Case No. B228732

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 3

CITY OF LOS ANGELES, and DOES 1 through 50, inclusive,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondents,

ENGINEERS AND ARCHITECTS ASSOCIATION,

Petitioner and Real Party in Interest.

Appeal from the Superior Court of Los Angeles
Honorable Gregory Alarcon
Los Angeles Superior Court Case No. BS 126192

APPLICATION OF LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE AMICUS CURIAE BRIEF; PROPOSED AMICUS CURIAE BRIEF BY LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PETITIONER CITY OF LOS ANGELES

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Second **APPELLATE DISTRICT, DIVISION** Three	Court of Appeal Case Number: B228732
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APPELLANT/PETITIONER: City of Los Angeles RESPONDENT/REAL PARTY IN INTEREST: Superior Court of California/EAA	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party (*name*): Amicus Curiae League of California Cities

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	**Nature of interest *(Explain):***
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 11, 2011

Meredith H. Packer
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

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I.

APPLICATION OF LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF CITY OF LOS ANGELES

Pursuant to California Rules of Court, Rule 8.200(c), the League of California Cities (hereinafter "LOCC") hereby requests leave from this Court to file the accompanying brief as an amicus curiae in support of Petitioner City of Los Angeles (hereinafter "City"). This application is timely, as it is filed on the day set by this Court for filing of all additional amicus curiae briefs. No person or entity other than the LOCC and its counsel made a monetary contribution to the preparation or submission of this amicus curiae brief. The brief was authored in its entirety by the LOCC and its counsel.

A. The Amicus Curiae

The LOCC is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as being of such significance.

B. Interest of the Amicus Curiae

The issues present in the City's Petition for Writ of Mandate are issues common and relevant to all California cities. The municipal and emergency powers of a California City are of great interest to the LOCC, which is an organization representing and therefore concerned with the rights of cities. The outcome of this action is likely to affect disputes that members of the LOCC have had, or will have. As such, the LOCC has a particular interest in this case.

As an association of California cities, the LOCC is in a unique position to assist the Court in determining issues of municipal authority and duty. The LOCC will advance additional arguments that will allow the City's writ petition to be considered in the broader context of municipal authority and duty throughout the state of California, as mandated by both the California Constitution and California case law.

Additionally, the LOCC is uniquely qualified to present argument regarding whether the grievances at issue in this action are arbitrable under California law. The LOCC is uniquely able to provide additional briefing to assist this Court in determining whether arbitrating the grievances in this matter would be an impermissible delegation of municipal authority and duty. In addition, the LOCC, and its counsel, are able to provide unique insight into the interpretation of the California Supreme Court's holding in *Professional Engineers in California Government v. Schwarzenegger*

(2010) 50 Cal.4th 989 and its application to the present dispute.

C. Conclusion

For all of the foregoing reasons, the amicus curiae League of California Cities respectfully requests leave to file the accompanying amicus curiae brief in this action.

Dated: January 11, 2011

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

By: Meredith H. Packer

David W. Tyra
Meredith H. Packer
Attorneys for League of California Cities

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

II.

INTRODUCTION

It is undisputed in this case that in 2009, the City of Los Angeles ("City") was facing an unprecedented fiscal emergency. Neither Respondent Engineers and Architects Association ("EAA") or Amicus Curiae AFSCME challenge this fact. Despite the undisputed and unprecedented nature of this fiscal emergency, however, both Respondent EAA and Amicus AFSCME argue that the City's decision to furlough city employees in order to achieve necessary personnel cost savings are subject to challenge through the mechanism of 408 binding grievance arbitrations.

Amicus Curiae League of California Cities ("LOCC") submits this brief in support of the City's position that subjecting its policy decisions regarding the best means of addressing the City's fiscal crisis to binding grievance arbitration is contrary to the inherent authority the City possesses to manage its workforce and its finances.

Contrary to the arguments raised by Respondent EAA and Amicus AFSCME, the parties' Memorandum of Understanding ("MOU") does not require arbitration of the grievances at issue in this case. Rather, the Management Rights clause of that MOU supports the conclusion that the City retained the authority to furlough city employees to address a fiscal emergency. The City's authority to take appropriate emergency measures to address a fiscal crisis, such as furloughing city employees, finds support in the City's Charter and its Ordinances. The parties' MOU recognizes that the authority granted to the City by these various provisions of law was in no abrogated by the MOU. Accordingly, the applicable provisions of the City's Charter and Ordinances operate as the underlying source of the City's substantive authority to furlough city employees.

