

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

March 4, 1993

To: Board of Directors (Legal & Claims Committee--Action)
(Organization & Personnel Committee--Action)

From: Assistant General Counsel

Subject: Authority to Retain Outside Counsel for Labor Negotiations

Report

At the January meetings of the Organization and Personnel and Legal and Claims Committees, the committees discussed the potential for a perceived conflict of interest with respect to legal representation of the District in the upcoming negotiations to revise the expiring memoranda of understanding with the District's employee associations. In the past, a Deputy General Counsel has been designated to provide, on behalf of the General Counsel, legal representation to the District in its negotiations with three of the four organization. Since the Deputies General Counsel are members of the Management and Professional Employees Association (MAPA), the General Counsel and Assistant General Counsel (who are not members of an employee organization) have represented the District directly with respect to MAPA, on occasion with the assistance of outside counsel.

Legal representation in this manner has been effective. However, continued representation of the District through the Deputies General Counsel while they are also members of one of the employee associations potentially could raise the perception of a conflict of interest. This is particularly true in light of the simultaneous negotiations with all four associations which will occur this year. While the District's General Counsel and Assistant General Counsel could represent the District, the time involved would interfere significantly with their ability to adequately perform their many other duties. It is therefore recommended that outside counsel experienced in public agency employee labor relations be retained to assist the General Counsel in providing legal advice to the General Manager and the Board during labor negotiations this year.

Requests for Proposal for such services were sent to 15 law firms in Southern California and the San Francisco Bay Area known to have public agency labor relations and related litigation experience. Proposals were received from eight firms, of which four were selected for interview by the Assistant General Counsel and Director of Personnel. Based on the proposals, resumés, and interviews, the firm of Liebert, Cassidy & Frierson is recommended to your Board. The firm of Whitmore, Johnson & Bolanos which also ranked highly could provide such services in the event Liebert, Cassidy is not retained.

Liebert, Cassidy has proposed to make available named partner John Liebert and litigation partner Richard Kriesler. Mr. Dan Cassidy, another named partner of the firm, also would be available in the event Mr. Liebert or Mr. Kriesler are unavailable. Such associates as are appropriate also would be assigned to work on District matters. The firm has extensive experience, generally representing management, in public agency employee labor relations matters, including litigation. Liebert, Cassidy is also familiar with the District's employee relations practices and procedures, having in the past provided legal advice with regard to the adequacy of those practices as well as the District's affirmative action policies. The firm's rates are very competitive, ranging from \$120 for associates to \$185 for senior partners. The attorneys who will be working with the District are all located in the firm's office in Los Angeles, providing easy accessibility. Liebert, Cassidy has an equal opportunity/affirmative action plan that meets your Board's requirements.

Whitmore, Johnson of Mountain View, California also was highly rated and should be considered in the event Liebert, Cassidy is not retained. However, the factors which make Liebert, Cassidy the recommendation include its proximity and accessibility to the District; its ability to provide a greater depth of staffing if required; and more extensive experience litigating public agency labor relations issues.

Sufficient funds exist for this contract in the Legal Department's budgets for fiscal 1992-93 and 1993-94.

The proposed action is exempt from the provisions of the California Environmental Quality Act.

Board Committee Assignments

This letter is referred for action to:

The Legal and Claims Committee because of its authority to study advise, and make recommendations with regard to the selection of special counsel and the determination of the scope of their assignments, pursuant to Administrative Code section 2461(e); and

The Organization and Personnel Committee because of its authority to study, advise, and make recommendations with regard to the terms and conditions of employment of special counsel, pursuant to Administrative Code section 2471(g).

Recommendation**LEGAL AND CLAIMS AND ORGANIZATION AND PERSONNEL COMMITTEES
FOR ACTION.**

It is recommended that the General Counsel be authorized to contract with the law firm of Liebert, Cassidy & Frierson to assist the General Counsel in providing the District legal representation with respect to labor negotiations with the District's employee associations during 1993, and with litigation, if any, arising therefrom, at rates ranging from \$120 for associates to \$185 for senior partners.


for Karen L. Tachiki

JFR:mg/gld
board\outsid.2
Attn.

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Proposal:

Special Counsel for Labor Relations

for the

Metropolitan Water District of Southern California

Contact: John Liebert

Date: February 5, 1993

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February 5, 1993

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REGINALD T. MURPHY
DIRECTOR OF TRAINING PROGRAMS

Karen L. Tachiki
Assistant General Counsel
Metropolitan Water District of
Southern California
Post Office Box 54153
Los Angeles, California 90054

Re: Request for Proposal

Dear Ms. Tachiki:

Thank you for your January 21 request for a proposal to serve as special labor relations counsel. We are most interested in serving the Metropolitan Water District of Southern California in this capacity.

We understand your RFP to seek a firm that will be immediately responsive to your needs in the following legal aspects of labor relations:

- * Legal advice, assistance and representational services in negotiating, drafting, implementing and administering labor agreements with the District's employee organizations on an as needed basis.
- * As may be requested, assisting the General Counsel in litigation relating to labor law issues.

Based on the depth and scope of our experience, and our long record of success in this area, we believe that we are in a unique position to provide these services to the District in a quality and timely manner as attested to by our reputation.

In addition to myself, my partner Larry Frierson is fully authorized to make representations and enter into agreements on behalf of the firm. Both of us are reachable at the above indicated Los Angeles address, and phone and fax numbers.

Karen L. Tachiki
February 5, 1993
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The attached responds to the information requested with your RFP.

Should you have any questions, or wish to receive additional information, please let us know.

Thank you for addressing your RFP to us. We look forward to the opportunity of discussing our qualifications further with you.

Sincerely,

LIEBERT, CASSIDY & FRIERSON

By 
John Liebert

Profile of Liebert, Cassidy & Frierson

The main office of the firm is located at the above Los Angeles address, adjacent to the Los Angeles International Airport.

The office presently has a staff of eighteen attorneys, all of whose activities consist of representing public agency managements in the area of labor and employment relations law. Thus the office deals with the broad spectrum of issues in this area, including specifically all aspects of negotiations, labor agreements, and labor litigation.

Summary of Qualifications

Our firm resume, attached as Appendix A, describes the firm's practice, summarizes the experience of the attorneys, gives a listing of firm clients, and sets forth the firm's philosophy relating to labor relations and negotiations.

I would be the primary provider of services to the District. Partners Dan Cassidy and Richard Kreisler would be kept apprised and would serve as back ups in the event of my unavailability.

