides:

^{FN3}. The Senate Report expressed this concern as follows:

Time is usually of the essence [in labor disputes] and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have provided that the Board, acting in the public interest and not in vindication of purely private rights, may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotts defined as unfair labor practices....

....

Experience under the National Labor Relations Act has demonstrated that by reason of lengthy hearing and litigation enforcing its order, the Board has not been able in some instances to correct unfair labor practices until after substantial injury has been done.... [I]t has sometimes been possible for persons violating the act to accomplish their unlawful objective before being placed under any legal restraint and thereby to make it impossible or not feasible to restore or preserve the status quo pending litigation.

S.Rep. No. 105, 80th Cong., 1st Sess. 8,
27 (1947).

The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper. 29 U.S.C. § 160(j). Taft-Hartley also added § 10(l), which is a related but more limited provision that requires the Board to seek interim relief when it has "reasonable cause" to believe that specific violations of the NLRA (such as secondary boycotts and certain types of illegal picketing) have occurred, and correspondingly confers jurisdiction on the district courts to grant injunctive relief as the court deems "just and proper." *Id.* § 160(l).

[6] The district court applied the standard that has evolved in this circuit for determining whether § 10(j) injunctive relief is available. It is a two-part inquiry:

First, the court must determine whether there is reasonable cause to believe that an unfair labor practice occurred. The district court's inquiry into the validity of the Board's unfair labor practice charge is confined*456 to determining whether the factual allegations are not insubstantial and frivolous. Second, the court must determine whether the interim injunctive relief the Board seeks is just and proper.

Tomco, 853 F.2d at 747 (citations, footnote, and quotation marks omitted). While we have never explicitly defined the "just and proper" element, our decisions in *Tomco* and *El Farra* indicate that this standard is met when the relief requested is "necessary to prevent a frustration of the remedial purposes of the Act." *El Farra*, 863 F.2d at 674.

[7] CPMC argues that the "just and proper" standard incorporates the traditional equitable criteria used in

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determining whether to grant a preliminary injunction. Traditionally we consider (1) the likelihood of the moving party's success on the merits; (2) the possibility of irreparable injury to the moving party if relief is not granted; (3) the extent to which the balance of hardships favors the respective parties; and (4) in certain cases, whether the public interest will be advanced by granting the preliminary relief. United States v. Odessa Union Warehouse Co-op, 833 F.2d 172, 174 (9th Cir.1987). The moving party must show "either (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) the existence of serious questions going to the merits, the balance of hardships tipping sharply in its favor, and at least a fair chance of success on the merits." Mosbacher, 968 F.2d at 977. "These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." Odessa Union, 833 F.2d at 174.

The Board contends that district courts should limit their scrutiny of the merits of the violation to whether the Regional Director's factual allegations and legal theories are substantial and not frivolous, and that the "just and proper" prong should focus on whether the nature and effect of the alleged violations threatens remedial failure. It argues that the "reasonable cause" and "just and proper" inquiries parallel traditional equitable concepts, but properly restrict the court's power to weigh the equities in keeping with the statutory purpose and structure.

We conclude that while the Board is correctly concerned with protecting the integrity of the collective bargaining process and with preserving its remedial powers in the wake of an alleged violation of the NLRA, the "reasonable cause"/"just and proper" standard it advocates does not comport with the language of § 10(j), or with Supreme Court precedent which requires balancing competing claims of injury and the effect on each party of granting and withholding injunctive relief. See Weinberger v. Romero-Barcelo, 456 U.S. 305, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982). Rather, we believe the Board's concerns can more appropriately be accommodated by factoring the purpose of interim relief and preservation of the Board's remedial power into the traditional framework that informs our equity jurisdiction.

A

[8] Section 10(j) has no "reasonable cause" component. It was imported into § 10(j) analysis from § 10(l), where the requirement expressly appears, when Tomco adopted the "reasonable cause" prong of its § 10(j) test from San Francisco-Oakland Newspaper Guild v. Kennedy ex rel. NLRB, 412 F.2d 541, 544 (9th Cir.1969), a § 10(l) case. See Tomco, 853 F.2d at 747. Section 10(l), unlike § 10(j), is mandatory in nature: Whenever the Board develops "reasonable cause" to believe that any one of the specified types of labor violations has occurred, it *must* petition the district court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter." 29 U.S.C. § 160(l). Even so, in § 10(l), the "reasonable cause" requirement has to do with the Board's own obligations under the Act—not with a constraint on the equitable powers of the district court once its jurisdiction has been properly invoked.

Section 10(j), by contrast, is discretionary; it provides that "the Board shall have power" to petition the district court for relief, but it does not say that the Board must do so. Unlike § 10(l), it erects no hurdle for the Board to jump over before petitioning the court for interim relief. As Congress prescribed a "reasonable cause" prerequisite for requesting § 10(l) relief, it knew how to *457 impose that kind of requirement when it wanted to. Having not done so in § 10(j), we should not assume that it meant the two provisions to be treated similarly. In any case, the level of belief required to proceed to court cannot equate with the level of proof required to succeed in court; otherwise the court would have no discretion to exercise. That, in turn, would conflict with the plain meaning of the statutory conferral of jurisdiction to grant injunctive relief which the court deems "just and proper." Finally, to require that "reasonable cause" be shown is confusing, casting focus on the preliminary investigation instead of on the likely success of the complaint on the merits, where, as we shall explain, it properly belongs.

In this view we join our colleagues on the Seventh Circuit, who recently abandoned the "reasonable cause" requirement in § 10(j) proceedings. As Judge Easterbrook wrote for the court in Kinney v. Pioneer Press, 881 F.2d 485 (7th Cir.1989):

When courts apply traditional equitable principles to inquire whether an injunction is "just and proper"

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under § 10(j), no further purpose is served by asking the district judge, as a preliminary matter, to determine whether the Director has established reasonable cause. To the extent it is important, the inquiry is part of the analysis of whether injunctive relief is just and proper; if it doesn't fit into that analysis, it needn't be answered.... If the [Board's] legal theory is inapt or if the facts are stacked against the agency's position (i.e., if there is truly no reasonable cause to believe someone has breached the NLRA), it's a safe bet that injunctive relief is not "just and proper". In fact, the district judge would be required to deny relief under such circumstances, because an injunction may not issue unless the plaintiff has at least a modest chance of success on the merits. Because the district judge must consider the strength of the Director's case in order to make this decision, nothing is gained by engraving onto § 10(j) proceedings a preliminary "reasonable cause" test.

Id. at 491 (citations omitted).

We therefore overrule *Tomco* and *El Farra* on this point, and hold that a district court, when presented with a § 10(j) petition, need not determine whether there is reasonable cause to believe that an unfair labor practice has been committed. The district court must instead determine only whether the relief requested is "just and proper."

B

Relying on *El Farra*, the Board argues that the "just and proper" element is satisfied if the "relief [is] necessary to prevent a frustration of the remedial purposes of the Act." 863 F.2d at 674. The Supreme Court, however, instructed differently in *Romero*, 456 U.S. 305, 102 S.Ct. 1798.

In *Romero*, the court of appeals had directed entry of an injunction to restrain the Navy's discharging pollutants without a permit in violation of the Federal Water Pollution Control Act, concluding that the traditional equitable balancing of competing interests was not required where there was a statutory duty to obtain a permit. The Court reversed, noting that by its nature, an injunction is an equitable remedy that does not issue as of course. Rather, "the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies[.]" and where there are competing claims of in-

jury, "the traditional function of equity has been to arrive at a nice adjustment and reconciliation between the competing claims [.]" *Id.* at 312, 102 S.Ct. at 1803 (quotation marks omitted). Even though it is important to consider the public interest, *Romero* states, "[t]he grant of jurisdiction to ensure compliance with a statute hardly suggests an absolute duty to do so under any and all circumstances, and a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law." *Id.* at 313, 102 S.Ct. at 1803; see also *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 542, 107 S.Ct. 1396, 1402, 94 L.Ed.2d 542 (1987) ("In each case, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief."). Quoting its earlier opinion in *458*Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S.Ct. 587, 591-592, 88 L.Ed. 754 (1944), the Court emphasized:

These commonplace considerations applicable to cases in which injunctions are sought in the federal courts reflect a "practice with a background of several hundred years of history," a practice of which Congress is assuredly well aware. Of course, Congress may intervene and guide or control the exercise of the courts' discretion, but we do not lightly assume that Congress has intended to depart from established principles.

Romero, 456 U.S. at 313, 102 S.Ct. at 1803 (citation omitted). Accordingly, "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Id.* (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398, 66 S.Ct. 1086, 1089, 90 L.Ed. 1332 (1946)).

Section 10(j) does not state "in so many words" that district courts should ignore traditional equitable criteria when evaluating petitions for interim relief. Indeed, "just and proper" is another way of saying "appropriate" or "equitable." See Webster's Third New International Dictionary 1228 (1981) (defining "just" as "equitable"); *id.* at 1817 (defining "proper" as "marked by suitability, fitness, accord, compatibility"). Nor does the legislative history suggest that Congress intended to do away with the established equitable principles. Judge Friendly's analysis in *Danielson v. Joint Bd. of Coat, Suit & Allied Gar-*

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ment Workers' Union, 494 F.2d 1230, 1241-42 (2d Cir.1974), lays this to rest. We are thus left to consider whether anything in the structure of the Act necessarily implies that conventional equitable discretion should not be exercised.

The Board infers the requisite intent to restrict the court's jurisdiction in equity from the high level of deference the NLRA accords generally to the Board's decisions, and the congressional policy favoring interim relief when the NLRA's underlying purposes are threatened. It argues that § 10(j) and § 10(l) are part of an overall statutory scheme that allows for limited involvement by the federal courts in the investigation and disposition of unfair labor practice charges. The Board points out that, with the exception of these two provisions, the district courts lack jurisdiction over unfair labor practice complaints. Further, it notes that although the courts of appeals review the Board's decisions, the scope of their review is limited and deferential. See 29 U.S.C. § 160(e)(f); see also Fibreboard Paper Prods. Corp. v. NLRB, 379 U.S. 203, 216, 85 S.Ct. 398, 406, 13 L.Ed.2d 233 (1964) ("The Board's [remedial] order will not be disturbed unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act.") (quotation marks omitted); NLRB v. Truck Drivers Local Union No. 449, 353 U.S. 87, 96, 77 S.Ct. 643, 648, 1 L.Ed.2d 676 (1957) ("The function of striking [an appropriate] balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the [NLRB], subject to limited judicial review."). Finally, the Board submits that while the equities can no doubt be considered, Congress has done so and has itself struck the balance such that the only remaining factor for the courts to consider is whether denial of interim relief will jeopardize the grant of ultimate relief.

We are not persuaded. Even though § 10(j) is an exception to the primary jurisdiction of the NLRB over labor disputes, it reflects an intention that the district court will exercise judgment rather than simply sign off on Board requests. Otherwise, jurisdiction for the court to grant such relief "as it deems just and proper" would be unnecessary. Also, it is the courts of appeals which are obliged to afford deferential review to final Board determinations, not the district courts in response to preliminary requests. The

NLRA provisions requiring deference to the NLRB show that when Congress wanted to tell the courts to give the benefit of the doubt to the Board's expertise, it knew how to do so. See 29 U.S.C. § 160(e) (on petition for enforcement of its order, Board's factual findings deemed "conclusive" "if supported by substantial evidence on the record considered as a whole"); id. § 160(f) (same rule with respect to petition for review of Board's *459 order). As we discuss, district courts should take the appellate standard of review into account in evaluating the likelihood of success on the merits, but nothing in the NLRA requires them to defer to the Board's § 10(j) request.

The Board relies on our opinion in Odessa Union, 833 F.2d 172, to contend that the "just and proper" inquiry centers on the threat of failing to grant interim relief, rather than the likelihood that an unfair labor practice has occurred. In Odessa Union, we said that "the fact that a federal statute is being enforced by the agency charged with that duty may alter the burden of proof of a particular element necessary to obtain injunctive relief." Id. at 175. There, the traditional requirement of irreparable injury was inapplicable because the parties conceded that the federal statute involved was violated. However, when the violation is disputed (as it is here), Odessa Union does not relieve the governmental agency of its burden of showing that the statutory conditions are met. See id. Rather, as we recently indicated in United States v. Nutri-Cology, Inc., 982 F.2d 394 (9th Cir.1992), the strength of the government's showing on the likelihood of prevailing on the merits will affect the degree to which it must prove irreparable injury:

In statutory enforcement cases where the government has met the "probability of success" prong of the preliminary injunction test, we presume it has met the "possibility of irreparable injury" prong because the passage of the statute is itself an implied finding by Congress that violations will harm the public. Therefore, further inquiry into irreparable injury is unnecessary. However, in statutory enforcement cases where the government can make only a "colorable evidentiary showing" of a violation, the court must consider the possibility of irreparable injury.

Id. at 398 (citations omitted). This is in keeping with our normal sliding scale standard of injunctive relief. There is, accordingly, no basis in our statutory en-

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forcement cases for concluding that the Board need not make any showing of likelihood of success.

Recognizing that traditional equitable criteria apply to § 10(j) proceedings brings us in line with the First, Second, and Seventh Circuits, which read *Hecht* and *Romero* as we do. See *Pioneer Press*, 881 F.2d at 490-91; *Maram ex rel. NLRB v. Universidad Interamericana de Puerto Rico, Inc.*, 722 F.2d 953, 958 (1st Cir.1983); *Kaynard ex rel. NLRB v. Mego Corp.*, 633 F.2d 1026, 1033 (2d Cir.1980) (Friendly, J.).^{FN4} Incorporating conventional principles also comports with the approach we've taken in other statutory injunction cases. See *Regents of the Univ. of Cal. v. American Broadcasting Cos.*, 747 F.2d 511, 515 (9th Cir.1984) (Sherman Act § 1); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir.1982) (Federal Trade Commission Act).

^{FN4} This holding also aligns us with the Fifth Circuit, which, while not discussing *Hecht*, cited *Danielson* for the proposition that "[t]he Chancellor does not abdicate his powers merely upon a showing that the Regional Director's theories surpass frivolity." *Boire ex rel. NLRB v. Pilot Freight Carriers, Inc.*, 515 F.2d 1185, 1193 (5th Cir.1975), cert. denied, 426 U.S. 934, 96 S.Ct. 2646, 49 L.Ed.2d 385 (1976).

Those courts that adhere to the "reasonable cause"/"just and proper" standard, limiting the latter to whether relief is necessary to preserve the Board's remedial power, have not directly considered whether the analysis in *Hecht* and *Romero* controls. See *Arlook ex rel. NLRB v. S. Lichtenberg & Co.*, 952 F.2d 367, 372 (11th Cir.1992); *Fleischut v. Nixon Detroit Diesel, Inc.*, 859 F.2d 26, 30 (6th Cir.1988); *NLRB v. Aerowox Corp.*, 389 F.2d 475, 477 (4th Cir.1967); *Angle v. Sacks ex rel. NLRB*, 382 F.2d 655, 660 (10th Cir.1967), cf. *Kobell ex rel. NLRB v. Suburban Lines, Inc.*, 731 F.2d 1076, 1090-92 (3d Cir.1984) (citing *Hecht*, but for proposition that court of appeals, in reviewing § 10(j) order, must be sure district court "focused upon" Act's "large objectives") (quotation marks omitted); *Minnesota Mining & Mfg. Co. v. Meter ex*

rel. NLRB, 385 F.2d 265, 270-72 (8th Cir.1967) (following Tenth Circuit's holding in *Angle* that relief under § 10(j) is "just and proper" upon showing of threat of remedial failure; while court cited *Hecht* and *Warner Holding* (relied on by the Court in *Romero*), it did so in rejecting district court's conclusion that injunctive relief was proper on showing of "reasonable cause" alone).

We therefore hold that in determining whether interim relief under § 10(j) is "just and proper," district courts should consider traditional equitable criteria. They must do so, however, through the prism of the underlying purpose of § 10(j), which is to protect *460 the integrity of the collective bargaining process and to preserve the Board's remedial power while it processes the charge.

