Case No. S172377

**IN THE SUPREME COURT**
**OF THE STATE OF CALIFORNIA**

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| INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 188, | ) |
| Plaintiff and Appellant, | ) |
| v. | ) |
| PUBLIC EMPLOYMENT RELATIONS BOARD, | ) |
| Defendant and Respondent, | ) |
| CITY OF RICHMOND, | ) |
| Real Party in Interest and Respondent. | ) |



# ANSWER TO APPELLANT LOCAL 188'S PETITION FOR REVIEW

After A Decision By The Court Of Appeal
First Appellate District, Division Three
[Case No. A114959]

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Respondent CITY OF RICHMOND

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**TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:**

Real Party in Interest and Respondent City of Richmond ("City") respectfully submits this answer to the petition for review filed by Petitioner International Fire Fighters, Local 188 ("Local 188").[1]

## INTRODUCTION

In 2003, the City, faced with an unprecedented financial crisis, made the difficult decision to lay off 78 employees, including 18 firefighters represented by Local 188. In response, Local 188 filed an unfair practice charge with the California Public Employment Relations Board, alleging that the City violated the Meyers-Milias-Brown Act (Gov. Code § 3500 *et seq.*, "MMBA") by failing to offer to meet and confer with the union over its layoff decision. When PERB refused to issue a complaint based on the union's charge, Local 188 filed the underlying petition for writ of mandate challenging PERB's decision.

Relying on established state and federal precedent, the Superior Court upheld PERB's determination, finding that the City's layoff decision constituted a managerial prerogative outside the scope of representation.

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[1] Respondent Public Employment Relations Board ("PERB") has also sought review of the Court of Appeal's analysis of whether and/or to what extent the trial court has jurisdiction to review a PERB refusal to issue a complaint. Local 188 does not contest the Court of Appeal's holding on the issue of jurisdiction. Confined to Local 188's petition only, this Answer does not address that aspect of the Court of Appeal's decision.

Accordingly, the Superior Court concluded that while the City had a duty to meet and confer over the ***effects*** of its decision to layoff employees, it had no obligation to negotiate over the ***decision*** itself. The Court of Appeal affirmed. Local 188 filed the instant petition for review, asserting that the Court of Appeal's decision conflicts with this Court's seminal decision in *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608 ("*Vallejo*") and with other California appellate decisions applying *Vallejo*.

A petition for review may be granted if necessary "to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, Rule 8.500, subd. (b)(1).) We demonstrate below that contrary to Local 188's arguments, *Vallejo* and subsequently decided cases uniformly hold that while a public employer may be required to bargain over the ***effects*** of a decision to lay off employees, it has no obligation to meet and confer about the layoff ***decision*** itself. Because case law is settled and because the Court of Appeal's decision is consistent with case law, review is unwarranted. Accordingly, Local 188's petition for review should be denied.

## BACKGROUND

In fiscal year 2003-2004, the City faced a financial crisis, involving a budget shortfall of $9.5 million. (App., Vol. III, Tab 15 at p. 828.) The crisis forced the City to consider city-wide layoffs to maintain operations. On October 3, 2004, the City Manager met with the City's department

heads and union representatives and invited the unions to help develop "cost-sharing" measures to avoid an otherwise necessary reduction of 100 City positions. (*Ibid.*)

When recommended budget reductions strategies failed to remedy the budget shortfall, the City notified employees that each department would be responsible for reducing its budget by nine percent. (App. Vol. III, Tab 15 at p. 828.) The City informed Local 188 that, as part of the budget cuts, it planned to lay off 13 of its bargaining unit members effective December 31, 2003, and that it would not fill the positions of six other bargaining unit members once they retired.[2] (*Id.* at pp. 828-829.)

