No. S192828

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF LOS ANGELES and Does 1 through 50, inclusive

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY

Respondents,

ENGINEERS AND ARCHITECTS ASSOCIATION,

Real Party in Interest.

Court of Appeal of the State of California
Second Appellate District, Division 3
Case No. B228732

Appeal from Superior Court of Los Angeles
Honorable Gregory Alarcon
Civil Case No. BS126192

PETITIONER'S SUPPLEMENTAL BRIEF

Gary M. Messing, No. 075363
Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
Gonzalo C. Martinez, No. 231724
CARROLL, BURDICK & McDONOUGH LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104
Telephone: 415.989.5900
Fax: 415.989.0932
Email: gadam@cbmlaw.com

Adam N. Stern, No. 134009
MYERS LAW GROUP
9327 Fairway View Place, Suite 304
Rancho Cucamonga, CA 91730
Telephone: (213) 223-7676
Email: laboradam@aol.com

Attorneys for Petitioner and Real Party in Interest Engineers and Architects Association

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CARROLL, BURDICK & McDONOUGH LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104
Telephone: 415.989.5900
Fax: 415.989.0932
Email: gadam@cbmlaw.com

Adam N. Stern, No. 134009
MYERS LAW GROUP
9327 Fairway View Place, Suite 304
Rancho Cucamonga, CA 91730
Telephone: (213) 223-7676
Email: laboradam@aol.com

Attorneys for Petitioner and Real Party in Interest Engineers and Architects Association

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I

INTRODUCTION

This Court requested supplemental briefing on whether the parties' memoranda of understanding ("MOUs") "including but not limited to their management rights clauses . . . render the decision whether to impose employee furloughs inarbitrable." The answer to that question is no. The MOUs' arbitration clause determines arbitrability, not the management rights clause. Properly understood, the latter clause merely reserves the City's right to exercise its management prerogative over matters *not* covered by the MOU.[1]

The court of appeal asked for supplemental briefing on this issue and decided remand was appropriate because extrinsic evidence can resolve ambiguities regarding the management rights clause and arbitrability. (Slip Op. at 9-10.) EAA agrees with that conclusion, but not with that court's underlying rationale or interpretation of the MOUs.

To the extent the Court believes remand is inappropriate and arbitrability can be determined as a matter of law, there are numerous

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[1] At the outset, EAA's challenge is not to the City Council's decision to impose furloughs citywide; rather, it is to the City's attempt to apply furloughs to a group of employees who have conflicting wage and hour provisions established in their previously-ratified MOUs. (See EAA's Opening Brief ("OB") at p. 3; Reply at pp. 7.) And that question need not be resolved to determine the unlawful delegation question on which this Court granted review.

reasons why furloughs arbitration is mandated by the MOUs. First, under this Court's precedents, furloughs are not a management right because they impact wage and hour protections at the heart of collective bargaining. (See Part III.A, *infra*.) Second, the MOUs' arbitration clause is broad and encompasses the parties' underlying dispute regarding enforcement of the MOUs' wage and hour provisions. (See Part III.B, *infra*.) Third, this management rights clause does not expressly create a management right to furlough employees, and instead functions as such clauses typically do by preserving the City's management prerogatives that are not superseded by the MOU. (See Part, III.C, *infra*.) It does not render unenforceable any of the MOUs provisions, and is not a limitation on the arbitration clause.

II

WHETHER THE PARTIES INTENDED THE MOUS TO REQUIRE FURLOUGHS ARBITRATION IS A FACTUAL QUESTION REQUIRING REMAND

The trial court and court of appeal both found that they could not determine whether the MOUs proscribed furloughs arbitration. The trial court determined that was a merits issue to be decided by the arbitrator.