C

We turn, then, to how courts should approach the balancing of equities in § 10(j) requests.

[9] First, as *Romero* indicates, the public interest is an important factor in the exercise of equitable discretion. 456 U.S. at 312, 102 S.Ct. at 1803 ("In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction."). In § 10(j) cases, the public interest is to ensure that an unfair labor practice will not succeed because the Board takes too long to investigate and adjudicate the charge. Thus, courts must consider the extent to which this interest is implicated under the circumstances of the particular case.

[10] Next, as we have now held, likelihood of success must be weighed against the possibility of irreparable injury. Likelihood of success is no longer to be equated with "reasonable cause" to believe a violation has occurred, nor is it to be measured by whether the factual allegations are "not insubstantial and frivolous." Instead, "[a]s an irreducible minimum, the moving party must demonstrate a fair chance of success on the merits [.]"^{FN5} *Arcamuzi v. Continental Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir.1987) (quotation marks omitted).

^{FN5} Where the moving party shows only a

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"fair" chance of success on the merits, in contrast to "probable" success on the merits, the party also must show there are serious questions going to the merits of the case and that the balance of the hardships tips decidedly in its favor. Mosbacher, 968 F.2d at 977.

[11] In assessing whether the Board has met its burden, it is necessary to factor in the district court's lack of jurisdiction over unfair labor practices, and the deference accorded to NLRB determinations by the courts of appeals. See NLRB v. City Disposal Sys., Inc., 465 U.S. 822, 829, 104 S.Ct. 1505, 1510, 79 L.Ed.2d 839 (1984) ("[O]n an issue that implicates [the Board's] expertise in labor relations, a reasonable construction by the Board is entitled to considerable deference[.]"); Ford Motor Co. v. NLRB, 441 U.S. 488, 497, 99 S.Ct. 1842, 1849, 60 L.Ed.2d 420 (1979) ("Of course, the judgment of the Board is subject to judicial review, but if its construction of the statute is reasonably defensible, it should not be rejected merely because the courts might prefer another view of the statute."). While the district court is not required to defer to the Board in deciding whether interim relief is "just and proper," it should evaluate the probabilities of the complaining party prevailing in light of the fact that ultimately, the Board's determination on the merits will be given considerable deference. By the same token, because it is the Board and not the district court which has primary responsibility for declaring federal labor policy, we agree with Judge Friendly that "[e]ven on an issue of law, the district court should be hospitable to the views of the General Counsel, however novel." Danielson, 494 F.2d at 1245. In short, the Board can make a threshold showing of likelihood of success by producing some evidence to support the unfair labor practice charge, together with an arguable legal theory.

[12] If the respondent concedes the substance of the unfair labor practice charge, or if the Board demonstrates that it is likely to prevail on the merits, we presume irreparable injury. Nutri-Cology, 982 F.2d at 398. If the charge is disputed, or if the Board has only a fair chance of succeeding on the merits, the court must consider the possibility of irreparable injury.

[13] In this connection, as well as in considering the balance of hardships, the district court must take into

account the probability that declining to issue the injunction will permit the allegedly unfair labor practice to reach fruition and thereby render meaningless the Board's remedial authority. See Amoco Prod. Co., 480 U.S. at 545, 107 S.Ct. at 1404 ("If [environmental] injury is sufficiently likely ... the balance of harms will usually favor the issuance of an injunction to protect the environment."). Where the Board and the respondent each make a showing*461 of hardship, the district court must exercise its sound discretion to determine whether the balance tips in the Board's favor.

V

Because the district court applied the "reasonable cause"/"just and proper" law as it existed when the temporary injunction was issued, and we have instead held that there is no "reasonable cause" inquiry in § 10(j) proceedings and that courts should apply traditional equitable criteria, we would normally remand to give the court an opportunity to reconsider in light of our newly-adopted standard. See, e.g., Aguirre v. Chula Vista Sanitary Serv. & Sani-Tainer, Inc., 542 F.2d 779, 781 (9th Cir.1976) (per curiam) (where district court erred in considering only likelihood of success, case remanded for application of sliding scale injunction test). However, no useful purpose would be served by doing so in this case, as the temporary relief granted has expired and the district court no longer has jurisdiction now that the Board has issued its final order. Therefore, we vacate the district court's opinion^{FN6} and hold that a district court, exercising § 10(j) jurisdiction, shall determine whether the temporary relief requested is "just and proper" in accordance with traditional equitable criteria considered in the context of the federal labor laws and the underlying purposes of § 10(j), to protect the integrity of the collective bargaining process and to preserve the Board's remedial powers.^{FN7}

FN6. Miller ex rel. NLRB v. California Pac. Medical Ctr., 788 F.Supp. 1112 (N.D.Cal.1992). We also vacate the panel's opinion, published at 991 F.2d 536 (9th Cir.1993).

FN7. See American Trading Transp. Co. v. United States, 841 F.2d 421, 426 (D.C.Cir.1988) (Ginsburg, R.B., J.) (in view of atypical posture of requests to review

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short-term agency orders capable of repetition but evading review, court construes remedy sought on appeal as in the nature of prospective declaratory relief); *see also Guardian Moving & Storage Co. v. ICC*, 952 F.2d 1428, 1433-34 (D.C.Cir.1992) (ICC orders granting emergency temporary authority reviewed although permanent contract had been granted by time of appellate decision; court declined to remand and instead vacated interim authorities and declared law to be applied in future); *cf. DHL Corp. v. Civil Aeronautics Bd.*, 659 F.2d 941, 944 n. 4 (9th Cir.1981) (acknowledging D.C. Circuit rule, but finding it inapplicable because order at issue was unlikely to evade review).

VACATED.

SCHROEDER, Circuit Judge, with whom Circuit Judges BROWNING, TANG, and TROTT join, concurring in part and dissenting in part;

My disagreement is not so much in what the majority opinion says as in what it declines to say. The majority announces a newly articulated analysis for district courts to apply in NLRA preliminary injunction cases, but then declines to apply that analysis to the case before it.

Article III limits our jurisdiction to cases and controversies. When we assume jurisdiction of a moot case because it is capable of repetition yet likely to evade review, we routinely decide the merits. *See, e.g., Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398 (9th Cir.1994); *see also Burlington Northern R. Co. v. B.M.W.E.*, 481 U.S. 429, 431, 107 S.Ct. 1841, 1843, 95 L.Ed.2d 381 (1987); *Johansen ex rel. NLRB v. San Diego County Dist. Council of Carpenters*, 745 F.2d 1289 (9th Cir.1984) (per curiam). If, as the majority announces, this case is worthy of consideration because the dispute may recur between the parties, then this court has an obligation to explain how that dispute should be decided, and not merely render advisory standards for use by district courts in future cases.

Because I believe that under the court's own newly articulated analysis, the district court would have no option other than to enter a preliminary injunction, I would affirm.

Under our prior law, that the district court correctly and ably applied, we used a two-prong test to determine whether or not injunctive relief under § 10(j) was appropriate. We instructed the district court to look first to see whether there was "reasonable cause," i.e. whether there was a factual and legal basis for the injunction. Then, the district court was to determine whether the relief was "just and proper," meaning that the *462 district court was to determine whether the relief was appropriate in order to preserve the ability of the Board to grant relief in the future. *See, e.g., Scott ex rel. NLRB v. El Farra Enters., Inc.*, 863 F.2d 670, 673-74 (9th Cir.1988); *Miller v. California Pacific Medical Center*, 788 F.Supp. 1112 (N.D.Cal.1992).

In order to conform the analysis more closely to the statutory language, and to harmonize our law with the apparent developing trend in other circuits, the majority opinion collapses the two steps into one "just and proper" inquiry and explains that to determine whether an injunction is "just and proper," the district court is to consider the "public interest" and weigh the likelihood of success against the degree of injury. Majority opinion at 458-459.

The majority recognizes that in § 10(j) cases, the public interest is to protect the remedial power of the Board, and to ensure that unfair labor practices do not succeed before the Board is able to adjudicate the charge. Majority opinion at 451, 460. The majority further recognizes that the stronger the Board's legal and factual showing of probable success, the less the need for a showing of irreparable harm. Majority opinion at 459. Moreover, because the district court does not have jurisdiction to determine the merits of a claim under the NLRA, and because Congress has designated the Board and not the district court as the primary enforcer of labor relations matters, the district court owes great deference to both the Board's understanding of the facts underlying its decision to apply for an injunction, and to the Board's interpretation of the law. Majority opinion at 459.

Thus, under the majority's analysis, where the Board is able to support its charge with a reasonable basis in fact and an arguable legal position, the Board's threshold requirement is met, and if, on its showing of irreparable harm, the Board is able to establish that an injunction is necessary in order to preserve the remedial jurisdiction of the Board, then the injunction

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should be entered. If, rather than showing that it has a reasonable basis in law and fact for its position the Board is able to show that it is "likely to prevail on the merits," the injunction should issue and no further showing of irreparable injury is required. Majority opinion at 459.

I have no substantive disagreement with this analysis. I object only to the majority's failure to follow through with its opinion and apply its analysis to the case before us. The majority indicates that if the case were not moot, it would remand to the district court for reconsideration in light of its new standard. Majority opinion at 459-460. It does not indicate, however, what more the district court might consider that would justify a different result in this case, given the district court's findings that the Board was likely to succeed on the merits, and that the injunction was necessary to protect the Board's remedial power and prevent the union's destruction. See 788 F.Supp. at 1116.

Applying the majority analysis to this case, I find that the actual basis for the Board's § 10(j) application is not disputed. The hospital admittedly refused to bargain with the nurses. 788 F.Supp. at 1114-15. The legal basis of the Board's position, that hospitals should be treated like other employers who, following a merger are required to bargain with represented employees in a single facility, is also, at the very least, an arguably valid position. See 788 F.Supp. at 1115-16; *N.L.R.B. v. Burns Internat'l Security Services, Inc.*, 406 U.S. 272, 92 S.Ct. 1571, 32 L.Ed.2d 61 (1972). Accordingly, under the majority's analysis, if the district court found that an injunction was necessary in order to preserve the ability of the Board to remedy any unfair labor practice at the conclusion of the enforcement proceedings, the district court was required to enter the injunction. That is precisely what the district court found and precisely what the district court did. It found that if a preliminary injunction were not entered, the nurses' union would no longer represent employees in the single facility by the time the Board concluded its proceedings, and that an injunction for that reason should enter. As the court noted, "[i]f an injunction were not issued, after 45 years of representing the nurses at [the hospital.] CNA would cease to exist at the California campus." 788 F.Supp. at 1116. The finding of irreparable harm is unassailable, *463 and the district court injunction should be affirmed.

I therefore dissent from the majority's decision to vacate the district court opinion without deciding that the district court properly entered the injunction.

C.A.9 (Cal.), 1994.
Miller for and on Behalf of N.L.R.B. v. California Pacific Medical Center
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EXHIBIT B

THORNHILL v. STATE OF ALABAMA
U.S. 1940.

Supreme Court of the United States
THORNHILL
v.
STATE OF ALABAMA.
No. 514.

Argued Feb. 29, 1940.
Decided April 22, 1940.

Mr. Justice McREYNOLDS, dissenting.

On Writ of Certiorari to the Court of Appeals of the State of Alabama.

Byron Thornhill was convicted of loitering and picketing, the conviction was affirmed by the Court of Appeals, 28 Ala.App. 527, 189 So. 913, and certiorari was denied by the Supreme Court, 238 Ala. 162, 189 So. 914, and Byron Thornhill brings certiorari.

Reversed.

West Headnotes

[1] Constitutional Law 92 ↔ 3851

92 Constitutional Law
92XXVII Due Process
92XXVII(A) In General
92k3848 Relationship to Other
Constitutional Provisions; Incorporation
92k3851 k. First Amendment. Most

Cited Cases
(Formerly 92k274.1(1), 92k274)
The freedom of speech and of the press which are secured by the First Amendment against abridgment by the United States are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a state. U.S.C.A.Const. Amends. 1, 14.

[2] Constitutional Law 92 ↔ 1490

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In General. Most Cited

Cases
(Formerly 92k274.1(1), 92k274)
Abridgment of freedom of speech and of press impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through processes of popular government. U.S.C.A.Const. Amends. 1, 14.

[3] Constitutional Law 92 ↔ 1490

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In General. Most Cited

Cases
(Formerly 92k274.1(1), 92k274)
When the effective exercise of constitutional right of freedom of speech and of the press is claimed to be abridged, court should weigh the circumstances and appraise the substantiality of reasons advanced in support of challenged regulations. U.S.C.A.Const. Amends. 1, 14.

[4] Constitutional Law 92 ↔ 1725

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press

92XVIII(G) Property and Events
92XVIII(G)1 In General
92k1725 k. In General. Most Cited

Cases
(Formerly 92k274.1(5), 92k274)

Constitutional Law 92 ↔ 1850

92 Constitutional Law

EXHIBIT B

92XVIII Freedom of Speech, Expression, and Press

92XVIII(K) Protests and Demonstrations in General

92XVIII(K)2 Picketing

92k1850 k. In General. Most Cited

Cases

(Formerly 92k274.1(5), 92k274)

Validity of Alabama statute forbidding loitering and picketing, attacked on ground of unconstitutional denial of freedom of speech, was to be determined on its face. Code Ala.1923, § 3448; U.S.C.A.Const. Amend. 14.

[5] Indictment and Information 210 ⇐117

210 Indictment and Information

210V Requisites and Sufficiency of Accusation

210k117 k. Construction in General. Most

Cited Cases

(Formerly 210k17)

Where charges of loitering and picketing were framed in the words of statute, they were to be given a like construction. Code Ala.1923, § 3448.

[6] Constitutional Law 92 ⇐4582

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)4 Proceedings and Trial

92k4578 Charging Instruments;

Indictment and Information

92k4582 k. Relation Between

Allegations and Proof; Variance. Most Cited Cases

(Formerly 92k265, 92k257)

Conviction upon a charge not made would be a denial of "due process." U.S.C.A.Const. Amend. 14.

[7] Constitutional Law 92 ⇐859

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(A) Persons Entitled to Raise

Constitutional Questions; Standing

92VI(A)9 Freedom of Speech, Expression,

and Press

92k858 Criminal Law

92k859 k. In General. Most Cited

Cases

(Formerly 92k42.1(3), 92k42)

The fact that accused could not complain of deprivation of any rights but his own did not preclude him from attacking Alabama statute forbidding loitering and picketing with which he was charged with having violated on ground that the statute was an unconstitutional abridgment of right of freedom of speech. Code Ala.1923, § 3448; U.S.C.A.Const. Amend. 14.

[8] Constitutional Law 92 ⇐874

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(A) Persons Entitled to Raise Constitutional Questions; Standing

92VI(A)9 Freedom of Speech, Expression, and Press

92k873 Licenses

92k874 k. In General. Most Cited

Cases

(Formerly 92k42.1(6), 92k42)

Proof of an abuse of power in a particular case is not a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. U.S.C.A.Const. Amend. 14.

[9] Constitutional Law 92 ⇐714

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(A) Persons Entitled to Raise Constitutional Questions; Standing

92VI(A)3 Particular Questions or Grounds of Attack in General

92k713 Licenses

92k714 k. In General. Most Cited

Cases

(Formerly 92k42.1(6), 92k42)

One who might have had a license merely for the asking may call into question the whole scheme of licensing when he is prosecuted for failure to procure it.

[10] Constitutional Law 92 ⇐1800

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(H) Law Enforcement; Criminal

Conduct

92k1800 k. In General. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

Constitutional Law 92 ↔ 2070

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(U) Press in General
92k2070 k. In General. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

The existence of a penal statute which sweeps within its ambit activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press, and which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. U.S.C.A.Const. Amend. 14.

[11] Constitutional Law 92 ↔ 1490

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In General. Most Cited

Cases

(Formerly 92k274.1(1), 92k274)

Where regulations of liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute and not the accusation or evidence under it which prescribes the limits of permissible conduct and warns against transgression. U.S.C.A.Const. Amend. 14.

