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SUPREME COURT
FILED

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Deputy

IN THE SUPREME COURT OF CALIFORNIA

PARATRANSIT, INC.
Respondent,

V.

UNEMPLOYEMENT INSURANCE BOARD
Respondent,

CRAIG MEDEIROS
Petitioner and Real Party in Interest and Appellant.

After a decision of the Court of Appeal, Third Appellate District
Case No. C063863

Appeal from a Judgment of the Superior Court,
County of Sacramento
Hon. Timothy M. Frawley, Presiding
Case No. 34-2009-80000249

PETITION FOR REVIEW

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ISSUES PRESENTED

1.May an employee be found to have committed misconduct for purposes of Unemployment Insurance benefits by insubordination without a finding that the employer's order is lawful and reasonable?

2. Can an employer's order to sign a disciplinary memorandum stating signature was "as to receipt" be lawful and reasonable when the collective bargaining agreement required that disciplinary memoranda state signing is "only acknowledging receipt of said notice and is not admitting to any fault or to the truth of any statements in the notice" and when the employee expresses concern that signing would be an admission?

3. May an employee be found to have committed misconduct for purposes of Unemployment Insurance benefits without a finding that the employee's conduct harmed the employer's interest?

4. May good faith error in judgment for purposes of eligibility for Unemployment Insurance benefits be limited to only those situations where an employee "in good faith fails to recognize the employer's directive is reasonable and lawful or otherwise reasonably believes he is not required to comply . . ." instead of considering all of the circumstances from the employee's perspective?

WHY REVIEW SHOULD BE GRANTED

The appellate court's decision in this case is published and includes a dissent. (*Paratransit, Inc v. Unemployment Insurance Appeals Board* (2012) 206 Cal.App.4th 1319, 142 Cal.Rptr.3d 351.) Review should be granted to "secure uniformity of decision or to settle an important issue of law." (Cal. Rule Court 8.500(b)(1).)

For almost 100 years, the first question in any insubordination case, including cases involving eligibility for Unemployment Insurance benefits, has been whether the employer's order is lawful and reasonable, including whether the order complies with the applicable employment contract. (*See May v. New York Motion Picture Corp.* (1920) 45 Cal.App.396; *see also Moosa v. State Personnel Board* (2002) 102 Cal.App.4th 1379, 1387 [citing *May* and calling rule a "general principle of employment law in California."]) This rule has been codified in a Unemployment Insurance regulation. (22 Cal.Code Regs. § 1256-36(b)(1).)

However, in this case, the published majority opinion dismisses this well-settled analysis as "a red herring" without a compelling and reasoned argument. (*Paratransit, supra,* 142 Cal.Rptr.3d at p.356.) The decision below announces a new rule that contravenes precedent, ignores regulatory authority, and changes the legal standard in Unemployment Insurance cases in a way that is prejudicial to employees. Instead of asking whether the employer's order to sign a disciplinary memorandum that was non-compliant with the employee's collective bargaining agreement was lawful and reasonable, as the court was required to do, the majority opinion instead posed its own hypothetical question and asked whether Petitioner Craig Medeiros would have signed any document the employer might have presented. The majority opinion's analysis needlessly creates uncertainty by discarding almost 100 years of unbroken precedent.

The majority opinion also raises an important issue of law by finding that a document that states "signature as to receipt," combined with employer statements that signing is not an admission, cannot reasonably be considered an admission. (*Paratransit,*

supra,142 Cal.Rptr.3d at p.357.) The dissenting opinion validly states that "signature as to receipt" does not rule out an adverse inference. (*Id.* at p.362 [dis. opn . of Blease, J.]) The dissent continues and answers the question evaded by the majority's analysis that the failure of the disciplinary memorandum to state signing was not an admission violated the governing collective bargaining agreement. Review should be granted to address the related issues of whether "signature as to receipt" reasonably negates an inference of admission and whether the failure to include the express language that signing is not an admission violates a collective bargaining agreement that requires such language.

In addition, the majority opinion creates uncertainty by finding misconduct for purposes of Unemployment Insurance benefits without finding that the employee's conduct harms the employer's interest. In so doing, the majority substitutes its own judgment for that of the legislature and attempts to overturn statute by judicial decision. (Unemp. Ins. Code § 1256; 22 Cal. Code Regs. § 1256-30(b).) The dissent correctly finds no misconduct because the employee's conduct did not harm the employers' interest. (*Paratransit, supra*, 142 Cal.Rptr.3d at p.361-62 [dis.opn. of Blease, J.]) The law is well established that the employee's conduct must harm the employer's interest to rise to the level that the aggrieved employee, in addition to being unemployed, commits misconduct that denies eligibility for Unemployment Insurance. (Unemp. Ins. Code § 1256; *Maywood Glass Co. v. Stewart* (1959) 170 Cal.App.2d 719, 724.) Review should be granted because the majority opinion creates uncertainty in the analysis of misconduct for purposes of Unemployment Insurance benefits, an issue that directly impacts over a million Californians who receive Unemployment Insurance.

Finally, the majority opinion is nconsistent with established law regarding the circumstances when an employee's actions are a good faith error in judgment for purposes of Unemployment Insurance benefits. The majority opinion limits good faith error in judgment to when the employee "fails to recognize the employer's directive is reasonable and lawful or otherwise reasonably believes he is not required to comply." (*Paratransit, supra*, 142 Cal.Rptr.3d at p.357.) This limitation creates uncertainty because it is directly at odds with longstanding case law the good faith error in judgment cannot be arbitrarily limited and must " . . . take account of real circumstances, substantial reasons, objective conditions, palpable forces that operate to produce correlative results, adequate excuses that will bear the test of reason, just grounds for action, and always the element of good faith." (*Amador v. Unemployment Insurance Appeals Board* (1984) 35 Cal.3d 671, 679 [citations omitted].) The established rule is essential in taking account of the realities of the workplace and interests of subjectively innocent and well intentioned employees who must nonetheless bear the brunt of the employer's judgment.

BACKGROUND

Petitioner Craig Medeiros was employed by Paratransit as a vehicle operator for approximately six years beginning in March 2002. (*Paratransit, supra*, 142 Cal. Rptr.3d at p.352.) As a condition of his employment, Mr. Medeiros was required to join a designated union. (*Ibid.*) He joined the union and his employment was governed by a collective bargaining agreement. Pursuant to the collective bargaining agreement, Mr. Medeiros was required to sign all disciplinary notices when they were presented to him "provided that the notice states by signing, the Vehicle Operator is only

acknowledging receipt of said notice and is not admitting to any fault or to the truth of any statements in the notice." (*Id.* at p.353.)