The argument raised by Amicus AFSCME that under the California Supreme Court's recent decision in *Professional Engineers in California Government v. Schwarzenegger* ("*Professional Engineers*") (2010) 50 Cal.4th 989 the City may only furlough city employees if such authority is found expressly in the parties' MOU misreads the Court's holding in that

case. The California Supreme Court's analysis in *Professional Engineers* of the limitations placed on the State by the Ralph C. Dills Act, Government Code section 3512, *et seq.* to furlough state employees is inapplicable to this Court's analysis of the City's authority to furlough city employees under the MMBA.

Not only does an analysis of the applicable provisions of the City's Charter, Ordinances, and the parties' MOU lead to the conclusion that the grievances at issue here are not arbitrable, but compelling the City to arbitrate these grievances would amount to an impermissible delegation of the City's municipal powers over its workforce and budget to an arbitrator or arbitrators. Such a decision by this Court would inflict irreparable harm not only on the City of Los Angeles, but on other local governmental entities who find themselves in similar fiscal crises by removing from them the ability to exercise their inherent authority to manage their workforce and finances.

Based on these arguments as developed below, Amicus LOCC joins with the City of Los Angeles in urging this Court to issue a writ of mandate directing the trial court to vacate its order granting Respondent EAA's petition to compel arbitration and directing the trial court to enter a new order denying that petition.

III.

STATEMENT OF FACTS

Amicus LOCC adopts the Statement of Facts provided by the City of Los Angeles in its Petition for Writ of Mandate filed with this Court.

IV.

LEGAL ANALYSIS

A. The Determination of Whether the Grievances At Issue in this Case Are Arbitrable Under the Parties' MOU Is An Issue for the Courts to Decide

It is well established that the question of whether a particular dispute arising under a labor agreement is arbitrable pursuant to the terms of that agreement is a matter for judicial determination. (*AT&T Technologies v. Communications Workers of America* (1986) 475 U.S. 643, 649.) In its brief to this Court, Amicus AFSCME uncritically advances the proposition that public policy favors arbitration of disputes arising under collective bargaining agreements. (AFSCME Amicus Brief, p. 5.) While this proposition is inevitably true so far as it goes, it is equally true that "[t]here is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate." (*Engineers and Architects Association v. Community Development Department of the City of Los Angeles* (1994) 30 Cal.App.4th 644, 653.) "The duty to arbitrate being of contractual origin, a compulsory submission to arbitration cannot precede judicial determination that the collective bargaining agreement does in fact create such a duty."

(*AT&T Technologies, Inc. v. Communications Workers of America, supra,* 475 U.S. 643, 649.) The question for this Court to determine is whether the party resisting arbitration – in this case the City – has agreed by contract to submit the dispute to the arbitration process. (*Teamsters Local 315 v. Union Oil Company of California* (9th Cir. 1988) 856 F.2d 1307, 1309; *United Public Employees, Local 790 v. City and County of San Francisco* (1997) 53 Cal.App.4th 1021, 1026.) In interpreting the MOU between the parties for purposes of determining whether the City is under a duty to arbitrate the 408 furlough grievances in question, this Court is "not bound by the trial court's construction of the agreement." Instead, "the interpretation of the agreements [is] a question of law" on which this Court should "make an independent determination of its meaning." (*United Public Employees, Local 790, supra,* 53 Cal.App.4th 1021, 1026.)

In its brief to this Court, Amicus AFSCME places great reliance on *California Correctional Peace Officers Association ("CCPOA") v. State* (2006) 142 Cal.App.4th 198 in arguing that the grievances at issue here are arbitrable. The issue before the court in *CCPOA v. State*, was "whether a party opposing a petition to compel arbitration may defeat the petition by demonstrating that the relief sought by the petition in arbitration is precluded by statute." (142 Cal.App.4th at 201.) In answering this question in the negative, the court in *CCPOA v. State* found that the grievance in question – which involved the State's refusal to allow