Clients we have been working with that are currently or were recently involved in labor negotiations are:

Anaheim
David Hill, Labor Relations Director
Jack White, City Attorney
(714) 254-5182

Housing Authority of the
City of Los Angeles
Joseph Shuldiner, Executive Director
(213) 483-6440

Downey
Chris Birch, Personnel Director
(310) 904-7293

Oxnard
Dene Jones, Personnel Director
Gary Gillig, City Attorney
(805) 385-7590

Inglewood
Paul Eckles, City Manager
Howard Rosten, City Attorney
(310) 412-5301

In addition to negotiations, the firm's practice extends to consulting, training, and representation in administrative and court proceedings involving all aspects of labor relations, due process and discipline, employment discrimination, FLSA, OSHA, and personnel administration issues. Our services are provided to the many public agencies listed in the firm resume, including several water districts.

The firm publishes a monthly newsletter apprising clients of latest employment law developments. A recent copy is attached as Appendix B.

Fees and Costs

We are prepared to provide our services on any one of three fee arrangements.

1. An hourly fee, whereby we bill for time during which services are provided, to the nearest quarter of an hour;

2. An annual flat retainer covering all specified services except representation in administrative and court proceedings, which would be at an hourly rate; or

3. A combination of the two, whereby the annual retainer would cover all specified services up to a designated maximum number of hours, and an hourly fee structure thereafter.

We would not bill for travel time to your administrative office. Nor would we bill for expenses other than if our services were to require long distance travel, and of course costs incident to proceedings or litigation we had been asked to handle.

We agree that it is appropriate for us not to bill for any initial familiarization time.

Insurance

We maintain in effect errors and omissions coverage of one million/two million dollars.

Affirmative Action

Attached as Appendices C and D are copies of the firm's Affirmative Action Policy and Work Force Utilization Forms for the years 1988 through 1993.

APPENDIX A

RESUME OF THE FIRM

Practice of the Firm:

Liebert, Cassidy & Frierson, with offices in Los Angeles and San Francisco, specializes in representing public sector employers in all matters pertaining to employment relations.

Our clientele consists of cities, counties, special districts, and school and college districts throughout California, and in Arizona and Nevada.

Following are summaries of our firm's experience and clientele.

Negotiations:

The members of the firm have successfully negotiated literally many hundreds of agreements for cities, counties, special districts, and school and college districts. Examples of local agencies include:

- | | | |
|---------------|--|---|
| Arcadia | Los Angeles Housing Authority | Richmond |
| Beverly Hills | Los Angeles City Community
Redevelopment Agency | Ridgecrest |
| Brea | Mammoth Lakes | Sacramento |
| Chula Vista | Merced County | San Francisco |
| Claremont | Monrovia | San Marino |
| Covina | Montclair | San Rafael |
| Davis | Monterey County | Santa Barbara |
| Downey | National City | Santa Barbara County |
| El Segundo | North San Diego County Transit | Santa Monica |
| El Cajon | Norwalk | Santee |
| Fillmore | Oakland | Simi Valley |
| Gardena | Oceanside | South Coast Area Transit |
| Glendale | Oxnard | Stanton |
| Glendora | Palos Verdes | Vallejo |
| Hermosa Beach | Pasadena | Ventura |
| Inglewood | Petaluma | Ventura County |
| Irvine | Phoenix | Ventura Regional Sanitation
District |
| Kings County | Placer County | Visalia |
| Laguna Beach | Pomona | Westminister |
| Lancaster | Redondo Beach | |
| Lompoc | | |

The agreements negotiated on behalf of these and other public employers, depending on the particular philosophy and circumstances of a given agency, have run the gamut from brief understandings limited to benefit items to comprehensive labor agreements that define substantially all terms of employment, and, through management rights, waiver and "zipper" type clauses, provide protection to management's ability to manage the agency.

In addition to conducting negotiations for public employers, we continually work with public agencies that employ staff personnel to do their own negotiations. This arrangement has involved all aspects of consultation and related services, including writing initial bargaining proposals, reviewing counter-proposals, providing training and advice concerning negotiating strategies, and giving general advice when particular problems arise.

Negotiating Impasses - Services provided by members of the firm have included direct participation, as well as general consultation in hundreds of mediation, fact-finding and arbitration proceedings.

Strikes - We have worked with many public sector clients in contingency planning for job actions and in assisting them in strike-related activities. A firm partner co-authored the "Management Strike Handbook" published by the International Personnel Management Association.

Contract Administration and Grievance Handling - The firm has extensive experience in the area of grievance administration, ranging from the giving of advice at the administrative levels of the grievance process through litigating arbitration cases.

Firm's Approach to Negotiations:

The firm's approach to negotiations and related representational services is:

- We work with and for the chief administrative official and his/her designated staff, and through him/her with the Governing Body. We provide professional information and advice to assist the agency in determining its policy goals and objectives, which then become our goals and objectives; we see our job as applying our best efforts and skills to achieving them.
- We believe in carefully organizing for negotiations, with goals and objectives kept well in mind. The negotiating process, we believe, consists of definable stages, from preparatory activities to the preliminary bargaining phases, "hard bargaining," and finally to agreement, impasse procedure, or work action. Each stage of the process requires an organized approach in order to maximize the chances of attaining bargaining objectives.
- Our philosophy is not one of "union busting," but rather one of using a professional approach that seeks to achieve and maintain professional relationships, notwithstanding the adversarial aspects of the process.

- We call to the attention of our clients that in return for agreeing to competitive benefit adjustments, it is reasonable for them to seek to contractually protect and maximize their management discretion to set standards of service and retain the prerogative to direct, assign, and stimulate employees to meet them.
- We see the conclusion of negotiations as the beginning for establishing a constructive employer-employee organization-employee relations structure, which requires management training and ongoing involvement with agency management on our part.
- While one member of the firm handles a particular negotiating unit, at least one other designated attorney will be kept advised so that at all times the client has access to an attorney who is familiar with the status of the situation in each bargaining unit.