(Slip Op. at 9-10.) The court of appeal disagreed and requested supplemental briefing on this issue. (*Id.*)[2]

The appellate court concluded arbitrability was a factual issue requiring remand because "the MOU is ambiguous as to whether furloughs are arbitrable." (*Id.* at 13 [capitalization omitted], 17-18 & fn.17.) EAA agrees with the appellate court on this point[3], particularly because "[t]here is some reason to believe . . . extrinsic evidence may exist" to resolve the ambiguity. (Slip Op. at 17.) Thus, EAA respectfully submits this Court cannot answer the question posed without necessary factual development on remand.[4]

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[2] Specifically, the court of appeal "requested additional briefing on what appeared to be the relevant language of section 1.9 of the MOU: (1) the provision allowing the City to relieve employees from duty due to lack of funds; and (2) the provision reserving to employees and the Union their right to grieve the practical consequences of such actions." (Slip Op. at 10-12.)

[3] EAA disagrees with much of the court of appeal's interpretation of Article 1.9, particularly its interpretation about the interaction of that section with the rest of the MOU. (See Part III.B-C, *infra*.)

[4] By contrast, remand is unnecessary to decide the unlawful delegation question on which it granted review. Therefore, the Court should decide that issue, but remand to the trial court to determine arbitrability.

III

ALTERNATIVELY, THE MOUS AS A MATTER OF LAW MANDATE FURLOUGHS ARBITRATION BECAUSE THEY IMPACT THE MOUS' CORE WAGE AND HOURS PROVISIONS

The City's decision to impose furloughs on EAA members is subject to grievance arbitration because the parties have pre-existing MOUs governing employees' wages and hours. (See Part III.B, *infra*.) This Court specifically asked whether Article 1.9, the MOUs' management rights clause, makes that decision "inarbitrable." The answer is no.

Two threshold principles should guide this Court. First, the function of management rights clauses is not to permit management to override its MOU obligations. Second, furloughs directly impact public employees' wages and hours—matters at the heart of collective bargaining—and are not a management right. Article 1.9 does not change these core principles, and thus furloughs are subject to grievance arbitration under the circumstances of this case.

A. This Court's Precedents Recognize "Management Rights" Language Preserves Management Prerogatives, But Does Not Trump MOU Provisions

1. Management Rights Clauses Preserve Management Prerogatives

Before the advent of public sector collective bargaining, a government employer had largely unfettered discretion over the terms of employment affecting its employees. Collective bargaining, however,

imposed a statutory duty on government employers to bargain over wages, hours and working conditions. (Gov. Code §§ 3500-3510; Gov. Code § 3504 [scope of bargaining includes "wages, hours and other terms and conditions of employment"]; see also OB at 23-27.) Resulting collective bargaining agreements thus act as limits on management's rights as to those agreed-upon subjects contained within them. (See *International Assoc. of Fire Fighters v. City of Vallejo* (1974) 12 Cal.3d 608, 616-618 ("*Vallejo*").) Employers, however, retained their traditional management prerogatives as to those matters *outside* the collective bargaining agreement, including discretion over general managerial policies. (*Ibid.*) Recognized management rights include layoffs, ceasing operations, implementing a non-discrimination policy, changing the policy on use of deadly force and police review commission meetings. (See, e.g., *id.* at pp. 621-622; *International Assoc. of Fire Fighters v. Public Employment Relations Board ("Richmond")* (2011) 51 Cal.4th 259, 276; *Claremont Police Officers Assoc. v. City of Claremont ("Claremont")* (2006) 39 Cal.4th 623, 632.)

Accordingly, this Court has recognized that management rights language does not "restrict [arbitration or] bargaining on matters directly affecting employees' legitimate interests in wages, hours and working conditions," but rather is intended merely to "forestall any expansion of" the scope of bargaining so it does not "include more general managerial

policy decisions." (See *Vallejo, supra,* 12 Cal.3d at p. 616.) That is, management rights language prevents the scope of bargaining from "expand[ing] beyond reasonable boundaries to deprive an employer of his legitimate management prerogatives." (*Id.*) It does not take matters that are *already* within the scope of bargaining (and reduced to an MOU) and convert them into management prerogatives. Otherwise such an expansive interpretation of management rights language would "swallow the whole provision for collective negotiation and relegate determination of all labor issues to the city's discretion." (*Id.* at 615.)[5]

Applying these principles, in *Vallejo* this Court sent to grievance arbitration those matters it found were within the scope of bargaining and the parties' MOU, over the City of Vallejo's objections that some of these included management prerogatives. (*Id.* at pp. 617-624.) In doing so, this Court cautioned that courts "must be careful not to restrict unduly the scope of . . . arbitration by an overbroad definition of [management rights]."

