

S204221

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PARATRANSIT, INC.
Plaintiff and Respondent,

vs.

UNEMPLOYMENT INSURANCE APPEALS BOARD
Defendant;

SUPREME COURT
FILED

JUN 13 2013

Frank A. McGuire Clerk

Deputy

CRAIG H. MEDEIROS,
Real Party in Interest and Appellant.

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

Appeal from a Judgment of the Superior Court of the
State of California, County of Sacramento
Honorable Timothy M. Frawley, Judge
Case No. 34-2009-80000249

**RESPONDENT'S OPPOSITION IN PART TO
PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE**

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Attorneys for Plaintiff and Respondent, PARATRANSIT, INC.

**RESPONDENT'S OPPOSITION IN PART TO
APPELLANT'S REQUEST FOR JUDICIAL NOTICE**

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF
JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF
THE CALIFORNIA SUPREME COURT:

By motion received by this Court on May 20, 2013 and subsequently filed on May 29, 2013 in the above-captioned matter, the Appellant seeks judicial notice of several documents attached to said motion as Exhibits 1 through 9. Respondent opposes this motion in part.

Evidence Code sections 450 *et seq.* authorize this Court to take judicial notice of certain, enumerated matters. The Appellant moves this Court to take judicial notice of one California Unemployment Insurance Appeals Board ("CUIAB") decision, one National Labor Relations Board ("NLRB") decision, and seven federal labor arbitration decisions. (Appellant's Motion for Judicial Notice ("Appellant's RJN") at pp. 2-5, Exhibits 1-9; Appellant's Reply Brief ("ARB") at pp. 16-17, 20, 29, 36.) Appellant requests this Court to take judicial notice of said documents for the purported purpose of "respond[ing] to the arguments raised in Respondent's Answer Brief." (Appellant's RJN at p. 4.) This Court should deny the Appellant's request that it take judicial notice of the seven labor arbitration decisions.

Appellant asks this Court to take judicial notice of the labor arbitration decisions pursuant to Evidence Code sections 459 and 452, subdivision (c). Section 459 permits a reviewing court to take judicial notice of, *inter alia*, any matter specified in section 452. The Appellant argues that the seven labor arbitration decisions are an appropriate subject for judicial notice under section 452, subdivision (c), which states that

judicial notice may be taken of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” However, the Appellant provides no authority for how labor arbitration decisions could be considered an official act of either the legislative, executive, or judicial department of the United States or of any other state.

In *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, this Court considered whether it was proper to take judicial notice of the entire record of the parties’ arbitration proceeding. Although this Court specifically stated, “We need not decide the propriety of judicial notice of a State Bar arbitration,” and ultimately denied the judicial notice request by reasoning that the request had not been made in the Superior Court, it did address the Respondent’s argument regarding the appropriateness of taking judicial notice of the record under Evidence Code section 452, subdivisions (d), (h) and (c). (*Id.* at pp. 324-25.) In rejecting the Respondent’s argument that the arbitration record was a “quasi-judicial proceeding” pursuant to section 452, subdivisions (d) and (h), this Court explained, “[T]he [Respondent] offers no authority for expanding the statutory authorization to include the records of arbitration proceedings that are not conducted as part of a judicial action” and that subdivision (h) pertained to “facts and propositions.” (*Ibid.*)

In rejecting judicial notice pursuant to Evidence Code section 452, subdivision (c), the *Brosterhous* Court stated:

Because the State Bar is an administrative arm of the court only in its admissions and disciplinary functions [citation], the record of the arbitration proceeding is not subject to judicial notice as a record of the acts of the judicial department under subdivision (c) of Evidence Code section 452. Although the State Bar has been described as a public corporation and akin to a state public body or agency [citation], subdivision (c) does not clearly make its actions

matters subject to judicial notice as acts of either the legislative or executive department.