After notifying Local 188 of its intent to lay off bargaining unit members, the City arranged to meet with the union over the negotiable effects of its decisions. In November and December 2003, City representatives met with Local 188 on three separate occasions to discuss the proposed layoffs and related staffing issues. (App. Vol. III, Tab 15 at pp. 829-830.) Despite the City's efforts to engage the union in constructive negotiations, Local 188 refused to discuss the effects of the layoff proposal, instead focusing on its displeasure and opposition to the City's managerial decision to lay off employees. (*Id.* at p. 830.) Local 188 never tried to identify specific impacts of the layoff proposal, nor did it propose any plan

[2] The City ultimately laid off 78 employees, including 18 Local 188 bargaining unit members. (App. Vol. III, Tab 15 at p. 829.)

concerning the effects of the proposed layoffs. (*Id.* at pp. 830-831.) Local 188's intransigence persisted at a fourth and final meeting between the parties on January 5, 2004. (*Ibid.*)

On January 12, 2004, Local 188 filed an unfair practice charge with PERB, alleging, *inter alia*, that the City violated the MMBA by failing to meet and confer in good faith over its decision to lay off Local 188's bargaining unit members. (App. Vol. I, Tab 2 at p. 19.) On January 18, 2004 the PERB Regional Attorney issued a "Partial Warning Letter" to Local 188, indicating that its unfair practice charge lacked merit. (*Id.* at p. 145.) The Regional Attorney's letter explained that under the relevant provisions of the MMBA, layoffs are not subject to bargaining because such decisions fall within a local government's management prerogative. (*Id.* at p. 151.) Local 188 filed an amended unfair practice on February 17, 2004. (*Id.* at pp. 169-170.) On April 29, 2004, the PERB Regional Attorney dismissed Local 188's charge with respect to allegations that the City violated the MMBA by unilaterally reducing daily shirt staffing levels, reaffirming that the decision to lay off employees is not subject to mandatory collective bargaining. (*Id.* at pp. 180, 185.)

On May 20, 2004, Local 188 appealed the dismissal of its charge to the PERB Board, arguing that the Regional Attorney should have issued a complaint based on the City's failure to meet and confer over its layoff decision. (App. Vol. I, Tab 2 at pp. 190, 215.) On December 13, 2004, the

Board issued a decision affirming the dismissal of Local 188's unfair practice charge. (*Id.* at p. 250.)

On January 11, 2005, Local 188 filed a petition for writ of mandate with the First District Court of Appeal. The Court of Appeal denied the union's petition without prejudice on January 28, 2005. One month later, Local 188 filed the underlying action with the Contra Costa County Superior Court, seeking a writ of mandate compelling PERB to issue a complaint based on the City's alleged failure to meet and confer over its layoff decision. (App. Vol. II, Tab 3 at p. 316.)

In a written order issued on April 14, 2006, the trial court determined that it had jurisdiction to review the matters raised in Local 188's petition. (App. Vol. V, Tab 30 at p. 1386.) On the merits, the trial court agreed with the City and PERB and held that the MMBA does not require the City negotiate over its decision to lay off firefighters. (*Ibid.*) Accordingly, the trial court entered judgment in favor of the City and PERB, and denied the union's petition. Local 188 appealed.

On May 18, 2009, the First District Court of Appeal issued a published decision, affirming the trial court's order. The Court of Appeal held that the decision to lay off personnel and reduce firefighter staffing levels was a managerial prerogative, and that only the effects of that decision were subject to bargaining. The Court of Appeal rejected Local 188's argument that sought to differentiate staffing levels from layoffs,

ruling that "[w]hen shift staffing levels are reduced following layoffs motivated by economic concerns, it goes without saying that the decision primarily concerns issues within the managerial prerogative of the public entity." Local 188 filed this petition for review, challenging the Court of Appeal's decision.

## DISCUSSION

### I. STANDARD FOR GRANT OF REVIEW

This Court may grant review if necessary "to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, Rule 8.500, subd. (b)(1).)

### II. THE COURT OF APPEAL'S DECISION ON THE SCOPE OF REPRESENTATION WAS CORRECT AND DOES NOT WARRANT REVIEW BY THIS COURT

#### A. The Court of Appeal Correctly Concluded that the City's Layoff Decision was a Matter of Managerial Prerogative

Local 188 challenges the Court of Appeal's conclusion that "[t]he decision to lay off firefighters is not subject to negotiation" under the MMBA because such decisions involve the scope and direction of an enterprise and therefore constitute "a fundamental management right." (Opinion, pp. 18-23, 25.) Local 188's challenge is without merit.

