S204221

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PARATRANSIT, INC.

Plaintiff and Respondent,

vs.

UNEMPLOYMENT INSURANCE APPEALS BOARD

Defendant;

CRAIG H. MEDEIROS,

Real Party in Interest and Appellant.

After a Decision of the Court of Appeal,
Third Appellate District Court Case No. C06386

Appeal from a Judgment of the Superior Court of the
State of California, County of Sacramento
Honorable Timothy M. Frawley, Judge
Case No. 34-2009-80000249

RESPONDENT'S OPPOSITION TO APPELLANT'S REPLY IN SUPPORT OF APPELLANT'S REQUEST FOR JUDICIAL NOTICE

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RESPONDENT'S OPPOSITION TO APPELLANT'S REPLY IN SUPPORT OF APPELLANT'S REQUEST FOR JUDICIAL NOTICE

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

By application filed on Thursday, July 11, 2013 in the above-captioned matter, Appellant sought leave to file a reply in support of his own request for judicial notice.[1] On Monday, July 15, 2013, said Application was granted and Appellant's Reply in Support of Appellant's Request for Judicial Notice (hereinafter "RJN Reply") was filed. Respondent now opposes Appellant's RJN Reply.

The California Rules of Court do not expressly authorize the filing of a reply to an opposition. Since Appellant failed to meet any of the requirements for filing an application under California Rules of Court, rule 8.50, it must be presumed that Appellant's RJN Reply was brought as a new motion under California Rules of Court, rule 8.54. Consequently, pursuant to subdivision (a)(3) of said rule, Respondent is entitled to oppose said motion within 15 days.

In his RJN Reply, Appellant argues that Respondent's Opposition to Appellant's Request for Judicial Notice was untimely. Appellant is

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[1] Respondent attempted to oppose Appellant's Application after it received such in the mail on Wednesday, July 10, 2013. Said Application was filed in this Court on Thursday, July 11, 2013. Respondent mailed to this Court, via FedEx, its Opposition to Appellant's Application on Friday, July 12, 2013. Said Opposition was received by this Court on Monday, July 15, 2013, however this Court granted Appellant's Application before it could consider Respondent's Opposition. Accordingly, the Clerk of this Court did not file Respondent's Opposition, as it was "moot," and then returned such to Respondent on July 15, 2013.

incorrect. Appellant mistakenly believes that his Request for Judicial Notice was *filed* on May 20, 2013, however such was only *received* by this Court on that date. Appellant's Request for Judicial Notice was filed on May 29, 2013, therefore pursuant to California Rules of Court, rule 8.54, subdivision (a)(3), Respondent had 15 days from May 29, 2013 to file an opposition. Respondent's opposition, filed on June 13, 2013, was therefore timely.

In his initial request for judicial notice, Appellant failed to adequately provide grounds for requesting judicial notice of the seven labor arbitration decisions. However, with this Court's permission to file a reply to said request, Appellant was graciously given a second chance to attempt to argue the merits. In his RJN Reply, Appellant asserts two fallible arguments: 1) that four[2] of the seven labor arbitration decisions are noticeable as "official acts" of the Federal Mediation and Conciliation Service (hereinafter "FMCS") under Evidence Code section 452, subdivision (c), and 2) that all seven of the labor arbitration decisions are noticeable under Evidence Code section 452, subdivision (h) as "facts or propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

Labor arbitration decisions cannot properly be considered an "official act" of the FMCS. A list of FMCS policies is found at 29 Code of Federal Regulations part 1403.2 (2013). Subdivision (a) of said part states that it is FMCS policy, "To facilitate and promote the settlement of labor-management disputes through collective bargaining by encouraging labor and management to resolve differences through their own resources."

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[2] In a footnote in his RJN Reply, Appellant admits that at least three of the labor arbitration decisions cannot be properly noticed under Evidence Code section 452, subdivision (c). (Appellant's RJN Reply at p. 3, fn 1.)

