CASE NO. S242034

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CATHERINE A. BOLING, T.J. ZANE and STEPHEN B. WILLIAMS,
Petitioners,

v.

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent.

CITY OF SAN DIEGO; SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION; DEPUTY CITY ATTORNEYS ASSOCIATION; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO LOCAL 127; and SAN DIEGO CITY FIREFIGHTERS LOCAL 145
Real Parties in Interest

AFTER DECISION BY THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION ONE
CONSOLIDATED CASE NOS. D069626 and D069630

ON APPEAL FROM THE PUBLIC EMPLOYMENT RELATIONS BOARD
PERB DECISION NO. 2464-M (PERB CASE NOS. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M and LA-CE-758-M)

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

AMICUS CURIAE BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION, CALIFORNIA STATE COUNCIL

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT PUBLIC EMPLOYMENT RELATIONS BOARD AND REAL PARTIES IN INTEREST SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION, ET AL.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to California Rule of Court 8.520(f), Service Employees International Union, California State Council ("SEIU State Council" or "Amicus") hereby respectfully requests leave to file the accompanying brief amicus curiae in support of Respondent Public Employment Relations Board and Real Parties in Interest San Diego Municipal Employees Association, et al.

A. INTEREST OF THE AMICUS CURIAE

Amicus SEIU State Council has over 750,000 members, 300,000 of whom serve in the public sector, and is part of the Service Employees International Union. SEIU State Council has a mission to improve the lives of working people and their families, fighting for jobs with decent wages, healthcare, pensions, better working conditions, and more opportunities. It engages in educational activities, member mobilization, voter registration and "get out the vote" efforts, legislative advocacy, and training.

This case involves two issues that deeply concern SEIU State Council, which are direct attacks on public-sector labor relations. The first issue is whether a public-sector employer can avoid its obligations to meet and confer with employee organizations when public officials use the "citizens' initiative" process to place on the ballot initiatives regarding the terms and conditions of employment of bargaining unit members. The second issue is what deference the courts must afford the Public Employment Relations Board ("PERB"), which is the administrative

agency tasked with administering a number of California's public-sector labor statutes. Amicus SEIU State Council has a direct and sincere interest in the resolution of these issues. SEIU State Council through its locals represents approximately 300,000 public-sector employees throughout California who may be impacted by a ruling in this case.

B. REASONS WHY THE PROPOSED AMICUS BRIEF WILL ASSIST THE COURT

Amicus SEIU State Council has experience that can assist this Court in resolving the main legal questions at issue in this case. As discussed in SEIU State Council's brief, the issues involve public-sector employers' duty to meet and confer with employee organizations over terms and conditions of employment and the deference the courts must afford PERB. SEIU State Council, through its locals, has experience dealing with the relevant statutes that set forth meet-and-confer obligations and with PERB decisions and the stability they bring to public-sector labor relations. It is SEIU State Council's intention to bring this experience and expertise to bear in assisting this Court in its deliberations over these important matters.

C. CALIFORNIA RULE OF COURT 8.520(F)(4) DISCLOSURE

No party or counsel for any party in this case, other than counsel for SEIU State Council, authored this amicus curiae brief in whole or in part or made any monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than SEIU State Council and its members, made any monetary contribution intended to fund the preparation or submission of this brief.

///

D. CONCLUSION

For the foregoing reasons, SEIU State Council's request for leave to file the accompanying amicus curiae brief should be granted.

Dated: 11/28/17

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

Kerianne R. Steele
Anthony J. Tucci

By: /s/ Kerianne R. Steele

Attorneys for Amicus
Service Employees International Union, California State Council

AMICUS CURIAE BRIEF OF THE SERVICE EMPLOYEES INTERNATIONAL UNION, CALIFORNIA STATE COUNCIL IN SUPPORT OF RESPONDENT PUBLIC EMPLOYMENT RELATIONS BOARD AND REAL PARTIES IN INTEREST SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION, ET AL.