Under the MMBA, a public agency's duty to meet and confer is "confined to matters within the 'scope of representation,'" that is, matters relating to "employment conditions and employer-employee relations including, but not limited to, wages, hours, and other terms and conditions

of employment." (*Berkeley Police Assn. v. City of Berkley* (1978) 76 Cal.App.3d 931, 936; Gov. Code § 3504.) Critically, the MMBA also provides that "the scope of representation shall not include considerations of the merits, necessity, or organization of any service or activity provided by law or executive order." (Gov. Code § 3504.)

This limiting language "forestall[s] any expansion of the language of 'wages, hours and working conditions' to include more general managerial policy decisions." (*Berkeley Police Assn.*, *supra*, 76 Cal.App.3d at p. 936; *San Diego Adult Educators v. PERB* (1990) 223 Cal.App.3d 1124, 1133-1134.) Thus, "decisions which are plainly within the realm of managerial discretion are excluded from the scope of union representation." (*Berkeley Police Assn.*, *supra*, 76 Cal.App.3d at p. 937; see *San Jose Peace Officers Assn. v. City of San Jose* (1978) 78 Cal.App.3d 935, 948-949 [city may unilaterally change policy concerning use of deadly force because it was a fundamental policy decision].)

It is well established that decisions to eliminate or reduce services and lay off employees fall squarely within an employer's managerial prerogative. As this Court recognized in *Vallejo*, *supra*, employers have the right to unilaterally lay off employees without subjecting the decision to bargaining under the MMBA. (12 Cal.3d at pp. 621-622.)[3] The *Vallejo*

[3] In *Fire Fighters Union v. City of Vallejo, supra,* the City of Vallejo and the Fire Fighters Union reached impasse in negotiations over four specific

Court made clear that the fact that layoffs may result in the termination of employees alone is not sufficient to require the local government to meet and confer over the decision. (*Ibid.*, see also *State Assn. of Real Property Agents v. State Personnel Bd.* (1978) 83 Cal.App.3d 206, 213 [recognizing that "an employer faced with economic necessity has the right unilaterally to decide that some reduction in work forces must be made"].)

Decisions interpreting similar provisions of the National Labor Relations Act ("NLRA," 29 U.S.C. § 151 *et seq.*) support the conclusion that the MMBA exempts layoff decisions from the meet and confer requirement.[4] In *First National Maintenance Corp. v. National Labor Relations Bd.* (1981) 452 U.S. 666, the United States Supreme Court considered whether an employer's economically motivated decision to close part of its business and layoff employees was a mandatory subject of bargaining under the NLRA. (*Id.* at p. 667.) The Court held it was not.

The Court in *First National* concluded that the decision to lay off employees was itself not subject to bargaining because it involved the

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proposals. The City's Charter required binding interest arbitration as a means of resolving such disputes. This Court addressed the negotiability of hours, vacancies and promotions, and a "constant manning procedure." As to personnel reductions, this Court held that the City was not required to bargain personnel reductions, but the effects of such a reduction were bargainable. (*Vallejo, supra* 12 Cal.3d at p. 621.)

[4] California courts may rely on NLRA precedent to interpret the MMBA because the MMBA is, in large part, patterned after the NLRA. (*Vallejo, supra*, 12 Cal.3d at p.617; *San Diego Teachers Assn. v. Superior Court* (1979) 24 Cal.3d 1, 12-13.)

scope and direction of an enterprise and therefore constitutes a fundamental management right. (*Id.* at pp. 678-679, 683 ) The Court explained that to require bargaining in such cases would effectively eviscerate management prerogative: "The union's practical purpose in participating [in a decision to close operations] however, will be largely uniform: it will seek to delay or halt the closing." (*Id.* at p. 681.) Requiring negotiation in such circumstances "could afford a union a powerful tool for achieving delay, a power that might be used to thwart management's intentions in a manner unrelated to any feasible solution the union might propose." (*Id.* at p. 683.) The Court went on to hold, however, that while an employer need not meet and confer over a layoff decision, it does have a duty to negotiate over the ***effects*** of that decision. (*Id.* at p. 677 n. 15.)