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[5] *Vallejo* construed management rights language in a city charter rather than an MOU, but there is no reason its analysis should not apply here. (*Id.* at p. 611.)

(*Id.*, at p. 615.) These principles were recently affirmed in *Richmond, supra,* 51 Cal.4th at pp. 271-277.[6]

2. Furloughs Are Not a Management Right and MOUs Determine Employers' Authority to Impose Them

Furloughs are *not* a management right because they impact employee wages and hours—matters at the "heart" of collective bargaining. (*Professional Engineers v. Schwarzenegger* (2010) 50 Cal.4th 989, 1040-1041; OB at p. 40 fn.19; Reply at pp. 5-6.) In *Professional Engineers*, this Court recognized that "a [government] employer's unilateral authority to impose . . . furlough[s] on represented employees . . . is governed by the terms of the applicable MOU . . . ." (50 Cal.4th at pp. 1040-1041; *ibid.* ["the issue whether an employee's wages may be reduced by the implementation of a mandatory furlough . . . lies at the heart of the matter of 'wages, hours, and other terms and conditions of employment' that are the subject of an MOU"].) The reason for that is because "the *principal*

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[6] *Vallejo* and *Richmond* applied a balancing test to decide if layoffs were a management right. That is unnecessary in this case because this Court has already determined that furloughs are subjects within the mandatory subjects of bargaining, as has the City's Employee Relations Board. (See Part III.B.2, *infra*).

effect of an involuntary unpaid furlough" on public employees is a "reduction in [their] salaries." (*Id.* at p. 1036 [italics added].)[7]

Applying that reasoning, *Professional Engineers* criticized the trial court's reliance on an MOU's management rights clause to "override" specific contractual wage and hour obligations. (*Id.* at p. 1041 fn.35.)

These principles should govern here. First, the scope of bargaining under the Dills Act (at issue in *Professional Engineers*) is exactly the same as that under the MMBA (at issue here). (See Gov. Code §§ 3504 and 3516.) Second, this Court affirmed that public employee salaries remain matters covered by an MOU and are *not* a management prerogative even in times of severe fiscal distress. (See 50 Cal.4th at p. 1003 [noting "unprecedented statewide fiscal crisis"].) Third, it accords with the views of the City's Employee Relations Board, the California Public Employment Relations Board and of at least one sister state holding that furloughs are not a management right and are within the scope of bargaining and the parties' MOU. (See, e.g., Reply at 23-24 & City's MJN

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[7] An MOU *could* expressly permit an employer to furlough employees notwithstanding contrary provisions in the MOU. (See, e.g *Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2007) 154 Cal.App.4th 1536, 1540-1541 [management rights clause allowing employer to "relieve its employees from duty, effect work furloughs or any other alternatives because of lack of work or for other legitimate reasons"].) These MOUs do not expressly allow furloughs, nor has the City ever so argued.

Ex. 3; *N. Sacramento Sch. Dist.* (1981) PERB Dec. No. 193, 6 PERC § 13026, pp. 60-61; *San Ysidro Sch. Dist.* (1997) PERB Dec. No. 1198, 21 PERC § 28095, pp. 320-321; *Opinion of the Justices (Furlough)* (1992) 135 N.H. 625, 631-633.)

B. The Arbitration Clause in Article 3.1 Makes Furloughs Arbitrable

The text of the MOUs, and the principles above, confirm furloughs are arbitrable in this case.

The MOUs' arbitration clause is broad and encompasses the parties' underlying dispute. (See OB at 8-9; Pet. for Rev. at 5-6.) That clause, set forth in Section I of Article 3.1 of the MOUs, provides:

> A grievance is defined as ***any dispute*** concerning ***the interpretation or application of this written MOU*** or departmental rules and regulations governing personnel practices or working conditions applicable to employees covered by this MOU.

