SUPREME COURT COPY

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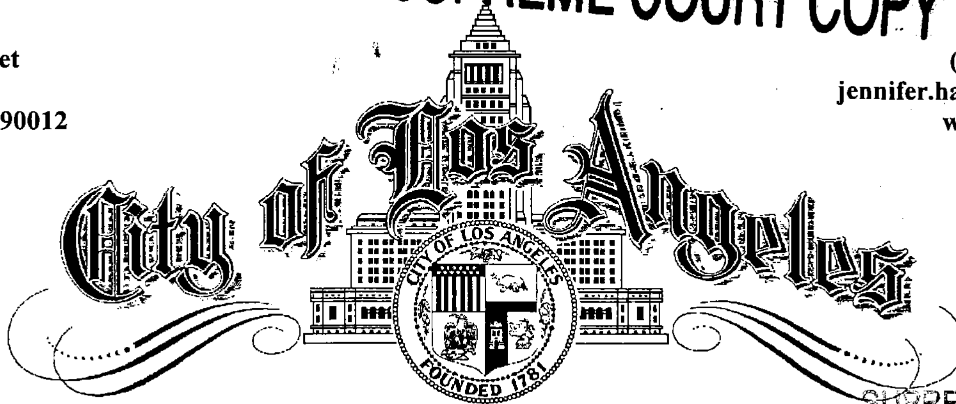

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SUPREME COURT
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Deputy

January 7, 2013

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

Re: *City of Los Angeles v. Superior Court (Engineers & Architects Association), California Supreme Court Case No. S192828*

Dear Honorable Justices of the California Supreme Court:

We represent the City of Los Angeles (City), and submit this letter brief in response to the letter brief of Engineer & Architects Association (Association) dated January 2, 2013, requesting that this Court consider the decision of the California Public Employee Relations Board (PERB) issued on December 4, 2012 in *International Assoc. of Machinists & Aerospace Workers v. City of Long Beach*, Decision 2296-M (*City of Long Beach*). Association claims that the PERB decision is relevant to the issue in this case of whether the City Council's decision to furlough employees during a financial emergency is subject to arbitration. Association's reliance is misplaced.

City of Long Beach has no bearing on the issues in this case. Unlike *City of Long Beach*, the present case does not ask the Court to decide whether the parties have fulfilled their statutory bargaining obligation under the *Meyers-Milias-Brown Act*, Government Code section 3505 (MMBA). Rather, the question presented is whether the City agreed to arbitrate *this type of dispute*. (*Ajamian v. CantorCO2e* (2012) 203 Cal.App.4th 771, 781, citing *Granite Rock Co. v. Teamsters* (2010) 561 U.S. ___, ___, ___-___ [130 S.Ct. 2847, 2856, 2859-2860].) Both the right and scope of arbitration are strictly matters of contract, not statute, and ultimately depend upon the terms of the

governing agreement. (Code Civ. Proc. §§ 1281, 1281.2.)[1] Contrary to Association's implication, the MMBA scope of bargaining does not determine the breadth of a contractual arbitration clause.

It is well established that a court should refuse to compel arbitration where, as here, the subject matter sought to be arbitrated is not within the scope of the arbitration agreement. (See *Service Employees International Union v. City of Los Angeles* (1994) 24 Cal.App.4th 136, 143-144.) In this case, the language of the governing MOUs shows that the City never agreed to arbitrate a decision by the City Council to furlough employees in a financial emergency in order to maintain uninterrupted service to the community. The structure of the department-oriented grievance and arbitration procedure contained in Section 3 unambiguously restricts the process to those disputes which can be resolved at the individual department level and does not apply to City-wide disputes. (See City's Suppl. Br. at pp. 14-16.) Section 1.9 expressly reserves to the City the right to "take all necessary actions to maintain uninterrupted service to the community and to carry out its mission in an emergency." The "practical consequences" provision of Section 1.9 is clear that such emergency actions are not subject to the grievance/arbitration procedure. Therefore, Section 3, read in conjunction with Section 1.9, means that the emergency furlough controversy is excluded from arbitration.

Second, *City of Long Beach* is not authority for the proposition that the decision to furlough employees in a financial emergency to preserve public services can never be a proper exercise of reserved management rights. In its decision, PERB was careful to limit its decision to the facts of that particular case, noting: "[W]e make no determination as to whether the imposition of furloughs may fall within the scope of the management rights [clause] in another case." (*City of Long Beach*, at p. 23, n. 14.)

Third, in contrast to the circumstances in *City of Long Beach*, in this case the City has already proven that a financial emergency existed when it implemented its furlough plan, and that the furloughs were authorized by the City Council as an integral part of the annual budget process, as a means of preserving essential services to the community. (City's ABOM at pp. 61-64.) (Cf. *City of Long Beach*, at p. 23 (finding furlough decision was not aimed at affective public service), 27 (finding city's claim of financial emergency questionable, given that the city did not formally declare a fiscal

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[1] It is well established both that PERB lacks jurisdiction to resolve pure contractual disputes (*San Lorenzo Education Assn. v. Wilson* (1982) 32 Cal.3d 841, 850.) and that the City is not subject to PERB's jurisdiction. (Gov. Code § 3509.)

emergency until two months *after* unilaterally implementing the furloughs, independently of the normal budget process).)

Finally, while Long Beach is subject to PERB's jurisdiction, the City's labor relations are governed by its own Charter and Employee Relations Ordinance. The scope of Los Angeles City Council's authority in a fiscal emergency is not governed by PERB's interpretation of the Long Beach MOUs.

For all of these reasons, *City of Long Beach* is inapplicable to the resolution of this appeal and should be disregarded.

Very truly yours,

By:
JENNIFER HANDZLIK
Deputy City Attorney

JANIS LEVART BARQUIST
Deputy City Attorney

JH:JLB:lh

PROOF OF SERVICE
(VIA VARIOUS METHODS)

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 800 City Hall East, 200 North Main Street, Los Angeles, California 90012.

On **January 8, 2013**, I served the foregoing document(s) described as **LETTER DATED JANUARY 7, 2013 RE *CITY OF LOS ANGELES v. SUPERIOR COURT (ENGINEERS & ARCHITECTS ASSOCIATION), CALIFORNIA SUPREME COURT CASE NO. S192828*** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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[ ] **BY PERSONAL SERVICE** - ( ) I delivered by hand, ( ) I caused to be delivered via messenger service, or ( ) I caused to be delivered via Document Services, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

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[ ] - Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **January 8, 2013**, at Los Angeles, California.

LISA HUGHES

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