Consistent with *First National*, federal courts have routinely recognized that certain core management decisions, such as the decision to layoff employees, are not subject to mandatory collective bargaining. (See *Arrow Automotive Industries, Inc. v. National Labor Relations Bd.* (4th Cir. 1988) 853 F.2d 223, 227 [noting that *First National* "established a ***per se rule*** that an employer has no duty to bargain over a decision to close part of its business"], citations omitted, emphasis added; *Intern. Broth. of Elec. Workers, Local 21 AFL-CIO v. National Labor Relations Bd.* (9th Cir. 2009) --- F.3d ---, 2009 WL 1036038, pp. *2-3 [holding that under *First National*, corporation's decision to merge with joint venture was a core

business decision not subject to mandatory collective bargaining].) PERB has likewise held that the issue of whether there are sufficient funds or work to support the maintenance of particular staffing levels "is a matter of fundamental managerial concern which requires that such decisions be left to the employer's prerogative." (*Newman-Crows Landing Unified School Dist.* (1982) PERB Dec. No. 233 [6 PERC ¶ 131621] [citing NLRB precedent]; see *State of California (Dept. of Forestry and Fire Protection)* (993) PERB Dec. No. 999-S [17 PERC ¶ 24112].)

Consistent with this precedent, the Court of Appeal here properly upheld PERB's determination that the City's layoff decision constituted a management prerogative, not subject to mandatory bargaining.

### B. *Vallejo* Did Not Create a Fire Fighters Exception to the General Rule that Layoffs Are a Managerial Prerogative

Local 188 maintains that *Vallejo* and its progeny require public agencies "to negotiate with affected employee organizations over decisions to reduce firefighter staffing levels as well as over decisions to lay off firefighters if those decisions primarily involve workload and safety of the employees rather than the policy of fire prevention of the city." (Petition, p. 12.) This effort to differentiate decisions to lay off firefighters from decisions to lay off non-firefighter personnel is belied by plain language in the *Vallejo* decision itself. First, the *Vallejo* Court squarely held that employers have the right to unilaterally lay off ***firefighters*** without

subjecting the decision to bargaining. (12 Cal.3d at pp. 621-622.) Indeed, as the Court of Appeal here observed, *Vallejo* stated "without qualification that '[a] reduction of the entire fire fighting force based on the city's decision that as a matter of policy of fire prevention the force was too large would not be arbitrable in that it is an issue involving the organization of the service.'" (Opinion, p. 21, quoting *Vallejo, supra*, 12 Cal.3d at p. 621.) Neither this Court nor any subordinate appellate court has ever created a firefighters exception to the exclusion of layoff decisions from the scope of bargaining. Rather, the cases uniformly hold that only the effects of such a decision – such as workload or safety of the remaining employees – are negotiable. The record herein is clear that Local 188 demanded to bargain over the ***decision*** of the layoff, not any ***effects*** thereof. (App. Vol. III, Tab 15 at pp. 830-831.)

### C. Local 188's Assertion that the Decision Herein Conflicted with Other California Appellate Decisions Is Incorrect

Local 188 cites to a variety of appellate cases in an effort to demonstrate that the decision herein drives a wedge in otherwise uniform California case law. Each of the cases to which Local 188 cites either supports the Court of Appeal's analysis or is distinguishable. In *Engineers & Architects Assn. v. Community Development Dept.* (1994) 30 Cal.App.4th 644, 655-656, the court of appeal concluded that the layoff of a finance officer was neither grievable nor arbitrable because the decision to

lay off was the exclusive prerogative of management. *Sullivan v. State Bd. of Control* (1985) 176 Cal.App.3d 1059, 1065 addressed a policy that directly affected the wages and hours of highway patrol officers, and did not involve layoffs at all. *Long Beach Police Officer Assn. v. City of Long Beach* (1984) 156 Cal.App.3d 996, 1005-1006 held that consultation with union representatives prior to making statements related to officer shootings was within the scope of meeting and conferring, and similarly did not involve the layoffs. In *Solano County Employees' Assn. v. County of Solano* (1982) 136 Cal.App.3d 256, 264, the court of appeal held that a rule that prohibiting employees from driving motorcycles on County business without prior approval was negotiable as a safety rule; again, layoffs were not at issue. *Public Employees of Riverside County, Inc. v. County of Riverside* (1977) 75 Cal.App.3d 882, 886, addressed an entirely different issue – whether MMBA employers were required to bargain with employee organizations representing supervisory employees. As the *Riverside* court made clear, the scope of bargaining was not even at issue in the case. *(Id.)*