I. INTRODUCTION

The Court of Appeal's decision in *Boling v. Public Employment Relations Board* (2017) 10 Cal. App.5th 853, upends settled law that has helped establish labor peace in the public sector. The Service Employees International Union, California State Council ("SEIU State Council" or "Amicus") submits this brief in order to assist this Court with its deliberations over the questions presented. This case raises two important questions for collective-bargaining relationships throughout the state in the public sector. The Court of Appeal's decision directly attacks the heart of a public agency's duty to meet and confer with the exclusive employee representative over wages, hours, and other terms and conditions of employment of bargaining unit members. The *Boling* decision provides a roadmap to public agencies throughout the state on how to circumvent their meet-and-confer obligations through a "citizens' initiative" even when the initiative is a thinly veiled effort to achieve public officials' priorities. The Court of Appeal's decision also broadly threatens the Public Employment Relations Board ("PERB")'s authority to interpret the public-sector labor statutes it is charged with administering. Real Parties in Interest San Diego Municipal Employees Association, et al. and Respondent PERB have made a compelling case in their briefs for why this Court should overturn the Court of Appeal's decision. This Court should rule in their favor.

Amicus submits this brief not to reiterate Real Parties in Interest's and Respondent's claims, but rather to assist this Court in placing the *Boling* case within the collective-bargaining context in the public sector throughout the state, and to demonstrate to this court employee organizations' dependence on the stability created by PERB's ability to administer California's public-sector labor statutes authoritatively.

II. ARGUMENT

A. THIS COURT SHOULD NOT ALLOW PUBLIC AGENCIES TO CIRCUMVENT THEIR MEET-AND-CONFER OBLIGATION AND THIS COURT'S *SEAL BEACH* DECISION

Public-sector labor relations depend on public agencies meeting and conferring over wages, hours, and other terms and conditions of employment, as codified in section 3505 of the Government Code, as a way to maintain labor peace. The California Supreme Court has already held that the "meet-and-confer requirement is an essential component of the state's legislative scheme for regulating the city's employment practices. By contrast the burden on the city's democratic functions is minimal." (*People ex rel. Seal Beach Police Officers' Ass'n v. City of Seal Beach (Seal Beach)* (1984) 36 Cal.3d 591, 599.)

A public agency must meet and confer before proposing a ballot initiative that will affect matters within the scope of an employee organization's representation, such as proposed changes to employees' retirement benefits. (*Id.* at 602.) In the *Boling* case, San Diego Mayor, Jerry Sanders, triggered the City's obligation to meet and confer in November 2010 when he announced his plans to replace

defined benefit pensions with 401(k)-style plans through the initiative process. Such a change squarely falls within the negotiable subjects of wages and other terms and conditions of employment. The exclusive employee representatives made repeated requests to the City to meet and confer over that pension reform initiative, which the City rejected. As stated in *Seal Beach*, the burden of the statutory meet-and-confer obligation on the City's democratic functions is minimal. Nothing prevented the City from meeting and conferring with the exclusive employee representative before placing the "citizens' initiative" on the ballot. A meet and confer would have been beneficial for a number of reasons, including but not limited to the possibility that, as a product of the meet and confer, the City and the exclusive employee representatives could have agreed to the City placing on the ballot a more moderate initiative on pensions. This hypothetical ballot initiative could have addressed concerns regarding Mayor Sanders's initiative, such as retention of City employees, and would compete with the Mayor's initiative on the same ballot. By focusing on technicalities instead of reality, the Court of Appeal's decision undermines a central tenet of public-sector labor relations that requires public agencies to meet and confer in good faith with the exclusive employee representative over terms and conditions of employment.

Moreover, the *Boling* decision upsets existing law and gives public agencies throughout the state license to make an end-run around their requirement to meet and confer with exclusive employee representatives over wages, hours, and other terms and conditions of employment. Public officials merely need to move their political

agenda from the normal government process that requires action by a governing body to a "private citizen." The *Boling* decision even allows high-ranking public officials to lead the charge in these "citizens' initiatives" to avoid their obligations under the public-sector labor statutes.

There is no factual dispute that the Mayor orchestrated the "citizens' initiative" regarding City employees' pensions. Mayor Sanders announced he was going to devote the last two years of his term to transforming the pension system into a 401(k)-style plan. The crystalline purpose of Mayor Sanders's "citizens' initiative" was to circumvent the meet-and-confer process. As the Court of Appeal found, "[Mayor Sanders] believed pursuing a City Council-sponsored ballot proposal (which would also require negotiating with the unions) could require unacceptable compromises to his proposal." (*Boling*, *supra*, 10 Cal. App. 5th 853, 859.) What is more, Mayor Sanders consistently used the imprimatur of his office and the City to promote the ballot initiative, announcing his plans at City Hall in front of the City seal, promoting his plans at his State of the City address, and announcing that he, then-City Councilmember Kevin Faulconer, and the City Attorney "will soon bring to voters an initiative to enact a 401(k)-style plan." (*Id.*) Thereafter, Mayor Sanders and City staff used City resources by "responding to request from the media for quotes." (*Id.* at 862 n. 13.) Mayor Sanders vigorously supported the ballot initiative by gathering signatures, promoting it with speaking engagements, and "issuing a 'message from Mayor Jerry Sanders'" to solicit financial and other support." (*Id.*) The Court of Appeal's decision improperly endorses this conduct by city officials that is

