S245607



# IN THE
# SUPREME COURT OF CALIFORNIA

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**GEORGE MELENDEZ, et al.,**

**Plaintiffs and Appellants,**

**v.**

**SAN FRANCISCO BASEBALL ASSOCIATES, LLC**

**Defendant and Respondent.**

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COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION 3
CASE NO. A149482
SAN FRANCISCO SUPERIOR COURT, No. CGC-13-530672
HONORABLE CURTIS E.A. KARNOW

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## APPELLANTS' ANSWER TO AMICUS BRIEF

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## I. INTRODUCTION

The appellate court in this matter disregarded dispositive United States Supreme Court authorities that establish that an independently provided state-law right is not preempted unless it depends on interpretation of the CBA. It further disregarded that the determination of whether an employee is "discharged" under state law is a purely factual question about conduct that does not require a court to interpret any term of the collective-bargaining agreement. (*Lingle v. Norge Div. of Magic Chef* (1988) 486 U.S. 399, 405-407); *Hawaiian Airlines, Inc. v. Norris et al.* (1994) 512 U.S. 246, 266; *Lividas v. Bradshaw* (1994) 512 U.S. 107, 108-109.) The appellate court also failed to properly analyze Labor Code §§ 201, 203, 219 and the unanimous decision of this Court in *Smith v. Superior Court (L'Oreal)* (2006) 39 Cal.4th 77, which establish timely payment of final wages as a minimum labor standard.

Amici Curiae Los Angeles Dodgers LLC and Other California Sports Organizations ("Amici") in their brief in support of San Francisco Baseball Associates LLC ("Giants") similarly disregard the law of preemption, the language of Labor Code § 201, the purpose of

Labor Code § 201 et seq, the meaning of "layoff," as well as the lesson, holdings, application and significance of *Smith, supra.*

The absence of authority and analysis in the Amicus Brief in support of Respondent is stunning. It reinforces the reality that the Giants' position does not stand up to scrutiny.

## II. AMICI'S FACTUAL REPRESENTATIONS BELIE A MISGUIDED BELIEF THAT PARTIES HAVE THE POWER TO DECLARE FICTIONS AS FACTS AND THEN APPLY THE LAW TO THOSE DECLARED FACTS

Relying on the existence of CBAs, and provisions in those CBAs regarding, inter alia, seniority, drug testing, and contractual discharges for cause, Amici claim employees covered by their CBAs are continuously employed and are never laid off/discharged as those terms are used in Labor Code § 201. (Amicus Brief "Am. Brief", passim.)

It is axiomatic that employers cannot curb worker's rights based on contractually driven *factual conclusions*, usurping the role of the courts to decide whether facts exist that constitute a violation of non-negotiable state rights that employees enjoy irrespective of CBAs. [1]

[1] If Amici's conclusions regarding "no layoffs" and "continuous employment" were actually factual, they would have no reason to file a friend of the court brief --- their employees would not have

The analysis demanded by this case will necessarily turn on the facts of intermittent periods of employment and unemployment, and the legal conclusion that when an employee is relieved of duty by an employer for a lack of work, he or she is laid off and entitled to the benefits of Labor Code § 201.

There are necessarily numerous employees of the Giants and Amici who experience lengthy periods of unemployment and receive far fewer assignments than other employees. This reality is illustrated by statements in the Amicus Brief notwithstanding assertions of continuous employment and an absence of layoffs.

There are 81 regular season home games in a 365-day year. (Am. Brief pg. 10). At Dodger Stadium, for example, with 56,000 seats, for each home game with tens of thousands of fans, it is fair to say the Dodgers are going to have staffing levels that would probably include well over a hundred and fifty (150) maintenance/janitorial employees, over a hundred (100) ushers/customer service staff, close to a hundred (100) guards, dozens of ticket sellers, ticket takers and numerous employees who sell merchandise throughout the stadium. In

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experienced the employer determined breaks in service that animate this case.

contrast, on most non-game days during the season and during the late October through March off-season, staffing levels will be a fraction of the level on game days.

The Amicus Brief states that in addition to baseball games, at Dodger Stadium, there are "concerts, festivals, marathons, an annual fan fest event, stadium tours, etc." Conveniently, there is no reference to the number of concerts and other events that may utilize large number of employees. There is only one marathon, and one fan fest. Assuming those events involve staffing levels approaching the numbers applicable to home games, and assuming as many as four concerts a year, combined with baseball games, there are 87 assignments utilizing large numbers of employees. If the Dodgers make the playoffs, there may be close to 100 such assignments in a 365-day year.

The other 265 days in a year, Dodger Stadium may have other events; however, Amici's failure to disclose staffing levels on these non-game days renders their suggestion of continuous employment for all employees a fallacy.

On non-game days during the season and off season, there are three stadium tours at Dodger Stadium available to the public. The

Amicus brief mentions Dodger stadium tours, but, again, conveniently does not mention stadium staffing levels for the tours. Through an internet search, one person remarked there were 17 people on the Dodger stadium tour she took. (www.detourla.com/start-here-exploring-los-angeles/dodger-stadiumtour). On public tour days during and after the baseball season when the Dodgers are not playing at home, when there are 3 tours at the stadium, it would be non-sensical for the Dodgers to have staffing levels that even approach the game day levels of over 150 maintenance/janitorial employees, over 100 ushers, dozens of employees throughout the stadium selling merchandise including store employees, close to 100 security guards, and sufficient ticketing personnel required to scan tickets from tens of thousands of fans. Amici's claims of "continuous employment" and "no layoffs" consequently have to be taken with a grain of salt.

The Amicus Brief states an usher who works a concert on a Sunday could work a Dodger game on Monday. (Am. Brief pg. 11). Although that may be true, it is also true that an usher who works a concert at the stadium in November, may be laid off when the concert is over, and not work again at the stadium, depending on staffing needs, until a fan fest in late January or until baseball returns in

March. In suggesting all employees are "continuously" employed, Amici are either being disingenuous, or adopting a view of "continuous employment" that must be rejected if the letter and purpose of Labor Code § 201 is to be realized.[2]

### A. Despite "No Layoff" And "Continuous Employment" Claims, The Amicus Brief Exposes the Fallacy of Those Assertions.

The Dodgers indicate that work schedules are "posted on a monthly basis so that employees are aware of when they will be working **(and not working) well in advance**." (Am. Brief pg. 12, emphasis added). This scheduling reality confirms that employment at the stadium is assignment based with periods when employees will be out of work. With the Dodgers, if there is a Billy Joel concert at Dodger Stadium in the off-season in, for example mid-November, in which one hundred ushers are needed and seventy-five security guards are needed, and on other days in November, no ushers are needed and

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[2] The Amicus Brief points out how other Amici also have events at their venues other than games. Without statistics as to the number of such events (such as proms and corporate receptions) they host, and staffing levels at each, such representations are no more than a smoke screen to obscure the reality that many employees experience lengthy periods without employment. "Continuous employment" for a few employees clearly does not equate to "continuous employment" for an entire workforce that includes large numbers of employees who experience layoffs on account of their employer's variable staffing requirements.