Consulting and Training Services:

The firm's greatest source of accomplishment comes from its record of success in counseling and advising its clients on the best ways to avoid becoming party to adversary proceedings. A prime example of this approach is the consulting and training services the firm provides to "consortiums" of agencies. Local agency consortium clients include:

Albany	Colton	Glendale
Alhambra	Covina	Glendora
American Canyon	Culver City	Hanford
Antioch	Cupertino	Hawthorne
Arcadia	Cypress	Hayward
Bell Gardens	Dana Point	Healdsburg
Benicia	Danville	Hercules
Beverly Hills	Davis	Hermosa Beach
Brea	Del Mar	Hollister
Calistoga	Downey	Housing Authority of Los Angeles
Carlsbad	Duarte	Huntington Beach
Carmel	Dublin	Imperial Beach
Carpinteria	El Cajon	Indio
Carson	El Centro	Inglewood
Central Contra Costa Sanitation District	El Cerrito	Irvine
Cerritos	El Dorado County	Kings County
Chino	El Monte	La Habra
Chino Basin Municipal Water District	El Segundo	La Mesa
Chula Vista	Emeryville	La Mirada
Claremont	Encinitas	La Palma
Cloverdale	Escondido	La Verne
Clovis	Fillmore	Lakewood
College of the Sequoias	Folsom	Las Virgenes Municipal Water District
Concord	Fountain Valley	Lawndale
Conejo Recreation & Park District	Fremont	Lemon Grove
Contra Costa Water District	Fresno County	Livermore
Coronado	Fresno County Housing Authority	Lompoc Hospital District
Costa Mesa	Fullerton	Los Altos
	Gardena	Los Gatos
	Garden Grove	Madera

Madera County	Pico Rivera	Sausalito
Madera Housing Authority	Pinole	Scotts Valley
Manhattan Beach	Pittsburg	Simi Valley
Marin County	Placer County	Solano Beach
Marin Municipal Water District	Placer County Water Agency	Solano County
Martinez	Pleasant Hill	Sonoma
Metropolitan Water District of So. California	Pleasanton	Sonoma County
Merced County Housing Authority	Pomona	South Bay Regional Public Comn. Authority
Menlo Park	Poway	South Gate
Milpitas	Redondo Beach	South Pasadena
Mission Viejo	Rialto	Sunnyvale
Monrovia	Richmond	Taft
Montclair	Rocklin	Temple City
Montebello	Roseville	Thousand Oaks
Monterey	Rowland Water District	Tracy
Monterey County	Salinas	Tulare
Monterey Park	San Clemente	Tulare County
Monterey Regional Water Pollution Control Dist.	San Fernando	Tustin
Monterey Salinas Transit	San Juan Capistrano	Union City
Napa City	San Leandro	Union Sanitation District
Napa County	San Marcos	Upland
National City	San Marino	Vallejo
Nevada County	San Rafael	Vacaville
Newark	San Ramon	Ventura
Norwalk	Sanger	Ventura Regional Sanitation District
Novato	Santa Barbara	Vernon
Novato Fire Protection District	Santa Barbara County	Visalia
Oceanside	Santa Ana	Vista
Orange	Santa Cruz	Walnut Creek
Orange County	Santa Cruz County	Walnut Valley Water District
Oxnard	Santa Cruz Metro Transit Authority	Watsonville
Pacific Grove	Santa Fe Springs	West Covina
Palo Alto	Santa Paula	West Sacramento
Pasadena	Santa Rosa	Whittier
Petaluma	Santee	Yolo County
	Saratoga	

In addition to being available as needed for individual consultations, the firm provides ongoing training on current developments in labor relations and personnel law, and workshops on such subjects as negotiating strategies, performance evaluations, disciplinary actions, employment discrimination, effective supervision, grievance administration, law enforcement issues and special workshops for Governing Board members. Experience over the years confirms that not only have the member agencies found the consulting and training services helpful, but the opportunity afforded for the exchange of ideas and information between agency management has proven invaluable.

The firm has presented series of highly successful workshops on behalf of the League of California Cities and the League of Arizona Cities and Towns on such topics as Handling Disciplinary Actions, Handling Charges of Employment Discrimination, Personnel Administration for Law Enforcement Agencies

and Implementing the Fair Labor Standards Act. Workbooks developed for these workshops are widely used by public agencies throughout California and Arizona, and some of them have been given extensive national distribution.

Members of the firm make presentations on a continuing basis to a variety of professional organizations on employment relations law issues. Examples of such organizations include:

American Arbitration Association
 American Bar Association
 American Public Transit Association
 Association of Washington Cities
 California Peace Officers Standards and Training (POST) Academy
 California Public Employer Labor Relations Association
 County Supervisors Association of California
 International Personnel Management Association
 Institute of Industrial Relations, UCLA
 League of California Cities
 League of Arizona Cities and Towns
 National Institute of Municipal Law Officers
 National Public Employer Labor Relations Association
 Oregon Local Government Personnel Institute
 Public Risk Managers Association

The firm serves as general counsel for the County Personnel Association of California (CPAC).

Local Agency Employment Law Services:

We have worked closely with city attorneys and county counsels, as well as having directly handled the representation for our local agency clients in literally hundreds of legal proceedings before civil service and personnel boards, arbitrators, the Public Employment Relations Board, State and Federal EEO and other administrative agencies, and the courts. These have covered the full spectrum of employer-employee relations matters, including civil service appeals, recognition and unit representation matters, unfair labor practice charges and related negotiating issues, employment discrimination matters, pension and disability issues, and Fair Labor Standards Act claims. Examples of such local agency representations include:

Alameda-Contra Costa Transit District	Claremont	Fremont
Angels Camp	Compton	Gardena
Arcata	Concord	Glendale
Atascadero	Conejo Recreation & Parks District	Hayward
Bakersfield	Davis	Healdsburg
Beverly Hills	Downey	Hermosa Beach
Bishop	Dunsmuir	Highland
Brawley	El Centro	Imperial Beach
California City	El Centro Medical Center	Imperial Irrigation District
Carson	El Dorado County	Inglewood
Carpinteria	El Monte	Irvine
Cathedral City	Fairfield	Kern County
Ceres	Fillmore	La Habra
Chino	Fontana	La Verne
		Lancaster

Las Virgenes Municipal Water District	Pittsburg	Santa Cruz
Livermore	Placer County	Santa Maria
Lompoc	Pleasanton	Santa Monica
Los Angeles	Pomona	Seaside
Los Angeles County	Porterville	Selma
Madera	Poway	Solano County
Madera Housing Authority	Redondo Beach	Sonoma County
Mammoth County Water District	Redwood City	Sonora
Mammoth Lakes	Reno	South Bayside Systems Authority (Redwood City)
Marina	Salinas	South County Fire District (Belmont-San Carlos)
McFarland	San Bruno	South Pasadena
Monterey	San Carlos	Sunnyvale
Monterey County	San Fernando	Tehachapi
Morro Bay	San Francisco	Thousand Oaks
Napa	San Jose	Torrance
Novato Fire Protection District	San Jose Redevelopment Agency	Turlock
Oakland	San Leandro	Turlock Irrigation District
Oceanside	San Luis Obispo	Upland
Orange	San Luis Obispo County	Vallejo
Oxnard	San Mateo	Ventura
Palo Alto	San Pablo	Vernon
Pasadena	San Rafael	Visalia
Paso Robles	San Ramon	Whittier
Perris	Sanger	Watsonville
Phoenix	Santa Clara County	
Pinole		

Employee Relations/Personnel Policies:

By virtue of the public agency background of members of the firm, we have extensive experience in developing local agency personnel policies and procedures. The firm does extensive work in reviewing agency civil service/personnel policies and rules to assure continuing consistency with the ever-changing dictates of EEO and affirmative action, labor relations and other laws and administrative regulations. A firm partner was instrumental in developing the League of California Cities Sample Employer-Employee Relations and Personnel Policies and Procedures Ordinances.