clearly designed to frustrate the purposes of the public-sector labor statutes by avoiding their obligation to meet and confer under the false pretense that city officials are acting as "citizens" in bringing forward a "citizens' initiative." If the Court of Appeal's decision is allowed to stand, it will wreak havoc on the meet-and-confer process and threaten labor peace. The California Supreme Court should reaffirm its decision in *Seal Beach* and overturn the *Boling* decision that threatens to upend decades of principles of public-sector labor relations.

B. THIS COURT SHOULD REAFFIRM THAT THE CLEARLY ERRONEOUS STANDARD OF DEFERENCE APPLIES TO PERB DECISIONS

This Court should also overturn the Court of Appeal's decision because it alters the deference the Courts of Appeal must afford PERB, replacing the long-established "clearly erroneous" standard with de novo review. The California Supreme Court has held that the courts must employ the clearly erroneous standard in reviewing PERB decisions. (*Banning Teachers Ass'n v. PERB* (1988) 44 Cal.3d 799.) When it comes to the interpretation of the statutory provisions on scope of representation and duty to bargain, the courts have found that "this squarely falls within PERB's legislatively designated field of expertise," (*San Mateo City Sch. Dist. v. PERB* (1983) 33 Cal.3d 850, 856), and "PERB's interpretation will generally be followed unless it is clearly erroneous," (*Banning*, *supra*, 44 Cal.3d 799, 804). Courts afford PERB this great degree of deference for good reason. PERB has developed an expertise in public-sector labor law and can authoritatively interpret the statutes it administers. Public-sector unions and employers alike have come to depend on these expert and

authoritative decisions, which creates stability in public-sector labor relations. As such, this Court should reaffirm that courts must afford PERB's decisions with great deference and follow them unless they are clearly erroneous.

III. CONCLUSION

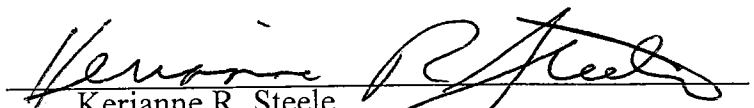
At stake in the *Boling* decision is the heart of public-sector labor relations: the duty to meet and confer in good faith over wages, hours, and other terms and conditions of employment. If the Court of Appeal's decision is allowed to stand, it is inevitable that officials of public agencies throughout the state will try to use the *Boling* decision to skirt their obligations to meet and confer with the exclusive employee representative.

For the aforementioned reasons, it is respectfully submitted that this Court rule in favor of Respondent PERB and Real Parties in Interest San Diego Municipal Employees Association, et al., and reverse the decision of the Court of Appeal.

Dated: 11/28/17

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

Kerianne R. Steele
Anthony J. Tucci

By: 
Kerianne R. Steele

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CERTIFICATE OF COMPLIANCE

I certify that this Amicus Curiae Brief of the Service Employees International Union, California State Council in support of Respondent Public Employment Relations Board and Real Parties in Interest San Diego Municipal Employees Association, et al. complies with the requirements of California Rules of Court Rule 8.520(c)(1). This brief contains 1,980 words, excluding the tables and this certificate, pursuant to Rule 8.520(c)(3). I make this representation in reliance upon the word count program accompanying the Microsoft Word software that was used to create this brief.

Dated: 11/28/17

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

Kerianne R. Steele
Anthony J. Tucci

By: Kerianne R. Steele

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PROOF OF SERVICE
(CCP §1013)

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On November 28, 2017, I served the following documents in the manner described below:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
AMICUS CURIAE BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION, CALIFORNIA STATE COUNCIL

☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.

☑ (BY ELECTRONIC SERVICE) By electronically transmitting via TrueFiling to the each of the parties listed below.

On the following part(ies) in this action:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 28, 2017, at Alameda, California.

Stephanie Mizuhara

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