(*Brosterhous, supra*, 12 Cal.4th at p. 325.) While *Brosterhous* is distinguishable from the case at bar, it nonetheless provides guidance on taking judicial notice of arbitration proceedings.

By his request for judicial notice of the seven labor arbitration decisions, the Appellant seeks to rely upon the rationale of various arbitrators in interpreting private agreements in light of the contracting parties' intent. The arbitrator's findings in these decisions are fact sensitive and unique to the collective bargaining agreements and bargaining history between the parties therein, and therefore do not, and should not, serve as precedence in this case. As the United States Supreme Court explained in *Alexander v. Gardner-Denver Co.* (1974) 415 U.S. 36, 56-57 [94 S.Ct. 1011, 1024, 39 L.Ed.2d 147], the arbitrator's "task is to effectuate the intent of the parties rather than the requirements of enacted legislation."

In sum, Evidence Code section 450 states, "Judicial notice may not be taken of any matter unless authorized or required by law." Arbitration decisions concerning private contract interpretation are not a proper subject for judicial notice pursuant to Evidence Code section 452, subdivision (c), or any other subdivision therein. The Appellant has provided no authority supporting his request for judicial notice of the seven labor arbitration decisions. Accordingly, and applying the rationale of this Court's decision in *Brosterhous, supra*, 12 Cal.4th at pp. 324-325, his request should be denied. Should the court deny the Appellant's request for judicial notice, the Respondent further moves this court pursuant to Code of Civil Procedure section 437, to disregard and strike the portions of the Appellant's Reply Brief where Appellant improperly relies upon the seven federal labor arbitration decisions

CONCLUSION

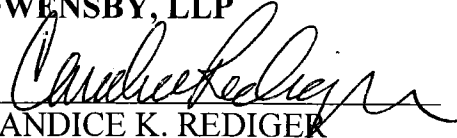
For the reasons set forth above, the Appellant's request for judicial notice of those documents attached to said motion as Exhibits 2 through 7 and Exhibit 9, should be denied.¹

DATED: June 12, 2013.

Respectfully submitted,

**REDIGER, McHUGH &
OWENBY, LLP**

By


CANDICE K. REDIGER
Attorneys for Respondent,
PARATRANSIT, INC.

¹ Respondent does not take any position on Appellant's request for judicial notice of the documents attached to said motion as Exhibits 1 and 8.

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 555 Capitol Mall, Suite 1240, Sacramento, California 95814.

On June 12, 2013, I caused to be served the within **Respondent's Opposition in Part to Plaintiff's Request for Judicial Notice**, in *Paratransit, Inc. v. Unemployment Insurance Appeals Board; Craig Medeiros*; California Supreme Court Case No. S204221 [Third Appellate Dist. Ct. of Appeal Case No. C063863; Sac. County Sup. Ct. Case No. 34-2009-80000249-CU-WM-GDS] by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

**Sarah R. Ropelato, Esq.
Stephen E. Goldberg, Esq.
Legal Services of Northern California
515 – 12th Street
Sacramento, CA 95814**

**Attorneys for Real Party
in Interest and Appellant,
CRAIG MEDEIROS**

**The Honorable Timothy M. Frawley
Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814**

Trial Court Judge

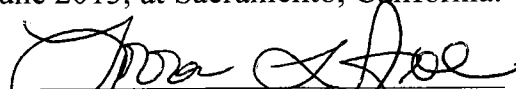
**Third Appellate District Court of Appeal
621 Capitol Mall, 10th Floor
Sacramento, CA 95814-4719**

**Michael Hammang, Deputy Attorney General
Department of Justice
1300 "I" Street, Suite 125
Sacramento, CA 95814**

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and placing the same with postage thereon fully prepaid in the designated area for outgoing mail. I am readily familiar with Rediger, McHugh & Owensby, LLP's practice of collecting and processing correspondence whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited with the United States Postal Service after the close of each day's business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 12th day of June 2013, at Sacramento, California.


LORRAINE L. RENFRO