On May 2, 2008 after he completed his shift, Mr. Medeiros was called into a meeting with Paratransit's human resources manager and director of administrative services. (*Paratransit, supra*, 142 Cal.Rptr.3d at p.353.) Mr. Medeiros was told he was being disciplined based on a complaint made against him be a passenger. (*Ibid.*) During the meeting Mr. Medeiros stated he disagreed with the allegations against him. (*Ibid.*) He asked that a union representative be present at the meeting. (*Ibid.*) He also stated that he was tired after working a full day. (*Ibid.*) In addition, he said he was confused because the Paratransit representatives discussed an incident about his hiring that occurred six years previous. (*Ibid.*)

The Paratransit representatives responded that Mr. Medeiros was not entitled to union representation. (*Paratransit, supra*, 142 Cal.Rtpr.3d at p.353.) The Paratransit representatives presented Mr. Medeiros with a memorandum stating he was being suspended for two days without pay because of the passenger's allegations. (*Ibid.*) Below the signature line, the disciplinary memorandum stated "Employee Signature as to Receipt." (*Ibid.*)

Mr. Medeiros responded that he did not want to sign anything without a union representative present. (*Paratransit, supra*, 142 Cal.Rptr. at p.353.) He stated that he would not sign the disciplinary memorandum because he was concerned his signature could be an admission of the truth of the allegations. (CT 00030 [Paratransit representative's description of meeting]; 00053; CT 473 [trial court finding].) Mr. Medeiros stated the union president advised him not to sign documents that could lead to discipline without a union

representative present. (*Paratransit, supra*, at p.353.) Mr. Medeiros was also concerned that signing would mean he could not obtain union representation because he understood that other union members had been denied representation on that basis. (*See* CT 00056-00059.)

In 2004, Mr. Medeiros had been given a disciplinary memorandum that the agreed to sign. (*Paratransit, supra*, 142 Cal.Rptr.3d at p.353.) Unlike the 2008 memorandum, the 2004 memorandum stated "Employee Signature as to receipt **only**)." (*Ibid.* [emphasis added].)

During the May 2, 2008 meeting, the Paratransit representatives stated Mr. Medeiros was required to sign the disciplinary memorandum and that he would be fired if he did not sign the disciplinary memorandum. (*Paratransit, supra*, 142 Cal.Rptr.3d at p.353.) Despite the fact that the disciplinary memorandum did not state that signing was not an admission as required by the collective bargaining agreement, the Paratransit representatives stated that signing was not an admission of the allegations in the memorandum. (*Ibid.*) Mr. Medeiros said he would not sign the disciplinary memorandum until he consulted with the union and he left the meeting. (*Id.* at p.354; CT 53 [Mr. Medeiros' testimony that ["[s]o I'm not gonna sign this **as of now** . . . until I get the union representation. . . . "][emphasis added].) As a result of his failure to immediately sign the disciplinary memorandum that was presented to him, Paratransit terminated his employment. (*Paratransit, supra*, at p.354.)

Upon termination of his employment, Mr. Medeiros applied for unemployment benefits with the Employment Development Department ("EDD"), which denied his application. (*Paratransit,*

supra, 142 Cal.Rptr.3d at p.354.) Mr. Medeiros appealed and the Administrative Law Judge affirmed EDD's decision. (*Ibid.*) Mr. Medeiros then appealed to the California Unemployment Insurance Appeals Board ("CUIAB"), which overturned the Administrative Law Judge's decision and found Mr. Medeiros was discharged for reasons other than misconduct and was not disqualified for benefits. (*Ibid.*) Paratransit then filed a Petition for Administrative Mandamus that was granted by the trial court. (*Ibid.*)

On May 31, 2012, the Third District Court of Court of Appeal, over a dissent, issued a Decision affirming the lower court decision granting Paratransit's Petition for Writ of Administrative Mandate. On June 14, 2012, the Third District ordered its decision published. A copy of the Third District decision and dissent is attached as Exhibit 1. A copy of the Third District's publication order is attached as Exhibit 2.

The Third District majority opinion found that the question of whether Paratransit's order to sign the disciplinary memorandum was lawful and reasonable, that is, whether it violated the collective bargaining agreement, "is a red herring" and, regardless of the contents of the memorandum, Mr. Medeiros violated a duty to the employer based on the finding that he would not have signed any document that might have been presented by the employer. (*Paratransit*, *supra* at p.356.) The majority opinion continued that the demand for him to immediately sign the memorandum was reasonable because the memorandum stated "signature as to receipt" and the Paratransit representatives stated signing was not an admission. (*Id.* at p.357.) The majority opinion did not address whether the failure to sign the memorandum harmed the employer's interest.

The majority opinion also found Mr. Medeiros' failure to immediately sign the memorandum was not a good faith error in judgment. The majority stated that the standard for good faith error in judgment is when an employee "in good faith fails to recognize the employer's directive is reasonable and lawful or otherwise reasonably believes he is not required to comply . . . ." (*Paratransit, supra*, 142 Cal.Rptr.3d at p.357.) Based on that standard, the majority opinion found that Mr. Medeiros' failure to immediately sign the memorandum was not a good faith error in judgment.

The dissenting opinion found that the Mr. Medeiros' failure to immediately sign the disciplinary memorandum was not misconduct because it did not impact the employer's interest. (*Paratransit, supra*, 142 Cal.App.3d at pp.361-62 [dis.opn. of Blease, J.]) The dissenting opinion also found that Mr. Medeiros was not required to sign the disciplinary memorandum because it did not comply with the collective bargaining agreement requirement that he was "acknowledging receipt of said notice and is not admitting to any fault or to the truth of any statement in the notice" and the statement "Employee Signature as to Receipt" did not necessarily negate an adverse inference. (*Id.* at p.362 [dis. opn. of Blease, J.])

Mr. Medeiros filed at petition for rehearing on June 29, 2012. The appellate court denied the petition on July 2, 2012. A copy of the court's order denying rehearing is attached as Exhibit 3.

LEGAL DISCUSSION

I. THIS COURT SHOULD GRANT REVIEW TO SECURE UNIFORMITY OF DECISION THAT A FINDING OF EMPLOYEE MISCONDUCT FOR INSUBORDINATION FIRST REQUIRES A FINDING THAT THE EMPLOYER'S ORDER WAS LAWFUL AND REASONABLE.

The majority opinion disregards a century of established law that the first question in any insubordination case is whether the order given to the employer is lawful and reasonable, and no insubordination occurs if the order is not lawful and reasonable. Until this case, this rule has been well established in Unemployment Insurance cases. The regulation governing unemployment insurance eligibility in insubordination cases, 22 Cal. Code Regs. Section 1256-36, states an employee is insubordinate if the employee "Refuses, without justification, to comply with the **lawful and reasonable** orders of the employer." (22 Cal. Code Regs. § 1256-36(b)(1) [emphasis added].) In both *Thornton v. Department of Human Resources Development* (1973) 32 Cal.App.3d 180, 185 and *Lacy v. California Unemployment Insurance Appeals Board* (1971) 17 Cal.App.3d 1128, 1132, in deciding whether an allegation of insubordination constituted misconduct, courts relied on Labor Code Section 2856 and determined that insubordination, and therefore misconduct, did not occur, if the employer's order imposed a new and unreasonable burden on the employee.