(See, e.g., AA 1:103 [emphases added].) EAA's members filed grievances to enforce their MOUs' wage and hour provisions—that is, they requested arbitration to resolve whether "interpretation or application" of their MOUs allowed the City to violate their pre-existing contract.[8] As in *Professional*

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[8] The grievances expressed that in various ways (see Slip Op. at 16-17 fn.13), but distilled to their core the court of appeal understood "[t]he Union wants a determination made that the City *violated* the salary and workweek provisions of the MOU by instituting furloughs . . . ." (*Id.* at 25 [italics original].)

Engineers, the MOUs here contain specific provisions that exhaustively detail the agreed-upon wage rates and hours for employees. (See, e.g., AA 1:112-114 [Article 5 (Work Schedules [mandating a fixed work week that "may be changed only if the change is intended to be permanent and not designed to evade overtime requirements of the FLSA"); Article 6 (Compensation)].)

EAA's right to arbitration for these contractual issues was expressly bargained for in order to provide quick and efficient resolution of such disputes. (See OB at 19-30.) The MOUs thus have a comprehensive grievance procedure to resolve disputes regarding "interpretation or application" of the MOUs. (See AA 1:103-108 [Article 3].) That procedure is designed to resolve disputes at the lowest level possible, but after the internal grievance process is exhausted, it directs the parties to arbitration. (AA 1:107 ["[f]ailure of management to respond . . . shall entitle the grievant to process the grievance at Step 5 (Mediation) and/or Step 6 (Arbitration)"].) EAA sought arbitration pursuant to this section, and the trial court compelled it. (AA 2:340 – 7:1648; AA 9:1957-67; Slip Op. at pp. 5-6, 8.)

In sum, because the City's imposition of furloughs implicates the most fundamental terms of the parties' MOUs, and the parties expressly agreed in Article 3.1 that "any dispute concerning the interpretation or

application of this written MOU" is arbitrable, furloughs are subjects of grievance arbitration.

C. Article 1.9 Does Not Expressly Authorize Furloughs, Nor Can It Reasonably Be Interpreted To Negate the MOUs' Wage and Hour Provisions

Article 1.9, the MOUs' management rights clause, does not expressly give the City authority to impose furloughs. Nor does it expressly exclude furloughs from arbitration. More fundamentally, it cannot be construed to grant the City open-ended authority to avoid the MOUs' contractual obligations. In short, the management rights clause cannot be read in isolation and must be read in light of the parties' entire agreement. (Civ. Code § 1641 ["The whole of a contract is to be taken together, so as to give effect to every part"]; *Balandran v. Labor Ready, Inc.* (2004) 124 Cal.App.4th 1522, 1529 ["in interpreting the scope of an arbitration (or any) agreement, we do not consider an individual phrase out of context"].)

Article 1.9 is fully set out below, divided into three subsections to elucidate its intended purposes, with italics to designate those portions the City has argued trump Article 3.1. Article 1.9 is structured as follows: The first sentence provides that the City retains its pre-MOU management rights, in effect, as to matters outside the scope of bargaining. The second sentence then catalogs those management rights in its initial clause.

Finally, for matters that are true management rights, it allows the filing of "grievances" to preserve effects bargaining in its final clause.

1. Article 1.9's First Sentence Preserves the City's Management Rights Not Otherwise Limited by the MOU

The first sentence provides that the City retains its pre-MOU management rights, in effect, as to matters outside the scope of bargaining:

> As the responsibility for the management of the City and direction of its work force is vested exclusively in its City officials and department heads whose powers and duties are specified by law, it is mutually understood that *except as specifically set forth herein no provisions in this 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 this MOU.*

The key clause is "*except as specifically set forth herein no provisions in this MOU shall be deemed to limit or curtail the City ....*" Both parties agree that the word "herein" is shorthand for "in this MOU." (See Slip Op. at 15 fn.12; City's Answer Brief at 27 and Mar. 4, 2011 Suppl. Letter Brief in 2nd DCA.) The clause thus means *"except as specifically set forth [in*

this MOU] no provisions in this MOU shall be deemed to limit or curtail the City['s management rights]."[9]