Subdivision (f) of the same part states, "To proffer its services to the parties in grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement only as a last resort and in exceptional cases." Definitions are set forth in 29 Code of Federal Regulations part 1403.1 (2013). Subdivision (e) therein states, "The term *proffer its services,* as applied to the functions and duties of the [FMCS], means to make mediation services and facilities available either on its own motion or upon the request of one or more of the parties to a dispute." (29 C.F.R. § 1403.1(e) (2013), original italics.) The FMCS merely facilitates the selection of an arbitrator for parties who are desirous of pursuing voluntary arbitration. Moreover, the FMCS does not require publication of arbitration awards. (29 C.F.R. § 1404.14(d) (2013) ["While FMCS encourages the publication of arbitration awards, arbitrators should not publicize awards if objected to by one of the parties."].) Accordingly, a decision rendered by a labor arbitrator selected by private parties to interpret a private collective bargaining agreement, cannot be properly characterized as an "official act" of the FMCS as the FMCS's role in the final decision is limited to the procedure utilized by the parties to select an arbitrator.

Appellant also wrongly asserts that labor arbitration decisions are entitled to judicial notice under Evidence Code section 452, subdivision (h) which permits notice of "Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Once again, Appellant has not provided any authority to support his assertion. Appellant merely offers his unfounded opinion that "the contents of the labor arbitration decisions are facts not reasonably subject to dispute." (Appellant's RJN Reply at p. 2.) Appellant misreads the plain language of Evidence Code section 452, subdivision (h) since such specifically states

that *facts and propositions* are what must not be reasonably subject to dispute. As one appellate court explained, "These include, for example, facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons learned in the subject matter [citation]." (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145.) Surely, "the contents" of an arbitrator's decision in a single matter cannot be properly classified as "facts and propositions" within the meaning of subdivision (h).

Lastly, Respondent maintains that *Brosterhous v. State Bar* (1995) 12 Cal.4th 315 provides persuasive authority for the determination of the present request for judicial notice as it argued in its Opposition filed on June 13, 2013.

CONCLUSION

For the reasons set forth above, the Appellant's Request for Judicial Notice should be denied as to the seven labor arbitration decisions included in Appellant's initial request as Exhibits 2 through 7, and 9.[3]

DATED: July 23, 2013.

Respectfully submitted,

REDIGER, McHUGH & OWENSBY, LLP

By _____
CANDICE K. REDIGER
Attorney for Respondent,
PARATRANSIT, INC.

[3] As stated in its initial Opposition, Respondent does not take any position on Appellant's request for judicial notice of the documents attached to said motion as Exhibits 1 and 8.

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 555 Capitol Mall, Suite 1240, Sacramento, California 95814.

On July 23, 2013, I caused to be served the within **RESPONDENT'S OPPOSITION TO APPELLANT'S REPLY IN SUPPORT OF APPELLANT'S REQUEST FOR JUDICIAL NOTICE** in *Paratransit, Inc. v. Unemployment Insurance Appeals Board; Craig Medeiros*; California Supreme Court Case No. S204221 [Third Appellate Dist. Ct. of Appeal Case No. C063863; Sac. County Sup. Ct. Case No. 34-2009-80000249-CU-WM-GDS] by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Sarah R. Ropelato, Esq.
Stephen E. Goldberg, Esq.
Legal Services of Northern California
515 – 12th Street
Sacramento, CA 95814

Attorneys for Real Party in Interest and Appellant, CRAIG MEDEIROS

The Honorable Timothy M. Frawley
Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814

Trial Court Judge

Third Appellate District Court of Appeal
621 Capitol Mall, 10th Floor
Sacramento, CA 95814-4719

Michael Hammang, Deputy Attorney General
Department of Justice
1300 "I" Street, Suite 125
Sacramento, CA 95814

XXXX and placing the same with postage thereon fully prepaid in the designated area for outgoing mail. I am readily familiar with Rediger, McHugh & Owensby, LLP's practice of collecting and processing correspondence whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited

with the United States Postal Service after the close of each day's business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 23rd day of July 2013, at Sacramento, California.

LORRAINE L. RENFROE