

DEC 29 2017

**Case No. S242034**

**IN THE SUPREME COURT OF CALIFORNIA** Jorge Navarrete Clerk

Deputy

**CATHERINE A. BOLING, ET AL. and CITY OF SAN DIEGO**

*Petitioners,*

v.

**PUBLIC EMPLOYMENT RELATIONS BOARD,**

*Respondent,*

**SAN DIEGO MUNICIPAL EMPLOYEES' ASSOCIATION, DEPUTY  
CITY ATTORNEYS ASSOCIATION, AMERICAN FEDERATION  
OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO,  
LOCAL 127, SAN DIEGO CITY FIREFIGHTERS, LOCAL 145,  
IAFF, AFL-CIO,**

*Real Parties in Interest.*

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

**APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF  
AMICUS CURIAE SAN DIEGO POLICE OFFICERS  
ASSOCIATION**

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**APPLICATION TO FILE BRIEF OF AMICUS CURIAE**  
**SAN DIEGO POLICE OFFICERS ASSOCIATION**

Pursuant to Rule 8.520(f) of the California Rules of Court, the San Diego Police Officers Association (“SDPOA”) seeks permission to file the attached Amicus Curiae Brief in support of Real Parties in Interest 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, IAFF, AFL-CIO (collectively “Unions”).

No party or counsel for a party in this appeal authored the proposed amicus brief or made any monetary contribution intended to fund the preparation or submission of the brief.

**Description of Amicus.** The SDPOA is a mutual benefit corporation organized and doing business as a State of California sanctioned employee organization representing police officers holding the rank of captain and below who are employed by the City of San Diego (“City”).

**SDPOA’s Interest in This Matter.** The case before this Court addresses the Meyers-Milias-Brown Act (“MMBA”), which is comprehensive and beneficial legislation. The SDPOA is directly affected

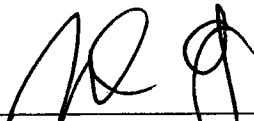
by the City's Proposition B. However, the SDPOA is aware of the efforts by City officials to effectuate and "end run" around the MMBA, and is concerned that such efforts might be successful, thereby substantially weakening the MMBA.

**SDPOA's Position.** The SDPOA has carefully reviewed the briefs already filed in this action, and is familiar with the arguments raised by the parties. The Amicus Curiae Brief attempts not to repeat arguments already made, but briefly presents views on the issues under review. The SDPOA's proposed Amicus Curiae Brief will assist the Court by providing the perspective of several hundreds of public employees who are among the hundreds of thousands of Californians not directly affected by Proposition B, but who will be dramatically harmed if the MMBA is weakened.

DATED: November 28, 2017

Respectfully submitted,

LAW OFFICE OF MICHAEL A.  
CONGER

By:  \_\_\_\_\_  
Michael A. Conger  
Attorney for San Diego  
Police Officers Association

# **BRIEF OF AMICUS CURIAE SDPOA**

## **I.**

### **INTRODUCTION**

The SDPOA agrees with the positions advanced by the Unions in their briefs filed in this Court, and submits this amicus brief to address an issue related to the importance of the MMBA to hundreds of thousands of public servant employees not affected by the City's Proposition B.



## II.

### **THE MMBA IS IMPORTANT LEGISLATION DESIGNED TO FOSTER COMMUNICATION, DISPUTE RESOLUTION AND AGREEMENT BETWEEN LOCAL PUBLIC AGENCIES AND THEIR PUBLIC SERVANT EMPLOYEES.**

Government Code section 3500, subdivision (a), provides, in relevant part:

It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California . . . . This chapter is intended . . . to strengthen merit, civil service and other methods of administering employer- employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

The Legislature's enactment of the MMBA in 1968 was intended to strengthen previous attempts to promote beneficial labor relations in the public sector. (*Glendale City Employees' Ass'n v. City of Glendale* (1975) 15 Cal.3d 328, 335-336 [legislative intent in the 1968 adoption of the MMBA was "[e]pressly intend[ed] . . . to strengthen employer-employee communication".]) "The Legislature designed the [MMBA], moreover, for the purpose of resolving labor disputes." (*Glendale* at p. 336.) "The

MMBA has two stated purposes: (1) to promote full communication between public employers and employees, and (2) to improve personnel management and employer-employee relations. (§ 3500.)” (*Claremont Police Officers Ass’n v. City of Claremont* (2006) 39 Cal.4th 623, 630, quoting *Building Material & Constructions Teamsters’ Union v. Farrell* (1986) 41 Cal.3d 651, 657.)