Members of the Firm:

John Liebert - Over twenty years of experience representing public agency management in California, Arizona and Nevada in employment relations matters. Mr. Liebert was Labor Relations Counsel for the City of Sacramento prior to becoming a partner in a management labor firm. He has negotiated hundreds of agreements for local agencies and school districts, as well as representing public agency management in Public Employment Relations Board, arbitration, fact-finding, Personnel and Civil Service Commission, EEOC, and other administrative proceedings and before trial and appellate courts.

Daniel C. Cassidy - Over twenty years of experience in public and private sector labor relations. Mr. Cassidy was in charge of the Labor Relations Division of the Los Angeles County Counsel's Office prior to his years as a partner in a management labor law firm. His clients include counties, cities and special districts, as well as school and college districts throughout California, for which he has negotiated a multitude of agreements and which he has represented in a variety of administrative and court proceedings.

Larry J. Frierson - Over twenty years of experience in employment and education law with the State University and College System, as general counsel of the Los Angeles Community Colleges, and in representing a large number of local agencies and school and college districts in administrative and court proceedings with respect to employment discrimination, disciplinary proceedings and education law matters as a partner in a management labor law firm.

Linda Jenson - Twenty years of experience representing management in public sector employment relations and education law. Ms. Jenson has negotiated dozens of labor agreements covering all types of city, county, school, college and special district employees. She has had extensive experience in handling arbitrations, PERB hearings, fact-findings, personnel commission and civil service commission hearings, and court proceedings. She was a full-time faculty member of the UCLA School of Law.

Bruce A. Barsook - Over fifteen years of experience in public sector employment law; first as counsel to the Chairman of the California Public Employment Relations Board, and thereafter as an Administrative Law Judge for the PERB. Mr. Barsook has extensive experience in handling negotiations, arbitrations, and administrative and court proceedings for local agencies as well as school and college districts.

Jeffrey Sloan - Over fifteen years of experience in labor and employment law. After a number of years in private practice with a labor law firm, Mr. Sloan joined the California Public Employment Relations Board, and ultimately the Governor appointed him the PERB's General Counsel. Mr. Sloan has been an instructor in labor law for the University of California. He manages the San Francisco office, and directs the firm's northern California activities.

Richard M. Kreisler - Over fifteen years of experience in civil litigation and public sector labor law. Mr. Kreisler was for many years a partner in a firm which specialized in representing police officers, firefighters and their respective employee organizations. He has had extensive experience in litigating the defense of civil rights cases in the public sector, as well as the whole range of public sector labor law issues.

Linda A. Tripoli - Over ten years of experience in all facets of public sector labor and employment law representing management in negotiations, arbitrations, disciplinary and other administrative proceedings, and in litigation in state and federal court. Ms. Tripoli was a partner in a public sector management employment law firm until joining the firm's San Francisco office.

Marie C. Blits - Over fifteen years of experience in all phases of employment law and labor relations representing public sector management. Ms. Blits was for a number of years supervising attorney in the Employment Relations Division of the Los Angeles City Attorney's office. She is a member of the firm's San Francisco office, representing northern California clients in all facets of the firm's practice, including negotiations, employee discipline proceedings, discrimination matters, and litigation in the state and federal courts.

Debra L. Bray - Before joining the firm in 1987, Ms. Bray served as legal intern for the Equal Employment Opportunity Commission while attending the University of Southern California Law School. Ms. Bray is involved in all aspects of the firm's employment and education law practice, notably the defense of employment discrimination law suits.

Mildred Collins - Ms. Collins had many years of experience as a personnel manager in private industry, representing management in labor relations, discrimination, discipline and other employment matters, as well as establishing and conducting supervisory and executive training programs. After her law studies, she spent a number of years as a trial attorney for the Los Angeles County District Attorney's office before joining the firm in 1988. Since that time she has been heavily involved in employment litigation proceedings.

Jess J. Gonzalez - Over ten years experience in all phases of public sector labor and employment law. Mr. Gonzales has served as a Deputy Attorney General, Administrative Law Judge, and, prior to joining the firm, was Acting Assistant Chief Counsel of the Department of Fair Employment and Housing.

Arturo Morales - Over ten years experience in labor and employment law. Mr. Morales has extensive experience in state and federal courts at the trial and appellate court levels. The cases have involved a wide range of employment relations matters, including employment discrimination, constitutional claims, wrongful discipline and termination, pension and disability issues and wage and hour laws.

Carmen Plaza de Jennings - Over ten years of experience in all facets of labor relations and labor law. Prior to joining the firm's San Francisco office, Ms. Plaza de Jennings served as Supervising Attorney for the National Labor Relations Board in San Francisco, in which capacity she oversaw the investigative and litigation activities of that office.

Edward Reitkopp - Over ten years experience in representing management in labor and employment law matters, including consultations, negotiations and representation in administrative and court proceedings involving labor relations and employment discrimination.

Alan G. Atlas - Mr. Atlas has an extensive and varied background in public and private sector labor and employment law. Prior to joining the firm, Mr. Atlas was the Deputy Labor Relations Counsel for the New York City Health and Hospitals Corporation and served for many years as a personnel director in the health care industry. He has extensive experience representing management before administrative tribunals, has litigated labor relations matters in state and federal courts, and has handled a variety of local agency negotiations.

Rosario M. Tobias - After graduating from UCLA Law School, and serving as an intern for a Federal District Court judge, Ms. Tobias worked for a number of years for a nation-wide law firm that specialized in representing management in employment law matters. She is active in all facets of the firm's practice.

Peter J. Brown - Mr. Brown first became associated with the firm as a summer law clerk in 1988 while attending Hofstra University School of Law in New York, from which he graduated in 1989. Since then he has been involved in every phase of the firm's employment and education law practice.

Jeffrey Leacox - After graduating from the University of California, Davis, School of Law, Mr. Leacox joined the firm's San Francisco staff, where he has become involved in all aspects of the firm's practice.

