No. S192828

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF LOS ANGELES,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

ENGINEERS AND ARCHITECTS ASSOCIATION,

Petitioner and 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

REPLY BRIEF IN SUPPORT OF PETITION FOR REVIEW

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I

INTRODUCTION

The answer of the City of Los Angeles ("the City") to the Petition for Review mischaracterizes what is at issue in this case. Petitioner Engineers and Architects Association ("EAA") does not challenge the City's authority to declare a fiscal emergency, to enact emergency legislation, or even to enact a balanced budget. Rather, the issue here is whether EAA is *entitled to arbitrate* whether the City's furloughs ordinance violates the parties' pre-existing memoranda of understanding ("MOUs"). (See Petition at p. 1.) Such arbitration would involve no "unlawful delegation" of budgetary or policy making authority because the City already exercised its discretion to enact the furloughs ordinance, a fact the City cannot contest. But that legislative act does not relieve the City of its contractual obligations to its employees, including its obligation to arbitrate.

The City further argues that an interest arbitration analysis should apply to this grievance arbitration case because the arbitration EAA seeks would have the same effect. That is incorrect. Neither the City nor the court of appeal whose decision it defends cogently explains how that is so, given that arbitration of EAA members' grievances would not involve the exercise of municipal authority or bind the City to new terms it did not agree to—the hallmarks of interest arbitration.

The City broadly argues for a "fiscal emergency" exception to the enforceability of MOUs, even though such an exception has no support in law. The Meyers-Milias-Brown Act (California Government Code § 3500 *et seq.*) ("MMBA") has no such exception. The City has no authority to "de-fund" its MOUs, even in fiscal emergencies. And this Court's holding in *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328 ("*Glendale*")–i.e., that MOUs are binding on public employers—has no fiscal emergency exception. Moreover, such an exception would run afoul of the contracts clause in both the federal and state constitutions.

The City minimizes the impact of the court of appeal's decision as tethered to "the particular circumstances in this case" (Answer at p. 16), but the "emergency powers" exception it argues for would apply to all California public employers facing, unfortunately, all-too-common fiscal emergencies. If allowed to stand, the court of appeal's incorrect and broadly-written decision will create great uncertainty in the law regarding the enforceability of MOU provisions any time the employer asserts that the underlying contract term(s) may impact its policymaking power or fiscal authority.

As the U.S. Supreme Court recently held when considering the enforceability of arbitration clauses in a different context: "courts must place arbitration agreements on an equal footing with other contracts, and

enforce them according to their terms." (*AT&T Mobility LLC v. Concepcion* (April 27, 2011) 131 S.Ct. 1740, 1745, internal citations omitted.) This Court should grant review because the court of appeal did not do so here and because it authored an opinion that will deprive thousands of public employees in California of the right to enforce their MOUs in arbitration—or, as *amici* have persuasively argued, the right to any enforcement at all.

II

ARBITRATION OVER THE EFFECT OF THE CITY'S FURLOUGHS ORDINANCE IS NOT AN "UNLAWFUL DELEGATION" BECAUSE IT DOES NOT INVOLVE EXERCISE OF THE CITY'S POLICYMAKING AUTHORITY

The City purports to situate the court of appeal's decision within established law, but although the general principles the City recites are correct, it fundamentally misconstrues their application to this case.[1]

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[1] The City obliquely argues that, under *Lucchesi v. City of San Jose* (1980) 104 Cal.App.3d 323, it could not have entered into an arbitration agreement overriding spending and budget limitations in the City Charter. But, under the MMBA, a city is authorized to enter into binding MOUs with wage and hour provisions, including arbitration provisions. (See Petition at pp. 16-18.) MOUs are thus construed as rendering *subsequent* ordinances (or even charter provisions) that contravene the MOU ineffective as to the union, even if they were enacted pursuant to residual charter powers. (See, e.g., *People ex rel. Seal Beach Police Officers Association v. City of Seal Beach ("City of Seal Beach")* (1984) 36 Cal.3d 591, 602 [invalidating charter amendments]; *International Brotherhood of Electrical Workers v. City of Gridley* (1983) 34 Cal.3d 191 [invalidating resolution].)