“The MMBA, applicable to all local government employees, codifies California’s recognition of the right of public employees to collectively bargain with their government employers, and reflects ‘the strong policy in California favoring peaceful resolution of employment disputes . . . .’” (*Vernon Fire Fighters v. City of Vernon* (1980) 167 Cal.App.3d 802, 811, quoting *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 622.) “To effect [its] goals the [MMBA] . . . obligates employers to bargain with employee representatives about matters that fall within the ‘scope of representation.’” (*Claremont Police Officers Association v. City of Claremont, supra*, 39 Cal.4th at p. 630; Gov. Code, §§ 3504.5, 3505.) “The scope of representation . . . include[s] all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment . . . .” (Gov. Code, § 3504.) “The duty to bargain requires the public agency to refrain

from making unilateral changes in employees' wages and working conditions until the employer and employee association have bargained to impasse . . . .” (*City of Fresno v. People ex rel. Fresno Firefighters, IAFF Local 753* (1999) 71 Cal.App.4th 82, 99, quoting *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 537.)

““The MMBA deals with a matter of statewide concern, and its standards may not be undercut by contradictory rules or procedures that would frustrate its purposes.’ [Citation.]” (*County of Los Angeles v. Los Angeles County Employee Relations Commission* (2013) 56 Cal.4th 905, 925.) “[T]he Legislature intended for the [MMBA] to regulate the entire field of labor relations of affected public employees.” (*Dailey v. City of San Diego* (2014) 223 Cal.App.4th 237, 254.)

### III.

#### **THE CITY'S ACTIONS WERE AN END RUN ON THE MMBA**

The SDPOA submits this amicus brief to underscore a critical point—the beneficial purposes of the 48-year-old MMBA will be substantially weakened if this Court were to permit the opinion of the Court of Appeal to go uncorrected. The SDPOA urges this Court to recognize the City's end run around the strong policy embodied in the MMBA. Any other result would substantially weaken very successful and important legislation which has helped keep labor peace in the California public sector for almost one-half of a century.

IV.

CONCLUSION


The SDPOA urges this Court to overturn the Court of Appeal's decision and affirm the PERB Board's decision in *City of San Diego* (2015), PERB Decision No. 2464-M.

DATED: November 28, 2017

Respectfully submitted,

LAW OFFICE OF MICHAEL A.  
CONGER

By: \_\_\_\_\_


  
Michael A. Conger  
Attorney for San Diego  
Police Officers Association

**CERTIFICATE OF WORD COUNT**  
**California Rule of Court 8.204(c)(1)**

I, Michael A. Conger, certify that:

I am counsel for the San Diego Police Officers Association. The preceding Amicus Curiae Brief was produced on a computer. That brief, exclusive of its cover, tables, and this certificate, contains 713 words. In certifying that word count, I have relied on the word count of the Corel WordPerfect X4 computer software used to prepare the brief.

DATED: November 28, 2017

  
\_\_\_\_\_  
Michael A. Conger

## PROOF OF SERVICE

I, PATRICIA B. MESSER declare:

I am and was at the time of the service described below a resident of the State of California, County of San Diego, and at least 18 years old. I am not a party to the above-entitled action. My business address is Law Office of Michael A. Conger, P. O. Box 9374, Rancho Santa Fe, CA 92067.

On November 30, 2017, I served the documents described as:

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(X) **BY ELECTRONIC MAIL** - I caused a copy of said document(s) to be delivered by electronic mail to the addressees pursuant to Code of Civil Procedure §1010.6 on November 29, 2017. My electronic notification address is [messerpatti@aol.com](mailto:messerpatti@aol.com).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 30, 2017, at Rancho Santa Fe, California.

  
PATRICIA B. MESSER