The CUIAB, to which courts give deference, echoes this rule: "The duty of an employee is to obey the employer's lawful and reasonable orders within the scope of the contract of employment, but not to "obey further . . . than is consistent with law." (*Matter of Anderson* (1968) P-B-3 at p.6; *see Pacific Legal Foundation v. California Unemployment Insurance Appeals Board* (1981) 29

Cal.3d 101, 111 [CUIAB view of statute or regulation it interprets is entitled to great weight]; *see also Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11-12 [administrative interpretive decisions are entitled to deference].)

The law in the related area of wrongful termination for insubordination is the same. For wrongful termination purposes, "Insubordination can be predicated only upon a refusal to obey some order which a superior officer is entitled to give and entitled to have obeyed." (*Pasadena Unified School Dist. v. Commission of Professional Competence* (1977) 20 Cal.3d 309, 314 n.7; *Parrish v. Civil Service Commission* (1967) 66 Cal.2d 260, 264 [citations omitted].) When there is an employment contract, an employee has a duty to obey all reasonable orders of the employer that are "not inconsistent with the contract." (*Mason v. Lyl Productions* (1968) 69 Cal.2d 79, 84; *May v. New York Motion Picture Corp.* (1920) 45 Cal.App. 396 (1920).) The Third District Court of Appeal, the same court that decided this case, reiterated this rule in the context of whether an order violated the terms of a union contract. (*Moosa v. State Personnel Board* (2002) 102 Cal.App.4th 1379, 1387.)

Instead of following this well established law that the first question in an insubordination case is whether the order is lawful and reasonable, the majority opinion calls the question whether the order at issue was lawful and reasonable, which in this case was whether the order complied with the governing union collective bargaining agreement, "a red herring." (*Paratransit, supra*, 142 Cal.Rptr.3d at p.356.) Instead, the majority opinion asked whether Mr. Medeiros would have signed any document presented to him. (*Id.* at p.356.) This hypothetical first question of the majority's own invention pertaining to Mr. Medeiros' subjective intent regarding

whether he would have signed any document given to him by his employer is contrary to nearly 100 years of established law. In so doing, the majority opinion creates substantial uncertainty in the analysis of insubordination cases more widely, not just in Unemployment Insurance cases.

Following its legal analysis, the majority opinion finds ". . . there is no reason to believe Claimant would have signed the document even if it had been in a form more in line with the requirements of the CBA." (*Paratransit, supra*, 142 Cal.Rptr.3d at p.356.) This method of analysis is unworkable because it requires speculating as to hypothetical demands that might have been made upon an employee, but were not made. The majority opinion cites no authority for the novel proposition that it can decide a case based on a hypothetical set of facts that had not been addressed in the proceedings below. This speculation is improper. Cases should be decided based on the facts and record presented. The majority fashions a completely untenable standard for future insubordination cases.

Moreover, under the analysis established prior to this case, Mr. Medeiros' reasons for not signing the document his employer presented to him are only relevant after Paratransit proves that the order to sign was lawful and reasonable. As the California Supreme Court explained in *Amador v. Unemployment Insurance Appeals Board* (1984) 35 Cal.3d 671, 680-81: " . . . once the employer has proven that the worker willfully refused a reasonable order, the worker has an opportunity to show that her refusal was for good cause." (*See also Rabago v. Unemployment Insurance Appeals Board* (1978) 84 Cal.App.3d 200, 209 [reason for disobeying employer order goes to good cause].) By intentionally omitting the

first step in the analysis of whether misconduct occurs due to insubordination, the majority creates uncertainty that justifies Supreme Court review.

II. THE COURT SHOULD GRANT REVIEW TO SETTLE IMPORTANT QUESTIONS OF LAW REGARDING THE EFFECT OF SIGNING A DOCUMENT "AS TO RECEIPT"

A. REQUIRING SIGNING A DOCUMENT "AS TO RECEIPT" VIOLATES A COLLECTIVE BARGAINING AGREEMENT MANDATING THE DOCUMENT STATE THAT SIGNING IS NOT AN ADMISSION.

Throughout this case, Mr. Medeiros has argued that he did not have a duty to sign Paratransit's disciplinary memorandum because it violated the applicable collective bargaining agreement because it did not expressly state signing was not an admission while the governing collective bargaining agreement required such language. As explained in Part I, *supra*, the majority opinion evaded this question.

The dissent answered this question and found that the disciplinary memorandum violated the collective bargaining agreement because it did not expressly state that signing was not an admission. (*Paratransit*, *supra*, 142 Cal.Rptr. 3d at p.362 [dis. opn. of Blease, J.]) The dissent conforms to the Third District case, *Moosa v. State Personnel Board* (2002) 102 Cal.App.4th 1379, which found that employment termination based on a demand that violated a governing collective bargaining agreement was improper. The Supreme Court should resolve this important question of whether an order that violates a collective bargaining agreement can be a lawful and reasonable order. This is a question that affects

every union employee in California and it was improperly ignored in the majority opinion.

B. REFUSAL TO IMMEDIATELY SIGN A DOCUMENT PRESENTED BY AN EMPLOYER IS REASONABLE WHEN THE EMPLOYEE EXPRESSES CONCERN THAT SIGNING IS AN ADMISSION.

The majority ruled on the related question of whether the demand to sign the disciplinary memorandum, without regard to the collective bargaining agreement, was reasonable, and found that the demand for Mr. Medeiros to sign the disciplinary memorandum was reasonable because it stated under the signature line "employee signature as to receipt" and the employer stated signing would not be an admission. (*Paratransit, Inc., supra*, 142 Cal. Rptr.3d at p.357.) The majority opinion cited no authority to support this conclusion which defies logic and ignores that real world tensions that arise in the workplace. The dissent correctly found that the language "signature as to receipt" did not rule out that signing could be an admission. (*Id.* at p.362 [dis. opn. of Blease, J.])

The question of what language in a document can reasonably negate that signing in an admission is important both in employment law and in other areas, such as contract law generally, where documents are routinely signed. Prior case law and common sense support the dissenting Justice's well reasoned position that signing "as to receipt" may not negate an admission. "An admission is a statement made by a party to the proceeding suggesting an inference as to any fact in dispute or relevant to any such fact . . . . " (*Legg v. United Beneficial Life Ins. Co.* (1951) 103 Cal.App.2d 228, 229.) "The failure to deny the truth of a statement constitutes an admission

by silence." (*Nungaray v. Pleasant Valley Lima Bean Growers & Warehouse Ass'n* (1956) 142 Cal.App.2d 653, 666.) The notation of "signature as to receipt" is not on face a denial of the truth of the statements contained in the document.

The majority opinion also states the employer's assurance that signing would not be an admission should have "dispelled any concern" that signing would be an admission. (*Paratransit, supra* at p. 357.) Essentially, the majority states that as a matter of law, an employee must always believe whatever an employer says. One need not subscribe to the opposite belief in order to have a healthy skepticism of an employer's motives and interests in situations where an actual dispute has arisen with an employer. Nor is it an unacceptable mark of disloyalty for an employee to harbor an act in accordance with such skepticism, as Mr. Medeiros did by stating he would not sign the document until he consulted with a union representative. (CT 53.)