A. The Grievances Do Not Seek to "Overturn" City Policy or "Usurp" The City's Fiscal Authority

The City makes numerous arguments why arbitration of EAA members' grievances would "usurp" its authority. (Answer at pp. 22-34.) None are persuasive and all are premised on the City's own mischaracterization of the relief sought. According to the City, "these grievances are asking the arbitrator to overturn the new [furloughs] policy enacted by [the] City Council." (*Id.* at p. 26; see also *ibid.* [arguing the grievances "necessarily require[] an arbitrator to rule on matters external to the MOU provisions, and involve[] issues of municipal authority and policy making"]; see also *id.* at p. 3 ["[i]f these furlough grievances go to arbitration, EAA will ask the arbitrator to usurp and overturn the City Council's fundamental policy choices"].)

The City never cogently explains how an arbitrator interpreting an MOU to determine whether the City's already-enacted ordinance violates the earlier-enacted MOUs' wage and work hours provisions would usurp the City's authority. Nor does it cite *a single example* of the over 400 individual grievances that asks that the City's furloughs *ordinance* be "overturn[ed]." In fact, the overwhelming majority demonstrate that employees seek to arbitrate whether the furloughs imposed on them violated their MOUs (e.g., AA 2:340-370, 375-493, 497-499, 503-508, 512-535)—which they are entitled to do under the MOUs' grievance procedure.

(See, e.g., AA 1:103 [defining a grievance 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"].)[2]

More importantly, regardless of the idiosyncratic arguments individual grievants may have advanced, the nature and the scope of that arbitration is necessarily constrained by the MOUs, which provide that: "The decision of an arbitrator resulting from any arbitration of grievances hereunder *shall not add to, subtract from, or otherwise modify the terms and conditions of this MOU.*" (See, e.g., AA 1:107, italics added.) If, under the terms of the parties' agreement an arbitrator does not have the authority to modify the MOUs, it is unclear how he or she would wield the much greater power to invalidate city ordinances or policies. The arbitrator simply has no power to do what the City alleges, and any arbitration award that purported to do so would be vacated as exceeding the arbitrator's

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[2] To be sure, certain grievance denials attached to EAA's complaint on their face also appear to challenge the City's authority to violate their MOUs. (E.g., AA 3:591-617.) As explained above, however, notwithstanding individual members' arguments, the grievance arbitration process is itself constrained by the terms of the parties' MOUs. Further, the perfunctory grievance denials were all drafted by the City's own management employees and not by the grievants themselves. (See, generally, AA 2:340 – 7:1648.)

jurisdiction. (Code of Civil Proc. § 1286.2; *Taylor v. Crane* (1979) 24 Cal.3d 442, 450.)[3]

B. An "Interest Arbitration" Analysis Is Improper Here Because The Arbitrator Would Not Exercise City Discretion or Bind the City to New Terms

At the outset, EAA agrees with the City that what matters here is not the label attached to the arbitration sought—*i.e.*, "grievance" or "interest" arbitration—but rather the ***substance*** and ***scope*** of what the arbitrator will be called upon to decide. EAA submits, however, that the terms are valuable shorthand for the concepts they encapsulate: grievance arbitration exercises a quasi-judicial function that interprets, applies, and enforces the parties' existing MOU; interest arbitration exercises legislative discretion to *create* the terms that will bind the parties' future relations and conduct, even if they did not agree to such terms. (See *County of Sonoma v. Sup. Ct.* (2009) 173 Cal.App.4th 322, 341-342.)

The City defends the court of appeal's application of interest arbitration principles because, according to its argument, "arbitration of the furlough grievances would be legislative in nature, resembling interest arbitration" since the arbitrator "will be called upon to validate or overturn the City Council's discretionary legislative acts to reduce salary

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[3] The City does not explain why vacatur would be an insufficient remedy other than asserting it would not be an "adequa[te] . . . safeguard." (Answer at p. 33 n.9.)

appropriations . . . in response to a fiscal crisis and to enact a new work rule . . . ." (Answer at pp. 32-33; *id.* at p. 34 [further arguing, "the decision and remedy might require the City . . . to cut items from its budget, or increase taxes. Such decisions are legislative-political in nature, *akin* to those made in interest arbitration proceedings"].)