The City argued in the Answer brief that this language preserves all its pre-MOU management prerogatives, including the right to abrogate its contractual obligations—seemingly without any limit. That reading is untenable. State law makes MOUs binding and enforceable on local governments. (OB at 17-30.) Article 1.9 must be harmonized with the other parts of the MOUs, including its more specific wage and hour provisions. (*Professional Engineers, supra,* 50 Cal.4th at p. 1041 fn.35; Civ. Code § 1641.) Further, management rights clauses are intended merely to preserve management rights rather than to give management authority to trump the whole of the parties' agreement. (Part III.A.1, *supra.*)

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[9] The court of appeal opined such a reading is "a nonsensical interpretation which reads the entire section out of existence." (Slip Op. at 14 fn.12.) That is incorrect, because such a reading accords with the general management rights principles outlined above, i.e., that management rights clauses merely preserve management rights but do not trump specific MOU provisions. Thus understood the phrasing may be redundant, but it is *not* "nonsensical." More fundamentally, this reading accords with the parties' mutual intent. (Cf. *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 269 ["the rules of grammar . . . are but tools, guides to help courts determine likely legislative intent. And that intent is critical. Those who write statutes seek to solve human problems. Fidelity to their aims requires us to approach an interpretive problem not as if it were a purely logical game, like a Rubik's Cube, but as an effort to divine the human intent that underlies the statute"].)

For example, this Court understood in *Professional Engineers* that the MOU management rights clause there did not "override all of the other, more specific provisions of the MOU governing wages, hours, and other terms and conditions of employment." (50 Cal.4th at p. 1041 fn.35.) That analysis makes great sense because management rights clauses do not *ipso facto* "override" bargained-for provisions. (See *id.*; *Vallejo, supra,* 12 Cal.3d at p. 615 [management rights clauses should not be construed to "swallow the whole provision for collective negotiation and relegate determination of all labor issues to the city's discretion"]; Gov. Code § 3500.)

The City's interpretation is unreasonable. "When a public employer chooses instead to enter into a written contract with its employee (assuming the contract is not contrary to public policy), it cannot later deny the employee the means to enforce that agreement." (*Retired Employees Assn. of Orange County, Inc. v. County of Orange* ("*REAOC*") (2011) 52 Cal.4th 1171, 1182.) Yet, the City asks this Court to determine as a matter of law that the City has *carte blanche* authority to violate the MOU, and the Union no recourse to arbitration. (*O'Malley v. Wilshire Oil Co.* (1963) 59 Cal.2d 482, 491 ["only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail"]; *Vallejo, supra,* 12 Cal.3d at p.615 [courts "must be careful not to restrict unduly the scope of . . . arbitration by an overbroad definition of [management rights]"].) If, as the City

argues, it retains all of its pre-MOU powers without limitation, it may simply change wages, hours, or other bargained-for rights, without EAA being able to enforce the MOU.

The court of appeal rejected the parties' shared reading (incorrectly attributing it to EAA only), and opined that Article 1.9's first sentence "can only be read to mean 'except as specifically set forth [in this section] no provisions in this MOU shall be deemed to limit or curtail the City.'" (Slip Op. at 14-15 fn.12.) That reading is unreasonable. It would read the MOU to present no limitation on the City's management prerogative other than the management rights clause itself. This dubious reading would also permit the City unilaterally to override bargained-for MOU rights.

The more reasonable reading consistent with the purpose of the parties' intent and labor policy in the MMBA, is that Article 1.9 preserves the City's management prerogatives, limited by the other provisions of the MOUs. Otherwise, that language would "swallow the whole provision for collective negotiation and relegate determination of all labor issues to the city's discretion." (*Vallejo, supra*, 12 Cal.3d at p. 615.)