supervisors to attend bargaining sessions for a new MOU for rank-and-file members of the union – involved the "state's obligation to negotiate under section 27.01 of the MOU" at issue in that case.[1] (142 Cal.App.4th at 206.) Amicus AFSCME's reliance on *CCPOA v. State* misses the point, however. The issue of arbitrability in this case does not involve merely the question of whether the 408 individual furlough grievances at issue here are arbitrable, but rather whether the City's authority to manage its budget and to take action to address a fiscal crisis by reducing its personnel costs through a reduction in City employee work hours is subject to grievance arbitrations. Seen in this light, the MOU does not compel the City to arbitrate the furlough grievances at issue and, therefore, the holding in *CCPOA v. State* does not compel the conclusion that the City's decision to furlough its employees as one means of addressing a fiscal crisis is arbitrable.

The trial court erred when it ruled that the MOU between the parties requires the City to submit its decision to furlough City employees to binding arbitration. First, under the terms of the Management Rights clause in the MOU, the City retains the right to address a fiscal emergency through the reductions in personnel costs achieved through furloughs. Second, the

[1] Section 27.01 of the MOU at issue in the *CCPOA v. State* case, which contained an express requirement that, following adoption of the MOU, the parties negotiate any changes to the working conditions of employees covered by the MOU with respect to matters not expressly covered in the MOU. (142 Cal.App.4th at 203.)

MOU does not prohibit the City from furloughing its employees to address a fiscal crisis. Accordingly, the parties' MOU does not require the arbitration of the subject furlough grievances and, therefore, the City is entitled to the a writ of mandate compelling the trial court to enter a new order denying Respondent EAA's petition to compel arbitration.

B. The City Possesses The Authority To Furlough City Employees During A Fiscal Emergency

1. The Management Rights Clause of the Parties' MOU Provides the City with the Authority to Furlough City Employees to Address a Fiscal Emergency

The parties' MOU contains a broad Management Rights clause at Article 1.9 of the MOU. (See Documents Nos. 00093, 00153, 00218, and 00284.) The Management Rights clause in the parties' MOU vests the City with the "exclusive" responsibility "for the management of the City and direction of its work force." (*Id.*) In recognition of this fact, the parties expressly agreed that, except as otherwise provided in the MOU, "no provisions in [the] MOU shall be deemed to limit or curtail the City officials and department heads in any way in the exercise of the rights, powers and authority which they had prior to the effective date of the MOU." (*Id.*) In addition, the Management Rights clause of the parties' MOU contains a specific acknowledgement by Respondent EAA that the powers and authority retained by the City under the MOU include, among other things, the authority to "take all necessary actions to maintain

uninterrupted service to the community and to carry out its mission in emergencies." (*Id.*) Thus, the MOU between the parties expressly grants the City the authority and responsibility to take action in an emergency to carry out its mission and, in so doing, to rely on all authority it possessed prior to the adoption of the MOU.

In the briefs it has filed with this Court, the City has directed the Court to several provisions of its Charter and City Ordinances which support the proposition that at the time the City implemented its furlough program, the City possessed the inherent authority over its budget and finances to take such action in the face of a fiscal emergency. Amicus LOCC defers to the City regarding a discussion of its own Charter and Ordinances, but one issue, in particular, that has been addressed by the parties requires further discussion, *i.e.,* the City's emergency authority under the MMBA to address a fiscal crisis and the impact of the California Supreme Court's recent decision in *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal. 4th 989 on the analysis of that emergency authority.

As the California Supreme Court has opined, the power to declare and abate a public emergency represents a formidable undertaking and is the single most compelling and absolute exercise a sovereign governmental authority may pursue. (*Macias v. State of California* (1995) 10 Cal. 4th 844, 856.) This authority is no less compelling when the emergency in

question is one involving governmental financial woes. (*Duncan v. Department of Personnel Administration* (2000) 77 Cal.App.4th 1166, 1182.)

Government Code section 3504.5, subdivision (b), a part of the MMBA, provides as follows:

> In cases of emergency, when the governing body or the designated boards and commissions determine that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body or the boards and commissions shall provide notice and opportunity to meet at the earliest possible practicable time following the adoption of the ordinance, rule, resolution, or regulation.