But even under the City's own formulations, the arbitration EAA seeks does not have the characteristics that would make such arbitration problematic from an unlawful delegation standpoint because: (1) the arbitrator is not deciding *whether* to impose a furloughs ordinance (the City already decided that itself); and (2) he or she will ***not*** *create new contractual terms binding the parties*. Without these hallmarks of interest arbitration, there simply is no unlawful delegation. (See, e.g., AA 1:107 ["The decision of an arbitrator resulting from any arbitration of grievances hereunder shall not add to, subtract from, or otherwise modify the terms and conditions of this MOU"].)

C. The City Does Not Persuasively Distinguish *Taylor*.

The City argues this Court's decision in *Taylor* does not apply here because in that case "the arbitrator's role was confined to the quasi-judicial function of 'applying and interpreting [rules] which the employer ha[d] created or agreed to . . . .'" (Answer at p. 27, quoting *Taylor, supra,* 24 Cal.3d at 453.) But this is exactly the role that the arbitrator will serve

here: applying and interpreting the MOU provisions to which the City agreed.

In fact, courts that meaningfully apply *Taylor* have flatly rejected the City's unlawful delegation argument. In *SEIU v. City of Los Angeles* (1996) 42 Cal.App.4th 1546, 1553-1554, the court dismissed the City's argument that an arbitrator's interpretation of City-enacted legislation constituted an unlawful delegation of municipal authority over employee salaries. (See *id.* at p. 1555.) The court found that the City had already "exercised its initial discretion to fix salaries for all employees by enacting [the legislation]. The only task left to the arbitrator is *to interpret and apply terms which the city council itself has created or agreed to* and which it is capable of making more or less precise." (*Id.*) (internal citation, quotation and brackets omitted.)

The City further asserts that cases, such as *Taylor*, involving the "arbitration of [employee] termination disputes" are irrelevant because this case concerns the City's "ability to legislate in an emergency . . . not the termination or discipline of one employee." (Answer at p. 25.) That

argument misses the mark.[4] This case is fundamentally about the enforceability of a *contractual right to arbitrate* disputes arising from the interpretation of MOUs, which makes cases enforcing MOU arbitration provisions directly on point.

The City further argues it could not have delegated any "general policy making powers of the kind involved here" to an arbitrator absent statutory authorization. (Answer at pp. 29-31.) Although this general proposition of law may be true, it is irrelevant here because this case involves no such delegation. The City *already exercised* the discretion it claims the arbitrator would usurp because it already enacted and implemented the furloughs ordinance. (*Taylor, supra,* 24 Cal.3d at p. 451 n.9 [no unlawful delegation where city manager "did not delegate that discretion but exercised it himself"]; *SEIU, supra,* 42 Cal.App.4th at p. 1555; see also Petition at pp. 23-26.) Arbitral review of the implementation of that ordinance on individual employees to determine whether it violates the wage and work hours provisions of the parties' MOUs in no way

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[4] To the extent the City argues, based on the court of appeal's flawed decision, that the *number* of employee grievances alone transforms the substance of the dispute from grievance to interest arbitration, its argument has no merit. The grievances merely seek a determination of whether the furloughs ordinance violates existing MOU provisions, *i.e.*, application of contract provisions the City previously agreed to. Neither the City nor the court explains how the number of grievances alters the *substance* of the relief sought. It cannot.

delegates or exercises the City's powers. It merely holds the City to promises it made to its employees.

D. Arbitration Will Not Lead to Meddling in The City's Fiscal Affairs

The City insists that the arbitrator would impermissibly meddle in the City's budget, citing *California Teachers Assoc. v. Ingwerson* (1996) 46 Cal.App.4th 860. But that case does not support the City's position. There the court found the employees were not entitled to a writ of mandate compelling the county superintendent of schools to enact a budget without certain salary reductions primarily because the case was moot, but also because the public employees had no contractual right to unreduced salaries. (*Id.* at pp. 873-876.) The prior contract had expired, the parties had reached bargaining impasse, and, at the time the case was filed, they were still awaiting the results of mediation. (See *id.* at pp. 863-864.) In fact, the collective bargaining agreement there allowed the public employer "to unilaterally implement its proposed [salary] freeze . . . and a 5.3% salary rollback" if the parties remained at impasse after mediation. (*Id.* at p. 864.)

But this case presents a fundamentally distinct situation. EAA members' grievances are not asking that the City or any of its departments be directed to enact pre-furloughs budgets. Rather, they seek adjudication by an arbitrator that, under the terms of the applicable MOUs, they are

entitled to the wage and work hours provisions the parties previously agreed to.

