IN THE SUPREME COURT OF CALIFORNIA

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 188, AFL-CIO, Petitioner, v. PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent, and CITY OF RICHMOND, Real Party in Interest.	Case No. S172377 PERB Decision No. 1720-M

After a Decision by the Court of Appeal, First Appellate District
Case No. A114959

PUBLIC EMPLOYMENT RELATIONS BOARD'S ANSWER TO PETITIONER'S OPENING BRIEF

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INTRODUCTION

The determination of whether a particular subject falls within the scope of representation under the Meyers-Milias-Brown Act (MMBA or Act) (Gov. Code, § 3500 et seq.) is one of those specialized and narrowly focused actions that the Legislature specifically delegated to the Public Employment Relations Board (PERB or Board). Because PERB is recognized by California's Legislature and courts as the expert administrative agency with respect to public-sector labor relations, courts have typically viewed PERB's findings regarding the scope of representation with great deference.

The matter initially giving rise to this litigation falls clearly within these settled matters of law. Here, PERB was called upon to determine whether the City of Richmond (City) violated the MMBA by failing and refusing to meet and confer regarding the City's decision to lay off firefighters. Consistent with the decisions of the United States Supreme Court, California courts, and PERB—all holding that only the effects of a decision to conduct layoffs, rather than the decision itself, is negotiable—the Board properly dismissed the relevant allegations filed against the City by the International Association of Fire Fighters, Local 188, AFL-CIO (Petitioner or Local 188).

Unfortunately, the resulting court decisions emanating in this case from both the Contra Costa County Superior Court and the Court of

Appeal, First Appellate District, serve to confuse—rather than clarify—the applicable standard of review, if this Court determines that decisions by PERB not to issue a complaint in unfair practice cases are in fact subject to judicial review. This confusion is compounded by the appellate court's application to this case of the narrow exceptions set forth in *Belridge Farms v. Agricultural Labor Relations Board* (1978) 21 Cal.3d 551 (*Belridge Farms*). This Court's clarification that, if such decisions by PERB are subject to judicial review, the appropriate standard of such review is the deferential "abuse of discretion" standard rather than the less deferential "clearly erroneous" standard is critical not only for PERB but for all who rely on PERB's expertise to stabilize public-sector labor relations throughout the State of California.

Further, PERB respectfully submits that the Board's decision in the underlying matter satisfies both standards of review—i.e., the deferential "abuse of discretion" and less deferential "clearly erroneous" standard—and therefore should, in any event, be affirmed by this Court.[1]

[1] While asserting here that PERB's decision in the underlying matter would survive both a deferential "abuse of discretion" review and a "clearly erroneous" review, PERB nevertheless maintains its position that decisions by PERB not to issue a complaint under the MMBA are not subject to judicial review. (See PERB's Opening Brief.)

SUMMARY OF FACTS/PROCEEDINGS

On January 12, 2004, Local 188 filed with PERB an unfair practice charge against the City. (Appendix Tab (App. Tab) 10.) The charge alleged that the City violated section 3505 of the MMBA by refusing to negotiate over the decision to lay off firefighters and by failing to provide Local 188 with necessary and relevant information. (*Ibid.*)

On April 29, 2004, PERB's General Counsel issued a partial dismissal of Local 188's charge, dismissing the allegation that the City failed to meet and confer over the decision and/or the effects of the decision to lay off firefighters. (App. Tab 2.) On May 20, 2004, Local 188 appealed the partial dismissal to the Board itself. (*Ibid.*) On December 13, 2004, the Board upheld the dismissal in *City of Richmond* (2004) PERB Decision No. 1720-M. (*Ibid.*) The Board's decision notes that Local 188's reliance on *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608 (*Vallejo*) is misplaced because *Vallejo* supports PERB's finding that the decision to lay off employees is a management right. (*Ibid.*) The Board concluded that as a management right, the decision to lay off employees is not subject to negotiations. (*Ibid.*)

After the Board issued the underlying decision, Local 188 filed a petition for writ of mandate, pursuant to section 1085 of the California