[12] Extortion and Threats 165 ↔ 25.1

165 Extortion and Threats

165II Threats

165k25 Nature and Elements of Offenses
165k25.1 k. In General. Most Cited Cases
(Formerly 165k25, 377k1(1) Threats)

Under Alabama statute making it an offense for a person without just cause or legal excuse to go near to or loiter about premises of any person engaged in

lawful business for purpose of influencing or inducing others to adopt any of certain enumerated courses of action, the phrase "without just cause or legal excuse" does not in any effective manner restrict the breadth of the regulation, since the words themselves have no ascertainable meaning either inherent or historical. Code Ala.1923, § 3448.

[13] Extortion and Threats 165 ↔ 25.1

165 Extortion and Threats

165II Threats

165k25 Nature and Elements of Offenses
165k25.1 k. In General. Most Cited Cases
(Formerly 165k25, 377k1(1) Threats)

Under Alabama statute making it an offense first for any person without just cause or legal excuse therefor to go near to or loiter about the premises or place of business of any other person engaged in lawful business for the purpose or with the intent of influencing or inducing others to adopt any of certain enumerated courses of action, and second, to picket the works or place of business of such other person for the purpose of hindering, delaying, or interfering with or injuring any lawful business, persons may be found to be within the purview of the undefined term "picket", and convicted for engaging in activities identical with those proscribed by the first offense. Code Ala.1923, § 3448.

[14] Constitutional Law 92 ↔ 1807

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(1F) Law Enforcement; Criminal Conduct

92k1807 k. Particular Offenses in General. Most Cited Cases
(Formerly 92k274.1(5), 92k274)

Constitutional Law 92 ↔ 1850

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(K) Protests and Demonstrations in General

92XVIII(K)2 Picketing
92k1850 k. In General. Most Cited

Cases

(Formerly 92k274.1(5), 92k274)

Labor and Employment 231H ↔1345(2)

231H Labor and Employment

231HXII Labor Relations

231HXII(F) Disputes and Concerted Activities

231HXII(F)1 In General

231Hk1342 Constitutional and Statutory Provisions

231Hk1345 Validity

231Hk1345(2) k. Picketing. Most

Cited Cases

(Formerly 232Ak285 Labor Relations, 92k274)

Alabama statute, providing that any person who without just cause or legal excuse therefor goes near to or loiters about the premises or place of business of any other person engaged in lawful business for the purpose or with the intent of influencing or inducing others to adopt any certain enumerated courses of action, or who pickets the place of business of any other person for purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise of another shall be guilty of a misdemeanor, is an unconstitutional restraint on "freedom of speech and of the press." Code Ala.1923, § 3448; U.S.C.A.Const. Amend. 14.

[15] Constitutional Law 92 ↔1555

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General

92XVIII(A)3 Particular Issues and Applications in General

92k1555 k. Matters of Public Concern.

Most Cited Cases

(Formerly 92k274.1(1), 92k274)

The "freedom of speech and of the press" guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. U.S.C.A.Const. Amends. 1, 14.

[16] Constitutional Law 92 ↔1490

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General

92XVIII(A)1 In General

92k1490 k. In General. Most Cited

Cases

(Formerly 92k274.1(1), 92k274)

Freedom of discussion guaranteed by the Constitution embraces all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period. U.S.C.A.Const. Amends. 1, 14.

[17] Constitutional Law 92 ↔1911

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(O) Labor and Employment in General

92k1910 Labor Relations

92k1911 k. In General. Most Cited

Cases

(Formerly 92k274.1(1), 92k274)

Labor and Employment 231H ↔1911

231H Labor and Employment

231HXII Labor Relations

231HXII(F) Disputes and Concerted Activities

231HXII(F)3 Nature of Activity

231Hk1371 k. Publicity. Most Cited

Cases

(Formerly 232Ak286 Labor Relations, 92k274)

The dissemination of information concerning the facts of a labor dispute is within the area of free discussion which is guaranteed by the Constitution. U.S.C.A.Const. Amends. 1, 14.

[18] Labor and Employment 231H ↔1

231H Labor and Employment

231HI In General

231Hk1 k. In General. Most Cited Cases

(Formerly 232Ak5 Labor Relations, 255k10 Master and Servant)

The rights of employers and employees to conduct their economic affairs and to compete with others for

a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist.

[19] Constitutional Law 92 ⇌ 1911

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(O) Labor and Employment in General
92k1910 Labor Relations
92k1911 k. In General. Most Cited
Cases
(Formerly 92k274.1(1), 92k274)

Labor and Employment 231H ⇌ 1341

231H Labor and Employment
231HXII Labor Relations
231HXII(F) Disputes and Concerted Activities
231HXII(F) In General
231Hk1341 k. Power to Regulate. Most Cited
Cases
(Formerly 232Ak283 Labor Relations, 92k274)

The fact that the rights of employers and employees to conduct their economic affairs are subject to modification or qualification in the interests of society does not permit state, in dealing with evils arising from industrial disputes, to impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. U.S.C.A.Const. Amends. 1, 14.

[20] Constitutional Law 92 ⇌ 1555

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)3 Particular Issues and Applications in General
92k1555 k. Matters of Public Concern. Most Cited
Cases
(Formerly 92k274.1(1), 92k274)

Abridgment of liberty of peaceful and truthful discussion of matters of public interest can be justified only where the clear danger of substantive evils arises under circumstances affording no

opportunity to test the merits of ideas by competition for acceptance in the market of public opinion. U.S.C.A.Const. Amends. 1, 14.

[21] Constitutional Law 92 ⇌ 1911

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(O) Labor and Employment in General
92k1910 Labor Relations
92k1911 k. In General. Most Cited
Cases
(Formerly 92k274.1(5), 92k274)

Constitutional Law 92 ⇌ 1917

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(O) Labor and Employment in General
92k1916 Protests and Demonstrations; Picketing
92k1917 k. In General. Most Cited
Cases
(Formerly 92k274.1(5), 92k274)

Labor and Employment 231H ⇌ 1370

231H Labor and Employment
231HXII Labor Relations
231HXII(F) Disputes and Concerted Activities
231HXII(F)3 Nature of Activity
231Hk1370 k. In General. Most Cited
Cases
(Formerly 92k274.1(5), 92k274)

Where the range of activities proscribed by Alabama statute, whether characterized as picketing or loitering or otherwise, embraced nearly every practicable, effective means whereby those interested, including the employees directly affected might enlighten the public of the nature and causes of a labor dispute, the danger of injury to an industrial concern is neither so serious nor so imminent as to justify such sweeping proscription of freedom of discussion. Code Ala.1923, § 3448; U.S.C.A.Const. Amend. 14.

[22] States 360 ⇌ 21(2)

360 States

360II Government and Officers

360k21 Government Powers

360k21(2) k. Police Power. Most Cited

Cases

(Formerly 92k1066, 92k81)

A state has the power and is under duty to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents.

[23] Constitutional Law 92 ⇌ 1911

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(O) Labor and Employment in General

92k1910 Labor Relations

92k1911 k. In General. Most Cited

Cases

(Formerly 92k274.1(5), 92k274)

Constitutional Law 92 ⇌ 1917

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(O) Labor and Employment in General

92k1916 Protests and Demonstrations; Picketing

92k1917 k. In General. Most Cited

Cases

(Formerly 92k274.1(5), 92k274)

Labor and Employment 231II ⇌ 1345(2)

231II Labor and Employment

231HXII Labor Relations

231HXII(F) Disputes and Concerted Activities

231HXII(F)1 In General

231HK1342 Constitutional and Statutory Provisions

231HK1345 Validity

231HK1345(2) k. Picketing. Most

Cited Cases

(Formerly 92k274.1(5), 92k274)

Where the range of activities proscribed by Alabama statute, whether characterized as picketing or loitering or otherwise, embraced nearly every practicable, effective means whereby those interested, including the employees directly affected might enlighten the public on the nature and cause of a labor dispute, the fact that the statute was limited or restricted in its application to such activities as take place at the scene of labor dispute, did not render the statute a valid abridgment of freedom of discussion, since the danger of breach of peace or serious invasion of rights of property or privacy at scene of a labor dispute is not sufficiently imminent in all cases to warrant a Legislature in determining that such place is not appropriate for the range of activities outlawed by the statute. Code Ala.1923, § 3448; U.S.C.A.Const. Amend. 14.

****738 *90** Messrs. James J. Mayfield, of Tuscaloosa, Ala., and Joseph A. Padway, of Washington, D.C., for petitioner.
Mr. William H. Loeb, of Montgomery, Ala., for respondent.

***91** Mr. Justice MURPHY delivered the opinion of the Court.

Petitioner, Byron Thornbill, was convicted in the Circuit Court of Tuscaloosa County, Alabama, of the violation of Section 3448 of the State Code of 1923.^{FN1} The ****739** Code Section reads as follows: 's 3448. Loitering or picketing forbidden.-Any person or persons, who, without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of any other person, firm, corporation, or association of people, engaged in a lawful business, for the purpose, or with intent of influencing, or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by such persons, firm, corporation, or association, or who picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise of another, shall be guilty of a ***92** misdemeanor; but nothing herein shall prevent any person from soliciting trade or business for a competitive business.'

^{FN1} Petitioner was first charged and

convicted in the Inferior Court of Tuscaloosa County and sentenced to imprisonment for fifty-nine days in default of payment of a fine of one hundred dollars and costs. Upon appeal to the Circuit Court, another complaint was filed and a trial de novo was had pursuant to the local practice. The Circuit Court sentenced petitioner, upon his conviction, to imprisonment for seventy-three days in default of payment of a fine of one hundred dollars and costs.

The complaint against petitioner, which is set out in the margin,^{FN2} is phrased substantially in the very words of the statute. The first and second counts charge that petitioner, without just cause or legal excuse, did 'go near to or loiter about the premises' of the Brown Wood Preserving Company with the intent or purpose of influencing others to adopt one of enumerated courses of conduct. In the third count, the charge is that petitioner 'did picket' the works of the Company 'for the purpose of hindering, delaying or interfering with or injuring (its) lawful business'. Petitioner demurred to the complaint on the grounds, among others, that Section 3448 was repugnant to the Constitution of the United States (Amendment 1) in '93 that it deprived him of 'the right of peaceful assemblage', 'the right of freedom of speech', and 'the right to petition for redress'. The demurrer, so far as the record shows, was not ruled upon, and petitioner pleaded not guilty. The Circuit Court then proceeded to try the case without a jury, one not being asked for or demanded. At the close of the case for the State, petitioner moved to exclude all the testimony taken at the trial on the ground that Section 3448 was violative of the Constitution of the United States.^{FN3} The Circuit Court overruled the motion, found petitioner 'guilty of Loitering and Picketing as charged in the complaint', and entered judgment accordingly. The judgment was affirmed by the Court of Appeals, which considered the constitutional question and sustained the section on the authority**740 of two previous decisions in the Alabama courts.^{FN4} *O'Rourke v. City of Birmingham*, 27 Ala.App. 133, 168 So. 206, certiorari denied, 232 Ala. 355, 168 So. 209; *Hardie-Tynes Mfg. Co. v. Cruise*, 189 Ala. 66, 66 So. 657. A petition for certiorari was denied by the Supreme Court of the State. The case is here on certiorari granted because of the importance of the questions presented.^{308 U.S. 547, 60 S.Ct. 296, 84 L.Ed. 460, December 11, 1939.}

^{FN2}'1. The State of Alabama, by its Solicitor, complains of Byron Thornhill that, within twelve months before the commencement of this prosecution he did without just cause or legal excuse therefor, go near to or loiter about the premises or place of business of another person, firm, corporation or association of people, to-wit: the Brown Wood Preserving Company, Inc., a corporation, engaged in a lawful business, for the purpose or with the intent of influencing or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by the said Brown Wood Preserving Company, Inc., a corporation, for the purpose of hindering, delaying or interfering with or injuring the lawful business or enterprise of the said Brown Wood Preserving Company, Inc., a corporation.

'2. (The second count is identical with the first, except that the last clause, charging a purpose of hinder, delay or interfere, etc., with the lawful business of the Preserving Company, is omitted.)

'3. The State of Alabama, by its Solicitor, complains of Byron Thornhill that, within twelve months before the commencement of this prosecution he did picket the works or place of business of another person, firm, corporation or association of people, to-wit, the Brown Wood Preserving Company, Inc., a corporation, for the purpose of hindering, delaying, or interfering with or injuring the lawful business or enterprise of the said Brown Wood Preserving Company, Inc., a corporation.'

^{FN3} The petitioner also moved to exclude the testimony on the ground that it was insufficient to sustain a conviction. Upon being asked by the Court whether he insisted on this ground, however, counsel for petitioner stated that the only question he wanted to raise was the constitutionality of the statute.

^{FN4} The Court of Appeals stated:
'It seems clear enough that the evidence adduced upon the trial was sufficient to

bring appellant's actions, for which he was being prosecuted, within the purview of the prohibition implied in said Statute. 'So, as conceded by able counsel here representing appellant, 'the only question involved in this appeal is the constitutionality vel non of Section 3448 of the Code of Alabama of 1923.'"

The proofs consist of the testimony of two witnesses for the prosecution.^{FN5} It appears that petitioner on the morning*94 of his arrest was seen 'in company with six or eight other men' 'on the picket line' at the plant of the Brown Wood Preserving Company. Some weeks previously a strike order had been issued by a Union, apparently affiliated with The American Federation of Labor, which had as members all but four of the approximately one hundred employees of the plant. Since that time a picket line with two picket posts of six to eight men each had been maintained around the plant twenty-four hours a day. The picket posts appear to have been on Company property, 'on a private entrance for employees, and not on any public road.' One witness explained that practically all of the employees live on Company property and get their mail from a post office on Company property and that the Union holds its meetings on Company property. No demand was ever made upon the men not to come on the property. There is no testimony indicating the nature of the dispute between the Union and the Preserving Company, or the course of events which led to the issuance of the strike order, or the nature of the efforts for conciliation.

FN5 No evidence was offered on behalf of petitioner.

The Company scheduled a day for the plant to resume operations. One of the witnesses, Clarence Simpson, who was not a member of the Union, on reporting to the plant on the day indicated, was approached by petitioner who told him that 'they were on strike and did not want anybody to go up there to work.' None of the other employees said anything to Simpson, who testified: 'Neither Mr. Thornhill nor any other employee threatened me on the occasion testified to. Mr. Thornhill approached me in a peaceful manner, and did not put me in fear; he did not appear to be mad.' 'I then turned and went back to the house, and did not go to work.' The other

witness, J. M. Walden, testified: 'At the time Mr. Thornhill and Clarence Simpson were talking to each other, there was no one else present, and I heard no harsh words and saw *95 nothing threatening in the manner of either man.'^{FN6} For engaging in some or all of these activities, petitioner was arrested, charged, and convicted as described.

FN6 Simpson and Walden are not in entire accord with respect to the number of persons present during the conversation between Simpson and petitioner. A possible inference from Simpson's testimony, considered by itself, is that petitioner was in the company of six or eight others when the conversation took place. This difference is not material in our view of the case.

[1] First. The freedom of speech and of the press, which are secured by the First Amendment against abridgment by the United States, are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a state.^{FN7}

FN7 Schneider v. State, 308 U.S. 147, 160, 60 S.Ct. 146, 150, 84 L.Ed. 155; Lovell v. Griffin, 303 U.S. 444, 450, 58 S.Ct. 666, 668, 82 L.Ed. 949; De Jonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278; Grosjean v. American Press Co., 297 U.S. 233, 244, 56 S.Ct. 444, 446, 80 L.Ed. 660; Near v. Minnesota, 283 U.S. 697, 707, 51 S.Ct. 625, 627, 75 L.Ed. 1357; Stromberg v. California, 283 U.S. 359, 368, 51 S.Ct. 532, 535, 75 L.Ed. 1117, 73 A.L.R. 1484; Gitlow v. New York, 268 U.S. 652, 666, 45 S.Ct. 625, 629, 69 L.Ed. 1138. See Palko v. Connecticut, 302 U.S. 319, 326, 327, 58 S.Ct. 149, 152, 82 L.Ed. 288.