III

THE LAW DOES NOT SUPPORT A "FISCAL EMERGENCY" EXCEPTION TO THE ENFORCEABILITY OF MOUS

The City vigorously argues that "the emergency provisions of the MMBA, the ERO, and the Charter . . . provide authority for the City Council to reduce salary appropriations in response to an unprecedented fiscal crises, despite previously approved MOU provisions." (Answer at p. 24.) That argument goes to the merits of the dispute between the parties that is properly the subject of arbitration. However, the City's argument that it has the authority to break MOUs with its employees whenever it declares a fiscal crisis holds no water.

A. The MMBA Has No "Fiscal Emergency" Exception

The City acknowledges it is "uncontroverted" that the MMBA applies "to this situation" but maintains that no "City practice, ordinance or MOU provision conflicts with . . . the MMBA." (Answer at p. 18.) It relies on Government Code section 3504.5 (and Section 4.850(b) of the Los Angeles Administrative Code which tracks this language) as substantive authority for enacting its furloughs ordinance. (Answer at pp. 18, 21.) The

City misapplies those laws. Section 3504.5[5] merely *tolls the MMBA's notice and meet and confer requirements* and is not a grant of substantive authority to enact legislation contravening existing MOUs.

As this Court explained with reference to Government Code section 3516.5[6], a directly parallel provision in the Ralph C. Dills Act [7], "the statute's plain language makes it clear that the provision was not intended to, and does not, constitute a source of *substantive* authority for the [public employer] to take any particular . . . action regarding the terms and conditions of employment." (See *Professional Engineers in Cal.*

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[5] Section 3504.5, subd. (b), provides:

> In cases of emergency when the governing body or the designated boards and commissions determine that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body or the boards and commissions shall provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.

[6] Section 3516.5, in relevant part, provides:

> In cases of emergency when the employer determines that a law, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the administrative officials or their delegated representatives as may be properly designated by law shall provide such notice and opportunity to meet and confer in good faith at the earliest practical time following the adoption of such law, rule, resolution, or regulation.

[7] Just as the MMBA governs labor relations between cities and counties and unions representing their employees, the Ralph C. Dills Act ("Dills Act"), Government Code section 3512 *et seq.*, governs labor relations between the State of California and labor associations representing its employees.

Government v. Schwarzenegger (2010) 50 Cal.4th 989, 1032, italics original.) This Court rejected the state employer's argument that the statute itself provided the authority to furlough employees covered by an MOU, even though furloughs were implemented in a fiscal emergency, holding that such a provision "cannot properly be interpreted as providing . . . [the] authority to institute the mandatory unpaid furlough program . . . ." (*Id.* at p. 1033.)

The City offers no reason why this Court should not reach the same conclusion here, especially given the similarity between the notice provisions in the Dills Act and the MMBA. It argues that this Court has previously "approv[ed] actions taken pursuant to the MMBA emergency . . . provisions" (Answer at p. 22), citing *San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 669. But at most, that case addressed "municipal declarations of emergency," holding only that such declarations themselves, rather than legislation enacted pursuant to them, are reviewed "under an abuse of discretion standard." (*Id.*)

B. The City Has No Authority to "De-Fund" MOUs

The City points to no specific Charter or Administrative Code provision authorizing it to breach the MOUs' arbitration or wage and work hours provisions. There is none. Instead, the City cobbles together its various charter powers to set budgets, employee salaries, and emergency

proclamations to fill that gap. (Answer at pp. 5, 35, 40). But none of those powers are at issue here.

The City further argues that the MOUs "did not foreclose further exercise of its legislative discretion in emergency situations" because "under the City Charter, the City Council retains *ultimate control* over salaries and the expenditure of public funds through the annual budget process." (Answer at pp. 34-35, italics added, citing Slip Op. at p. 22 and *Professional Engineers, supra,* 50 Cal.4th at p. 1036.) The analogy to *Professional Engineers* is invalid because the City's powers over MOU funding are ***more limited*** than those of the state Legislature.