Code of Civil Procedure, in the Contra Costa County Superior Court.[2] (App. Tab 1.) On April 14, 2006, the superior court issued a ruling denying Local 188's petition for writ of mandate and finding that PERB properly processed and determined Local 188's unfair practice charge. (App. Tab 30.) In its decision, the superior court ruled that PERB correctly interpreted and applied the holding found in the decision of *Vallejo*, *supra*, 12 Cal.3d 608, 621-623. (*Ibid.*) In reaching its conclusions, the superior court noted the lack of guidance as to the appropriate standard of review, but reasoned that the "arbitrary or capricious" standard articulated by this Court in *Belridge Farms*, *supra*, 21 Cal.3d 551, 559 would do "minimum violence to the Legislature's seeming intention to insulate such decisions from any form of appellate review." (*Ibid.*) After finding first that it had no jurisdiction to review PERB's decision, and second that it should review the decision, if at all, only under an "arbitrary or capricious" standard, the superior court ultimately conducted de novo review of the Board's decision. (*Ibid.*)

Upon appeal to the Court of Appeal, First Appellate District, the appellate court began its analysis of the superior court's decision by stating that it would conduct a "de novo" review. (Exhibit A to PERB's Petition

[2] Local 188 initially filed its Petition with the Court of Appeal, First Appellate District, but the appellate court denied Local 188's petition without prejudice on January 28, 2005. (App. Tab 20.)

for Review at p. 7.) The appellate court's decision went on to state that the limited grounds discussed in *Belridge Farms*, *supra*, 21 Cal.3d 551 are applicable to decisions by PERB not to issue a complaint, and therefore PERB's decision in such a situation is subject to a "deferential abuse of discretion" standard. (Exhibit A to PERB's Petition for Review at pp. 13-14.) The appellate court then noted that when PERB is interpreting its own statutory authority, its findings should be upheld unless they are "clearly erroneous." (*Id.* at p. 15.) Notwithstanding its articulation, the appellate court ultimately conducted de novo review in this case to determine whether PERB's decision not to issue a complaint was based upon the erroneous construction of an applicable statute. (*Id.* at pp. 16-17.)

ARGUMENT

I. IF THIS COURT DETERMINES THAT A DECISION BY PERB NOT TO ISSUE AN UNFAIR PRACTICE COMPLAINT IS SUBJECT TO JUDICIAL REVIEW, THE APPLICABLE STANDARD OF REVIEW MUST BE LIMITED TO THE DEFERENTIAL "ABUSE OF DISCRETION" STANDARD; NOT, AS LOCAL 188 ASSERTS, THE LESS DEFERENTIAL "CLEARLY ERRONEOUS" STANDARD

A. Application of the Deferential Abuse of Discretion Standard Does "Minimum Violence" to the Legislature's Stated Intention to Insulate from Appellate Review Decisions by PERB Not to Issue a Complaint

As noted by the trial court in this matter, there is little guidance as to the scope of review in the procedural context where a court is called

upon to determine whether PERB correctly interpreted and applied existing case law to dismiss an unfair practice charge. (App. Tab 30.) Nevertheless, the trial court correctly noted that judicial review of decisions by PERB not to issue a complaint in unfair practice cases should only occur under the narrowest scope possible to "do minimum violence to the Legislature's seeming intention to insulate such decisions from any form of appellate review." (*Ibid.*)[3]

Moreover, the appellate court in this matter specifically declared that, when a court reviews by way of traditional mandamus a decision by PERB not to issue an unfair practice complaint, the appropriate standard of review is the "deferential abuse of discretion standard, such that the agency decision under review will be upheld unless it is arbitrary, capricious, or entirely lacking in evidentiary support." (Exhibit A to PERB's Petition for Review at p. 14.) In so stating, the appellate court relied upon *Belridge Farms*, *supra*, 21 Cal.3d 551 and found it was permitted to apply the standard set forth therein only to determine whether "the decision violates a constitutional right, exceeds a specific grant of

[3] In a matter arising under the National Labor Relations Act, the Ninth Circuit Court of Appeals held that permitting parties to challenge procedurally correct dismissals of unfair labor practice charges, even by application of a narrow "abuse of discretion" standard, would override congressional purpose by requiring the court to analyze the Board's factual findings and legal conclusions. (*Bays v. Miller* (1975) 524 F.2d 631 [distinguishing *Leedom v. Kyne* (1958) 358 U.S. 184].)

authority, or is based on an erroneous construction of an applicable statute." (Exhibit A to PERB's Petition for Review at p. 15.)