Moreover, in this case, where a collective bargaining agreement required that a disciplinary memorandum state that signing is not an admission, the fact that the disciplinary memorandum did not contain the no admission language could lead to the inference that signing is an admission. In addition, the prior disciplinary memorandum that Mr. Medeiros was given in 2004 stated "Employee Signature (as to receipt **only**)" while this disciplinary memorandum did not state as to receipt only. (*Id.* at p.353 [emphasis added].) The omission of the word "only" from the 2008 disciplinary memorandum further supports the signing it could have been an admission.

Furthermore, the claim that Mr. Medeiros was required to accept the employer's assurance that signing was not an admission is

problematic because the employer's assurance could not apply to third parties. The allegations against Mr. Medeiros involved a third party. (*Paratransit, supra*, 142 Cal.Rptr.3d at p.353.) The allegations were serious enough to give rise to potential civil liability from the third party or even criminal liability. The employer's assurances could only apply to how the employer might proceed, and not how third parties might proceed. The majority opinion raises important legal questions about the nature of an admission and the circumstances surrounding admissions. The Supreme Court should accept review to address these important issues about when signing a document can be an admission which regularly arise in a wide range of cases.

III. THE COURT SHOULD GRANT REVIEW TO SECURE UNIFORMITY OF DECISION REGARDING WHETHER THE EMPLOYER MUST PROVE INJURY TO ITS INTEREST IN ORDER TO PROVE MISCONDUCT FOR PURPOSES OF UNEMPLOYMENT INSURANCE BENEFITS.

For purposes of eligibility for Unemployment Insurance benefits, misconduct can only occur if the employee breaches a duty owed to the employer and the breach " . . . injures or tends to injure the employer's interest." (Unemp. Ins. Code § 1256; 22 Cal.Code Regs. § 1256-30(b); *Maywood Glass Co. v. Stewart* (1959) 170 Cal.App.2d 719, 724.) Established law prior to this case was that the employer had the burden of proof to show injury to its interest. (*Perales v. Department of Human Resources Development* (1973) 32 Cal.App.3d 332, 340-41.) However, the majority opinion says nothing about this issue, despite the fact that the legislature has required such a showing and the employer presented no evidence of injury to its interest from Mr. Medeiros not immediately signing the memorandum. The dissent found that there was no injury to the

employer's interest from Mr. Medeiros' actions. (*Paratransit, supra*, 142 Cal.Rptr.3d at pp.361-62 [dis. opn. of Blease, J.])

The majority opinion's failure to analyze injury to the employer as an element of misconduct creates uncertainty regarding the proper analysis of Unemployment Insurance cases. Contrary to the methodology used by the majority opinion, multiple courts have held, in conformity with the unequivocal intent of the legislature, that in Unemployment Insurance cases where an employee has disobeyed an employer order that no misconduct occurs absent proof of harm to the employer's interest. (*See e.g. Steinberg v. Unemployment Insurance Appeals Board* (1978) 87 Cal.App.3d 582, 587; *Agnone v. Hansen* (1974) 41 Cal.App.3d 524, 529.) The Supreme Court should accept review to secure uniformity in this area.

IV. THE COURT SHOULD GRANT REVIEW TO SECURE UNIFORMITY OF DECISION REGARDING THE STANDARD FOR GOOD FAITH ERROR IN JUDGMENT FOR PURPOSES OF ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS.

The majority opinion defines good faith error in judgment in the context of this insubordination case as when an employee "in good faith fails to recognize the employer's directive is reasonable and lawful or otherwise reasonably believes he is not required to comply" there might be a good faith error in judgment. (*Paratransit, supra*, 142 Cal. Rptr.3d at p.357.) This is a much narrower standard for good faith error in judgment than the governing case law mandates.

The well-established standard for good faith error in judgment is to " . . . take account of real circumstances, substantial reasons, objective conditions, palpable forces that operate to produce

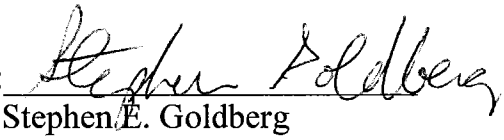
correlative results, adequate excuses that will bear the test of reason, just grounds for action, and always the element of good faith." (*Amador v. Unemployment Insurance Appeals Board* (1984) 35 Cal.3d 671, 679 [citations omitted].) Unlike the majority opinion's standard, " . . . the concept of 'good cause' cannot be arbitrarily limited." (*Ibid.*) Moreover, good faith error must be considered from the workers' standpoint, in light of the circumstances facing her and the knowledge possessed by her at the time. (*Id.* at p.683; *Sanchez v. California Unemployment Insurance Appeals Board* (1984) 36 Cal.3d 575, 587.) Contrary to the majority opinion's analysis, Unemployment Insurance law must be liberally construed to benefit persons who are unemployed. (*Amador*, *id.* at p. 683; *Gibson v. Unemployment Insurance Appeals Board* (1973) 9 Cal.3d 494, 499.)

The majority opinion ignores these governing principles, and instead arbitrarily limits good faith error in judgment to situations where the employee reasonably believes the employer's directive is not reasonable or she is not required to comply. By so doing, the majority opinion creates uncertainty in the law regarding the standard for good faith error in judgment that will cause confusion in every Unemployment Insurance case. This justifies Supreme Court review.

CONCLUSION

Unemployment benefits provide important economic protection for employees, their families, the merchants from whom they buy food, clothing, and other necessities, the banks to whom they make their mortgage payments, and the landlords to whom they pay rent. The published majority opinion announces multiple new

judicially created rules which, left unchecked, would deny such benefits to untold numbers of Californians whom the legislature intended to receive them. Such a drastic change should not occur without the review of the state's highest court. For the reasons stated, the Court should grant review.

Dated: July 23, 2012 By: 

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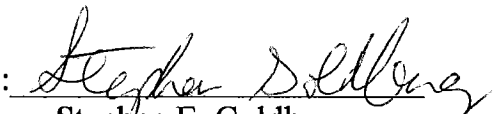
WORD COUNT CERTIFICATION

I certify pursuant to California Rule of Court 8.204(c)(1) that the attached **Real Party in Interest and Appellant's Rehearing Petition** contains 4,646 **words**, as measured by the word court of the computer program used to prepare this brief.

Dated: July 23, 2012 By: 

Stephen E. Goldberg
Attorney for Petitioner
and Real Party in Interest
Craig Medeiros

EXHIBIT 1

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

PARATRANSIT, INC.,

Plaintiff and Respondent,

v.

UNEMPLOYMENT INSURANCE APPEALS BOARD,

Defendant;

CRAIG MEDEIROS,

Real Party in Interest and Appellant.

C063863

(Super. Ct. No. 34-2009-80000249)

Unemployment Insurance Code section 1256 (section 1256) disqualifies an employee from receiving unemployment compensation benefits if he or she has been discharged for misconduct. Misconduct within the meaning of section 1256 involves a willful or wanton disregard of an employer's interests or such carelessness or negligence as to manifest

equal culpability. It does not include, among other things, good faith errors in judgment. (*Amador v. Unemployment Ins. Appeals Bd.* (1984) 35 Cal.3d 671, 678 (*Amador*).)