### D. The Court of Appeal's Decision Is Consistent with *Building Materials*

Next, Local 188 claims that the Court of Appeal's holding that layoff decisions are a matter of managerial prerogative erroneously failed to apply the three-part balancing test established in *Building Material & Construction Teamsters' Union v. Farrell*, (1986) 41 Cal.3d 651 ("*Building*

*Material*").[5] This argument also fails. The Court of Appeal analyzed *Building Materials* and decided that the case is distinguishable because it involved a transfer of work out of the bargaining unit – a mandatory subject of bargaining. (Opinion, p. 19.) The Court of Appeals correctly declined to apply a "balancing" test because, as discussed above, it is well-established by federal and state judicial and administrative case law that layoffs are outside the scope of collective bargaining as a managerial prerogative. (See *First National Maintenance Corp., supra*; 452 U.S. at p. 683 [an employer may exercise its managerial prerogative to eliminate or reduce services and lay off employees "free from the constraints of the bargaining process"].) Indeed, this Court in *Building Material* expressly acknowledged that "[d]ecisions to close a plant or ***reduce the size of an entire workforce*** ... are of a different order from a plan to transfer work duties between various employees" and are not subject to mandatory bargaining. (41 Cal.3d at p. 655, emphasis added.)

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[5] In the balancing test, the court must first consider whether the management action has a "significant and adverse effect on the wages, hours, or working conditions of the bargaining unit employees." (*Building Materials, supra*, 41 Cal.3d at p. 660.) If not, no duty to meet and confer applies. (*Id.* at pp. 659-660.) If there is, the court must consider whether the "significant and adverse effect" arises from implementation of a fundamental managerial or policy decision. (*Id.* at p. 660.) "If an action is taken pursuant to a fundamental managerial or policy decision, it is within the scope of representation *only* if the employer's need for unencumbered decisionmaking [sic] in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question. (*Id., quoting First National Maintenance Corp., supra,* 452 U.S. at p. 686. [Emphasis added.].)

Moreover, in *Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623, this Court clarified that the balancing test established in *Building Material* "applies to determine whether management must meet and confer with a recognized employee organization ... when the ***implementation*** of a fundamental managerial or policy decision significantly and adversely affects a bargaining unit's wages, hours, or working conditions." (*Id.* at p. 637, emphasis added.) This Court distinguished between actions taken to implement a fundamental managerial decision from a fundamental managerial decision itself, which is not subject to bargaining. (*Id.* at pp. 631-635.)

Local 188 claims that the Court of Appeal's failure to apply the three-part *Building Material* test is inconsistent with the Fourth District Court of Appeal's decision in *Rialto Police Benefits Assn. v. City of Rialto* (2007) 155 Cal.App.4th 1295. The Fourth District's decision in *Rialto* is inapposite. In *Rialto*, the city faced an intractable crime problem. (*Id.* at p. 1308 n. 5.) Conceding that its efforts to remedy Rialto's crime problem had failed, the city council voted to disband the city's police force and contract for law enforcement services with the much more effective and respected San Bernardino County Sheriff's Department. (*Id.* at p. 1305.) Although the city offered to meet and confer with the police unions on the *effects* of the decision to "go out of the business" of providing police

services, it did not offer to meet and confer on the decision itself. (*Id.* at p. 1299)

The *Rialto* court found that the decision was subject to collective bargaining because it was motivated by a desire to reduce costs, which along with matters concerning "employee morale, level of service, and management conflicts" were "eminently suitable for resolution through collective bargaining." (*Rialto*, *supra*, 155 Cal.App.4th at p. 1308.) Because, in the court's view, the city's motivation for disbanding its police force was to obtain less expensive law enforcement services from the county sheriff, it was unnecessary to consider whether the decision implicated a fundamental managerial decision or policy. (*Ibid.*)