Scott N. Kivel - Prior to joining the firm's San Francisco office, Mr. Kivel worked for a number of years as a public sector administrator on both the local and state levels, and obtained an advanced degree from Harvard University in Administration and Social Policy. A graduate of Stanford University Law School, Mr. Kivel is involved in all facets of the firm's practice.

Amy R. Pleatman - Prior to joining the firm in 1992, Ms. Pleatman spent six years as a litigator in public sector law. Five of those years were as a Los Angeles County Public Defender. Since joining the firm, she has been active in all aspects of the firm's practice, particularly in representing clients in litigation.

W. Michael Battle - Mr. Battle completed both his undergraduate and legal training at the University of Southern California. After his second year of law school, Mr. Battle served as a law clerk in a Los Angeles labor law firm. He joined the firm upon graduation from law school and is currently involved in all aspects of the firm's practice.

OF COUNSEL

Melanie M. Poturica - Over ten years experience in private and public sector labor and employment discrimination law, in which she has handled a wide variety of litigation in state and federal courts, as well as numerous arbitration and administrative hearings. Ms. Poturica has been with the firm since its inception in 1980. After an absence to devote full time to raising her young children, she has again become actively

associated with the firm. She is widely recognized for her expertise in handling all aspects of employment discrimination law matters, particularly in federal court and before the State Department of Fair Employment and Housing. In addition to labor and EEOC matters, Ms. Poturica handles the full range of education law matters.

Mary L. Dowell - Over ten years of experience in labor and employment law and education law. Ms. Dowell previously worked for the PERB and for the Los Angeles Community College District, where she was General Counsel for four years. She has practiced before state and federal trial and appellate courts, the Public Employment Relations Board, and various state and federal administrative agencies. She has handled cases involving labor relations, employment discrimination and employee discipline, as well as matters involving education law and general public agency property, construction and business issues.

Virginia A. Riegel - Ms. Riegel has ten years of experience in public education and employment law. She holds Masters degrees in English and Education and was a faculty member at Southern Illinois University prior to her legal career. She is of counsel to the firm's San Francisco office, handling education and employment law matters.

DIRECTOR OF TRAINING PROGRAMS

Reginald T. Murphy - Coordinates the firm's extensive management training activities. Mr. Murphy has for many years developed and presented management training programs for public agency managers and supervisors on such subjects as labor negotiations, grievance processing and arbitration, evaluation techniques, personnel administration, supervision and management skills. Mr. Murphy's background in employment relations also includes a number of years in a management position with the Los Angeles Unified School District. Mr. Murphy has a Master's Degree in Public Administration from California State University, Los Angeles, and earned a Doctorate at the University of Southern California. He has taught graduate courses at UCLA's Department of Management.

APPENDIX B

Labor Relations

District Satisfied its Obligation to Meet and Discuss Proposed Terms and Conditions of Employment With Nonexclusive Representative

The Public Employment Relations Board has upheld the dismissal of an unfair practice charge filed by a nonexclusive representative of teachers in the Summerville Elementary School District because the District had fulfilled its obligation to meet and discuss proposed terms and conditions of employment.

The Summerville Elementary Teachers Association filed an unfair practice charge against the District alleging that the District had violated Government Code § 3543.5 of the Educational Employment Relations Act by announcing its clear intent to unilaterally implement its latest proposal concerning wages and benefits. The District argued that because the Association was not the exclusive representative of the teachers in the District, the District was only obligated to meet and discuss proposed terms and conditions of employment, but was not obligated to bargain in good faith as it would be with an exclusive representative.

PERB agreed with the District, holding that EERA provides only two methods under which an employee organization may become an exclusive representative. The first is by requesting voluntary recognition from a public school employer. This method also requires that the Association follow the process to prove majority support to PERB. The other method is by representation elections. PERB held that since the Association did not avail itself of either of these methods, it did not qualify as an exclusive representative under EERA. Accordingly, the District did not owe the Association the duty to bargain in good faith which is owed to exclusive representatives.

Note: While this PERB decision is based on the particular provisions of the Educational Employment Relations Act, a similar holding would probably result in the case of a non-recognized employee organization under the Meyers-Milias-Brown Act applicable to local agencies.

Summerville Elementary Teachers Association v. Summerville Elementary School District, PERB Dec. No. 956, 16 PERC ¶ 23170 (November 12, 1992).

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Employment Discrimination

Suit Against Sheriff's Department Alleging Harassment Based on Sexual Orientation Settled With Promise of Policy Changes

A lawsuit filed by a San Diego County Sheriff's Deputy alleging that she was harassed because she is a lesbian was recently settled with the Department. The Department agreed to amend its manual of policies and procedures to forbid prejudice or harassment based on sexual orientation. Sheriff Jim Roach stated that the policy change reflects his strong commitment to eliminate discrimination based on sexual orientation in the Department.

Note: On January 1, 1993, Labor Code § 1102.1, which prohibits employment discrimination based on sexual orientation, went into effect in California. On that date five lawsuits were filed in San Francisco and Alameda Counties in which the plaintiff employees alleged that they were fired or forced to quit their jobs because of their homosexuality.

Shands v. Culver, Cal. Sup.Ct. No. 645372 (December 3, 1992).

Award of Costs and Attorney's Fees to Employer Who Was a Prevailing Defendant in an Age Discrimination Case Was Improper

The California Court of Appeal has held that a superior court award of attorney's fees and costs to an employer who successfully defended an age discrimination claim brought by a former employee was improper because the claim was neither frivolous, unreasonable nor groundless.

Channie Cummings, a 67 year old supervisor on the night janitorial crew of a large Beverly Hills office building, sued her employer, Benco Building Services, for age discrimination. Benco terminated Cummings after receiving several complaints from tenants that the building was not being properly cleaned. The Court of Appeal determined that Cummings failed to produce substantial evidence that she was terminated because of her age or that Benco's proffered reason for terminating her was pretext for discrimination. Benco then filed a motion for statutory attorney's fees and costs as the prevailing party in the action. The superior court awarded Benco \$63,359.45 in fees and costs. Cummings appealed.

The Court of Appeal reversed the award of fees and costs. The Court held that the California Fair Employment and Housing Act authorizes an award of attorney's fees and costs to a prevailing party in any action brought under the Act. The court may award costs in its discretion unless the action is filed by a public agency or public official acting in an official capacity. The Court held that the standard a court must use in exercising its discretion in awarding fees and costs to a prevailing defendant is that such awards should only be permitted where the action brought is found to be unreasonable, frivolous, meritless or vexatious. The Court held that Cummings presented some evidence of age discrimination but that she merely failed to prevail on her claim. The Court held that the award of attorney's fees and costs to Benco was an abuse of discretion because Cummings' claim was neither frivolous, unreasonable nor without foundation.