**741 [2][3] The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the

right of free discussion. Abridgment of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government. Compare United States v. Carolene Products, 304 U.S. 144, 152, 153n, 58 S.Ct. 778, 783, 784, 82 L.Ed. 1234. Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate^{*96} foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations. Schneider v. State, 308 U.S. 147, 161, 162, 60 S.Ct. 146, 150, 151, 84 L.Ed. 155.

[4][5][6][7] Second. The section in question must be judged upon its face.

The finding against petitioner was a general one. It did not specify the testimony upon which it rested.^{FN8} The charges were framed in the words of the statute and so must be given a like construction. The courts below expressed no intention of narrowing the construction put upon the statute by prior State decisions.^{FN9} In these circumstances, there is no occasion to go behind the face of the statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges. Conviction upon a charge not made would be sheer denial of due process. De Jonge v. Oregon, 299 U.S. 353, 362, 57 S.Ct. 255, 259, 81 L.Ed. 278; Stromberg v. California, 283 U.S. 359, 367, 368, 51 S.Ct. 532, 535, 75 L.Ed. 1117, 73 A.L.R. 1484. The State urges that petitioner may not complain of the deprivation of any rights but his own. It would not follow that on this record petitioner could not complain of the sweeping regulations here challenged.

FN8 The trial court merely found petitioner 'guilty of loitering and picketing as charged in the complaint.'

FN9 The Court of Appeals determined merely that the evidence was sufficient to support the conviction under Section 3448. See note 4, supra, p. 2. It then sustained the judgment in reliance upon O'Rourke v. City of Birmingham, 27 Ala.App. 133, 168 So. 206, certiorari denied 232 Ala. 355, 168 So. 209; and Hardie-Tynes Mfg. Co. v. Cruise, 189 Ala. 66, 66 So. 657.

*97 [8][9][10][11] There is a further reason for testing the section on its face. Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. Schneider v. State, 308 U.S. 147, 162-165, 60 S.Ct. 146, 151-152, 84 L.Ed. 155; Hague v. C.I.O., 307 U.S. 496, 516, 59 S.Ct. 954, 964, 83 L.Ed. 1423; Lovell v. Griffin, 303 U.S. 444, 451, 58 S.Ct. 666, 668, 82 L.Ed. 949. The cases when interpreted in the light of their facts indicate that the rule is not based upon any assumption that application for the license would be refused or would result in the imposition of other unlawful regulations.^{FN10} Rather it derives from an appreciation of the character of the evil inherent in a licensing system. The power of the licensor against which **742 John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. See Near v. Minnesota, 283 U.S. 697, 713, 51 S.Ct. 625, 630, 75 L.Ed. 1357. One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it. Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949; Hague v. C.I.O., 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423. A like threat is inherent in a penal statute, like that in question here, which does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily leads itself to harsh and discriminatory enforcement by local prosecuting^{*98} officials, against particular groups deemed to merit their displeasure, results in a continuous and

pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview.^{FN11} It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship.^{FN12} An accused, after arrest and conviction under such a statute, does not have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him. Schneider v. State, 308 U.S. 147, 155, 162, 163, 60 S.Ct. 146, 148, 151, 84 L.Ed. 155. Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression. Stromberg v. California, 283 U.S. 359, 368, 51 S.Ct. 532, 535, 75 L.Ed. 1117, 73 A.L.R. 1484; Schneider v. State, 308 U.S. 147, 155, 162, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155. Compare Lanzetta v. New Jersey, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888.

^{FN10} Compare Electric Bond & Share Co. v. Comm., 303 U.S. 419, 58 S.Ct. 678, 82 L.Ed. 936, 115 A.L.R. 105; Smith v. Caboon, 283 U.S. 553, 562, 51 S.Ct. 582, 585, 75 L.Ed. 1264; Gundling v. Chicago, 177 U.S. 183, 186, 20 S.Ct. 633, 634, 44 L.Ed. 725; Lehon v. Atlanta, 242 U.S. 53, 55, 56, 37 S.Ct. 70, 71, 72, 61 L.Ed. 145; Hall v. Geiger-Jones Co., 242 U.S. 539, 553, 554, 37 S.Ct. 217, 221, 222, 61 L.Ed. 480, L.R.A. 1917F, 514, Ann.Cas. 1917C, 643.

^{FN11} The record in the case at bar permits the inference that, while picketing had been carried on for several weeks, with six to eight men at each of two picket posts, Section 3448 was not enforced against anyone other than petitioner, the Union President, and then only after his conversation with Simpson who thereupon returned home rather than report for work.

^{FN12} A distinguished commentator has observed that 'the liberty of the press might be rendered a mockery and a delusion, and the phrase itself a by-word, if, while every

man was at liberty to publish what he pleased, the public authorities might nevertheless punish him for harmless publications.' 2 Cooley, Const. Lim., 8th Ed., p. 885. See Madison's Report on the Virginia Resolutions, 4 Ell. Deb., 2d Ed., 1876, p. 569; Address on the Conduct of the Maryland Convention of 1788, 2 id., p. 552.

Third. Section 3448 has been applied by the State courts so as to prohibit a single individual from walking slowly and peacefully back and forth on the public sidewalk in front of the premises of an employer, without speaking to anyone, carrying a sign or placard on a staff above his head stating only the fact that the employer did not employ union men affiliated with the American Federation of Labor,^{FN13} the purpose of the described activity was concededly to advise customers and prospective customers of the relationship existing between the employer and its employees and thereby to induce such customers not to patronize the employer. O'Rourke v. City of Birmingham, 27 Ala.App. 133, 168 So. 206, certiorari denied 232 Ala. 355, 168 So. 209.^{FN14} The statute as thus authoritatively construed and applied **743 leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute.

^{FN13} The employer in fact had locked out its union stagehands and was working others not regularly employed as stagehands in admitted violation of the National Industrial Recovery Act (48 Stat. 195).

^{FN14} Accused there asserted that the application of Section 3448 to the particular facts of his case deprived him of rights guaranteed to him by the Fourteenth Amendment. The Court of Appeals passed upon this constitutional question and decided it adversely to the contentions of accused.

[12][13] The numerous forms of conduct proscribed by Section 3448 are subsumed under two offenses: the first embraces the activities of all who 'without a

just cause or legal excuse'' go near to or loiter about the premises' of any person engaged in a lawful business for the purpose of influencing or inducing others to adopt any of certain enumerated courses of action; the second, all who 'picket' the place of business of any such person 'for the purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise of another.'^{FN12} It is apparent *100 that one or the other of the offenses comprehends every practicable method whereby the facts of a labor dispute may be publicized in the vicinity of the place of business of an employer. The phrase 'without a just cause or legal excuse' does not in any effective manner restrict the breadth of the regulation; the words themselves have no ascertainable meaning either inherent or historical. Compare Lanzetta v. New Jersey, 306 U.S. 451, 453-455, 59 S.Ct. 618, 619, 83 L.Ed. 888.^{FN13} The courses of action, listed under the first offense, which an accused-including an employee-may not urge others to take, comprehends those which in many instances would normally result from merely publicizing, without annoyance or threat of any kind, the facts of a labor dispute. An intention to hinder, delay or interfere with a lawful business, which is an element of the second offense, likewise can be proved merely by showing that others reacted in a way normally expectable of some upon learning the facts of a dispute.^{FN12} The vague contours of the *101 term 'picket' are nowhere delineated.^{FN12} Employees or others, accordingly, may be **744 found to be within the purview of the term and convicted for engaging in activities identical with those proscribed by the first offense. In sum, whatever the means used to publicize the facts of a labor dispute, whether by printed sign, by pamphlet, by word of mouth or otherwise, all such activity without exception is within the inclusive prohibition of the statute so long as it occurs in the vicinity of the scene of the dispute.

^{FN15} There is a proviso that 'nothing herein shall prevent any person from soliciting trade or business for a competitive business.'

^{FN16} So far as the phrase may have been given meaning by the State courts it apparently grants authority to the court and the jury to consider defensive matter brought forward by the accused, depending for its sufficiency not upon rules of general

application but upon the peculiar facts of each case. See Owens v. State, 74 Ala. 401; Bailey v. State, 161 Ala. 75, 49 So. 886; Folmar v. State, 19 Ala.App. 435, 97 So. 768; Compare O'Rourke v. City of Birmingham, 27 Ala.App. 133, 168 So. 206, certiorari denied 232 Ala. 355, 168 So. 209.

^{FN17} The only direct evidence in the case at bar to show that the activity of petitioner was accompanied by the necessary intent or purpose is the fact that one other employee, after talking with petitioner, refrained from reporting for work as planned. There is evidence here that the other employee was acquainted with the facts prior to his conversation with petitioner. The State concedes, however, that under Section 3448 everyone must be deemed to intend the natural and probable consequences of his acts. See Jacobs v. State, 17 Ala.App. 396, 85 So. 837; Reed v. State, 18 Ala.App. 371, 92 So. 513; Weeks v. State, 24 Ala.App. 198, 132 So. 870, certiorari denied 222 Ala. 442, 132 So. 871; Worrell v. State, 24 Ala.App. 313, 136 So. 737, certiorari denied 223 Ala. 425, 136 So. 738.

^{FN18} See Hellerstein, Picketing Legislation and the Courts (1931), 10 No. Car.L.Rev. 158, 186n.:

'A picketer may: (1) Merely observe workers or customers. (2) Communicate information, e.g., that a strike is in progress, making either true, untrue or libelous statements. (3) Persuade employees or customers not to engage in relations with the employer: (a) through the use of banners, without speaking, carrying true, untrue or libelous legends; (b) by speaking, (i) in a calm, dispassionate manner, (ii) in a heated, hostile manner, (iii) using abusive epithets and profanity, (iv) yelling loudly, (v) by persisting in making arguments when employees or customers refuse to listen; (c) by offering money or similar inducements to strike breakers. (4) Threaten employees or customers: (a) by the mere presence of the picketer; the presence may be a threat of, (i) physical violence, (ii) social ostracism,

being branded in the community as a 'scab', (iii) a trade or employees' boycott, i.e., preventing workers from securing employment and refusing to trade with customers, (iv) threatening injury to property; (b) by verbal threats. (5) Assaults and use of violence. (6) Destruction of property. (7) Blocking of entrances and interference with traffic.

'The picketer may engage in a combination of any of the types of conduct enumerated above. The picketing may be carried on singly or in groups; it may be directed to employees alone or to customers alone or to both. It may involve persons who have contracts with the employer or those who have not or both.'

Fourth. We think that Section 3448 is invalid on its face.

[14][15][16] The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent *102 punishment.^{FN12} The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times.^{FN20} The Continental Congress in its letter sent to the Inhabitants of Quebec (October 26, 1774) referred to the 'five great rights' and said: 'The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs.' *Journal of the Continental Congress, 1904 Ed., vol. I, pp. 104, 108.* Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.

FN19 *Stromberg v. California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117, 73 A.L.R. 1484; *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357; *Lovell v. Griffin*, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949; *Hague v. C.I.O.*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423; *Schneider v. State*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155.

FN20 See Duniway, *The Development of Freedom of the Press in Massachusetts*, p. 123 et seq.; Tyler, *Literary History of the American Revolution*, passim; 2 Bancroft, *History of the United States*, p. 261; Schofield, *Freedom of the Press in the United States (1914)*, 9 Proc. Am. Sociol. Soc. 67, 76, 80.

[17] In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. *Hague v. C.I.O.*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423; *Schneider v. State*, 308 U.S. 147, 155, 162, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155. See *103 *Senn v. Tile Layers Union*, 301 U.S. 468, 478, 57 S.Ct. 857, 862, 81 L.Ed. 1229. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, **745 such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem. We concur in the observation of Mr. Justice Brandeis, speaking for the Court in *Senn's* case (301 U.S. at page 478, 57 S.Ct. at page 862, 81

[L.Ed. 1229]; 'Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.'

[18][19] It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist.^{FN21} This is but an instance *104 of the power of the State to set the limits of permissible contest open to industrial combatants. See Mr. Justice Brandeis in Duplex Printing Press Co. v. Deering, 254 U.S. 443, at page 488, 41 S.Ct. 172, 184, 65 L.Ed. 349, 16 A.L.R. 196. It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society.

FN21 See, e.g., Senn v. Tile Layers Union, 301 U.S. 468, 57 S.Ct. 857, 81 L.Ed. 1229; Ethyl Gasoline Corp. v. United States, 309 U.S. 436, 60 S.Ct. 618, 84 L.Ed. 852, this Term; National Labor Relations Board v. Newport News Co., 308 U.S. 241, 60 S.Ct. 203, 84 L.Ed. 219; West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703, 108 A.L.R. 1330; Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469; Dorchy v. Kansas, 272 U.S. 306, 47 S.Ct. 86, 71 L.Ed. 248; Eastern States Retail Lumber Dealers' Association v. United States, 234 U.S. 600, 34 S.Ct. 951, 58 L.Ed. 1490, L.R.A. 1915A, 788; Aikens v. Wisconsin, 195 U.S. 194, 25 S.Ct. 3, 49 L.Ed. 154; Holden v. Hardy, 169 U.S. 366, 18 S.Ct. 383, 42 L.Ed. 780.

[20][21] The range of activities proscribed by Section 3448, whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested-including the employees directly affected-may enlighten the public on the nature and causes of a labor dispute. The safeguarding of these means is essential to the securing of an informed and educated public opinion

with respect to a matter which is of public concern. It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgment of the liberty of such discussion can be justified only where the *105 clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion.^{FN22} We hold that the danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping proscription of freedom of discussion embodied in Section 3448.

FN22 See Mr. Justice Holmes in Schenck v. United States, 249 U.S. 47, at page 52, 39 S.Ct. 247, at page 249, 63 L.Ed. 470; Abrams v. United States, 250 U.S. 616, at page 630, 40 S.Ct. 17, at page 22, 63 L.Ed. 1173.

[22] The State urges that the purpose of the challenged statute is the protection of the community from the violence and breaches of the peace, which, it asserts, are the concomitants of picketing. The power and the duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents cannot be doubted. But no clear and present danger of destruction of life or property, or invasion of the right of privacy, or breach of the peace can be **746 thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labor dispute involving the latter. We are not now concerned with picketing en masse or otherwise conducted which might occasion such imminent and aggravated danger to these interests as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger. Compare American Steel Foundries v. Tri-City Council, 257 U.S. 184, 205, 42 S.Ct. 72, 77, 66

1 Ed. 189, 27 A.L.R. 360. Section 3448 in question here does not aim specifically at serious encroachments on these interests and does not evidence any such care in balancing these interests against the interest of the community and that of the individual in freedom of discussion on matters of public concern.

[23] It is not enough to say that Section 3448 is limited or restricted in its application to such activity as takes place at the scene of the labor dispute. '(The streets are *106 natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.' Schneider v. State, 308 U.S. 147, 161, 60 S.Ct. 146, 150, 84 L.Ed. 155; Hague v. C.I.O., 307 U.S. 496, 515, 516, 59 S.Ct. 954, 963, 964, 83 L.Ed. 1423.^{FN23} The danger of breach of the peace or serious invasion of rights of property or privacy at the scene of a labor dispute is not sufficiently imminent in all cases to warrant the legislature in determining that such place is not appropriate for the range of activities outlawed by Section 3448.

FN23 The fact that the activities for which petitioner was arrested and convicted took place on the private property of the Preserving Company is without significance. Petitioner and the other employees were never treated as trespassers, assuming that they could be where the Company owns such a substantial part of the town. See p. 3, supra. And Section 3448, in any event, must be tested upon its face.

Reversed.

Mr. Justice McREYNOLDS is of opinion that the judgment below should be affirmed.

U.S. 1940.