2. The City's Reserved Right to Relieve Employees Because of Lack of Funds and to Meet Emergencies Does Not Prevent Arbitration of Furlough Grievances

Article 1.9's second sentence catalogs specific management rights:

> The Association recognizes that these rights, powers, and authority include but are not limited to, the right to determine the mission of its constituent departments, offices and boards, set standards of services to be offered to the public, exercise control and discretion over the City's organization and operations, take disciplinary action for proper cause, *relieve City employees from duty because of lack of work, lack of funds or other legitimate reasons*, determine the methods, means and personnel by which the City's operations are to be conducted, *take all necessary actions to maintain uninterrupted service to the community and carry out its mission in emergencies*[.]

The City argued the "lack of funds" and "emergenc[y]" language makes furloughs inarbitrable. That is not so.

First, the City argues that Article 1.9's reservation of the City's right to relieve employees for "lack of funds" also authorizes furloughs, (i.e., reductions in work schedules and wages), notwithstanding contrary provisions elsewhere in the MOU. (Answer at p. 28.) That is incorrect. In *Professional Engineers* this Court determined that similar MOU language "reasonably can be interpreted to refer *only* to [layoffs]." (50 Cal. at p. 1042 fn.35 [italics added]; accord *REAOC, supra,* 52 Cal.4th at p. 1182.) The MOU analyzed there gave the state the management right to "relieve

its employees from duty because of lack of work, lack of funds, or other legitimate reason" (50 Cal.4th at p. 1042, fn. 35)—which is materially identical to Article 1.9. (See Article 1.9 ["relieve City employees from duty because of lack of work, lack of funds or other legitimate reasons"].) Consistent with that approach, in *EAA v. Community Development Dept. of City of Los Angeles* (1994) 30 Cal.App.4th 644, 652-653, the court construed the "lack of funds" language to find that layoffs were an inarbitrable management right. The "lack of funds" language in Article 1.9 is too generalized to "override" the MOUs' more specific wage provisions. (See AA 1:112-114 [list those provisions].)[10]

Second, the City argues that Article 1.9's "take all action necessary to meet an emergency" language authorizes furloughs. (See Answer at 28 [arguing Article 1.9 allows City to use reserved charter and ordinance powers].) That too is incorrect for a number of reasons EAA has already outlined. (OB at pp. 47-55 [emergency exception to MOUs

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[10] The court of appeal determined that Article 1.9's "lack of funds" language is "ambiguous" and required remand for factual development. (See Slip Op. at p. 18.) Specifically, it surmised that because ERO 4.859 did not contain the "lack of funds" language, "there was some reason that this language was added to the MOUs—although whether it was intended to refer to layoffs only, or layoffs and furloughs is not clear." (Slip Op. at 19.) EAA submits this Court can, as it did in *Professional Engineers*, determine the "lack of funds" language does not refer to furloughs as a matter of contract interpretation, especially given the MOUs' other more

unsupported by MMBA, City charter and ordinances, and would violate constitutional contracts clause]; Reply at pp. 20-22 [similar].) Specifically, Article 1.9 cannot reasonably be construed as a vehicle to give the City an "emergency" exception to violate the terms of the MOUs' wage and hours provisions because an emergency declaration alone is insufficient to absolve government from the consequences of breaching its contractual obligations. (*Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 308 [mere declaration of fiscal emergency insufficient; contract impairment must be constitutionally "reasonable" and "necessary"].) Moreover, interpreting that clause in such a manner would undermine all public sector collective bargaining agreements because it would authorize government employers to bypass MOU obligations by merely declaring a fiscal emergency.[11]

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specific provisions on wages and hours. Alternatively, to the extent the Court believes that ambiguity cannot be resolved, remand is appropriate.

[11] The court of appeal also discerned an ambiguity in Article 1.9 regarding whether the parties intended "emergencies" to apply to "fiscal emergencies." (Slip Op. at 19 fn. 17.) EAA submits this question too can be answered as a matter of law under the principles outlined above, but to the extent the Court finds an ambiguity requiring factual development, it submits remand is appropriate.