In *Sonoma County Organization v. County of Sonoma* (1991) 1 Cal.App.4th 267, the court addressed this application of the statute. In this case, the court ruled a county employer was not required to bargain with one of its unions before implementing a new work rule giving local supervisors authority to put employees on unpaid leave of absence in the wake of job actions by union members. The court held that the county's *obligation to meet and confer was excused by an emergency.* (*Sonoma County*, *supra*, 1 Cal.App.4th at p. 274.) The court further held that since the county already had determined there was an emergency, as reflected in the emergency ordinance, the burden shifted to the union to demonstrate there was not a bona fide emergency. (*Id.* at pp. 275-76, citing Evid. Code,

§ 664—presumption that public officers have properly exercised their duties.)

In *Professional Engineers, supra,* 50 Cal.4th 989, the issue before the California Supreme Court was the legality of the State of California's furlough program implemented pursuant to Executive Orders issued by Governor Arnold Schwarzenegger. Among the many issues addressed in the decision in *Professional Engineers*, the Court had occasion to interpret Government Code section 3516.5, a statute contained in the Ralph C. Dills Act, Government Code section 3512, *et seq.*, that is nearly identical to section 3504.5 quoted above. In *Professional Engineers,* the Court held that section 3516.5 did not provide independent substantive authority for the Governor to order furloughs of state employees:

> Neither the first nor the second paragraph of section 3516.5 purports to provide a source of authority for a state employer to take any particular type of substantive action in either a nonemergency or emergency situation. Instead, the statute, reasonably interpreted, simply provides that when an employer possesses the authority *from some other source* to take a particular type of action relating to matters within the scope of representation, the employer ordinarily must notify and meet and confer with the employee organization before taking such action, but in an emergency may take the action and thereafter notify and meet and confer with the organization as soon as practical. Accordingly, we conclude that section 3516.5 cannot properly be interpreted as providing the Governor with authority to institute the

> mandatory unpaid furlough program here at issue.

(*Professional Engineers, supra,* 50 Cal.4th at pp. 1032-1033. Emphasis in original.) The Court in *Professional Engineers* further held that the State "lacked authority (independent of that provided by the MOU's [between the State and its various bargaining units]) unilaterally to change the terms and conditions of employment covered by those MOU's." (*Id.* at p. 1040.) Based on this, Respondent and AFSCME argue that *Professional Engineers* stands for the proposition that the City's authority to furlough city employees in an emergency is similarly limited to whatever authority is provided in the relevant MOUs and that if no such authority can be found in those MOUs then the City is without authority to furlough its employees. Such an argument, however, misreads the holding in *Professional Engineers* and the differences in between the Dills Act, at issue in that case, and the MMBA, at issue here.

As the Court in *Professional Engineers* noted, the Dills Act is a supersession statute. (See also, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal.App.4th 155.) Pursuant to Government Code section 3517.6, a part of the Dills Act, "the terms and conditions embodied in an MOU supersede most of the general statutory provisions that govern the terms and conditions of state employment in the absence of an MOU." (*Professional Engineers, supra,* 50 Cal.4th at p.

1040.) Thus, the Court in *Professional Engineers* concluded that because there were valid and enforceable MOUs in place between the State and its bargaining units at the time the Governor issued his furlough executive orders, the State's authority to alter the terms and conditions of employment for state employees was limited to that found in the MOUs and the State could not rely on superseded statutory provisions as providing the substantive foundation for its furlough program.

The situation in this case, however, is far different. The MMBA does not have a counterpart to section 3517.6 -- it is not a supersession statute. Unlike the State, the City's emergency authority to furlough city employees is not limited solely to whatever authority is found in the MOUs. The holding in *Professional Engineers*, applied to this case, leads to the conclusion that section 3504.5 cannot be the singular source for the City's substantive authority to furlough its employees during a fiscal emergency. The underlying substantive authority to furlough city employees must, in the words of the *Professional Engineers* Court, emanate "from some other source," at which point section 3504.5 permits the City to take furloughed city employees outside the collective bargaining process. However, the "other source" on which the City may rely for its furlough authority is not limited to the MOUs as was the case in *Professional Engineers* because the MMBA is not a supersession statute. Thus, the City correctly argues to this Court that it must look to the provisions of the City

Charter and City Ordinances in determining the scope of the City's authority here. In fact, Respondent EAA implicitly has recognized the requirement that these "other sources" of authority be applied here by agreeing in the Management Rights clause that the MOU does not abrogate the authority the City possessed prior to the adoption of the MOU. In light of the fact that the City is entitled to rely on authority outside the terms of the MOU as a basis for furloughing city employees, under the broad language of this Management Rights clause, its decision to do so is not arbitrable.