Real party in interest Craig Medeiros (Claimant) appeals from a judgment of the trial court granting a writ of administrative mandamus to his former employer, petitioner Paratransit, Inc. (Employer), on Claimant's claim for unemployment insurance benefits. Claimant had been terminated by Employer for refusing to sign a disciplinary memorandum in connection with a prior incident of misconduct. Respondent Unemployment Insurance Appeals Board (Board) determined Claimant's refusal to sign the memorandum was, at most, a good faith error in judgment that did not disqualify him from receiving unemployment benefits. The trial court disagreed and directed the Board to set aside its decision and to enter a new one finding Claimant disqualified from receiving unemployment benefits. We affirm the judgment of the trial court.

FACTS AND PROCEEDINGS

Employer is a private, nonprofit corporation engaged in the business of providing transportation services for the elderly and disabled. Prior to his termination, Claimant had been employed by Employer as a driver for approximately six years.

As a condition of his employment, Claimant was required to join a union. The union was party to a collective bargaining agreement (CBA) with Employer that included the following provision: "The Employer shall provide a Vehicle Operator with

copies of complimentary letters received regarding his or her job performance and with copies of disciplinary notices, including verbal warnings that have been put in writing. *All disciplinary notices must be signed by a Vehicle Operator when presented to him or her provided that the notice states that by signing, the Vehicle Operator is only acknowledging receipt of said notice and is not admitting to any fault or to the truth of any statement in the notice."*

In February 2008, a passenger lodged a complaint against Claimant with Employer. Employer's human resources manager investigated the matter and concluded the alleged misconduct had occurred. This was not the first incident of alleged misconduct involving Claimant. On his application for employment in 2002, Claimant indicated he had not been convicted of any offenses. After Claimant was hired, a fingerprint search with the Department of Justice revealed a prior conviction. Claimant was terminated, but that termination was later rescinded based on Claimant's representations that the conviction arose from a domestic dispute. In September 2004, Claimant was issued a memorandum of discipline in connection with another incident.

On May 2, 2008, Claimant was called into a meeting with Employer's human resources manager and its director of administrative services and told he was being disciplined for the February 2008 incident. Claimant disagreed the incident had occurred as alleged, requested that a union representative be present at the meeting, and indicated he was tired from having just finished a full day of work and was confused because the

others at the meeting "had additionally brought up matters that had occurred when he had been hired six years earlier." Claimant was informed he was not entitled to union representation because the meeting did not involve discussions that could lead to discipline but was merely to inform him of discipline that had already been determined.

Employer's representatives had previously prepared a memorandum advising Claimant that he was being assessed discipline for the February 2008 incident, including suspension for two days without pay. They gave the memorandum to Claimant, explained its substance, and asked him to sign it. Below the signature line, the document read: "Employee Signature as to Receipt."

Claimant refused to sign the memo because he believed he should not sign anything without a union representative present. The union president had previously provided Claimant a card advising him "not to sign anything without a union representative which could in any way lead to him being disciplined because once a document was signed the employer could use it as an admission of guilt and the union would not be able to defend him."

When Claimant was given the disciplinary memorandum in 2004, he was also told to sign it. That document read under the signature line, "'Employee Signature (as to receipt only).'" Claimant was told if he refused to sign the memo he would be terminated. Claimant signed that document "'so [he] wouldn't get fired.'"

In the May 2, 2008, meeting, Employer's representatives informed Claimant the CBA required him to sign the disciplinary memorandum and that, if he did not, this would be treated as insubordination and his employment would be terminated. Claimant complained that, if he signed the document, he would be admitting the truth of what was stated in it. The representatives assured Claimant his signature would only signify receipt of the document. Claimant stated he had been informed by the union president not to sign anything and he was not going to sign anything. Claimant did not believe he would be fired for failing to sign the memorandum. He thought instead that the meeting would be rescheduled to give him an opportunity to consult with the union. He also believed Employer's representations that his signature would not be an admission of anything were lies. Claimant departed the meeting without signing the disciplinary memorandum and without asking that the meeting be rescheduled. However, he did indicate he would be consulting with the union. Claimant was thereafter informed his employment had been terminated.

Claimant applied for unemployment insurance benefits, but the Employment Development Department (EDD) denied his request. Claimant appealed, but an administrative law judge (ALJ) upheld EDD's decision. After conducting an evidentiary hearing at which both Claimant and the two Employer supervisors testified, the ALJ concluded Claimant's "deliberate disobedience of a reasonable and lawful directive of the employer, to sign the memorandum notifying him of disciplinary action, where obedience

was not impossible or unlawful and did not impose new or additional burdens upon [him], constituted misconduct . . . ." The ALJ further concluded that, because Claimant had been terminated for misconduct, he was disqualified from receiving unemployment benefits.

Claimant appealed to the Board, and the Board reversed. The Board concluded: "In this case, the claimant was compelled to meet with the employer and his request for union representation was denied despite the fact that the discussion led to a threat of and actual termination. Furthermore, the employer's disciplinary form appears to be in noncompliance with the language of its own rules in that there is no written notice on the form that, by signing, the employer [*sic*] is not admitting to any fault in the conduct resulting in discipline. Give[n] the admonition given to claimant by the union president not to sign, the lack of clarifying language near the signature line, and the denial of the claimant's request for union representation, we find that the claimant's failure to sign at the moment was, at most, a simple mistake or an instance of poor judgment."

Following the Board's decision, Employer filed the instant petition for writ of administrative mandamus. The trial court granted the petition, concluding Claimant deliberately disobeyed a lawful and reasonable directive of his employer and this amounted to misconduct rather than a good faith error in judgment. The court explained Claimant was not entitled to union representation at the meeting because it was not

investigatory in nature. As for Claimant's reliance on advice of the union president, the court indicated it did not believe the president "actually told [Claimant] not to sign anything without first obtaining union representation." The court further concluded that, even if the president did, Claimant could not in good faith have relied on such incorrect advice under the circumstances of this case.

Regarding the language of the disciplinary memorandum, the court determined this did not violate the CBA. The court explained the CBA did not require the exact language indicated therein and, while the CBA required both a statement that the signature is only an acknowledgement of receipt and a statement that the employee is not admitting guilt, the court concluded "these 'two requirements' are just different sides of the same coin." The court concluded "the memorandum was sufficiently clear that it was reasonable for [Employer] to demand that [Claimant] sign." Furthermore, even if it was not sufficiently clear, "[Employer] expressly advised [Claimant] that he was not entitled to a union representative and that signing the memorandum was merely an acknowledgement of receipt and not an admission of the truth of the statements."

The court did agree the discrepancies between the language of the memorandum and the language of the CBA must be considered in determining whether Claimant's refusal to sign was a good faith error in judgment. Nevertheless, the court concluded Claimant deliberately disobeyed a lawful and reasonable instruction of his employer and, under the totality of the

circumstances, this was misconduct rather than a good faith error in judgment.