3. The Third Sentence of Article 1.9 Merely Recognizes the City's Obligation to Engage in "Effects" Bargaining, and Is An *Additional* Source of Arbitration Rather Than A Limitation on Article 3.1 Arbitration

For matters that are true management rights, Article 1.9 gives the union the right to engage in impact or effects bargaining:

> [P]rovided, however, that the exercise of these rights does not preclude employees and their representatives from consulting or raising grievances about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment.

(See AA 1:93 [italics added].) This clause merely recognizes the City's effects bargaining obligation when it exercises management rights. This Court has consistently affirmed a union's right to such bargaining. (*E.g., Richmond, supra,* 51 Cal.4th at p. 852-853 [an "employer is normally required to bargain about the results or effects of [management] decisions"]; *id.* at p. 855 ["a public employer must, however, give its employees an opportunity to bargain over the implementation of the [management] decision, including the number of employees [affected], and the timing . . ., as well as the effects of the [action] on the workload and safety of the remaining employees"]; accord *Claremont, supra,* 39 Cal.4th at pp. 635-639 [similar].)

It is true that Article 1.9 refers to "consulting or raising grievances" in describing the effects bargaining process, but that merely

means that the parties intended to adopt the same grievance procedures in Article 3.1 to resolve such bargaining disputes. It does *not* mean the parties intended that Article 1.9 would be a limitation on Article 3.1. An Article 1.9 "grievance" on effects bargaining (not at issue here) is fundamentally different from an Article 3.1 "grievance" on contract or MOU-based disputes (at issue here). That is, Article 1.9's reference to "consulting or raising grievances" directly refers to the impacts bargaining process itself that applies only when the City exercises recognized management rights; it simply does not apply to the union's ability to seek enforcement of MOU-based provisions through Article 3.1 grievances.

Specifically, Article 3.1 *MOU-based* grievances are not expressly defined or otherwise limited to the 'practical consequences' of management decisions. By contrast, Article 1.9 grievances are expressly limited to the "practical effects" flowing from management decisions, i.e., effects bargaining. Interpreting Article 1.9 as limiting Article 3.1 would nonsensically limit union members' legitimate MOU-based grievances to the practical consequences of management's decision to violate core MOU wage and hour provisions—even though management has no such right. That interpretation would also unreasonably make Article 1.9 the sole source of MOU enforcement rights for the union.

In sum, the most reasonable reading of the MOUs is that Article 1.9 is not a limitation on Article 3.1 arbitration, but is instead an *additional*

source of grievance arbitration that allows effects bargaining regarding management prerogatives. That makes Article 1.9 inapplicable here because furloughs are not a management prerogative.

IV

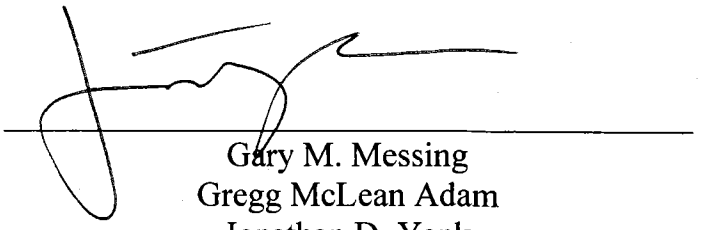
CONCLUSION

To the extent the Court is compelled to reach the subject of arbitrability, it should remand to have the trial court determine whether the parties intended to have the MOUs cover furloughs. Alternatively, as a matter of law, for all the reasons above, the MOUs do not prohibit furloughs arbitration.

Dated: November 30, 2012

Respectfully submitted,

CARROLL, BURDICK & McDONOUGH LLP

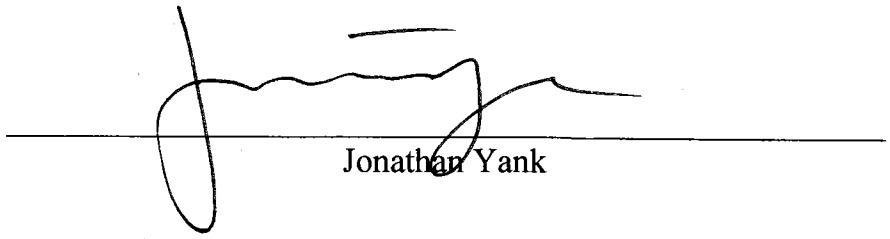
By 

Gary M. Messing
Gregg McLean Adam
Jonathan D. Yank
Gonzalo C. Martinez
Attorneys for Petitioner and Real Party in Interest
Engineers and Architects Association

WORD COUNT CERTIFICATION

Pursuant to Rule 8.520(c) of the California Rules of Court, I certify that the attached brief contains 4891 words, as determined by the computer program used to prepare the brief.