2. Previous Courts Have Interpreted Management Rights Clauses Similar to the One At Issue Here As Barring Arbitration of Matters Vested Within the Management Discretion of the Public Employer

There are several examples of appellate court decisions in which the courts have concluded that decisions falling within the discretion retained by a management under Management Rights clauses similar to the one before this Court. For instance, in *Engineers and Architects Association v. Community Development Department of the City of Los Angeles, supra,* 30 Cal.App.4th 644, the court had before it the same Management Rights clause at issue here. In that case, the court held that the provision in the Management Rights clause reserving to the City the exclusive authority and responsibility to manage and direct its workforce required denial of the union's petition to compel arbitration of the City's decision to layoff certain

employees. The court ruled that "the memorandum of understanding excluded this management decision to lay off because of lack of work and/or lack of funds from grievance and arbitration." (*Id.* at p. 655.)

Similarly, in *Teamsters Local 315 v. Union Oil Co. of California, supra,* 856 F.2d 1307, the Management Rights clause provided that "except as abridged by a specific provision of this Agreement, the Company reserves and retains the right to exercise solely and exclusively all awful power to manage and control its business and its workforce." (*Id.* at p. 1310.) Based on this language, the Ninth Circuit held the employer was under no obligation to arbitrate its determination of the medical fitness of an employee to return to work.

These cases stand for the proposition that when an MOU does not expressly limit management's ability to make a decision impacting the terms and condition of employment, and that decision falls squarely within the ambit of the Management Rights clause of the parties' agreement, such a decision cannot be subjected to arbitration. That is the situation before this Court. Accordingly, the trial court erred in granting Respondent EAA's petition to compel arbitration and this Court should issue a writ of mandate to correct that error.

C. Arbitration Of The Disputes In This Matter Would Impermissibly Delegate Municipal Authority And Duty to the Arbitrator

The City's Petition for Writ of Mandate should be granted because

any order compelling arbitration in this case would constitute an impermissible and unlawful delegation of the City's municipal authority and duties. The City cannot delegate to an arbitrator its core municipal functions, including the authority to declare a fiscal emergency pursuant to Government Code section 3504.5, the authority to take action to address such an emergency, and the authority to control the City's finances and balance its budget.

Article XI, section 11 of the California Constitution states, "[t]he Legislature may not delegate to a private person or body power to make, control, appropriate supervise or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments or perform municipal functions." In this case, if an order were to issue compelling arbitration, the essential municipal powers to manage the City's finances, to manage the City's workforce, and to make the fundamental policy decisions necessary to address a declared fiscal emergency, and carry out the necessary changes in policy to rectify the emergency situation, would be impermissibly delegated to the arbitrator, or more likely, arbitrators, in this matter.

First, arbitration of the City's authority to furlough would be an impermissible delegation to the arbitrator of the City's authority and power to manage municipal finances, including the authority and duty to budget city finances and make the necessary policy decisions essential to managing

the City's limited resources. As the Court stated in *County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 698, "a court is generally without power to interfere in the budgetary process." Furthermore, "this integrated process of determining the budget of a county...is a legislative function 'which may not be controlled by the courts.'" (*Ibid.*) The City of Los Angeles Charter requires the City to adopt a budget on an annual basis. (Los Angeles City Charter §§ 310- 315, as attached to the City's Petition.) As such, the municipal power to adopt a budget is firmly vested in the City Council, the legislative body of the City of Los Angeles, and cannot be delegated to the arbitrator. In *San Francisco Fire Fighters v. City and County of San Francisco* (1977) 68 Cal.App.3d 898, 901, "The principle is fundamental and of universal application that public powers conferred upon a municipal corporation and its officers and agents cannot be delegated to others, unless so authorized by the legislature or charter. In every case where the law imposes a personal duty upon an officer in relation to a matter of public interest, he cannot delegate it to others, as by submitting it to arbitration." The City's authority and duty to manage the City's finances cannot be, and should not be, delegated to an arbitrator.