DISCUSSION

I

Standard of Review

Claimant contends the trial court erred in concluding he engaged in misconduct within the meaning of section 1256 when he refused to sign the disciplinary memorandum. He argues he was not required to sign the memo, because it did not comply with the CBA. He further argues that, even if he was required to sign it, his failure to do so was, at most, a good faith error in judgment.

In reviewing a decision of the Board on a petition for writ of administrative mandate, "the superior court exercises its independent judgment on the evidentiary record of the administrative proceedings and inquires whether the findings of the administrative agency are supported by the weight of the evidence." (*Lozano v. Unemployment Ins. Appeals Bd.* (1982) 130 Cal.App.3d 749, 754.) We in turn review the decision of the superior court to determine whether it is supported by "substantial, credible and competent evidence." (*Ibid.*) "[A]ll conflicts must be resolved in favor of the respondent and all legitimate and reasonable inferences made to uphold the superior court's findings; moreover, when two or more inferences can be reasonably deduced from the facts, the appellate court may not substitute its deductions for those of the superior court."

(*Lacy v. California Unemployment Ins. Appeals Bd.* (1971) 17 Cal.App.3d 1128, 1134.) "However, 'where the probative facts are not in dispute, and those facts clearly require a conclusion different from that reached by the trial court, . . . the latter's conclusions may be disregarded.'" (*Amador, supra,* 35 Cal.3d at p. 679.)

II

The Disciplinary Memorandum

Section 1256 provides in relevant part: "An individual is disqualified for unemployment compensation benefits if . . . he or she has been discharged for misconduct connected with his or her most recent work." Misconduct within the meaning of section 1256 is "limited to '"conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or *good faith errors in judgment* or discretion are not to be deemed 'misconduct' within

the meaning of the statute."' [Citations.]" (*Amador, supra,* 35 Cal.3d at p. 678, italics added.)

Title 22 of the California Code of Regulations, section 1256-30, subdivision (b), identifies four factors for establishing misconduct: "(1) The claimant owes a material duty to the employer under the contract of employment. [¶] (2) There is a substantial breach of that duty. [¶] (3) The breach is a willful or wanton disregard of that duty. [¶] (4) The breach disregards the employer's interests and injures or tends to injure the employer's interests."

Labor Code section 2856 states: "An employee shall substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee." Title 22 of the California Code of Regulations, section 1256-36, subdivision (b), provides: "Implicit in the agreement of hire is the concept that an employee is subject to some degree of authority exercised by the employer or the employer's representative. An employee is insubordinate if he or she intentionally disregards the employer's interest and willfully violates the standard of behavior which the employer may rightfully expect of employees in any of the following ways: [¶] (1) Refuses, without justification, to comply with the lawful and reasonable orders of the employer or the employer's representative."

Claimant contends that where an employer's demand is "unlawful or unreasonable," disobedience by the employee is not

misconduct for purposes of unemployment insurance benefits. He further argues the lawfulness or reasonableness of an employer's directive is a question of law subject to de novo review, "when the determination rests on undisputed facts or where the inferences from the found facts point in one direction." Claimant argues this is such a case, because the lawfulness of Employer's demand that he sign the disciplinary memo depends solely on whether that memo complied with the CBA. Claimant asserts the memo at issue here did not do so.

Employer responds that the disciplinary memo adequately satisfied the terms of the CBA. It argues the CBA does not require any specific language and, as the trial court found, the two requirements that the memo state the employee is only acknowledging receipt and is not admitting any fault or the truth of the allegations are just two sides of the same coin. Finally, Employer argues, even if the memo did not comply with the CBA, that did not excuse Claimant's failure to sign it. According to Employer, Claimant's proper course of action was to sign the document and then file a grievance.

The question whether the disciplinary memorandum satisfied the requirements of the CBA is a red herring. At no time during the May 2 meeting did Claimant assert he would not sign the document because it failed to comply with the CBA. There is no indication he was even aware of the terms of the CBA. After being informed he was being disciplined, Claimant immediately requested union representation. He was told he was not entitled to such representation, and Claimant does not challenge that

point on appeal. When presented with the disciplinary memo, Claimant refused to sign it because "[h]e believed he should not sign *anything* without a representative present." (Italics added.) Thus, there is no reason to believe Claimant would have signed the document even if it had been in a form more in line with the requirements of the CBA.

When told the CBA required him to sign the memo, Claimant complained that his signature would be an admission of the truth of what was stated in the memo. Employer's representatives assured Claimant that was not the case and that his signature would only signify receipt. Claimant declared "he had been informed by the president of the union not to sign anything, and that he was not going to sign anything." Claimant did not believe Employer would go through with its threat to fire him if he did not sign the document. He also believed the assertions by Employer's representatives that his signature would not be an admission of anything were lies.

Thus, the question here is not whether Claimant was relieved of the requirement to sign the memo because it did not comply with the CBA. Claimant refused to sign "anything" presented to him by Employer. Claimant does not argue on appeal that signing the disciplinary memo would have imposed a new and unreasonable burden on him, except insofar as it failed to comply with the CBA. He argues he was afraid signing the memo would be an admission of guilt, but the language under the signature line and the assurances of the Employer representatives should have dispelled any such concern.

Although Claimant asserts he believed the representatives were lying, he cannot so easily sidestep his obligations to his employer. Claimant presented no evidence to warrant such belief.

Under the circumstances presented, we conclude Claimant's failure to sign the disciplinary memo violated his obligations to Employer under Labor Code section 2856. (See *Lacy v. California Unemployment Ins. Appeals Bd., supra*, 17 Cal.App.3d at p. 1133 [employee must comply unless the employer's directive imposes a duty that is both new *and* unreasonable].) The remaining question is whether such insubordination was misconduct under section 1256 or a good faith error in judgment.

III

Good faith Error in Judgment

As described above, an intentional refusal to obey an employer's lawful and reasonable directive qualifies as misconduct. But where an employee, in good faith, fails to recognize the employer's directive is reasonable and lawful or otherwise reasonably believes he is not required to comply, one might conclude his refusal to obey is no more than a good faith error in judgment. "Section 1256 must be read in light of section 100 of the Unemployment Insurance Code which was included in the code as a guide to interpretation and application of other sections of the code." (*Drysdale v. Department of Human Resources Development* (1978) 77 Cal.App.3d 345, 352.) This latter section reads, in relevant part: "The

Legislature . . . declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed *through no fault of their own*, and to reduce involuntary unemployment and the suffering caused thereby to a minimum." (Italics added.) Fault is therefore the basic element for considering and interpreting the Unemployment Insurance Code. (*Drysdale* at p. 353; *Evenson v. Unemployment Ins. Appeals Bd.* (1976) 62 Cal.App.3d 1005, 1015-1016.)

Claimant argues it was reasonable for him to have been mistaken, if indeed he was, about his obligation to sign the disciplinary memo and, therefore, his failure to do so was, at most, a good faith error in judgment. He points to the fact the three entities who have considered the issue--EDD, the Board and the trial court--"reached different conclusions about whether or not [Employer's] requirement that [Claimant] sign the disciplinary notice without a union representative was lawful and reasonable."