Thornhill v. State of Alabama

310 U.S. 88, 60 S.Ct. 736, 6 L.R.R.M. (BNA) 697,
84 L.Ed. 1093, 2 Lab.Cas. P 17,059

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UCS

David H. Yarnall, Clerk of the Superior Court
County of Santa Clara, California

By E. Mach

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

11 CALIFORNIA PUBLIC EMPLOYMENT	) Case No.	109 CV 153088
12 RELATIONS BOARD)	
13)	
14 Petitioner,	) SEIU LOCAL 521'S OPPOSITION TO	
15	) MOTION FOR PRELIMINARY	
16 v.	) INJUNCTIVE RELIEF	
17)	
18 SERVICE EMPLOYEES INTERNATIONAL	) Date:	October 13, 2009
19 UNION, LOCAL 521, CTW, CLC) Time:	1:30 p.m.
20) Dept.:	2
21 Respondent.) Judge:	Judge Elfving

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1 Service Employees International Union, Local 521, CTW, CLC (hereafter referred to as
2 "SEIU") hereby submits its Opposition to the California Public Employment Relations Board's
3 (hereafter referred to as "PERB") Motion for Preliminary Injunctive Relief.

4 **I. INTRODUCTION**

5 In the 19th Century, worker "collective action was generally viewed as a conspiracy and
6 held subject to both civil and criminal sanctions." (County Sanitation Dist. No. 2 v. Los Angeles
7 County Employees' Assn. (1985) 38 Cal.3d 564, 569.) However, over sixty years ago the United
8 States Supreme Court concluded that a state could not punish a worker for peaceably picketing and
9 asking for his fellow workers' support. (Thornhill v. State of Alabama (1940) 310 U.S. 88.) More
10 than thirty years ago, California's Supreme Court characterized, "[t]he right to strike as an
11 important symbol of a free society" (County Sanitation, supra, at 584.) More recently,
12 California's Legislature severely circumscribed courts' authority to issue injunctions during a labor
13 dispute to situations where, among other things, law enforcement officials are "unable or unwilling
14 to furnish adequate protection." (See United Food & Commercial Workers Union v. Superior
15 Court (2000) 83 Cal.App.4th 566, 577.)

16 Notwithstanding this authority, the Public Employment Relations Board ("PERB") seek to
17 resuscitate 19th Century case law. It requests the unprecedented relief of an injunction against the
18 SEIU unit.

19 The injunction PERB seeks is extremely broad. Despite the reams of paper the City and
20 PERB have submitted, they fail to provide any evidence that "clearly demonstrates" that such a
21 strike constitutes a "substantial and imminent threat to the health or safety of the public" as it must
22 under County Sanitation, supra, at 586. If the injunction they seek were issued it would be
23 unconstitutionally overbroad. (See In Re Berry (1968) 68 Cal. 2d 137.) Such an overbroad order
24 can properly be challenged through contempt proceedings. (Id.)

25 In seeking such extraordinary relief, the PERB must establish the traditional elements for
26 injunctive relief: (1) the likelihood of success on the merits; (2) the possibility of an irreparable
27 injury to the moving party if relief is not granted; (3) the extent to which the balance of hardships

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27 injury to the moving party if relief is not granted; (3) the extent to which the balance of hardships

1 favor the respective parties; and (4) in certain cases, where the public interest will be advanced by
2 granting preliminary relief. See, Miller for and on behalf of NLRB v. California Pacific Medical
3 Center, 19 F.3d 449, 456 (9th Cir. 1994).¹

4 **II. ARGUMENT**

5 **A. SERVICE WORKERS HAVE THE RIGHT TO STRIKE.**

6 **1. In Striking, Service Workers Exercise Their Right Of Speech.**

7 Service workers have the right to withhold their labor and publicize their plight to other
8 workers and to the public as a whole. The United States Supreme Court set forth in no uncertain
9 terms the broad protections assured by the First Amendment in labor disputes. (Thornhill, supra,
10 310 U.S. 88; United Farm Workers of America v. Superior Court (1976) 16 Cal.3d 499.) In
11 Thornhill, Mr. Thornhill was staffing a picket line sponsored by his Union. (Thornhill, supra, 310
12 U.S. at 94.) While doing so a fellow worker, who was not a member of the Union, approached the
13 picket line. (Id.) This worker testified at the lower court that "Mr. Thornhill approached me in a
14 peaceful manner and did not put me in fear; he did not appear to be mad. I then turned and went
15 back to the house and did not go to work." For this "transgression" Mr. Thornhill was charged,
16 tried and convicted under an Alabama statute prohibiting picketing. (Id. at 395.) The Court struck
17 down the anti-picketing legislation and held that picketing to "enlighten the public on the nature
18 and causes of a labor dispute" is protected by the First Amendment because it is an essential means
19 "to the securing of an informed and educated public opinion with respect to a matter which is of
20 public concern." (Id. at 104.)

21 The workers in the SEIU Unit seek to engage in the same conduct as Mr. Thornhill. They

22
23 ¹ The PERB relies heavily on PERB v. Modesto City School District (1982) 136 Cal.App.3d 881,
24 891 in its moving papers for the proposition that the Court must simply determine whether
25 "reasonable cause exists" to believe an unfair labor practice has been committed and that the relief
26 sought is "just and proper." See PERB MPA at page 5. That standard is based upon case law
27 which existed prior to the issuance of the Ninth Circuit decision in Miller. Under Gov't Code
28 § 3510(a) the PERB, and this Court, are obligated to apply the statute in accordance with "judicial
interpretation" of it. Since the 1970s it is clear that federal law, as it has developed under the
National Labor Relations Act, is the first source of information about application of the MMBA.
See Fire Fighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608, 616-617. The Court
should apply the Miller analysis, and not merely defer to PERB's judgment about whether an
injunction is proper.

1 intend to withhold their labor and ask their fellow workers and the public to support them. Such a
2 right cannot be abridged on mere speculation. The U.S. Supreme Court has eschewed the
3 assumption the PERB relies on in its brief, by stating:

4 But no clear and present danger of destruction of life or property . . . can be
5 thought to be inherent in the activities of every person who approaches the
6 premises of an employer and publicizes the facts of a labor dispute involving
7 the latter.

8 (*Id.* at 105.)

9 This Court should do the same and not abridge such fundamental rights on the mere
10 speculation that other workers may follow their conscience by not working as well.

11 2. **SEIU Workers Do Not Fall Within County Sanitation's Carve-Out, As Their**
12 **Strike Will Not Threaten Public Health Or Safety.**

13 The SEIU is composed of workers who perform important work, but their work can hardly
14 be characterized as "essential" to the maintenance of the public health and safety, under relevant
15 case law.

16 It is notable that the operation of the employer in the County Sanitation case, mirrored in
17 critical respects the City's landfill and composting facility, and its water control plant. In County
18 Sanitation the employer District was charged with ". . . providing, operating and maintaining
19 sewage transport and treatment facilities and landfill disposal sites throughout the county." 38
20 Cal.3d at 568. According to footnote 2 of the decision, the facilities operated by the District
21 included "six sanitary landfills which together received about 15,000 tons of solid waste each day,
22 eleven treatment plants processing 450 million gallons of raw sewage per day, four maintenance
23 yards, and forty-six pumping stations." See 38 Cal.3d at 568, Fn. 2. The size of that operation
24 dwarfs the facilities operated by the City in this case, yet the Court did not find that a strike by
25 employees whose sole assignment was to perform these various functions threatened imminent
26 harm to the public health or safety. It is also worth noting that 75% of the District's employees in
27 that dispute went out on strike and remained on strike for eleven days, and that the employer
28 managed to "maintain its facilities and operations through the efforts of management personnel and

1 certain union members who chose not to strike.” Id. Later in its decision, the Sanitation District
2 Court noted that at a point in time, any given strike affecting a facility such as that operated by the
3 District, and by the City here, might rise to the level of a “substantial and imminent threat” to the
4 public health and safety based on what was indeed occurring: “... there was no showing by the
5 District that the health and safety of the public was at any time imminently threatened. That is not
6 to say that had the strike continued indefinitely, or had the availability of replacement personnel
7 been insufficient to maintain a reasonable sanitation system, there could not have been at some
8 point a clear showing of a substantial threat to the public health and welfare.” (Emphasis
9 supplied.) 38 Cal.3d at 587. This is a practical evaluation of the possible impact of any given
10 strike, its success, the ability of the employer to staff, schedule, and maintain the facilities, and a
11 variety of other practical day-to-day considerations. Such an evaluation is critical in this case, and
12 any similar case, because we are not dealing with employees whose very job, such as in the case of
13 firefighters and police officers, directly involves the public health and safety.

14 We will now return to the categories or classifications that the employer is seeking to
15 restrain from exercising their rights as citizens and public employees.

16 Water Quality Control Plan:

17 Glenn Roberts (“Roberts”) Declaration is submitted with respect to the Water Plant.
18 Notably absent in the Declaration of Roberts is any statement of the typical daily staffing, the
19 minimum daily staffing, any statutory staffing mandates that it is obligated to follow. Further, it
20 ignores and does not treat, the question of whether or not it has within its managerial or
21 supervisory ranks anyone who possesses the Grade 3 Waste Water Treatment Plant. Para. 5 of the
22 Declaration. It indicates that it satisfies the statutory requirement by using the unit classification
23 —Senior Water Quality Control Operator—but, does not tell us how many individuals there are in
24 the classification. Moreover, Roberts does not indicate who within the employer’s work group
25 possesses the classification outside of the unit. This is likewise true of the Water Quality Control
26 Operator II class described in paragraph 6. Paragraph 7 implicitly indicates that it has the ability to
27 work its “Senior Water Quality Control Operators . . . 12 hour shifts, 7 days in a row.” See

1 paragraph 7. Without information concerning how many employees there are in any classification,
2 and without information concerning how many of its non-unit employees possess the required
3 certifications, the Court cannot make a determination about whether the absence of one, several, or
4 all of the unit employees assigned to the Plant would create operational difficulties. Paragraph 9
5 talks about merely "hindering" the City's ability to effectively and safely operate the Plant, and
6 contains no evidence in support of the claims. The Declaration of Nick Steinmeier ("Steinmeier"),
7 submitted in opposition to the request for injunction, shows that managers possess the certificates
8 at issue. Decl., para 8(D), p. 4.

9 Turning to the question of Chemist and Senior Chemist, we also do not know how many of
10 them there are, and how many there are on any given shift. Betts does not identify a "skeleton"
11 type staffing for the Plant. Paragraph 12, like paragraph 9, is merely a conclusion and not a factual
12 statement. The Steinmeier Declaration shows that at least one manager is a Chemist. Decl., para.
13 8(d), p. 4.

14 Contrary to the hysterical claims made by PERB in its moving papers that the absence from
15 work of Water Quality Plant Control Operators would jeopardize the public health and safety, the
16 Declaration of Richard Brown, referred to in the Riedel Declaration filed herewith, to which is
17 attached, shows that on September 24, it was "business as usual," with no extraordinary or unusual
18 activity occurring. Rather, Mr. Brown simply made his rounds throughout the Plant to verify that
19 "all systems were working," he made minor adjustments if needed, and he relieved the Incinerator
20 Operators for their breaks. See Riedel Declaration at paragraph 5, and incorporated Brown
21 Declaration. This is true also of Mr. Walpole, a Water Quality Control Operator who indicated
22 that after he had completed an assignment that went from approximately 6:00 a.m. to 12:00 p.m.
23 working on the incinerator, he "did not do much" after that. See Riedel Declaration at paragraph 6,
24 and the incorporated Walpole Declaration.

25 In regards to the Maintenance Mechanics at the Water Quality Control Plant, as the Riedel
26 Declaration indicates (paragraph 7), Mr. Siegenfeld, a Maintenance Mechanic, did work on
27 "regular work orders" none of which were urgent. It was Mr. Siegenfeld's judgment, as expressed

1 in that paragraph, and in his incorporated statement, that public health and safety would not have
2 been at risk if he had "not worked on the regular work orders" on September 24. The actual
3 evidence of what really occurred, and the routine nature of the work belies the claims made for the
4 "essential nature" of these employees.

5 There is no evidence in the Roberts Declaration that Electricians, Mechanics, in any
6 particular number, or over any particular amount of time, are necessary to assure the Plant actually
7 functions without creating an "imminent threat to the health and safety" of the public. It is not
8 mere inconvenience that would justify the issuance of an injunction, but actual evidence of
9 "imminent and substantial harm" to the public safety. Paragraph 18 is simply a conclusion, not a
10 statement of fact.

11 The City's landfill and compost facility is essentially indistinguishable from that described
12 by the court in its decision in County Sanitation District No. 2, and like the facility described in
13 that decision, it is not one which is critical to the public health and safety. Moreover, the entirety
14 of paragraph 19 of the Betts Declaration is full of hyperbole, hypothesis, and abstract propositions
15 which have no meaningful connection to the concept of whether or not, if there was a strike for one
16 day, two days, three days, or for one hour, such activity would create "imminent" threat to the
17 health and safety of the public. It also does not address whether it has any managers or
18 supervisors, outside of the unit, with prior experience in, or capability in performing the functions
19 of the Landfill Technician.

20 With respect to the landfill, the Roberts Declaration indicates that the City plans on
21 "closing the landfill" in the event of a strike. See paragraph 26. Notably absent is any statement of
22 how long the "natural decomposition process" will take before "combustion level" is reached.
23 Clearly the City had the ability to tell the Board that, but it chose not to. Moreover, since the City
24 says it has a Fire Department, it fails to explain why the Fire Department cannot be responsible for
25 both the hazardous waste issues, if any, that could be caused by the strike of anyone working at the
26 landfill, or by the HAZMAT response team which is required by law in every Fire Department.

27 Finally, paragraph 27 which speaks to the Heavy Equipment Operators, apparently all of

1 them, fails to contain any evidence upon which the Court could determine how many there are,
2 how they are scheduled, what they actually do. Notably absent as well, is any evidence of how
3 their absence due to work stoppage would create an “imminent threat to the health and safety of the
4 public,” not an inconvenience.

5 With respect to the Roberts Declaration, we submit that there is no evidence upon which
6 the Court could reasonably conclude that the absence of one, more, or any of the identified
7 classifications would, by itself, or even in combination with any of the other jobs at the facility,
8 create an “imminent threat to the health and safety of the public,” the only relevant standard.

9 Public Utilities Department (Fong Declaration):

10 Paragraph 4 of this Declaration, although it mentions numbers of persons in different
11 categories, fails to tell the reader what proportion or percentage of workers in each of these
12 classifications are represented by these numbers. Is it 50% of employees? Strikes by utility
13 workers occur all the time under the National Labor Relations Act, for customers many times the
14 size of the customer group identified in this Declaration. (See County Sanitation, *supra*, 38 Cal.3d
15 at 579 (the Court noted, “we tolerate strikes by private employees in many of the same areas in
16 which government is engaged, such as transportation, health, education, and utilities”).) It is
17 irrelevant that the City must have a “certain number of employees present to conduct day-to-day
18 operations,” as is reflected on page 2, at lines 1-3 of the Declaration. If there were to be a
19 strike, “day-to-day operations” might well be disrupted, and might have to be curtailed or
20 cancelled. That is the nature of a strike, it creates inconvenience for the employer, at least the
21 employer which cannot replace its workers, or use supervisory workers to perform the work that is
22 required to be done. Indeed, as well, a strike might “interrupt” the delivery of electricity, gas or
23 water (but might not), since these are largely mechanical systems which operate on their own.
24 Further, this Declaration is replete with “maintenance”—a normal ongoing activity—as being the
25 focus of the workers whom the City wishes to prevent from exercising their First Amendment
26 rights. The “daily maintenance of overhead and underground electrical equipment” mentioned in
27 paragraph 8, does not reflect a situation involving the “imminent threat to the health and safety of

1 the public.” Notably absent from the presentation made by Ms. Fong in this Declaration is any
2 information about what their emergency call out crew is, what their emergency stand by crews is,
3 etc., this would be a measure of the numbers of persons, and in what category, potentially, who
4 might be necessary to protect the “public health and safety.” The Declaration also fails to disclose
5 the hours of the day that these services are provided—are they 24/7, are they daytime only, etc.
6 The Steinmeier Declaration shows that this activity is day shift only, and the City does not have a
7 standing “call out” group. Para. 8(E), p. 3. These facts undermine the City’s claims regarding
8 “essential employees.”