B. The "Clearly Erroneous" Standard, as Argued by Local 188, Does Not Apply in this Circumstance

Local 188 continues to argue that judicial review of PERB's decision in this case should be subject to the "clearly erroneous" standard applicable only to final Board decisions on the merits. The California cases cited by Local 188 holding that the "clearly erroneous" standard applies to judicial review of Board decisions arose after and in challenge of a "final" decision by the Board. In those circumstances, appellate review of final Board decisions is specifically provided for by the MMBA. (See Gov. Code, § 3509.5.) Where PERB has issued a complaint, a formal hearing on the merits has occurred before a PERB administrative law judge (ALJ), and an appeal of the ALJ's decision has been filed with the Board itself, the appropriate judicial standard is indisputably the "clearly erroneous" standard. (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850; *Oakland Unified School District v. Public Employment Relations Bd.* (1981) 120 Cal.App.3d 1007; see also *Ford Motor Co. v. National Labor Relations Bd.* (1979) 441 U.S. 488.) But here, despite that which Local 188 would like this Court to believe, PERB's decision not to issue a complaint was

made under very different circumstances than those arising in the cases cited by Local 188.

Because PERB did not issue a complaint in this case, PERB was not required to, and did not, conduct a formal hearing. (Cal. Code Regs., tit. 8, §§ 32630, 32635, 32640, and 32680.) Therefore, no evidentiary record exists for an appellate tribunal to review for evidence of clear error. As noted in PERB's Opening Brief, the absence of an evidentiary hearing affects the form of mandate that may be invoked, and consequently the standard of review applied. (See PERB's Opening Brief at p. 17, fn. 10; and *Ohton v. Board of Trustees of the California State University* (2007) 148 Cal.App.4th 749.) The purpose of mandamus review is to ferret out procedural and due process flaws and rectify them. (*Ohton v. Board of Trustees of the California State University*, *supra*, 148 Cal.App.4th 749, 769.)

PERB pointed out the inconsistency of the appellate court's application of different standards of review at various different stages of its analysis. The confusion created by the appellate court's articulation of the applicable standard of review may help explain Local 188's argument that a "clearly erroneous" standard of review applies.

The exceptional nature of the appellate court's review, the fact that Local 188's allegations were dismissed without a formal hearing on the

merits by PERB, and the Legislature's stated intention to insulate from judicial review decisions by PERB not to issue a complaint in unfair practice cases necessitates that this Court reject Local 188's argument and clarify for public-sector employers, employees, and their exclusive representatives that the applicable standard of review, if judicial review is indeed appropriate in such case, is the deferential "abuse of discretion" standard.

II. PERB'S DECISION NOT TO ISSUE AN UNFAIR PRACTICE COMPLAINT IN THIS CASE WAS NEITHER AN ABUSE OF ITS DISCRETION NOR CLEARLY ERRONEOUS

Irrespective of whether the judicial review conducted in this case was proper, there simply are no grounds to disturb PERB's decision not to issue an unfair practice complaint in this case.

A. PERB did Not Abuse its Discretion when it Determined that the City's Decision to Layoff Firefighters was Not Within the Scope of Representation

In its decision, the appellate court cites *American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534 for the proposition that the appropriate standard of review in a traditional mandamus proceeding is the deferential "abuse of discretion" standard, such that the agency decision under review will be upheld unless it is "arbitrary, capricious, or entirely lacking in evidentiary support."

(Exhibit A to PERB's Petition for Review at p. 14.)[4] "When making that inquiry, the 'court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.' (*Stone v. Regents of University of California* [(1999)] 77 Cal.App.4th [736] at p. 745)." (*American Board of Cosmetic Surgery v. Medical Board of California*, *supra*, 162 Cal.App.4th 534, 547.) "In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld." (*Munroe v. Los Angeles County Civil Service Com.* (2009) 173 Cal.App.4th 1295, 1300.)

Under the deferential abuse of discretion standard, Local 188 must establish that PERB's decision was arbitrary, capricious, or entirely lacking in evidentiary support. (*State Board of Chiropractic Examiners v. Superior Court* (2009) 45 Cal.4th 963, 977; *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 34-35, fn. 2; *American*

[4] In upholding the Medical Board's denial of plaintiff's petition, the court in that case stated, "Because the record reflects the reasons for the Medical Board's decision, those reasons are rationally related to the regulatory requirements, and they are supported by ample evidence, we conclude the Medical Board did not abuse its discretion by denying ABCS's application." (*American Board of Cosmetic Surgery v. Medical Board of California*, *supra*, 162 Cal.App.4th 534, 550.)