Significance: It is extremely difficult for a defendant employer to recover attorney's fees and costs when successfully defending a claim of employment discrimination under either state or federal law.

Cummings v. Benco Building Services, 92 Daily Journal D.A.R. 17358 (December 29, 1992).

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Local Government

Retired School Board Members are Entitled to District Paid Health Benefits

The California Court of Appeal has held that two retired members of the Hollister School District Board of Trustees were entitled to health benefits paid by the District because they had a vested right to the benefits that were secured by the United States Constitution.

Zeph Thorning and Robbie Crump were elected to the District's Board of Trustees in 1977. They retired in November 1990. In 1988, the Board adopted a District policy regarding health and welfare benefits for its board members. The policy, which was consistent with Government Code § 53201, provided that the District would pay the health and welfare benefits of a retired board member who served at least 12 years, and that members who served less than 12 years could continue benefits as long as the member paid for them. In July 1990, the policy was amended to provide that for members who have served 12 or more years, the District may continue the health and welfare benefits.

At the last regular meeting of the Board during Thorning and Crump's term, the Board, with Thorning participating, voted three to one to continue payment of health and welfare benefits for Thorning and Crump for the next ten years. At the new Board's first regular meeting, it reopened discussion of the continued benefits

and voted to suspend payment. After filing a tort claim, Thorning and Crump filed an action for writ of mandate and for damages for a violation of their civil rights under 42 U.S.C. § 1983. The superior court dismissed their lawsuit and this appeal ensued.

The Court of Appeal reversed the decision of the superior court and granted the writ of mandate. The Court held the terms of the 1988 policy, which provided that the District would pay the health and welfare benefits of retired members serving 12 or more years, became a contractually vested right. The 1988 policy was an inducement for the continued service of Crump and Thorning and was a factor in their decision to retire. The Court rejected the District's argument that the 1990 amendment to the policy, which made payment of continuing benefits discretionary, should control. The Court held that the benefits conferred by the 1988 policy became vested rights during the continuation of that term which ended in 1990. The Court also held that the Board's action in depriving Thorning and Crump of their health and welfare benefits was a deprivation of property without due process of law in violation of 42 U.S.C. § 1983.

Significance: Retired members of a public agency board have the continuing right to have their health benefits paid for by the agency to the extent such right has become vested. If the agency, through policy or other means, provided such right prior to the retirement of the member, the

retired member's right to such benefits is vested.

Thorning v. Hollister School District, 93 Daily Journal D.A.R. 41 (January 4, 1993).

City's Election Not to Treat Jailers as Local Policemen Under PERS Precludes Them From Qualifying for Local Safety Member Status

The California Supreme Court has held that the City of Huntington Beach's election not to treat its jailers (detention officers) as "local policemen" under Government Code § 20020.9 of the Public Employees' Retirement System, precludes these employees from qualifying for local safety member status based on their custodial functions.

Jailers in the City do not acquire peace officer status. Their primary duty is the supervision and custody of person's committed to the City's jail. By virtue of their employment with the City, jailers are entitled to membership in PERS. That membership has been classified as local miscellaneous. In 1987, 17 jailers requested that their membership in PERS be reclassified to local safety, which includes the category of "local policeman" under PERS. The PERS executive officer denied this request and the jailers appealed. A PERS administrative law judge granted the jailers' request for reclassification,

and the decision was adopted by the PERS Board of Administration. The City filed a petition for writ of administrative mandamus in superior court. The court denied the petition. The Court of Appeal affirmed.

The Supreme Court reversed, finding for the City. The Court reviewed Government Code § 20020.9, which provides that "local policeman" (one of the local safety member categories) also includes any employee of a contracting city who is employed in a jail or a detention or correctional facility and having as their primary

duty and responsibility the supervision and custody of persons committed to the jail or facility. The Court held that Section 20020.9, which expressly deals with jail employees, does not apply unless and until the contracting agency elects to be subject to it. The Court held that because the Legislature enacted a specific section for jail employees, Section 20020.9, and because that section provides that it is up to the agency to elect to be subject to it, the Legislature has given local agencies discretion to determine whether their jailers or other custodial employees are to be treated as safety members.

The Court also rejected the argument by the jailers that jailers hired before the effective date of Section 20020.9 on January 1, 1984, were entitled to local safety member status. The Court held that inasmuch as the custodial functions of the jailers never constituted active law enforcement under Section 20020 (which defines "local policeman"), the jailers claim must be denied.

City of Huntington Beach v. Board of Administration of the Public Employees' Retirement System, 92 Daily Journal D.A.R. 17305 (December 29, 1992).

Proposition 73 Does Not Preclude City From Adopting and Enforcing Public Funding Provisions of its Campaign Reform Measure

The California Supreme Court has held that Proposition 73's prohibition on public financing of election campaigns does not preclude the City of Los Angeles from adopting and enforcing the public funding provisions of its campaign reform Measure.

In 1988, Proposition 73 was added to the Political Reform Act of 1974. Article 3 of chapter 5, Government Code §§ 85301-85307, imposed various restrictions on contributions to and by candidates and political committees on parties. In 1990, the voters of the City of Los Angeles amended the City Charter by adopting measure H. Among other things, Measure H provided for partial public funding of city political campaigns and for spending limits on candidates who accept public funds. In this lawsuit, a State Assemblyman and others invoked the original jurisdiction of the Court of Appeal to enjoin the City from implementing and enforcing measure H. The Court of Appeal agreed with the City that a charter city's decision to provide its own public funds to finance city political campaigns is a "municipal affair" and not a matter of statewide concern. Therefore, Proposition 73 does not preclude implementation and enforcement of Measure H.

The Supreme Court affirmed. The Court held that pursuant to the Home Rule provision of the California Constitution, Article XI, Section 5, a charter city may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to the restrictions and limitations imposed by their charters. The Court held that there was a conflict between Measure H and Section 85300, but that Section 85300 did not qualify as a matter of statewide concern. Therefore, Measure H was upheld.

Johnson v. Bradley, 92 Daily Journal D.A.R. 17340 (December 29, 1992).



Wrongful Termination

Jury Awards Over \$3 Million to Employees Fired for Dating

A Superior Court jury in San Diego has awarded over \$3 million to two managers who were fired by their employer, Rohr Inc., an aerospace company, because their dating relationship allegedly gave the appearance of a conflict of interest. After they were fired, Kenneth Bingham and Sue Everett sued Rohr for wrongful termination, breach of contract, violations of public policy and intentional infliction of severe emotional distress. The jury awarded both managers compensatory and punitive damages.

Bingham v. Rohr Inc., Calif. SuperCt. No. 637458 (November 16, 1992).