While it is true that the City generally has the authority to set its own budget on an annual basis, unlike the Legislature it has *no authority* to refuse to "fully fund" MOUs in its annual appropriations. As this Court explained in *Professional Engineers*, Government Code section 3517.7[8] allowed the state Legislature to de-fund the MOUs in that case. "By reducing the appropriation for employee compensation, the Legislature no longer had 'fully funded' the provisions of the MOU's supporting the

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[8] Section 3517.7 provides, in relevant part:

> If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature in the annual Budget Act.

higher level of pay that previously had been approved, and thus, under sections 3517.6 and 3517.7, the provisions of the applicable MOU's that supported the higher level of pay . . . prior to the implementation of the furloughs no longer were effective." (50 Cal.4th at pp. 1043-1044.)

The City cites no equivalent to Government Code section 3517.7 under the MMBA, City Charter, or Administrative Code. Nor does the court of appeal's opinion it defends.

C. *Glendale's* Holding That MOUs Are Binding On Public Employers is Not Subject to a "Fiscal Emergency" Exception

The City argues this Court's holding in *Glendale* that MOUs are binding on public employers does not apply when such employer has a "legally cognizable reason" to ignore the MOU, such as an inability "to appropriate the funds necessary to comply with the agreement." (Answer at p. 23, citing *CTA v. Parlier Unif. School Dist.* (1984) 157 Cal.App.3d 174, 184.) *Parlier*, which involved teachers asking the court to declare invalid a portion of their MOU that was unlawful *ab initio*, does not so hold; nor does its reasoning support the City's argument.

Moreover, the City's argument ignores the spirit and reasoning of *Glendale*. There, this Court not only affirmed the binding nature of an MOU, but it expressly held that "mandamus lies to enforce [a] memorandum of understanding." (*Glendale, supra,* 15 Cal.3d at p. 343-345 ["the city entered into an understanding which . . . became a valid and

binding agreement upon approval by . . . the council. That agreement . . . is definitive, and admits of no discretion.") Compliance with the MOUs' arbitration and wage and work hours provisions contemplates no exception for fiscal emergencies.

The City further argues "the MMBA's emergency provisions grant the City the authority to act first, even in the face of arguably contrary contract language." (Answer at p. 24.) But the city's ability "to act first" is not at issue here. What is at issue is its intractable position that once it acts it has no responsibility to abide by its contract with its employees, including arbitration over whether the City's acts breached the parties' MOUs. And that argument has no support at law.

D. A "Fiscal Emergency" Exception to the MOUs Would Violate the State and Federal Constitutions

The City's argument is also of dubious constitutional validity. This Court has not hesitated to strike down duly enacted legislation that "impairs the obligation of contracts in violation of article 1, section 10, of the United States Constitution and article I, section 9, of the California Constitution." (*Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296 [statute prohibiting payment of cost of living increase due under MOUs unconstitutionally impaired contract rights].) That holds true even when the legislation is enacted in response to a fiscal crisis, such as the one facing California municipalities

after the enactment of Proposition 13, which "sharply reduced" tax revenues. (*Id.*)

Public employers in financial straits cannot use a "fiscal emergency" exception to justify unilateral re-writing of existing contractual obligations to their employees, because such employees' contractual rights would be unconstitutionally impaired.

IV

THE GRIEVANCES CAN BE CONSOLIDATED

The City argues the grievances cannot be consolidated, relying on a court of appeal footnote purporting to find that EAA could not proceed with consolidated arbitration because it would require the assent of employees who filed grievances and/or because EAA had previously declined to so proceed. (See Slip Op. at pp. 9-10 n. 8.) EAA submits this finding has no legal basis or preclusive effect. The court's finding is dicta unnecessary to its holding. More importantly, the court of appeal cites no

legal basis for its conclusion.[9] Regardless, if this Court allows arbitration to proceed, EAA will agree to consolidation.

V

THE MOUs AND THE CITY'S ADMINISTRATIVE CODE CONFIRM GRIEVANCES ARE NOT LIMITED TO DEPARTMENTAL DISPUTES

The City asserts, for the first time, that the MOUs' "grievance provisions are not available to employees challenging decisions taken by City officials" but rather are limited to situations where "an employee of a particular department . . . challeng[es] an action taken by his or her employing department." (Answer at pp. 13, 19-21.) In support it relies on the court of appeal's limited and incorrect definition of "grievance." (See Slip Op. at p. 14 n.10 [limiting grievances to challenges to "departmental rules and regulations"].)