Board of Cosmetic Surgery v. Medical Board of California, *supra*, 162 Cal.App.4th 534.)

In this case, the Board's finding that the City's decision to conduct layoffs is outside the scope of representation is premised upon this Court's explicit language in *Vallejo*, *supra*, 12 Cal.3d 608 and upon PERB's own long line of precedent under the Ralph C. Dills Act (Gov. Code, § 3512 et seq.), the Higher Education Employer-Employee Relations Act (Gov. Code, § 3500 et seq.), and the Educational Employment Relations Act (Gov. Code, § 3540 et seq.). (*Vallejo*, *supra*, 12 Cal.3d 608, 623; *California State University (San Diego)* (2008) PERB Decision No. 1955-H [32 PERC ¶ 74]; *Regents of the University of California* (1999) PERB Decision No. 1354-H [23 PERC ¶ 30173]; *State of California (Departments of Personnel Administration and Transportation)* (1997) PERB Decision No. 1227-S [22 PERC ¶ 29007]; *Regents of the University of California (Lawrence Livermore National Laboratory)* (1997) PERB Decision No. 1221-H [21 PERC ¶ 28161]; *Regents of the University of California* (1997) PERB Decision No. 1189-H [21 PERC ¶ 28066]; *San Jacinto Unified School District* (1994) PERB Decision No. 1078 [19 PERC ¶ 26036]; *State of California (Department of Forestry and Fire Protection)* (1993) PERB Decision No. 999-S [17 PERC ¶ 24112]; *State of California (Department of Personnel Administration)* (1987) PERB

Decision No. 648-S [13 PERC ¶ 20013]; *Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District* (1984) PERB Decision No. 375 [8 PERC ¶ 15021]; *Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223 [6 PERC ¶ 13162]; *Oakland Unified School District* (1981) PERB Decision No. 178 [5 PERC ¶ 12149].)

Further, Local 188 has failed to demonstrate that the Board's decision constituted an abuse of discretion; rather Local 188 merely advocates that this Court should substitute its view for PERB's. First, Local 188 has not argued at any stage of this case that PERB's decision was procedurally defective in any way. Nor does it present such facts in its Opening Brief to this Court. Second, review of the record demonstrates that both the determination of the General Counsel not to issue a complaint and the subsequent decision by the Board itself upholding that determination were supported by factual and legal findings. In fact, in dismissing the relevant portions of the charge, PERB's General Counsel provided a nine-page Partial Warning Letter and a subsequent five-page Partial Dismissal explaining its factual and legal findings. The Board additionally provided a written explanation of its factual and legal findings. Local 188 is silent on this issue, presumably because the existence of the Board's factual and legal findings are self-evident.

Finally, the findings of the Board in this case were supported by substantial evidence *on the record*. Specifically, the Board found that

> by its plain language, *Vallejo* [sic] supports the Board's holding that a decision to layoff employees is not within the scope of representation under the MMBA. The portion cited by Local 188 merely holds that the effects of a layoff decision, for example, workload and safety issues, are negotiable. Such an interpretation is consistent with long-standing PERB precedent addressing the negotiability of layoff decisions.

(App Tab 2.) Thus, Local 188 has failed to establish that the Board's decision was arbitrary, capricious, or lacking in evidentiary support.

Local 188 also takes issue with PERB's decision because PERB did not apply the three-part test from *Building Material & Construction Teamsters' Union v. Farrell* (1986) 41 Cal.3d 651 (*Building Material*) to determine the scope of representation and likewise did not rely on precedent established by the National Labor Relations Board (NLRB) to determine the scope of representation under the MMBA in this case.

Local 188, however, did not present arguments for application of the test in *Building Material*, *supra*, 41 Cal.3d 651 or the application of NLRB decisions until well after the Board dismissed the relevant

allegations from its unfair practice charge.[5] Therefore, even if another conclusion could be reached, the Board's decision may not be disturbed by the courts under the "abuse of discretion" standard because it is clear that the Board's findings are not arbitrary, capricious, or lacking in evidentiary support. Accordingly, there are no grounds for challenging the Board's dismissal of Local 188's allegations that the City failed to negotiate regarding its decision to conduct layoffs under the "abuse of discretion" standard.