Dated: November 30, 2012



Jonathan Yank

PROOF OF SERVICE BY UNITED PARCEL SERVICE (UPS) – NEXT DAY

I declare that I am employed in the County of San Francisco, California. I am over the age of eighteen years and not a party to the within cause; my business address is 44 Montgomery Street, Suite 400, San Francisco, CA 94104. On November 30, 2012, I served the enclosed:

PETITIONER'S SUPPLEMENTAL BRIEF

on the parties in said cause (listed below) by enclosing a true copy thereof in a prepaid sealed package, addressed with appropriate United Parcel Service shipment label and, following ordinary business practices, said package was placed for collection (in the offices of Carroll, Burdick & McDonough LLP) in the appropriate place for items to be collected and delivered to a facility regularly maintained by United Parcel Service. I am readily familiar with the Firm's practice for collection and processing of items for overnight delivery with United Parcel Service and that said package was delivered to United Parcel Service in the ordinary course of business on the same day.

Janis Levart Barquist, Esq.
Jennifer Maria Handzlik, Esq.
Carmen A. Trutanich
Office of the Los Angeles City Attorney
200 North Main Street, Room 800
Los Angeles, CA 90012

Counsel for Petitioner City of Los Angeles

Frederick Bennett
Superior Court of Los Angeles
111 North Hill Street, Room 546
Los Angeles, CA 90012

Counsel for Respondent Superior Court of Los Angeles

Hon. Gregory Alarcon
Superior Court of Los Angeles
111 North Hill Street, Dept. 36
Los Angeles, CA 90012

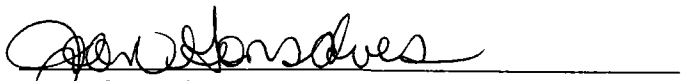
Trial Judge

Superior Court of Los Angeles
111 North Hill Street
Los Angeles, CA 90012

California Court of Appeal
Second District, Division 3
Ronald Reagan State Building
300 So. Spring Street, 2nd Floor
Los Angeles, CA 90013

Anthony Segall, Esq. Ellen Greenstone, Esq. Jonathan Cohen, Esq. Anthony P. Resnick Rothner, Segall & Greenstone 510 South Marengo Avenue Pasadena, CA 91101-3115	*Attorneys for Amicus Curiae AFSCME, District Council 36, et al.*
Arthur Krantz, Esq. Leonard Carder, LLP 1330 Broadway, Suite 1450 Oakland, CA 94612	*Counsel for Amicu Curiae IFPTE, et al.*
Rex S. Heinke, Esq. Jessica Michael Weisel, Esq. Amit Arun Kurlekar, Esq. Akin Gump Strauss Hauer & Feld 633 W. Fifth Street, Suite 5000 Los Angeles, CA 90071-2081	*Counsel for Amicus Curiae Los Angeles Chamber of Commerce*
David W. Tyra, Esq. Kronick Moskovitz Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814	*Counsel for Amici Curiae League of California Cities and California State Association of Counties*
Marcia Haber Kamine Kamine Phelps PC 523 W. 6th Street, Suite 546 Los Angeles, Ca 90014	*Counsel for Amicus Curiae Engineering Contractors' Association*
Stephen H. Silver, Esq. Silver, Hadden, Silver, Wexler & Levine 1428 Second Street Santa Monica, CA 90401	*Counsel for Amici Curiae Los Angeles Police Protective League, et al.*

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on November 30, 2012, at San Francisco, California.



Joan Gonsalves