Division of the DOL. The regulations provide that a violation is deemed to be repeated where the employer has previously violated either the minimum wage or overtime provisions of the Act as recognized by an official at the Wage and Hour Division, or where a court or tribunal has found that the employer has previously violated these sections of the Act. In determining the size of the penalty to impose, the DOL Administrator may consider several factors including the seriousness of the violation and size of the employer's operations.

Note: In addition to the exposure to a fine under the new regulation for violations found to be willful, remember that a finding of a willful violation will also result in liability for up to three years instead of the regular two years.

Police Investigators Not Exempt From FLSA Overtime Provisions

A federal district court in New York has held that New York state police investigators are not administrative employees as defined by the Fair Labor Standards Act, and should not be exempt from the overtime provisions of the Act. In ruling against the State, the Court applied what it called the production/administration dichotomy. The Court held that the investigators perform the production work of the State Police, but do not administer the agency's business affairs. The Court's decision affects approximately 700 investigators who are entitled to retroactive overtime compensation back to at least 1987.

Ahern v. New York, DC NNY, No. 89-CV-956 (December 8, 1992).

FLSA

DOL Publishes Final Regulations Regarding "Repeated" and "Willful" Violations of the FLSA

On October 29, 1992, the United States Department of Labor published final regulations which establish definitions for "repeated" and "willful" violations of the Fair Labor Standards Act. 29 C.F.R. Part 578. The regulations also implement the civil penalties provisions of the 1989 amendments to the FLSA, which provide that a penalty of up to \$1,000 per violation may be assessed against any employer who repeatedly or willfully violates the minimum wage or overtime provisions of the FLSA.

The regulations provide that a violation is willful where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act, or if the employer acts contrary to advice received from the Wage and Hour

Workers' Compensation

Injuries Flowing From Termination Are Governed Exclusively by Workers' Compensation

The United States District Court, Northern District of California, has dismissed several causes of action filed by a former employee against his employer alleging either physical or emotional injury arising from his termination, because the claims are governed exclusively by the provisions of the California workers' compensation system.

Dean Kacludis, a 23-year employee with GTE Sprint Communications Corp., (Sprint) was terminated in 1991 after his position was eliminated. Kacludis filed a wrongful termination lawsuit against Sprint alleging nine causes of action, including negligent and intentional misrepresentation, intentional infliction of emotional distress before and after employment, and negligent supervision. Sprint filed a motion to dismiss the listed causes of action, alleging that recovery is barred because they are governed exclusively by the California workers' compensation system.

The Court granted the motion to dismiss, because each of the listed causes of action alleges physical or emotional injury arising from Kacludis' termination. Such causes of action are only compensable under the California workers' compensation system.

Kacludis v. GTE Sprint Communications Corporation, 92 Daily Journal D.A.R. 17541 (December 31, 1992).

Civil Rights

Party Winning Only Nominal Damages in a Civil Rights Action is Not Entitled to Attorney's Fees

The United States Supreme Court has held that if a party is awarded only nominal damages (generally one dollar) in a federal civil rights action, the party is considered the "prevailing party" in the lawsuit, but is not entitled to receive attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988.

Joseph and Dale Farrar (plaintiffs) sued several government officials in Texas for monetary and injunctive relief under 42 U.S.C. §§ 1983 and 1985. The complaint alleged deprivation of liberty and property without due process by means of conspiracy and malicious prosecution. The plaintiffs sought \$17

million in compensatory damages. The case was tried before a jury which found that the plaintiffs' civil rights had been violated by one of the officials, but that the official's conduct was not a proximate cause of any damages suffered. The jury ordered that no damages be awarded. On appeal, the Fifth Circuit Court of Appeals affirmed the failure to award compensatory or nominal damages against the officials, but ordered entry of judgment for nominal damages against the one official who had deprived the plaintiffs of a civil right. The plaintiffs then sought attorney's fees under 42 U.S.C. § 1988. The District Court awarded the plaintiffs \$280,000 in fees. The fee award was reversed by the Fifth Circuit which ruled that the plaintiffs were not prevailing parties and were therefore ineligible for fees under Section 1988. The case was appealed to the Supreme Court.

The Supreme Court reversed the Fifth Circuit ruling that the plaintiffs were not prevailing parties, but upheld the decision to deny attorney's fees. The Court held that even if a party is only awarded nominal damages, they are prevailing parties in the lawsuit. However, in a civil rights suit for damages, the awarding of nominal damages demonstrates that the plaintiff has failed to prove actual compensable injury. The Court held that when a plaintiff recovers only nominal damages the only reasonable fee is no fee at all.

Significance: This case is significant because the Court held that even if a civil rights plaintiff who is seeking money is successful in proving that his/her civil rights have been violated, i.e., is a prevailing party, if the plaintiff fails to prove compensable injury from the violation of those rights, the plaintiff will not be able to recover attorney's fees.

Farrar v. Hobby, 92 Daily Journal D.A.R. 16669 (December 15, 1992).

Law Enforcement

City is not Immune From Suit Because its Vehicular Pursuit Policy Fails to Meet Statutory Guidelines

The California Court of Appeal has held that the City of Gardena has no immunity from a suit involving a vehicular pursuit where an innocent third party was killed, because the City's police vehicular pursuit policy did not satisfy the minimum standards prescribed by Vehicle Code § 17004.7.

Bobby Colvin was killed when the vehicle he was driving was struck by a car driven by Shawn Wilson, a nine-year-old-boy, who had taken his parents' car. Prior to the collision, Shawn had been pursued by two Gardena police cars for about three miles, through several red lights, at speeds approaching 100 m.p.h. Colvin's son, Robert, filed a wrongful death suit against Shawn and his parents, and the City and the officers involved, alleging negligence and recklessness by the City and its employees. The City and officers filed a motion for summary judgment on the ground that they were immune from liability for any police pursuit activity pursuant to Vehicle Code § 17004 and 17004.7. The Superior Court granted summary judgment and Colvin appealed.

The Court of Appeal affirmed the summary judgment as to the individual officers, but reversed as to the City. The Court held that Vehicle Code § 17004 provides immunity to the officers for any injury or death while responding to an emergency call or when in the immediate pursuit of an actual or suspected violator of the law. The Court held, however, that the City did not enjoy immunity from liability pursuant to Vehicle Code § 17004.7 because the City's vehicular pursuit policy did not satisfy the minimum standards prescribed by that section.