Claimant misreads the record. There is nothing therein as to what prompted EDD to reject Claimant's claim. The next decision maker to consider the issue was the ALJ, who is not mentioned by Claimant. The ALJ concluded Claimant deliberately disobeyed a reasonable and lawful directive of Employer. The Board reversed the ALJ's decision. However, the Board did not reach any specific conclusion on whether Employer's instruction

to sign the memo was lawful and reasonable. Instead, the Board concluded "[a]n employee's refusal to comply with a reasonable rule or direction is not misconduct if the employee has good cause for his or her action" and, in this case, Claimant's failure to sign "was, at most, a simple mistake or an instance of poor judgment." Finally, the trial court agreed with the ALJ that Claimant deliberately disobeyed a lawful and reasonable directive of Employer.

Claimant next argues that, in finding as a matter of law the disciplinary memo did not violate the CBA, the trial court "failed to consider [Claimant's] testimony regarding his confusion about the affect [*sic*] of signing the notice, absent the 'no admission' language, and whether or not that testimony showed [Claimant's] decision not to sign the notice was a good faith error in judgment." However, absent contrary evidence, we presume official duty has been regularly performed and that the court considered all relevant evidence in reaching its conclusions. (See Evid. Code, § 664; *People v. Frye* (1994) 21 Cal.App.4th 1483, 1486.) Claimant has made no attempt to demonstrate otherwise. Furthermore, Claimant never testified he was confused about the effect of signing the memo because of the absence of specific language on it. He testified he was reluctant to sign because of what he had been told by the union.

Claimant contends the evidence nevertheless does not support the trial court's conclusion his refusal to sign the memo was not a good faith error in judgment. He asserts the circumstances of the May 2 meeting demonstrate he "was confused

and troubled by the notice's lack of the 'no admission' language." He points to the fact he "was tired at the end of his shift, called into a meeting with two senior employees of [Employer], confronted with serious allegations he refuted, asked about lying on his employment application six years prior, faced with demands that he sign the disciplinary notice that confirmed the allegations, and was threatened with termination if he did not sign the notice." Claimant argues he was concerned that signing the memo would be an admission of guilt and would bar him from obtaining union assistance in defending the matter, in light of statements to him by the union president and Claimant's understanding that "the union had previously refused to assist employees who had signed disciplinary notices." Claimant argues the trial court failed to consider any of the foregoing in determining his failure to sign the memo was not a good faith error in judgment and, therefore, we must consider the issue de novo.

As mentioned above, absent contrary evidence, we presume official duty has been regularly performed and that the trial court considered all relevant evidence. Claimant has not demonstrated otherwise here. He merely assumes that, because the court ruled against him, it must not have considered these matters.

Furthermore, Claimant's argument is based on a false narrative that he refused to sign the memo because he was confused by the absence of specific language on it.

Absence to Sid Court Considered

Claimant also misstates the facts in asserting he was "confronted with serious allegations" at the meeting.

We note the record of the hearing before the Board reflects the following, McHugh being the representative of the employer and Brown being a witness for Paratransit:

"Ms. McHugh: . . . Ms. Brown, during your investigation of the underlying matter that resulted in the document the Claimant refused to sign, at any time did he ask for union representation during the investigation?

"Ms. Brown: No.

"Ms McHugh: Had he asked during the investigation would you have allowed a union rep to participate in the investigation?

"Ms. Brown: Yes.

"Ms. McHugh: That rule that you told us about as far as a union rep is not allowed to be present during meetings when the discipline has already been decided and its merely being delivered to the--the employee, is that a Paratransit rule or is that something else?

"Ms. Brown: No. Those are Weingarten rights and that's coming from the National Labor Relations Board."

Thus, the record demonstrates the investigation of the prior misconduct had already taken place, during which Claimant was, as far as the record shows, confronted with the serious allegations made by one of his riders. He never asked for union representation during that investigation. The only thing Claimant was confronted with at the May 2 meeting was his

employer's decision to discipline him at which time he did not have a right to union representation. The trial court could reasonably conclude that defendant's claims as to why he acted in good faith in refusing to sign the disciplinary notice were arrived at after the fact of his receipt of the notice.

As for the fact Claimant was instructed to sign the memo and was told that, if he did not, he would be terminated, this obviously cannot excuse his actions. Claimant was directed to sign the memo and was told he would be subject to termination if he failed to do so. If these facts were enough to make a refusal to obey an employer's directive a good faith error in judgment, no employee would ever have to obey an employer's directive.

Finally, while Claimant may well have been tired at the end of his shift and may have been reminded at the meeting about his earlier lie on his employment application, these matters were known to the trial court, who nevertheless concluded they were not sufficient to establish a good faith error in judgment. We cannot say on this record the court erred in this regard.

Claimant's reliance on the advice of the union fairs no better. The trial court made a credibility determination that the union president did not in fact say what Claimant testified he said. Claimant argues this credibility determination is not entitled to any weight, because the portions of the transcript to which the trial court referred support Claimant's testimony. Not so. Although Claimant testified the union president told him not to sign *anything*, Claimant repeatedly referred to a

card, Exhibit 8E, as support. That card read: "STATING YOUR WEINGARTEN RIGHTS TO THE EMPLOYER: 'If this discussion could in any way lead to my being disciplined or terminated or have any effect on my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Without union representation, I choose not to participate in the discussion.'" The court could readily have concluded from the totality of Claimant's testimony that he was told only that, if the meeting could lead to discipline, he should demand union representation and not participate without such representation. The court could also reasonably presume the union president would not have misstated that Claimant should not sign *anything* without union representation.

The trial court also concluded that, even if the union president had told Claimant not to sign *anything* without union representation, Claimant was not entitled to rely on such erroneous advice. We agree. Were it otherwise, a union could insulate members from adverse employment action simply by giving them bad advice that they need not comply with an employer's orders. If the union gave Claimant bad advice that resulted in his termination, Claimant's recourse may be against his union, not a claim for unemployment insurance funds.

Claimant also takes issue with the following statement in the trial court's decision: "Moreover, regardless of whether the memorandum's signature block was, by itself, clear, [Employer] expressly advised [Claimant] . . . that signing the memorandum was merely an acknowledgement of receipt and not an

admission of the truth of the statements." Claimant argues he was not required to accept Employer's representations. He further asserts prior Board precedent establishes that, if an employee doubts the reasonableness or legality of a supervisor's instructions, he should seek redress through avenues other than disobedience. Claimant argues he complied with this duty by "request[ing] a union representative" and indicating he wanted to talk with the union before signing.

We have previously explained an employee cannot so easily sidestep his obligations to his employer by a bald assertion that he did not believe what the employer's representatives told him. Claimant has presented no evidence to warrant such disbelief.

As to Claimant's argument that he sought redress through means other than disobedience, this is based on a misconception of the situation presented. Claimant was told to sign the disciplinary memo and that, if he did not, he would be subject to termination. Instead, Claimant requested union representation. He was then told he had no right to union representation at the meeting. Claimant was then instructed to sign the memorandum without union representation. By refusing to do so, Claimant was not seeking redress by other means. He was directly disobeying the employer's command.