B. PERB's Interpretation of the Scope of Representation Under the MMBA was Not Clearly Erroneous

To establish that PERB's decision was "clearly erroneous," Local 188 would need to provide facts to establish that PERB's findings were not reasonably defensible. (*Oakland Unified School District v. Public Employment Relations Bd.*, *supra*, 120 Cal.App.3d 1007, 1012.) In essence, Local 188 argues that PERB's decision was not reasonably defensible because it failed to apply the three-part test from *Building Material*, *supra*, 41 Cal.3d 651, did not follow NLRB precedent, and

[5] It appears that Local 188's argument is that the statutory requirement that PERB apply and interpret unfair labor practices consistent with existing judicial interpretations of the MMBA should be read to permit parties to appeal Board decisions based on the party's own failure to raise applicable legal arguments during the administrative procedure. Adopting this rationale would essentially give parties a second bite at the apple by permitting them to expand or revise their legal arguments after the administrative process had been exhausted, then claim that PERB failed to apply and interpret case law that was never presented.

interpreted this Court's decision in *Vallejo*, *supra*, 12 Cal.3d 608 in a manner that conflicts with its own interpretation thereof. None of these arguments survives the lesser "clearly erroneous" standard of review, let alone the more rigorous "abuse of discretion" standard.

First, even assuming Local 188 argued the applicability of the test set forth in *Building Material*, *supra*, 41 Cal.3d 651 in a timely manner such that the General Counsel and/or the Board itself saw fit to address it directly in their written decisions, the *Building Material* decision is easily distinguishable on the facts of this case. PERB has consistently maintained its position that when a decision to transfer bargaining-unit work to employees outside of the bargaining unit or to an independent contractor results in a layoff, the decision to transfer work is within the scope of representation. (See PERB's Opening Brief at pp. 26-27; and *Fibreboard Paper Products Corp. v. National Labor Relations Bd.* (1964) 379 U.S. 203; *Ventura County Community College District* (2003) PERB Decision No. 1547 [27 PERC ¶ 133], citing *Fibreboard Paper Products Corp. v. National Labor Relations Bd.*, *supra*, 379 U.S. 203; *Arcata Elementary School District* (1996) PERB Decision No. 1163 [20 PERC ¶ 27120], citing *Fibreboard Paper Products Corp. v. National Labor Relations Bd.*, *supra*, 379 U.S. 203.)

In *Building Material*, *supra*, 41 Cal.3d 651, the employer transferred bargaining-unit work to employees outside of the bargaining unit, which resulted in the layoff of bargaining-unit employees. (*Ibid.*) The actual holding from that case is that transfers of bargaining-unit work that negatively affect the bargaining unit are negotiable. (*Id.* at p. 659.) In reaching this conclusion, this Court approved the appellate court's opinion in *State Assn. of Real Property Agents v. State Personnel Bd.* (1978) 83 Cal.App.3d 206, which held there was no violation of meet-and-confer requirements when an employer unilaterally decided that layoffs would be necessary due to budget reductions and negotiations were held only regarding the method of implementing (i.e., the effects of) the layoffs. (*Building Material*, *supra*, 41 Cal.3d 651, 663.) Thus PERB's decision not to apply the *Building Material* test to the facts of Local 188's charge was not clearly erroneous.

Second, Local 188 would have this Court hold that PERB's decision, because it did not reflect that PERB scoured the annals of NLRB decisions to pluck and then adopt the same rationale as those samples provided by Local 188, was clearly erroneous. While true that PERB will generally follow NLRB decisions interpreting the same or similar language as that contained in the various public-sector statutes it administers, such need not be the case. PERB's purpose with respect to the MMBA is to interpret and

apply it in a manner that promotes "the improvement of personnel management and employer-employee relations within the various public agencies in the State of California." (Gov. Code, § 3500, subd. (a).) In so doing, PERB's duty to interpret and apply existing judicial interpretations *of the MMBA* is statutorily mandated. (Gov. Code, § 3509, subd. (b).) There is no statutory mandate for PERB to apply the NLRB's interpretation of its statutes to the MMBA. This undoubtedly is because "the Legislature meant for PERB to decide what appropriate standard[s] . . . should be applied in the context of the [public-sector statutes]." (See *Inglewood Teachers Ass'n v. Public Employment Relations Bd.* (1991) 227 Cal.App.3d 767 (*Inglewood Teachers Association*).)