That incomplete designation inexplicably ignores the other half of the definition of "grievance," as defined by the parties' MOUs and even the City's own Administrative Code. Both define a grievance in substantially similar terms: *"any dispute concerning the interpretation or*

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[9] Judicial estoppel does not apply because EAA did not obtain a favorable judicial relief on the basis of its past position, let alone relief that prejudiced the City. "Under the doctrine [of judicial estoppel], a party who has taken a particular position in litigation [is] . . . estopped from taking an inconsistent position to the detriment of the other party . . . . [T]he decisions which have invoked the doctrine do so when the party sought to be estopped successfully obtained some judicial relief based" on its previous position. (*Law Offices of Ian Herzog v. Law Offices of Joseph M. Fredrics* (1998) 61 Cal.App.4th 672, 678-679.)

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; accord Administrative Code section 4.801 [Attachment 2 to Petition for Review].) EAA members' grievances fall squarely within that definition.[10]

VI

THE COURT OF APPEAL'S VAGUE FORMULATION GIVES NO GUIDANCE AND THIS COURT SHOULD STEP IN TO PROVIDE IT

The City, not surprisingly, attempts to minimize the impact of the court of appeal's decision by tethering it to the facts of this case. It makes essentially two points: (1) the "decision does not prohibit employees from grieving the *usual disputes* with their employing department;" and (2) the court's holding is based on the "unique emergency circumstances of this case" and "a very narrow set of facts." (Answer at pp. 38-39) Neither of these provides necessary limiting principles to the court of appeal's over-broad decision and holding.

First, in this case, arbitration of grievances is not limited to the "usual disputes" arising within a department, but rather encompasses adjudication of disputes arising from the interpretation and application of

[10] The City also cites a number of inapposite cases (Petition for Review at pp. 20-21) denying arbitration of cross-department grievances. But EAA members filed their grievances seeking to arbitrate the effect of furloughs *within* their own departments.

collective bargaining agreements. (See Part V, *supra*.) Under the court of appeal's broad formulation, whenever arbitration may "impact[] policy matters" it is a prohibited "unlawful delegation." There is no limiting principle, let alone acknowledgement that, broadly construed, arbitration of grievances always impact policy matters. The court of appeal makes no exception, even for the "usual disputes."

It is unfortunate that, given the current economic climate, the "unique emergency circumstances of this case" are not that unique and are repeated throughout California. For almost 40 years, this Court has affirmed that public employees are entitled to rely on the terms of their collective bargaining agreements, and that the promises made to them by their employers are binding and enforceable. The court of appeal's decision here works a broad and unacknowledged exception to those principles either when discretionary policy-making powers are "impacted" or, in the City's formulation, in a fiscal crisis. Both are overbroad formulations subject to misuse by financially-strapped public employers lacking a clear standard; that lack of clear standard similarly applies to trial courts and courts of appeal who will wrestle with application of the court of appeal's decision.

This Court should step in to correct that decision and provide much needed guidance.

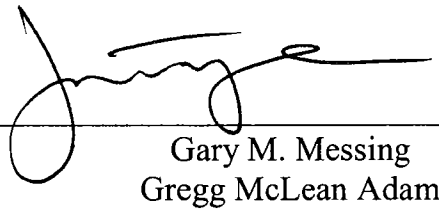
VII

CONCLUSION

For all these reasons, this Court should grant the Petition for Review.

Dated: June 6, 2011

CARROLL, BURDICK & McDONOUGH LLP

By 

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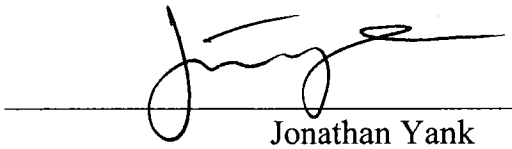
WORD COUNT CERTIFICATION

Pursuant to Rule 8.504(d) of the California Rules of Court, I certify that the attached brief contains 4,536 words, as determined by the computer program used to prepare the brief.

Dated: June 6, 2011



Jonathan Yank

City of Los Angeles v. Superior Court of Los Angeles (Engineers & Architects Association, Real Party in Interest), California Supreme Court, No. S192828

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 June 6, 2011, I served the enclosed:

REPLY IN SUPPORT OF PETITION FOR REVIEW

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.

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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 6, 2011, at San Francisco, California.

Janine Oliker