In this action, a budget that included the reduced salary expenditure appropriations that resulted from the furloughs was passed by the City Council and approved by the Mayor on June 2, 2009. (See Petitioner's Request for Judicial Notice, filed concurrently with Petitioner's Petition,

ex. 20, Mayoral signing statement and Council Resolution, p. 5, ¶ ¶ 8 and 9 thereto.) Under the provisions of the Los Angeles Charter, City departments can only spend money that was specifically appropriated in the budget, including salary expenditures. (City of Los Angeles Charter §§ 262 and 320.) Thus, in order to overturn the application of furloughs as applied to City employees, the arbitrator would have to either completely disregard the City's budget or effectively rewrite the budget in order to provide the necessary appropriations. Either way, it would be an impermissible delegation of the City's authority to manage the fiscal well-being of the City.

Amicus AFSCME raises the argument that the City was required to appropriate sufficient funds to cover the salary provisions of the MOU under the holding of *Glendale City Employees' Association, Inc. v. City of Glendale* (1975) 15 Cal.3d 328. (AFSCME Amicus Brief, pp. 21-23.) AFSCME argues that the City did not have discretion to alter the salary appropriations, and as such, there would be no impermissible delegation of the City's budgetary authority. (*Ibid.*) However, the Court in *Glendale* stated, "[i]t is increasingly apparent in the developing case law that once a contract has been signed, the public employer must, in effect, 'adopt' the contract and do everything *reasonably* within its power to see that it is carried out." (*Glendale, supra,* 15 Cal.3d at n. 11, internal quotation marks and citations omitted. Emphasis added.) In this case, appropriating the

exact level of salaries called for in the MOU was not reasonably within the City's power. At the time of the appropriations at issue here, the City was facing a dire and unprecedented fiscal crisis and had to make tough decisions in order to protect the city from fiscal collapse. Neither Respondent EAA, nor Amicus AFSCME dispute this fact. As such, the only *reasonable* action in light of the City's precarious financial situation was to lower appropriations pursuant to the emergency ordinance passed by the City Council. Moreover, the holding in the *Glendale* case was distinguished by *California Teachers' Association v. Parlier Unified School District, et al.* (1984) 157 Cal.App. 3d 174. In *California Teachers' Association,* the Teachers' Association attempted to have portions of their contract declared null and void because they violated Education Code sections. (*Id.* at p. 184.) The Court in *California Teachers' Association* held that *Glendale* did not apply because "*Glendale* dealt with a situation where city officials ignored a collective bargaining agreement *without* any statutory or other legally cognizable reason to consider it invalid." (*Ibid.*) This is precisely the opposite situation from that present here. The City did not *ignore* the MOU without any statutory or legally cognizable reason for doing so. Rather, the City adopted a furlough program that resulted in a reduction in salary appropriations for city employees through the exercise of the authority it possessed in the City Charter and City Ordinances, authority the Management Rights clause of the parties' MOU expressly

provides is not abrogated by the MOU. The "legally cognizable" reason for the reduction in salary appropriations resulting from furloughs was the dire financial straits in which the City found itself.

The City's petition for writ of mandate also should be granted because compelling arbitration in this case would impermissibly delegate to the arbitrator the City's municipal authority and duty to set the terms and conditions of employment for city employees, including setting compensation. In *Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 25, the Court held that "the ultimate act of applying the standards and of fixing compensation is legislative in character, invoking the discretion of the council." Further, in *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 339, 342-343, the Court held that the fixing of salaries is "unquestionably a legislative function," and an "integral part of the statutory procedure for the adoption of the county budget." In the City of Los Angeles, city employee salaries are set and paid pursuant to salary ordinances adopted by the City Council, but these ordinances cannot change or limit the provisions of the Charter, and are subject to the mandated annual budget process. (City of Los Angeles Charter §§ 262 and 320.) If arbitration is compelled in this case, it will impermissibly delegate the ability to set employee salaries and work hours to the arbitrator. The arbitrator would not be merely interpreting the provisions of an existing MOU.

