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June 6, 2016

Honorable Chief Justice Tani Cantil-Sakauye
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

**Re: *San Diego Housing Commission v. Public Employment Relations Board*
(Service Employees International Union, Local 221)
Case No. S234414
After a Decision by the Fourth District Court of Appeal, Division One,
Case No. D066237**

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Letter of Amici Curiae in Support of Petition for Review

To the Chief Justice and the Associate Justices of the California Supreme Court: **CLERK SUPREME COURT**

Pursuant to California Rules of Court, rule 8.500(g), the League of California Cities (League) and the California State Association of Counties (CSAC) (collectively Amici) respectfully submit this letter in support of the petition for review filed by the San Diego Housing Commission (Commission) on May 9, 2016, asking this Court to review the above-referenced decision of the Fourth District Court of Appeal, Division One. The Commission's petition should be granted because this case presents an issue of exceptional importance to local government agencies across the state: Whether the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.) requires a local public agency employer to participate in factfinding upon the union's request when the parties reach an impasse in negotiations that would not result in a comprehensive memorandum of understanding.

I. Amici's Interest in Review

The League 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 have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview



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Committee monitors litigation of concern to counties statewide and has determined that this case involves a matter affecting all counties.

Attorneys for amici are familiar with the issues involved, and have reviewed the Commission's petition for review and the answer filed by the Public Employment Relations Board (PERB). Amici support the Commission's petition and write separately to explain how the issues presented in this case are of great importance to all local government employers in California.

II. Review Should Be Granted to Settle an Important Question of Law – the Scope of Mandatory Factfinding for Local Agency Labor Disputes

Contrary to the Court of Appeal's opinion, PERB's recent rulings on this issue are not entitled to deference. PERB issued these decisions *after* the Commission filed its writ of mandate challenging PERB's authority to order the Commission to engage in single issue factfinding. In fact, PERB changed its own regulations precisely to allow it to render those decisions. The anomaly that PERB may issue a precedential decision on an issue while it is a party to court litigation over that very same issue unfairly gives PERB the ability to place its thumb on the scale in litigation. By giving unwarranted deference to PERB's decisions, the Court of Appeal essentially allowed PERB to usurp the judicial function of statutory interpretation. This relinquishment of judicial authority should not be allowed to stand.

As a practical matter, the Court of Appeal's decision requires almost all local agencies in California to submit to time-consuming and expensive factfinding proceedings over *any* dispute that arises between the agency and a labor union representing its employees. Specifically, the Court's ruling improperly expands statutory amendments that require factfinding when an agency and union cannot reach agreement on a labor contract to apply to *all* disputes over negotiable subjects. Not only is this ruling contrary to the text and structure of the amendments and their legislative history, but it is also contrary to longstanding practice in local agency collective bargaining. Should it stand, the Court of Appeal's decision will force local public agencies to substantially change how they negotiate over operational and policy issues that arise outside of negotiations for a full labor contract.

"The [MMBA] imposes on local public entities a duty to meet and confer in good faith with representatives of recognized employee organizations, in order to reach binding agreements governing wages, hours, and working conditions of the agencies' employees." (*Coachella Valley Mosquito & Vector Control Dist. v. Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1083, citing Gov. Code, § 3505.) Pursuant to this duty, local agencies and their employee unions negotiate comprehensive collective bargaining agreements – commonly known as a "memorandum of understanding" – governing terms and conditions of employment for the agency's employees. Typically, these "MOUs" are the product of negotiations between full teams of union and management representatives over every subject the parties wish to address in



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the labor contract. Because they usually have a significant cost component, MOUs must be approved by the local agency's governing body before they take effect.

The MMBA also requires local agencies to negotiate with labor unions over any effects on terms and conditions of employment arising from management's decision to adopt, change, or eliminate a policy or practice. For example, in this case the Commission decided to layoff two employees represented by SEIU. Although the Commission had no obligation to negotiate over the decision to lay these employees off, it had to bargain with the union over any negotiable effects of that decision.