9 Again, the actual activities performed by members of the Unit who were restrained from
10 participating in the “voluntary furlough” day on September 24, belies these claims. Thus, as
11 reflected in paragraph 8 of the Riedel Declaration, incorporating the statement of Mr. Mendoza, he
12 was assigned to “practice” his welding all day. Mendoza did not even leave the shop. Eric Talley,
13 an Installer/Repairer in the Utilities Department indicated that he answered “two calls to clean up
14 lines, and went out for broken water services into a building.” This took him a total of four hours.
15 He remained in the yard for the remainder of the day. *Id.* The situation with Mr. Giovanetti,
16 Maintenance Mechanic in Utilities, is much the same, but shows he had even less work assigned.
17 He “cleaned up the shop,” he went to a meeting that lasted less than an hour, he moved dirt from
18 one bin at the shop to another. He helped prepare a pipe cutter. Obviously, the non-performance
19 of any of these jobs would not have imperiled in any way public health and safety. See Riedel
20 Declaration at paragraph 10, and the incorporated Giovanetti Declaration.

21 Mr. Bingham, a Heavy Equipment Operator in Utilities did a routine installation job
22 involving a gas main installation and a lateral replacement. Riedel Declaration at paragraph 11.

23 Mr. Chi Du, a Water System Operator who was required to work on the 24th, advises that
24 he performed “minimal service checks” at five water receiving stations, and left after four hours of
25 work to handle personal matters. See Riedel Declaration at 12, and the incorporated Du
26 Declaration. Again, it is hardly evidence of work “essential to the public health and safety,” as
27 PERB would have it.

1 It is likewise true that with respect to the Utilities employees in the electric area, that they
2 were assigned little or no work to do. As reflected in the Riedel Declaration at paragraph 14, Mr.
3 Schultz, a Lead Lineperson, reported that the workers conducted an "all hands" meeting, and were
4 advised they could either sit in the yard or do regular work. A number of workers decided to
5 simply sit in the yard. A truck entered the yard carrying two switches, which he and others helped
6 to unload. These Line Workers did no emergency, or even regular kind of work. Riedel
7 Declaration at paragraph 14, incorporating the Declaration of Schwartz. Ms. Turpen, a Lead
8 Electrician, stayed in the office and sorted through her e-mails and did some paper work. Again,
9 no work essential to the public health and safety.

10 As accurately summarized by Riedel in paragraph 16 of his Declaration, it is evident that
11 employees of the Water Plant in the Utilities Department beyond a "skeletal crew" for true
12 emergencies, could have participated in the "voluntary furlough" activity of September 24, with no
13 impact at all on the public health or safety. The Court should consider the reality of what occurred
14 on September 24, rather than the hysterical characterization of the "possibilities," if it considers it
15 proper at this time to issue any kind of injunction. As reflected in the opening portion of this
16 Memo, however, we do not believe that any injunction is appropriate because there is no
17 threatened action of any sort at the present time. Nor is there any indication of one which is
18 pending.

19 We think it is notable as well that when the City Manager sent the Union a letter on
20 September 3, 2009, he failed to identify a single classification of employment in the Utilities
21 Department as "critical" to the prevention of "imminent harm to the public health and safety." The
22 letter only discusses positions in two departments: Police Department and Public Works
23 Department, and then only in the Water Quality Control Plant. See Exh. A to the Declaration of
24 Blanch, dated September 14, 2009. This discloses the real focus of the City's overbroad request—
25 to effectively blunt or eliminate the effectiveness of any lawful job action that might be undertaken
26 by its employees. This type of overreaching shows that this is not a genuine application focused on
27 "imminent threats" to the public health and safety, but arises out of an attempt to interfere with its

1 employees' rights.

2 **B. PERB DOES NOT ATTEMPT TO COMPLY WITH LABOR CODE SECTION**
3 **1138.1.**

4 California's Legislature severely restricted state courts' rights to issue injunctions "in any
5 case involving or growing out of a labor dispute." (Cal. Lab. Code § 1138.1(a).) The PERB may
6 maintain that this Labor Code section should not apply to public sector employees because of the
7 risk of "creating a substantial and eminent threat to the public health and safety." The PERB's
8 argument echoes arguments made in the Legislature by public sector employers. Those arguments
9 were only successful in excluding those individuals that Legislature concluded were essential -
10 peace officers.

11 Labor Code § 1138, et. seq., applies to public sector employers. Labor Code § 1138.1
12 limits the authority of any California court to issue an injunction "in any case involving or growing
13 out of a labor dispute." (Labor Code § 1138.1(a).) The Legislature decided to adopt the definition
14 of "labor dispute" as set forth in certain portions of Section 527.3 of the Code of Civil Procedure:
15 "The term 'labor dispute' as used in this chapter has the same meaning as set forth in clauses (i),
16 (ii) and (iii) of paragraph (4) of subdivision (b) of Section 527.3 of the Code of Civil Procedure."
17 (Labor Code § 1138.4.)

18 The current dispute falls squarely within the definition set forth in CCP § 527.3(b)(4)(iii).
19 That section defines labor dispute as "any controversy concerning . . . seeking to arrange terms or
20 conditions of employment . . ." Local 521 and the City are engaging in precisely such a dispute.
21 The parties have been engaged in extensive negotiations concerning a successor agreement to
22 arrange the terms and conditions of employment. The parties disagree on what those terms and
23 conditions should be. This type of dispute is a classic "labor dispute" and there is nothing in the
24 terms of Labor Code § 1138.1 which exempts public sector employers from its constraints. A
25 review of its terms indicate that it was intended to apply to public sector employees.

26 The public sector exclusion is found in CCP § 527.3(d) of the Moscone Act. However, the
27 Legislature decided not to incorporate that exclusion into Labor Code § 1138, et seq. The

1 Legislature carefully detailed which portions of Section 527.3 it wished to use in defining "labor
2 dispute":

3 The term "labor dispute" as used in this chapter has the same meaning as set
4 forth in clauses (i), (ii), and (iii) of paragraph (4) of subdivision (b) of
Section 527.3 of the Code of Civil Procedure.

5 (Labor Code § 1138.4.) Apparently, the Legislature made a conscious decision not to include CCP
6 § 527.3(d). Had the Legislature wished to incorporate the exclusion in CCP § 527.3(d) they could
7 have simply inserted the letter (d) into the statute. It did not. It refused to do so even after several
8 powerful constituency had asked for such an exclusion. Consequently, it would be improper to
9 interpret this legislation in a manner which is altogether inconsistent with its terms.

10 **C. AN UNCONSTITUTIONAL INJUNCTION NEED NOT BE FOLLOWED.**

11 An overbroad and vague injunction which sweeps aside Constitutional protections by
12 banning lawful and unlawful activities alike and which chills the free expression of striking
13 workers by creating doubt and uncertainty as to the contours of the conduct it prohibits, violates
14 both the First Amendment and the California Constitution. (*In Re Berry*, *supra*, 68 Cal 2d 137.) In
15 *United Farm Workers*, *supra*, 16 Cal. 3d at 504, the California Supreme Court summarized the law:

16 It is well established that "peaceful picketing is an activity subject to
17 absolute constitutional protection in the absence of a valid state interest
justifying limitation or restriction. (*In Re: Berry* (1968) 68 Cal 2d 137, 152;
18 See *Schwartz-Torrance Investment Corp. v. Bakery and Confectionary
Workers Union* (1964) 61 Cal 2d 766, 769-70. Moreover, an order affecting
19 peaceful picketing activity "must be couched in the narrowest terms that will
accomplish the pinpointed objective permitted by constitutional mandate and
20 essential needs of the public order. In this sensitive field the State may not
employ "means that proudly stifle fundamental personal liberties when the
end can be more narrowly achieved."

21 In *In Re Berry*, *supra*, the California Supreme Court held that an order against striking
22 public employees enjoining them from engaging in a broad range of activities including inducing,
23 or attempting to induce, any employee to cease work, was held to be unconstitutionally overbroad
24 and vague and consequently void *ab initio*.

25 The Court held that because various sections of the restraining order's prohibitions were
26 unconstitutionally overbroad and vague, the entire restraining order was without effect, and that the
27 court below had acted beyond its jurisdiction and that the entire order had to fall. (*Id.* at 157.)

1 PERB'S proposed injunction is cast from the same mold and should suffer the same fate as the
2 injunction in In Re Berry. The injunction is not limited to merely unlawful strikes, but includes
3 activity that is well within the Union and the workers' First Amendment rights.

4 **III. CONCLUSION**

5 For all of the above reasons, this Court should deny the request to enjoin SEIU's strike and
6 the right of individual workers to honor their fellow worker' picket line. Even if this Court
7 concludes that the PERB has "reasonable cause" to believe that SEIU has committed an unfair
8 practice of striking pre-impasse, that alone is not sufficient basis for enjoining the strike. The
9 PERB cannot demonstrate that an injunction is just and proper.

10 Dated: October 7, 2009

11 WEINBERG, ROGER & ROSENFELD
12 A Professional Corporation

13 By: 
14 VINCENT A. HARRINGTON, JR.
15 Attorneys for Respondent SEIU Local 521

16 122765/546924

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Alhambra, CA 91801-8092
192 877 1100

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[Signature]
DAVID T. WELLS AND
Court Reporter Official Clerk
Superior Court of CA County of Santa Clara
KATHY DAVIDSON DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

PUBLIC EMPLOYMENT RELATIONS BOARD,	)	Case No. 109CV153088
)	
	)	NOTICE OF RULING
Plaintiff,)	
)	
vs.)	
)	
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 521,)	
)	
)	
Defendant.)	

On October 13, 2009 in Department 2, Honorable William J. Elfving, Judge Presiding, there was a hearing on the Order to Show Cause Re: Preliminary Injunction on the application brought by Plaintiff Public Employment Relations Board.

The matter having been submitted, the motion is granted. The preliminary injunction order shall contain the same language as the temporary restraining order except that the individual employees enjoined is limited to the 87 essential employees identified in the declarations attached to the declaration of Laura Z. Davis dated and filed on October 8, 2009. Counsel for the Public Employment Relations Board shall prepare the order.

Dated: 10/13/09

[Signature]
WILLIAM J. ELFVING
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

FILED

OCT 13 2009

TO: FILE COPY

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY KATHY DAVIDSON DEPUTY

RE: Public Employment Relations Board Vs Service Employees International
Case Nbr: 1-09-CV-153088

PROOF OF SERVICE

NOTICE OF RULING

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Laura Z Davis , Public Employment Relations Brd.
1031 18th Street, Sacramento, CA 95814-4174
City Of Palo Alto

Weinberg, Roger & Rosenfeld, Vincent A. Harrington, Jr., Esq.,
1001 Marina Village Parkway, Suite #200, Alameda, CA 94501-1091

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922

DECLARATION OF SERVICE BY MAIL I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 10/13/09 DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Kathy Davidson, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

FILED

OCT 19 2009

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY *[Signature]* DEPUTY
KATHY DAVIDSON

TO: FILE COPY

RE: Public Employment Relations Board Vs Service Employees International
Case Nbr: 1-09-CV-153088

PROOF OF SERVICE

NOTICE OF RULING - AMENDED PROOF OF SERVICE

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Laura Z Davis , Public Employment Relations Brd.
1031 18th Street, Sacramento, CA 95814-4174
City Of Palo Alto

cc: Office Of The City Attorney, Gary Baum, Esq.,
250 Hamilton Avenue, 8th Floor, Palo Alto, CA 94301

cc: Weinberg, Roger & Rosenfeld, Vincent A. Harrington, Jr., Esq.,
1001 Marina Village Parkway, Suite #200, Alameda, CA 94501-1091

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/IDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY EMAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 10/15/09. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Kathy Davidson, Deputy

1 TAMJ R. BOGERT, Bar No. 206561
General Counsel
2 WENDI L. ROSS, Bar No. 141030
Deputy General Counsel
3 LAURA Z. DAVIS, Bar No. 196494
Regional Attorney
4 KATHARINE M. NYMAN, Bar No. 249067
Regional Attorney
5 PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
6 Sacramento, California 95811-4124
Telephone: (916) 322-3198
7 Facsimile: (916) 327-6377

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David H. Vazquez, Clerk of the Superior Court
County of Santa Clara, California
By: M. Rosales
David H. Vazquez, Clerk of the Superior Court
County of Santa Clara, California
By: J. G. [Signature]

8 Attorneys for State of California, Public Employment Relations Board

9
10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 PUBLIC EMPLOYMENT RELATIONS BOARD,
13 Plaintiff,
14 v.
15 SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521
16 Defendant.

17 Case No. 109CV153088
18 **AS AMENDED**
19 ~~PROPOSED~~ [Signature]
20 ORDER GRANTING EXTENSION OF
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
21 CAUSE RE PRELIMINARY
INJUNCTION
22 Date: ~~September 23, 2009~~ OCT. 13, 2009 [Signature]
23 Time: ~~To Be Determined~~ 1:30
24 Dept: ~~To Be Determined~~ 2

1 Upon reading the application, complaint, supporting declarations, and points and authorities
2 on file in this action, the Court finds that:

3 1. Plaintiff has established the probable validity of its claims and the probability that
4 there is an immediate danger that Defendant Service Employees International Union Local 521
5 (SEIU) will violate the Government Code by engaging in a strike or work stoppage on or about
6 September 24, 2009.

7 2. This is a proper case for issuance of an Order to Show Cause and a Temporary
8 Restraining Order, and unless a Temporary Restraining Order issues, the City of Palo Alto will face
9 substantial and irreparable injury before the matter can be heard on notice.

10 Accordingly, IT IS HEREBY ORDERED:

11 1. That Defendant SEIU, its agents, employees, representatives, officers, organizers,
12 committee persons, stewards, members, and all corporations, unincorporated associations, and
13 natural persons acting in concert and participation with any of them, until a hearing or trial on a
14 preliminary injunction, be enjoined and restrained;

15 a. from calling, engaging in, continuing, sanctioning, ~~inducing~~, aiding, ~~enticing~~,
16 ~~encouraging~~, abetting, or assisting certain General Unit employees—specifically but not limited to
17 those employed in the classifications ^{AS} identified in Exhibit "A" ("essential employees")—from
18 engaging in any strike, walkout, slowdown, or work stoppage of any nature against the City of Palo

19 Alto during their working hours on or about September 24, 2009; ~~AND CONTINUING~~ ^{AND CONTINUING THROUGH OCTOBER 13, 2009} ~~AND CONTINUING THROUGH OCTOBER 13, 2009~~ ^{OCTOBER 15, 2009}

20 b. from continuing in effect ~~or refusing to rescind~~ any strike, walkout, slowdown, or work
21 stoppage, notice, call, order, or sanction heretofore issued by Defendant to or involving "essential
22 ^{as identified in Exhibit A} employees" with respect to the anticipated General Unit strike, walkout, slowdown, or work
23 stoppage on or about September 24, 2009, ~~AND CONTINUING THROUGH OCTOBER~~ ^{AND CONTINUING THROUGH OCTOBER}
24 ~~OCTOBER 13, 2009~~ ^{OCTOBER 15, 2009}

25 2. That Defendant and its agents, employees, representatives, officers, organizers, committee
26 persons, stewards, members, and all corporations, unincorporated associations, and natural persons
27 acting in concert and participation with any of them, until a hearing or trial on a preliminary
28 injunction, be enjoined and restrained from doing or attempting to do, directly or indirectly, by any

1 means, method or device whatsoever, any of the acts enjoined in paragraph 1 hereof and each
2 subdivision thereof during the duration of this action.

3 3. That a Temporary Restraining Order be granted, enjoining and restraining SEIU, its
4 agents, employees, representatives, officers, organizers, committee persons, stewards, and members,
5 and all persons acting in concert with them or any of them, until the hearing upon an Order to Show
6 Cause, from doing or causing or permitting to be done any of the acts complained of in paragraph 1
7 hereof. **William J. Elving**

8 4. That Defendant SEIU appear before this Court in the courtroom of DM 2, on
9 OCTOBER 13, 2009, at 1:30 p.m., then and there to show cause why a
10 preliminary injunction should not be issued enjoining SEIU and its agents, employees,
11 representatives, officers, organizers, committee persons, stewards, and members, and all persons
12 acting in concert with them or any of them, from engaging in or performing the following acts prior
13 to such time.