The trial court concluded Claimant had no reasonable basis to believe he had a right to union representation at the disciplinary hearing. The record supports this conclusion. The card provided to Claimant by his union explained he had a right

No. 1101

to union representation only where the meeting could lead to discipline. Claimant was informed at the outset that Employer had already settled on the discipline to be imposed for the prior incident and that the meeting was solely for the purpose of notifying him of such discipline. The Employer representatives also told Claimant he had no right to union representation at the meeting. Under these circumstances, Claimant could have had no reasonable belief that he was entitled to union representation.

Claimant counters that he reasonably believed the May 2 meeting was investigatory in nature, thereby entitling him to union representation. Claimant asserts the fact the Employer representatives brought up the matter of the six-year-old lie on his employment application and the threat that further discipline would be imposed if he failed to sign the memo gave rise to a reasonable belief that the meeting was for more than just informing him of predetermined discipline.

The trial court concluded Claimant could not have reasonably believed the meeting was investigatory in nature simply because of the reference to his six-year-old lie. The court pointed out the lie was discovered soon after it was made and Claimant was disciplined for it. There was no reason for Claimant to believe he might be further disciplined for that falsehood. The trial court indicated that, while the reference might not have been necessary to inform claimant of the discipline for the February 2008 incident, it "did not transform the disciplinary meeting into an investigatory interview."

We agree. A single, stray reference to a prior lie by Claimant for which he had already been disciplined could have served no purpose other than to remind him that his credibility might be suspect. The obvious purpose of the meeting was to inform Claimant of the discipline that was about to be imposed following a full investigation. Claimant could not reasonably have believed the stray comment changed that fact.

As for Claimant being informed if he did not sign the memo he could be further disciplined, this too did not change the nature of the meeting. Claimant was under a continuing obligation to comply with lawful and reasonable orders of his employer and otherwise not to engage in misconduct. This included during the meeting. If Claimant had assaulted the Employer representatives during the meeting, he would not be able to avoid discipline by claiming he did not have union representation. Likewise, if Claimant refused to sign a document he was required to sign, he cannot escape punishment by claiming he did not have union representation at the meeting. The Employer representatives were just reminding Claimant of what he should already know, i.e., that insubordination can result in discipline. Such advice did not change the underlying nature of the meeting.

We conclude substantial evidence supports the trial court's determination that Claimant's refusal to sign the disciplinary memorandum was misconduct under section 1256 and not a good faith error in judgment. Claimant is therefore not entitled to unemployment benefits.

DISPOSITION

The judgment of the trial court is affirmed.

HULL, J.

I concur:

NICHOLSON, J.

I respectfully dissent.

Craig Medeiros was fired from his job as a Paratransit employee for refusal to sign a receipt, required by a provision in a collective bargaining agreement, stating that he had received a notice of disciplinary action and that by signing the receipt he did not admit to the truth of any statement in the notice. The Unemployment Insurance Appeals Board determined that the refusal was at most a good faith error in judgment that did not disqualify him from receiving unemployment benefits. My colleagues would reverse the administrative judgment. I disagree.

The provision requiring a signed notice was obviously meant to benefit the employee and I find it perverse that a refusal to sign can be seized upon by the employer as a pretext to fire the employee when the penalty to be imposed for the disciplinary violation was two days' pay. The Unemployment Insurance Code (§ 1256) provides that an employee may be disqualified for benefits for misconduct evincing a "willful . . . disregard of an *employer's interests*", but the employer's interests were manifestly not involved in the violation of a union provision designed to protect the employee. (Italics added.)

Moreover, the disciplinary notice given Mr. Madeiros - "Employee Signature as to Receipt" - did not comply with the bargaining agreement requirement that he was "only acknowledging receipt of said notice and is not admitting to any fault or to the truth of any statement in the notice." My colleagues, following the trial court, say that the notice given and the

notice required are but "just different sides of the same coin" and in any event Madeiros was orally informed that no adverse inference was to be drawn. But the explicit written notice required by the collective bargaining provision is there for a reason, to negate any adverse inference, an inference not ruled out by the statement "Employee Signature as to Receipt." And the employer's oral statement negating the inference manifestly did not comply with the written requirement.

I would affirm the judgment of the Unemployment Insurance Appeals Board.

BLEASE, Acting P. J.

EXHIBIT 2

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

PARATRANSIT, INC., Plaintiff and Respondent, v. UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant; CRAIG MEDEIROS, Real Party in Interest and Appellant.	C063863 (Super. Ct. No. 34-2009-80000249) ORDER OF PUBLICATION

APPEAL from a judgment of the Superior Court of Sacramento County, Timothy M. Frawley, Judge. Affirmed.

Sarah R. Ropelato and Maya Roy for Real Party in Interest and Appellant.

No appearance for Defendant.

Rediger, McHugh & Owensby, Laura C. McHugh, and Jimmie E. Johnson, for Plaintiff and Respondent.

The opinion in the above-entitled matter filed on May 31, 2012, was not certified for publication in the Official Reports.

For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

BLEASE, Acting P. J.

NICHOLSON, J.

HULL, J.

EXHIBIT 3

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

FILED

JUL - 3 2012

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk
BY_____ Deputy

PARATRANSIT, INC.,
Plaintiff and Respondent,
v.
UNEMPLOYMENT INSURANCE APPEALS BOARD,
Defendant;
CRAIG MEDEIROS,
Real Party in Interest and Appellant.

C063863
Sacramento County
No. 34200980000249

BY THE COURT:

Appellant's petition for rehearing is denied.

Dated: July 3, 2012

NICHOLSON, J.

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cc: See Mailing List

PROOF OF SERVICE (Court of Appeal) ☒ Mail ☐ Personal Service	FOR COURT USE ONLY
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.	
Case Name: Medeiros v. Paratranist et al Court of Appeal Case Number: C063863 Superior Court Case Number: 34-2009-80000249	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My ☐ residence ☒ business address is *(specify):*
   515 12TH STREET
   SACRAMENTO CA 95814
3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b):*
   PETITION FOR REVIEW

   a. ☒ **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

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      (3) The envelope was or envelopes were addressed as follows:

      (a) Person served:

      (i) Name: Clerk of the Court

      (ii) Address: Supreme Court of California
      350 McAllister Street
      San Francisco CA 94102-4797 (13 Copies)

      (b) Person served:

      (i) Name: Clerk of the Court

      (ii) Address: Third District Court of Appeals
      621 Capitol Mall, Suite 1240
      Sacramento CA 95814

      (c) Person served:

      (i) Name: Honorable Timothy Frawley

      (ii) Address: Superior Court of California
      720 9th Street
      Sacramento CA 95814

      ☒ Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from *(city and state):* SACRAMENTO, CALIFORNIA

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(1) Person served:

(a) Name:

(b) Address where delivered:

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(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page).*

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

Date: APRIL 12, 2011

ALEXA C GARZA

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

Rossiter, Alex

APP-009 Item 3(a)

Additional Persons Served via U.S. Mail :

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