Recognizing the difference between the public and private sectors, the appellate court in *Inglewood Teachers Association*, *supra*, 227 Cal.App.3d 767 noted that the Legislature did not mandate adherence to precedent established by the NLRB. (*Ibid.*) There, the appellate court held that PERB's decision to determine the existence of agency on a case-by-case basis, rather than by strict adherence to NLRB precedent, was not clearly erroneous. Here, the Board's finding that nothing exists in *Vallejo*, *supra*, 12 Cal.3d 608 or the text of the MMBA to require a departure from PERB's well-established rule that the decision to conduct layoffs is not within the scope of representation likewise cannot be clearly erroneous

simply because some NLRB decisions indicate a different result is reasonable in private-sector employment.

Public employees are not basically different from private employees. (*Abood v. Detroit Board. of Education* (1977) 431 U.S. 209.) The uniqueness of public employment is not in the employees or in the work performed, but in the special character of the employer. (*Ibid.*) Indeed, decision-making by a public employer is above all a political process. (*Ibid.*) Thus, the decision to reduce some public services while retaining others is ultimately a decision reserved by public employers irrespective of whether fiscal concerns were or are a factor in that decision. Under the circumstances, the Board's finding that the scope of representation under the MMBA should more closely resemble the scope of representation under other public-sector statutes rather than those of the private sector cannot be said to be "clearly erroneous."

CONCLUSION

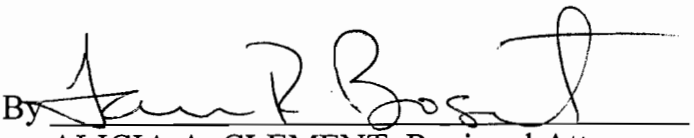
For the foregoing reasons, even if this Court finds the rationale in *Belridge Farms*, *supra*, 21 Cal.3d 551 generally applicable to decisions by PERB not to issue a complaint in unfair practice cases, no basis exists for disturbing PERB's decision in this matter under either the deferential "abuse of discretion" or "clearly erroneous" standard. Accordingly, this Court—if it determines that PERB's decision not to issue a complaint is

subject to judicial review—is asked to clarify that the proper standard of review in such case is the deferential "abuse of discretion" standard.

Dated: October 8, 2009

Respectfully submitted,

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

By 
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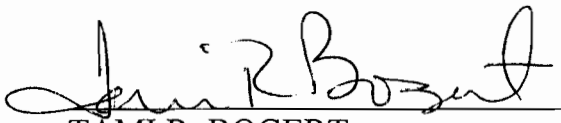
COUNSEL'S CERTIFICATE OF COMPLIANCE

WITH CALIFORNIA RULES OF COURT, RULE 8.504(d)

Counsel of Record hereby certifies that pursuant to rule 8.504(d) of the California Rules of Court, the enclosed brief of Respondent Public Employment Relations Board is produced using 13-point Roman type font including footnotes and contains 4,136 words, which is less than the 8,400 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: October 8, 2009



TAMI R. BOGERT
Declarant
PUBLIC EMPLOYMENT RELATIONS BOARD

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

COURT NAME: IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

SUPREME COURT CASE NO.: S172377

FIRST APPELLATE DISTRICT/DIVISION THREE CASE NO.: A114959

CONTRA COSTA COUNTY SUPERIOR COURT CASE NO.: N050232

CASE NAME: *INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 188 v. PUBLIC EMPLOYMENT RELATIONS BOARD; CITY OF RICHMOND*

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

On October 8, 2009, I served PUBLIC EMPLOYMENT RELATIONS BOARD'S ANSWER TO PETITIONER'S OPENING BRIEF regarding the above-referenced case on the parties listed below via United States Postal Service.

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1 copy to each party listed below

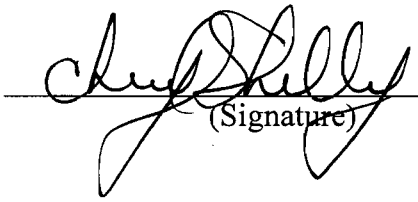
First District Court of Appeal
350 McAllister Street
San Francisco, CA 94102
Case No. A114959

Contra Costa County Superior Court
725 Court Street, Room 103
Martinez, CA 94553
Case No. N050232

Office of the California Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 8, 2009, at Sacramento, California.

Cheryl Shelly
(Type or print name)


(Signature)