Amicus AFSCME argues incorrectly that an order compelling arbitration in this matter would not be an impermissible delegation of municipal authority because the arbitrations in this matter would not be "legislative in character," but would rather be construing the terms of a contract and applying them to facts. (AFSCME Amicus Brief, pp. 18 - 19.) Amicus AFSCME misconstrues the content and subject matter of the arbitrations at issue here. The arbitrations at issue in this matter concern major issues of municipal authority, specifically the City's Council's authority to create a budget, to declare a fiscal emergency and to set the terms and conditions of employment for City employees. If an arbitrator is allowed to decide these issues, the arbitrator will be given permission to either completely ignore or rewrite the City's budget, which is an impermissible delegation of the City's authority to manage its fiscal affairs. These arbitrations would not be simple "interpreting the contract" arbitrations. Rather, these arbitrations, if allowed to go forward would impermissibly usurp the city's authority to manage city finances, manage city emergencies and manage city employees.

D. Local Governments Will Suffer Irreparable Injury If Required to Arbitrate Policy Decisions Made Within Their Emergency Authority.

Compelling arbitration in this action would set a precedent that will irreparably harm all local governments in the State of California. Under this precedent, local governments will be forced to arbitrate potentially

thousands of grievances dealing with subjects that are not properly the subject of arbitration. Local governments, including the City, will be irreparably harmed by having to arbitrate policy decisions made within the context of their emergency authority. If these policy decisions are allowed to be challenged through arbitration, it would do permanent damage to the City's, and all local governments', authority to act quickly in an emergency under their emergency powers and authority. Local governments could also be forced to impermissibly delegate to arbitrators their core municipal authority and duty, including the authority to manage City finances and City employees. Requiring local governments to delegate their non-delegable authority will do permanent damage to local governments' ability to exercise their municipal authority.

Additionally, compelling arbitration in this case will irreparably harm local governments because allowing the grievance arbitrations to continue creates a significant risk of conflicting rulings, which would create uncertainty for California local governments as to the reach of municipal authority in California. This type of uncertainty would irreparably harm local government's ability to manage their workforces and find solutions to unprecedented fiscal crises.

Amicus AFSCME argues incorrectly that there will be no irreparable injury here because the City may win at arbitration. (AFSCME Amicus Brief, p. 24.) However, what AFSCME fails to recognize is that the City

will be irreparably injured by the actual arbitrations. As noted, if arbitration is compelled here, the City will be forced to spend money on unnecessary arbitrations when it is already in dire financial straits. Furthermore, arbitration in this matter would be an impermissible delegation of the City's municipal authority and duty. If this impermissible delegation of the City's authority to manage its own fiscal affairs and workforce occurred, it would irreparably harm the city's authority and ability to manage its own policy decisions and finances without interference from arbitrators and the court system.

V.

CONCLUSION

Based upon the arguments set forth above, Amicus Curiae League of California Cities urges this Court to grant to the City of Los Angeles the requested writ of mandate. The City's ability to manage its workforce and its finances cannot be put into the hands of an arbitrator or arbitrators through the guise of grievance arbitration pursuant to the parties' MOU. Such a result here is unsupported by the terms of the parties' MOU and by

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sound public policy of allowing cities and other local governmental entities the discretion to take appropriate and lawful action to address fiscal emergencies.

Dated: January 11, 2011

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
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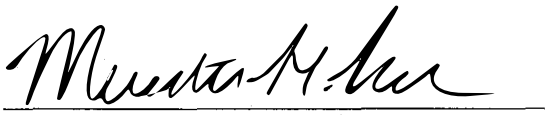
By: 

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CERTIFICATE OF WORD COUNT

I, Meredith H. Packer, Attorney for Amicus Curiae League of California Cities, hereby declare under penalty of perjury that the number of words in the Application of League of California Cities For Leave to File Amicus Curiae Brief; Proposed Amicus Curiae Brief By League of California Cities in Support of Petitioner City of Los Angles equals 5,552 words, as per the word count feature in Microsoft Word.

Dated: January 11, 2011

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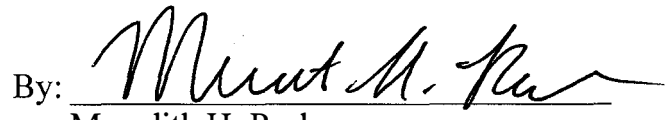
By: 
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PROOF OF SERVICE

I, May Marlowe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814-4416. On January 11, 2011, I served the within documents:

APPLICATION OF LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE AMICUS CURIAE BRIEF; PROPOSED AMICUS CURIAE BRIEF BY LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PETITIONER CITY OF LOS ANGELES

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on January 11, 2011, at Sacramento, California.

May Marlowe

May Marlowe