Typically, such operational or "single issue"¹ negotiations do not involve full bargaining teams on both sides. Rather, they are done by a few individuals for each side, often at the department level. Because agreements on such issues usually do not involve significant costs, they frequently are approved by an authority below the level of the governing body, such as a city manager or county administrative officer. Moreover, if they are titled anything at all, it is common practice to call such agreements a "side letter" or "addendum" to a MOU. Rarely, if ever, do parties refer to a single issue agreement as a "memorandum of understanding."

The way the Court of Appeal interpreted the term of art – "memorandum of understanding" – is not how local agencies and labor unions have used that term for decades. This is not just a matter of semantics; it has concrete effects. The Court's decision will force local public agencies to drastically change long-established practices with respect to single issue negotiations. Having to treat single issue negotiations as full MOU negotiations will significantly increase the resources an agency must commit to those negotiations. With the possibility of factfinding and its resulting cost and delay looming over those negotiations, an agency may choose either to cave to union demands or simply not make the operational change at all. Such a chilling effect could have significant negative consequences on agencies' operations and finances.

As an example, in this case the Commission decided to reduce staff in a unit that had been operating at a deficit. The budget savings from the staff reduction could be put toward the agency's core mission of providing public housing. If factfinding is required over the effects of this decision, the Commission would have to choose between spending agency funds on factfinding or keeping the positions and foregoing the budget savings altogether. In either case, the funds available for public housing would be diminished, thereby impairing the agency's ability to provide much-needed services.

Furthermore, even if, as PERB claims, single issue factfinding has been the practice among school districts and the statewide university systems for years, this does not mean it is required under the MMBA. In fact, significant differences between the MMBA and the statutes

¹ Consistent with the parties' usage, amici use this term to refer to any negotiations that are not negotiations for a comprehensive MOU, even if they include more than one subject or issue.



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governing public educational entities strongly suggest that MMBA factfinding is limited to full MOU negotiations. In its briefing below, PERB cited a handful of “single issue” factfinding decisions over the last nine years from school districts and the California State University system. Yet it provided no empirical evidence that this practice is common or has been going on for decades under the educational labor relations acts. But even if it had, local public agencies have followed a *different* practice with regard to single issue negotiations for decades. Nothing in the statutory language or legislative history indicates that the Legislature intended to eliminate this existing practice and replace it with the practice followed by school districts or the statewide university systems. The Court of Appeal’s failure to recognize the distinctions between local public agencies and educational entities will result in a sea change in how local agencies deal with negotiable issues outside of full MOU negotiations.

III. Conclusion

Amici respectfully request that this Court grant review to resolve the important question of whether local public agencies must change decades of practice and submit to factfinding over single issues. The answer to this question will have a substantial impact on the finances and operations of amici’s members, as well as those of the hundreds of other local government agencies throughout the state that are also subject to the MMBA.

Sincerely,

Timothy G. Yeung
Erich W. Shiners
Attorneys for Amici Curiae
League of California Cities and
California State Association of
Counties

PROOF OF SERVICE

State of California
County of San Francisco
Court of Appeal Case No.: E060047
Supreme Court Case No.: S234414

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On June 6, 2016, I served the following document(s) by the method indicated below:

Letter of Amici Curiae in Support of Petition for Review

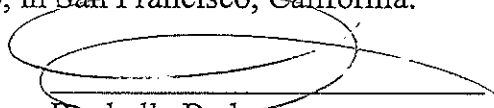
MANNER OF SERVICE:

- ✓ By United States Mail, enclosed in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of California.

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Office of the Attorney General 1300 "I" Street Sacramento, CA 95814-2919	<i>Per California Rules of Court, Rule 8.29</i>
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I declare, under penalty of perjury that the foregoing is true and correct. Executed on June 6, 2016, in San Francisco, California.


Rochelle Redmayne