14 a. from calling, engaging in, continuing, sanctioning, ~~inducing~~, aiding, ~~enticing~~,
15 encouraging, abetting, or assisting certain General Unit employees—~~specifically but not limited to~~
16 ~~those employed in the classifications~~ ^{AS} identified in Exhibit "A" ("essential employees")—from
17 engaging in any strike, walkout, slowdown, or work stoppage of any nature against the City of Palo
18 Alto during their working hours;

19
20 b. from continuing in effect or ~~refusing to rescind~~ any strike, walkout, slowdown, or work
21 stoppage, notice, call, order, or sanction ^{DIRECTED TO} heretofore ~~issued~~ by Defendant to or involving "essential
22 employees" with respect to the anticipated General Unit strike, walkout, slowdown, or work
23 stoppage. ^{AS IDENTIFIED IN EXHIBIT A}

24 IT IS FURTHER ORDERED that a copy of the complaint, together with a copy of this Order
25 to Show Cause and Temporary Restraining Order, accompanying declarations, and points and
26 authorities must be filed and served on SEIU not later than SEPT. 23, 2009. The opposition papers
27 must be filed and served on Plaintiff by mail no later than OCT. 8, 2009 BY ELECTRONIC
28 A reply brief must be filed and served on SEIU by mail no later than SERVICE

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WJM

Dated September 2009

City of Peabody's Motion to Intervene
by ex parte Application is denied.

William J. Eifving
JUDGE OF THE SUPERIOR COURT

9/23/09

10/13/09

William J. Eifving
Judge

William J. Eifving

EXHIBIT A

~~ALBERTA~~

1 action, the supporting declarations, points and authorities, it appears to the satisfaction of the court
2 that this is a proper case for granting a temporary restraining order and Order to Show Cause re:
3 Preliminary Injunction.

4 1. CITY has established the probable validity of its claims and the probability that there is an
5 immediate danger that SEIU will violate the Government Code by engaging in a strike or work
6 stoppage on or about September 24, 2009. Failure to issue this Temporary Restraining Order would
7 result in an imminent threat to public health, safety and welfare.

8 2. This is a proper case for issuance of an Order to Show Cause and a Temporary
9 Restraining Order, and unless a Temporary Restraining Order issues, the City of Palo Alto and its
10 residents will face substantial and irreparable injury before the matter can be heard on notice.

11 IT IS HEREBY ORDERED:

12 1. That Defendant SEIU, its agents, employees, representatives, officers, organizers,
13 committee person, stewards, members, and all corporations, unincorporated associations, and natural
14 persons acting in concert and participation with any of them, until a hearing or trial on a preliminary
15 injunction, be enjoined and restrained;

16 a. from calling, engaging in, continuing, sanctioning, inducing, adding, enticing,
17 encouraging, abetting, or assisting SEIU employees - specifically those employed in the
18 classifications listed below from engaging in any strike, walkout, slowdown, or work stoppage of
19 any nature against the City of Palo Alto during their work hours on or about September 24, 2009;

20 b. from continuing in effect or refusing to rescind any strike, walkout, slowdown, voluntary
21 furlough, or work stoppage, notice, call order, or sanction heretofore issued by SEIU to involving
22 "essential employees" with respect to the anticipated strike, walkout, slowdown, or work stoppage
23 on or about September 24, 2009.

24 2 This Order applies to these employees represented by SEIU in the following job
25 classifications:

26 a. Police Department

27 (1) Five Chief Public Safety Dispatchers: Steve Baca, John Clum, Brian Furtado,

28 Sean Smith, and Sheavounda Walker;

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(2) Twelve Public Safety Dispatchers: Terry Anderson, Audrey Bates, Mark Chase, Christine Czerniec, Brina Elmore, Rich Gordon, Melissa Kirkland, Marissa Longoria, Lisa Sandoval, Erika Spencer, Teresa Jo Strickland, and Patricia Whitman; and

~~(3) Two Animal Control Officers: Casey Cushman, and Bill Warner.~~

W M
W M

b. Public Works

(1) ~~Five~~ ^{Six} Senior Water Quality Control Operators: Brad Biehl, ~~Carlton~~ 'Dennis' Black, Richard Brown, David Delzer, Adam Nowak, and Ignacio Paez-Rincon;

W M

(2) Five Water Quality Control Operator IIs: Narine 'Lenny' Dass, Richard Dass, Thomas Hejza, Michael Olsen, and Corey Walpole;

(3) Two Chemists: Ryan Hoang, and Mei Wong;

(4) One Senior Chemist: Jong 'JJ' Jhun;

(5) Two Lead Electricians: Paul Saini, and Tuan Vu;

(6) One Electrician: Gabor Szegedy;

(7) One Senior Mechanic: Pedro Zalbidea;

(8) Four Maintenance Mechanics: Terrence Condon, Marc dela Cruz, Aaron Miller, and Jerzy Siegenfeld;

(9) Two Heavy Equipment Operators, assigned to Landfill: Eric VanZandt, and Roland Wilson;

(10) One Landfill Technician: Charles Risen; and

(11) One Environmental Specialist: Charles Muir.

c. Utilities

(1) Four Installer/Repair Leads: Doug Bohna, Daniel Mendoza, Dan Serna, and Jackey Wilson;

(2) Nine Installer/Repairers: Richard Anderson, Filiberto Castro, Oscar Garcia, Michael Haynes, Robert Justus, Anthony Meneses, Kevin Odom, Pedro Perez, and Eric Talley;

(3) Two Maintenance Mechanics: Steve Giovannetti, and Jordan Hart;

- 1 (4) Six Heavy Equipment Operators: Brian Bingham, James Givens, Paul
- 2 Gutierrez, Kenneth Hanks, Francisco Ramirez, and Sekou Wiggins;
- 3 (5) Six Water Systems Operators: David Cordova, Chi Du, Dave Ostello, Miguel
- 4 Perez, Marco Torres, and Jason Weir;
- 5 (6) Six Field Service Persons: Mike Akins, Alex Gonzalez, James Jensen, Ruben
- 6 Salas, Abel Silva, and Jorge Silva;
- 7 (7) Three Utility System Operators/Dispatchers: Jesus Cruz, Lani Cubillo, and
- 8 Michael Keate;
- 9 (8) Three Lineperson Leads: George 'Tom' Haupert, Alonzo Nelson, and
- 10 Gregory Schulz;
- 11 (9) Six Linepersons: Mike Bearden, David Johns, Craig Lindquist, Samuel
- 12 Rincon, Adrian Solis, and Anthony Taylor;
- 13 (10) Five Electrician Leads: Richard Baptist, Mark Briseno, Surendra Prasad,
- 14 Pamela Turpen, and Scott Yahne; and
- 15 (11) Seven Electricians: Isaac Armenta, Ryan Johnson, Gene Lindsey, Jayant
- 16 Mishra, Anthony Mouton, Nelson Primeaux, and Kenneth Schwab.

17 d Community Services

- 18 (1) One Senior Ranger: Daren Anderson;
- 19 (2) One Producer/Science: Rob Steele; and
- 20 (3) Inspector, Field Services: James Moss.

21 These positions represent essential functions that cannot strike due to the negative effective
 22 upon public health, safety and welfare. These positions include: Real Party in
 23 Interest's employees who work in the following job classifications that provide
 24 essential services to protect the public health and safety: Chief Public Safety
 25 Dispatchers; Public Safety Dispatchers; Animal Control Officers; Senior Water
 26 Quality Control Operators; Water Quality Control Operator IIs, Chemists; Senior
 27 Chemists; Lead Electricians; Electricians; Senior Mechanics; Public Works
 28 Department Maintenance Mechanics; Heavy Equipment Operators, assigned to

ORIGINAL

1 TAMI R. BOGERT, Bar No. 206561
 General Counsel
 2 WENDI L. ROSS, Bar No. 141030
 Deputy General Counsel
 3 LAURA Z. DAVIS, Bar No. 196494
 Regional Attorney
 4 KATHARINE M. NYMAN, Bar No. 249067
 Regional Attorney
 5 PUBLIC EMPLOYMENT RELATIONS BOARD
 1031 18th Street
 6 Sacramento, California 95811-4124
 Telephone: (916) 322-3198
 7 Facsimile: (916) 327-6377

FILED

OCT 15 2009

CS

David H. Nguyen, Clerk of the Superior Court
 County of Santa Clara, California
 By: *J. Cao-Nguyen* Deputy Clerk

J. Cao-Nguyen

8 Attorneys for State of California, Public Employment Relations Board

9
 10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 11 COUNTY OF SANTA CLARA

12 PUBLIC EMPLOYMENT RELATIONS BOARD,
 13 Plaintiff,
 14 v.
 15
 16 SERVICE EMPLOYEES INTERNATIONAL
 UNION LOCAL 521,
 17 Defendant.
 18
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 20

Case No. 109CV153088

J. Cao-Nguyen
**PROPOSED ORDER
 GRANTING PRELIMINARY
 INJUNCTION**

Date: October 13, 2009
 Time: 1:30 p.m.
 Dept. Two

**Exempt from Fees
 (Gov. Code, § 6103)**

23 The ex parte application of Plaintiff Public Employment Relations Board (PERB) for an
 24 order granting a preliminary injunction having come before the Honorable William J. Elfving on
 25 October 13, 2009 at 1:30 p.m. in Department 2 of the Santa Clara County Superior Court, notice
 26 duly given, Laura Z. Davis appearing for Plaintiff PERB; Adrianna Guzman, Melissa Tronquet, and
 27 Gary M. Baum appearing for the City of Palo Alto; and Vincent A. Harrington, Jr. appearing for
 28 Defendant Service Employees International Union, Local 521 (SEIU).

FAXED

1 Upon reading the application, complaint, supporting declarations, and points and authorities
2 on file in this action, the Court finds that:

3 1. Plaintiff has established the probable validity of its claims and the probability that there is
4 an immediate danger that Defendant SEIU will violate the Government Code by engaging in a strike
5 or work stoppage. Failure to issue this Preliminary Injunction would result in an imminent threat to
6 public health, safety and welfare.

7 2. This is a proper case for issuance of a Preliminary Injunction, and unless a Preliminary
8 Injunction issues, the City of Palo Alto will face substantial and irreparable injury

9 IT IS HEREBY ORDERED:

10 1. That Defendant SEIU, its agents, employees, representatives, officers, organizers,
11 committee person, stewards, members, and all corporations, unincorporated associations, and natural
12 persons acting in concert and participation with any of them, be enjoined and restrained;

13 a. from calling, engaging in, continuing, sanctioning, aiding, abetting, or assisting certain
14 General Unit employees identified in this order as "essential employees" from engaging in any
15 strike, walkout, slowdown, or work stoppage of any nature against the City of Palo Alto during their
16 working hours;

17 b. from continuing in effect any strike, walkout, slowdown, or work stoppage, notice, call
18 order, or sanction directed to "essential employees" as identified in this Order with respect to a
19 General Unit strike, walkout, slowdown, or work stoppage.

20 2. This Order applies to these eighty-seven (87) "essential employees" represented by SEIU
21 in the following job classifications:

22 a. Police Department

23 (1) Five Chief Public Safety Dispatchers: Steve Baca, John Clum, Brian Furtado,
24 Sean Smith, and Sheavounda Walker;

25 (2) Twelve Public Safety Dispatchers: Terry Anderson, Audrey Bates, Mark
26 Chase, Christine Czerniec, Brina Elmore, Rich Gordon, Melissa Kirkland, Marissa Longoria,
27 Lisa Sandoval, Erika Spencer, Teresa Jo Strickland, and Patricia Whitman.
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b. Public Works

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(1) Six Senior Water Quality Control Operators: Brad Biehl, Carlton 'Dennis'

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Black, Richard Brown, David Delzer, Adam Nowak, and Ignacio Paez-Rincon;

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(2) Four Water Quality Control Operator IIs: Narine 'Lenny' Dass, Richard Dass,

5

Michael Olsen, and Corey Walpole;

6

(3) One Senior Mechanic: Pedro Zalbidca;

7

(4) Three Maintenance Mechanics: Terrence Condon, Marc dela Cruz, Aaron

8

Miller;

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(5) Two Lead Electricians: Paul Saini, and Tuan Vu;

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(6) One Electrician: Gabor Szegedy;

11

(7) One Senior Chemist: Jong 'JJ' Jhun;

12

(8) Two Chemists: Ryan Hoang, and Geoff Wong;

13

(9) Two Heavy Equipment Operators, assigned to Landfill: Eric VanZandt, and

14

Roland Wilson;

15

(10) One Landfill Technician: Charles Risen; and

16

(11) One Environmental Specialist: Charles Muir.

17

18

c. Utilities

19

(1) Three Utility System Operators/Dispatchers: Jesus Cruz, Lani Cubillo, and

20

Michael Keate;

21

(2) Three Lineperson Leads: George 'Tom' Hauptert, Alonzo Nelson, and

22

Gregory Schulz;

23

(3) Five Linepersons: Mike Bearden, David Johns, Craig Lindquist, Adrian Solis,

24

and Anthony Taylor;

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(4) Five Electrician Leads: Richard Baptist, Mark Briseno, Surendra Prasad,

26

Pamela Turpon, and Scott Yahne;

27

(5) Five Electricians: Ryan Johnson, Gene Lindsey, Jayant Mishra, Anthony

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Mouton, and Nelson Primeaux;

- 1 (6) Four Installer/Repair Leads: Doug Bohna, Daniel Mendoza, Dan Serna, and
- 2 Jackey Wilson;
- 3 (7) Nine Installer/Repairers: Richard Anderson, Filiberto Castro, Oscar Garcia,
- 4 Michael Haynes, Robert Justus, Anthony Meneses, Kevin Odom, Pedro Perez, and Eric
- 5 Talley;
- 6 (8) Four Heavy Equipment Operators: Brian Bingham, James Givens, Kenneth
- 7 Hanks, and Francisco Ramirez;
- 8 (9) Three Field Service Persons: James Jensen, Ruben Salas, and Jorge Silva;
- 9 (10) Three Water Systems Operators: David Cordova, Chi Du, and Dave Ostello;
- 10 (11) Two Maintenance Mechanics: Steve Giovannetti, and Jordan Hart;

11 3. That Defendant SEIU and its agents, employees, representatives, officers, organizers,
 12 committee persons, stewards, members, and all corporations, unincorporated associations, and
 13 natural persons acting in concert and participation with any of them be enjoined and restrained from
 14 doing or attempting to do, directly or indirectly, by any means, method or device whatsoever, any of
 15 the acts enjoined in paragraph 1 during the duration of this order.

17 4. That a Preliminary Injunction be granted, enjoining and restraining SEIU, its agents,
 18 employees, representatives, officers, organizers, committee persons, stewards, and members, and all
 19 persons acting in concert with them or any of them, from doing or causing or permitting to be done
 20 any of the acts complained of in paragraph 1.

21 5. This Order will remain in effect until further order of court
 22 or UW
 22 until _____, whichever occurs first.

23 DATE: 10/15/89

24 By [Signature]
 25 The Hon. William J. Elving
 26 JUDGE OF THE SUPERIOR COURT

27 Approved as to form
 28 Vincent A. Harrington, Jr.
 Attorney for Defendant SEIU

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PROOF OF SERVICE
Code of Civil Procedure §1013

I declare that I am a resident of or employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1330 Broadway, Suite 1532, Oakland, California, 94612.

On October 14, 2009, I served the following documents pertaining to *Public Employment Relations Board v. Service Employees International Union Local 521*, County of Santa Clara Superior Court Case No. 109CV153088:

- [Proposed] Order Granting Preliminary Injunction

regarding the parties listed below by

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

overnight courier by causing each envelope, with postage fully prepaid, to be delivered to an authorized courier authorized by Federal Express to receive documents, in an appropriate package designated by Federal Express with delivery fees paid or provided for and sent by Federal Express for overnight delivery to the address below, such delivery being made at the location and on the date set forth below.

personal delivery.