The *Rialto* decision is consistent with existing PERB and NLRB case law that differentiates *subcontracting* with an economic motive from layoffs. (See *Oakland Unified School District* (2005) PERB Decision No. 1770E [District unlawfully subcontract police work from District police force to city police department]; *Soule Glass and Glazing Co. v. NLRB* (1st Cir. 1981) 652 F.2d 1055, 1088 [employer is required to bargain both the decision and effects of a work transfer].) Unlike *Rialto*, the layoffs here were not premised on contracting out bargaining unit work to obtain firefighter services more cheaply from a third party. Rather, the Richmond layoffs of fire fighting personnel were part City-wide layoffs geared

towards maintaining solvency and continuing to operate as government. (App., Vol. III, Tab 15 at p. 828)

## III. THE COURT OF APPEAL'S FAILURE TO REMAND AND REQUIRE A HEARING BEFORE PERB WAS NOT ERRONEOUS

Finally, Local 188 contends that the Court of Appeal's decision "improperly abrogates" PERB's exclusive jurisdiction. Specifically, Local 188 contends that the Court of Appeal trampled on upon PERB's exclusive jurisdiction to remedy violations of the MMBA ***by failing to remand the case*** back to PERB "to decide on the basis of an evidentiary hearing and factual record whether 'the manpower issue primarily involves the workload and safety of the men ('wages, hours and working conditions') or the policy of the fire prevention of the city ('merits, necessity or organization of any governmental service').'" (Petition, pp. 26-27, quoting *Vallejo*, *supra*, 12 Cal.3d at pp. 620-621.)

Under PERB Regulations, an unfair practice charge that does not reflect a *prima facie* case of unfair practice must be dismissed at the regional level. (8 Cal. Code Reg. § 32630.) Only if an unfair practice charge states a *prima facie* case may the Board issue a complaint and ultimately set the matter for hearing. (8 Cal. Code Reg. § 32640(a).)

Here, Local 188's core arguments are that PERB erred by refusing to issue a complaint, and that the Court of Appeal erred by agreeing with PERB that the decision to lay off personnel is a managerial prerogative.

Under these circumstances, a remand for purposes of conducting an evidentiary hearing would have been in conflict with the very essence of the decisions of PERB and the Court of Appeal.[6]

Moreover, Local 188's argument is contrary to its own theory of the case. Local 188 argued below that a court ***has*** jurisdiction to review a PERB decision not to issue a complaint – an argument disputed by PERB and the City which is the subject of a separate petition for review filed by PERB. The argument that the court impinged on PERB's exclusive jurisdiction by failing to remand the case cannot be squared with Local 188's assertion – questionable though it is – that the trial court had jurisdiction in the first place.

**CONCLUSION**

For all of the foregoing reasons, this Court should deny Local 188's petition for review.

DATED: May 18, 2009

Respectfully submitted,
Renne Sloan Holtzman Sakai LLP

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[6] This conclusion is all the more proper in light of the fact, as noted above, that Local 188 demanded that the City bargain the ***decision*** to layoff and at no time demanded to bargain the effects of the decision.

## CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c)(1) of the California rules of court, Counsel for Real Party in Interest City of Richmond certifies that the text of its Answer to Petition for Review consists of 4,147 words, excluding tables, as counted by the Word XP word-processing program used to generate the brief.

DATED: May 18, 2009

Respectfully submitted,
Renne Sloan Holtzman Sakai LLP

By: _____

Jeffrey Sloan
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PROOF OF SERVICE

I, Rochelle Redmayne, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at Renne Sloan Holtzman Sakai, 350 Sansome Street, Suite 300, San Francisco, CA 94104.

On May 18, 2009, I served the following document(s):

**ANSWER TO APPELLANT LOCAL 188'S PETITION FOR REVIEW**

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in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

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

Executed May 18, 2009, at San Francisco, California.

Rochelle Redmayne