Vincent A. Harrington, Jr.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Ste. 200
Alameda, CA 94501

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 14, 2009, at Oakland, California.

C.E. Johnson
(Type or print name)


(Signature)

ORIGINAL
ORIGINAL

1 VINCENT A. HARRINGTON, JR., Bar No. 071119
2 KERIANNE R. STEELE, Bar No. 250897
3 WEINBERG, ROGER & ROSENFELD
4 A Professional Corporation
5 1001 Marina Village Parkway, Suite 200
6 Alameda, California 94501-1091
7 Telephone 510.337.1001
8 Fax 510.337.1023

9 y.c.

10 ATTORNEYS FOR DEFENDANTS

LOS

FILED Santa Clara Co
10/27/09 10:11am
David H. Yamashiro
Crist Executive S/P
311 Avenida de Cesar E. Chavez
San Jose, CA 95128
408-298-1079

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SANTA CLARA

13 PUBLIC EMPLOYMENT RELATIONS
14 BOARD,

15 Plaintiff,

16 v.

17 SERVICE EMPLOYEES INTERNATIONAL
18 UNION, LOCAL 521,

19 Defendant.

Case No. 109CV153088

ANSWER OF SEIU LOCAL 521 TO
THE UNVERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF

20 Now comes the Defendant Service Employees International Union, Local 521 ("SEIU"),
21 and by way of answer to the Unverified Complaint for Injunctive Relief on file in the above-
22 referenced action alleges as follows:

23 GENERAL DENIAL

24 I. SEIU denies each and every, all and singular, the allegations and each of them of
25 the Complaint and each of the paragraphs and subparagraphs 1 through and including 18 of said
26 Complaint.

27 AFFIRMATIVE DEFENSES

28 I. As and for a first, separate affirmative defense, the SEIU alleges that the Complaint
and each of its paragraphs and subparagraphs fails to set forth facts sufficient to state a claim for

WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501-1091
Tel: 510.337.1001

ANSWER OF SEIU LOCAL 521 TO THE UNVERIFIED COMPLAINT FOR INJUNCTIVE RELIEF
Case No. 109CV153088

FAXED 283

1 relief against the SEIU.

2 2. As and for a second, separate affirmative defense, the SEIU alleges that PERB has
3 exceeded its jurisdiction in this matter by unlawfully intervening in and interfering with the
4 bargaining between the City of Palo Alto and the SEIU, and an injunction in this case is neither
5 "just and proper," nor justified on the ground that in the absence of the issuance of an injunction,
6 irreparable harm affecting the public interest would arise.

7 3. As and for a third, separate affirmative defense, the SEIU alleges that the evidence
8 before the Court fails to demonstrate that the issuance of an injunction in this case is "just and
9 proper" or required on the basis of traditional equitable considerations, because the PERB has
10 failed to present competent evidence that clearly demonstrates that the absence from work of any
11 of the employees sought to be restrained in this action would create a "substantial and imminent
12 threat to the health or safety of the public."

13 4. As and for a fourth, separate affirmative defense, the SEIU affirmatively alleges that
14 the Restraining Order sought by the PERB violates the First Amendment rights of the SEIU and its
15 members because it is unconstitutionally overbroad, vague and ambiguous and seeks to restrain
16 free speech, or speech acts protected by the California and the United States Constitutions.

17 5. As and for a fifth, separate affirmative defense, the SEIU alleges that this Court
18 lacks jurisdiction to grant the requested injunctive relief because the PERB proceeds in violation of
19 Labor Code § 1138.1(a), (1) through and including (5).

20 6. As and for a sixth, separate affirmative defense, the SEIU affirmatively alleges that
21 this Court lacks jurisdiction to issue any injunction in this matter, which arises out of a labor
22 dispute within the meaning of C.C.P. § 527.3(b)(4)(iii), because there is no allegation of mass
23 picketing, threatening or violent behavior, or violation of any Penal Code provisions, nor is there
24 any evidence of any of the factors required to be proved and presented by witnesses testifying
25 under oath as required by Labor Code § 1138.1(a)(1) through and including (5).

26 WHEREFORE, SEIU prays for the following relief:

27 1. That the Complaint be dismissed, and that the PERB take nothing by way of its

28
WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1045 Marin Village Parkway
Suite 200
Alhambra, CA 91801-1091
916.479.1804

- 2 -

ANSWER OF SEIU LOCAL 521 TO THE UNVERIFIED COMPLAINT FOR INJUNCTIVE RELIEF
Case No. 109CV153088

1 Complaint;

2 2. That any Order issued by the Court be dissolved as contrary to law;

3 3. That the Court award such other and further relief as to it appears just and proper;

4 4. That the SEIU be awarded its costs and attorney fees incurred in defending against
5 this suit.

6 Dated: October 21, 2009

7 WEINBERG, ROGER & ROSENFELD
8 A Professional Corporation

9 By: 
10 VINCENT A. HARRINGTON, JR.
11 Attorneys for Defendant Service Employees
12 International Union, Local 521

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WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1000 Avenue of the Stars, Suite 2000
Alhambra, CA 91801-1091
Tel: 626-444-1000

FILED

PROOF OF SERVICE
(CCP 1013)

OCT 22 AM 9:00

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I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On October 21, 2009, I served upon the following parties in this action:

Laura Davis
Regional Attorney
Public Employment Relations Board
San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514

copies of the document(s) described as:

Answer of SEIU Local 521 to Unverified Complaint for Injunctive Relief

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on October 21, 2009.



Mary Piro

WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1101 Marina Village Parkway
Suite 200
Alameda, CA 94501-1091
340.17.0011

ORIGINAL

1 VINCENT A. HARRINGTON, JR., Bar No. 071119
2 KERIANNE R. STEELE, Bar No. 250897
3 WEINBERG, ROGER & ROSENFELD
4 A Professional Corporation
5 1001 Marina Village Parkway, Suite 200
6 Alameda, California 94501-1091
7 Telephone 510.337.1001
8 Fax 510.337.1023

FILED UCS
2009 NOV 24 P 1:44
Clerk of Superior Court - Santa Clara County
By: *[Signature]*
11-23-09

6 Attorneys for Defendant SEIU Local 521

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SANTA CLARA

11 PUBLIC EMPLOYMENT RELATIONS BOARD,
12

12 Plaintiff,

13 v.

14 SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521,
15

16 Defendant.

) Case No. 109CV153088

) NOTICE OF APPEAL AND NOTICE
) DESIGNATING CLERK'S AND
) REPORTER'S TRANSCRIPT
) [CRC RULES 8.122; 8.130]

) Copy of Notice of Appeal
) sent to DCA and counsel

) on 11-30-09
) *[Signature]* Deputy Clerk,
) M. McCormick

18 TO: THE PUBLIC EMPLOYMENT RELATIONS BOARD AND ITS ATTORNEY OF
19 RECORD, LAURA Z. DAVIS:

20 Please take notice that the Defendant Service Employees International Union, Local 521,
21 hereby appeals to the California Court of Appeal, Sixth Appellate District, from the October 13,
22 2009 Order granting a preliminary injunction restraining "87 essential employees" of the City of
23 Palo Alto from exercising their right to engage in a strike.

24 Pursuant to CRC 8.122 the Appellant hereby requests the preparation of the clerk's
25 transcript consisting of the following documents:

26 1. All pleadings, including, but not limited to, the Complaint, Application for
27 Injunctive Relief, Temporary Restraining Order and Order to Show Cause in Re Preliminary

28 WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501-1091
510.337.1001

NOTICE OF APPEAL AND NOTICE DESIGNATING CLERK'S AND REPORTER'S TRANSCRIPT

1 Injunction, Declarations, Answers, Counter Declarations, on file with the clerk between September
2 23, 2009 and the date of this Notice;

3 2. This Notice of Appeal;

4 3. All Minute Orders entered in this matter between September 23, 2009 and the date
5 of the filing of this Notice of Appeal;

6 4. The Temporary Restraining Order and Order to Show Cause issued September 23,
7 2009;

8 5. The Notice of Ruling granting the preliminary injunction, dated October 13, 2009;

9 6. The Preliminary Injunction issued in this matter;

10 7. The Answer of SEIU Local 521 to the unverified Complaint for Injunctive Relief;

11 8. All such other and further documents as may be required pursuant to CRC 8.122(b).

12 9. Further, pursuant to CRC 8.130(a)(1), Appellant requests the preparation of the
13 reporter's transcript of the proceedings in Department 2 of the above-entitled Court on October 13,
14 2009, at 1:30 p.m., involving the hearing on the Order to Show Cause Re Preliminary Injunction.

15 Dated: November 23, 2009

16 Respectfully submitted,

17 WEINBERG, ROGER & ROSENFELD
18 A Professional Corporation

19 By: 
20 VINCENT A. HARRINGTON, JR.
21 Attorneys for Defendant SEIU Local 521

22 122783/552128

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WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1101 Marina Village Parkway
Suite 3000
Alhambra, CA 91801-1004
Tel: 626-256-1100
Fax: 626-256-1104

- 2 -

NOTICE OF APPEAL AND NOTICE DESIGNATING CLERK'S AND REPORTER'S TRANSCRIPT

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PROOF OF SERVICE
(CCP 1013) **FILED**

2009 NOV 24 P 1:44

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On November 23, 2009, I served upon the following parties in this action:

David A. ... of the Superior Court
By _____
Deputy Clerk

C. P. # 17-002

Laura Z. Davis
Regional Attorney
Public Employment Relations Board
San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514

copies of the document(s) described as:

NOTICE OF APPEAL

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on November 23, 2009.



Mary Piro

ORIGINAL

1 VINCENT A. HARRINGTON, JR., Bar No. 071119
KERIANNE R. STEELE, Bar No. 250897
2 WEINBERG, ROGER & ROSENFELD
A Professional Corporation
3 1001 Marina Village Parkway, Suite 200
Alameda, California 94501-1091
4 Telephone 510.337.1001
Fax 510.337.1023

5
6 Attorneys for Defendant SEIU Local 521

FILED Santa Clara Co
12/10/09 12:13pm
David H. Yamasaki
Chief Executive Office
By: ssancayco DTSCIVO
#200900132504
CR \$100.00
TL \$100.00
Case: 1-09-CV-153088

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

10
11 PUBLIC EMPLOYMENT RELATIONS)
BOARD,)

12 Plaintiff,

13 v.

14 SERVICE EMPLOYEES INTERNATIONAL)
15 UNION, LOCAL 521,)

16 Defendant.)

) Case No. 109CV153088

) AMENDED NOTICE DESIGNATING
) CLERK'S TRANSCRIPT
) [CRC RULES 8.122; 8.130]

17
18 TO: THE PUBLIC EMPLOYMENT RELATIONS BOARD AND ITS ATTORNEY OF
19 RECORD, LAURA Z. DAVIS:

20 Please take notice that the Defendant Service Employees International Union, Local 521,
21 hereby files its Amended Notice Designating Clerk's Transcript in the above-referenced matter.

22 Pursuant to CRC 8.122 the Appellant, Local 521, hereby requests the preparation of the
23 Clerk's Transcript consisting of the following documents:

- 24 1. Ex Parte Application of Plaintiff Public Employment Relations Board for
25 Temporary Restraining Order and Order to Show Cause in Re Preliminary Injunction, dated
26 September 23, 2009;
27 2. Complaint for Injunctive Relief, supporting Declarations, filed September 23, 2009;

28
WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501-1091
510.337.1000

AMENDED NOTICE DESIGNATING CLERK'S TRANSCRIPT
Case No.: 109CV153088

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- 1 3. Declaration of Laura Z. Davis and attachments, dated September 22, 2009;
- 2 4. Memorandum of Points and Authorities in Support of Ex Parte Application of
- 3 Plaintiff Public Employment Relations Board for Temporary Restraining Order; Order to Show
- 4 Cause Re Preliminary Injunction, dated September 22, 2009;
- 5 5. SEIU Local 521's Opposition to Ex Parte Request for Injunctive Relief, dated
- 6 September 22, 2009;
- 7 6. Declaration of Vincent A. Harrington, Jr. in Opposition to Ex Parte Application for
- 8 Injunctive Relief, dated September 22, 2009, and its attachments;
- 9 7. SEIU Local 521's Notice of Lodging of Federal Authorities, and attachments, dated
- 10 September 22, 2009;
- 11 8. Order Granting Temporary Restraining Order and Order to Show Cause Re
- 12 Preliminary Injunction, dated and filed September 23, 2009;
- 13 9. Second Declaration of Laura Z. Davis in Support of Application for Preliminary
- 14 Injunctive Relief, and attachments, dated October 8, 2009;
- 15 10. Declaration of Vincent A. Harrington, Jr. in Opposition to Motion for Preliminary
- 16 Injunctive Relief, and attached exhibits, dated October 7, 2009;
- 17 11. Declaration of Adolfo Riedel in Opposition to Order to Show Cause and Temporary
- 18 Restraining Order, and its attachments, dated October 8, 2009;
- 19 12. Local 521's Notice of Lodging of Federal Authorities, dated October 8, 2009;
- 20 13. SEIU Local 521's Opposition to Motion for Preliminary Injunctive Relief, dated
- 21 October 7, 2009;
- 22 14. Notice of Ruling on Application for Issuance of Preliminary Injunction, dated and
- 23 filed October 13, 2009;
- 24 15. Order Granting Extension of Temporary Restraining Order and Order to Show
- 25 Cause Re Preliminary Injunction, dated and filed October 13, 2009;
- 26 16. Order Granting Preliminary Injunction, filed October 15, 2009;
- 27 17. Answer of SEIU Local 521 to the Unverified Complaint for Injunctive Relief, filed

1 October 22, 2009;

2 18. Local 521's Notice of Appeal and Notice Designating Clerk's and Reporter's
3 transcripts, filed November 24, 2009.

4 Dated: December 9, 2009

5 Respectfully submitted,

6 WEINBERG, ROGER & ROSENFELD
7 A Professional Corporation

8 By: 
9 VINCENT A. HARRINGTON, JR.
Attorneys for Defendant SEIU Local 521

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PROOF OF SERVICE FILED
(CCP 1013)

2009 DEC 10 PM 12:12

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1801. On December 9, 2009, I served upon the following parties in this action:

Laura Z. Davis
Regional Attorney
Public Employment Relations Board
San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514

By S. BANCAYO

copies of the document(s) described as:

AMENDED NOTICE DESIGNATED CLERK'S TRANSCRIPT

BY MAIL. I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on December 9, 2009.

Mary Piro
Mary Piro

TO THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
IN AND FOR THE SIXTH APPELLATE DISTRICT

PUBLIC EMPLOYMENT RELATIONS

v.

SERVICE EMPLOYEES
INTERNATIONAL

SANTA CLARA COUNTY NO. 1-09
CV153088

DCA CASE NO.

CLERK'S CERTIFICATE

I, M. MCCORMIC, Deputy County Clerk of the County of Santa Clara, State of California,
do certify the following:

AFTER A COMPLETE SEARCH OF THE RECORD ITEMS # 5; # 6; # 7 OF THE "AMENDED
NOTICE DESIGNATING CLERK'S TRANSCRIPT" WERE NOT FOUND OR METIONED IN THE
COURT DATABASE..

In witness whereof, I have hercunto set my hand and the seal of said Superior Court, this 12/22/09
DATE



DAVID H. YAMASAKI, CHIEF EXECUTIVE OFFICER/CLERK

BY:

Handwritten signature of M. McCormic in cursive script.
M. MCCORMIC

DEPUTY CLERK

I, M. MCCORMIC, Deputy Clerk of the Superior Court of the State of California, County of Santa Clara, do hereby certify the foregoing to be a full, true, and correct copy of documents requested and/or specifically identified on the index pages of the Clerk's Transcript on Appeal, as the same as now appear on file in this office.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of said Superior Court, this 22nd day of DECEMBER, 2009



DAVID H. YAMASAKI, CHIEF EXECUTIVE OFFICER /CLERK

BY: *M. McCormic*
M. MCCORMIC DEPUTY CLERK

CASE # 1-09
CV153088