The Court held that in adopting Section 17004.7, the Legislature contemplated that public entities seeking immunity must adopt reasonably specific guidelines to give direction to officers in the field. The Court held that the City's policy does not provide any guidelines for determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a pursuit should not be initiated. The Court pointed out that the conclusory provisions of the policy do not amount to procedures and guidelines and that they fail to set forth such obvious factors such as weather, visibility, vehicular and pedestrian traffic, road conditions, speed, etc. In reaching its conclusion, the Court analyzed the pursuit policies of several surrounding cities which include specific guidelines for officers regarding vehicular pursuits.

Significance: Adoption of a vehicular pursuit policy is not required by the law. However, failure to adopt such a policy will eliminate the City's ability to claim immunity for a third party injury as a result of a pursuit. Therefore, if your police department does not already have a policy, one should be adopted. If your department has a vehicular pursuit policy, in light of this case it should be reexamined to ensure compliance with the specific requirements of Vehicle Code § 17004.7. If you have any question as to whether your policy complies with the Code, or if you need a policy prepared, please call either our Los Angeles or San Francisco offices for assistance.

Colvin v. City of Gardena, 92 Daily Journal D.A.R. 17265 (December 28, 1992).

Schools and Colleges

School District was not Required to Negotiate Over Policy to Ban Smoking

The Public Employment Relations Board has held that the Eureka City School District was not required to negotiate prior to implementing a policy that banned smoking in all District buildings and vehicles, and at District-sponsored activities, whether such activities took place on or off District premises.

Motivated by several factors, including promotion of a healthy lifestyle for its students and staff, and compliance with Education Code § 48901, which requires a school district to take all steps to discourage high school students from smoking, the District adopted a Tobacco-Free Schools Policy on February 4, 1991. The policy did not go into effect until July 1, 1991, the expiration date of the District's agreement with the Eureka Teachers Association, which had provided for smoking areas. The Eureka Teachers Association filed an unfair practice charge with PERB alleging that the unilateral implementation of the policy violated Government Code § 3543.2 of the Educational Employment Relations Act, because the implementation of the policy was a mandatory subject of bargaining.

PERB disagreed with the Association. PERB held that the decision to establish a smoking policy is a management prerogative, and is not a mandatory subject of bargaining. PERB has previously held that the decision to implement a smoking policy was not a mandatory subject of bargaining. *Riverside Unified School District* (1989) PERB Dec. No. 750. The *Riverside* smoking policy prohibited smoking in district facilities and on school grounds when students were in the general vicinity. The Eureka policy goes farther than the *Riverside* policy by prohibiting smoking by anyone on all District property, in District vehicles, and it applies to services provided by employees off campus. However, PERB held that while the implementation of a smoking policy is not a mandatory subject of bargaining, the effects of such a policy are negotiable, including any disciplinary action resulting from enforcement of the policy.

Significance: A district may unilaterally decide to implement a smoking policy without negotiating the decision, so long as it is not inconsistent with a provision of a collective bargaining agreement.

Eureka Teachers Association v. Eureka City School District, Dec. No. 955, 16 PERC ¶ 23168 (October 27, 1992).

Private Driving School Successfully Sues School District to Compel it to Stop Charging Students for Driver Training

The California Court of Appeal has held that a private driving school could sue a school district to compel it to stop charging students for driver training. The Court also held that the free school guarantee of the California Constitution precludes the District from charging students through its adult school for a class in driver training.

In 1991, the San Mateo Union High School District discontinued driver training as an elective course because the state withdrew a subsidy for the high school driver training classes. In place of the high school elective classes, the District offered a course in driver training through its adult school for a payment of a \$190 fee reflecting the actual cost of instruction. Although an adult school course, the course was offered at a time and place suited to the convenience of high school students. The adult school did not offer credit for the class.

The Driving School Association of California filed a writ of mandate against the District alleging that the District should be enjoined from charging students in the District for driver training class. Driving School's motivation for suing the District was that if the District was barred from charging fees, it would most likely abandon or cut back its adult school driver training class, thus reducing competition. The District filed a demurrer seeking to dismiss the writ, alleging that the Driving School did not have standing to sue the District because it was not beneficially interested in the District's actions. The Superior Court dismissed Driving School's writ, holding that it did not have standing to sue the District. This appeal followed.

The Court of Appeal first held that Driving School had standing to challenge the District under the public interest exception to the requirement that the party bringing the action have a beneficial interest in the lawsuit. The Court then held that the District could not charge students for driver training.

The Court held that even though pursuant to Education Code § 51815, the District had the authority to charge fees to students for community service classes in its adult school, charging students for driver training violates the free school guarantee of the California Constitution. The free school guarantee provides that a district cannot charge fees for those activities that constitute an integral component of public education. The Court held that driver training classes serve an educational purpose. Like extracurricular activities, driver training supplements a course given for credit, i.e., driver education. As the laboratory phase of driver education, driver training has an inherent connection with driver education. The Court then held that the connection between driver training and driver education is not decisive. Here, the critical consideration was that the driver training classes were offered after school hours and were composed overwhelmingly with high school students. Under these circumstances, the classes were an integral component of the public education of the high school students, and the District could not charge for the classes.

Significance: The Court's ruling sends a mixed message to school districts. First, the Court ruled that driver training was sufficiently educational in character so that a district which chooses to offer driver training in its adult school may not charge students for it. Then, the Court rules that the connection between driver training and driver education is not decisive and that the critical consideration is that the classes were set up for the convenience of the students. The question this case does not answer, is whether a district could offer driver training in the evening where members of the community and students in the district would have an equal opportunity to attend. However, since it is likely that no matter when driver training is offered, a great percentage of driver training students will be district students, a district which attempts to charge students for driver training will most likely be held to have violated the free school guarantee.

Driving School Association of California v. San Mateo Union High School District, 93 Daily Journal D.A.R. 9 (January 4, 1993).

State Had a Constitutional Duty to Prevent the Richmond Unified School District From Closing When it Ran Out of Money in 1991

The California Supreme Court has upheld a superior court ruling that the State of California had a constitutional duty to prevent the Richmond Unified School District from closing six weeks early in April 1991, because of the students' right to basic educational equality. However, the Court reversed the superior court's ruling which authorized a \$19 million emergency loan to the District from appropriations clearly intended by the Legislature for other purposes.

In April 1991, after a period of mounting deficits, the District announced that it lacked funds to complete the final six weeks of its 1990-91 school year. The District announced that it intended to close the doors to its 44 elementary, secondary and adult schools on May 1, 1991. As a result of the District's announcement, a group of District parents and students filed a class action lawsuit for temporary and permanent injunctive relief against the State and the District's Board. The lawsuit alleged that the resulting loss of six weeks of instruction would cause irreparable harm to the District's 31,500 students and would deny them their fundamental right to an effective public education under the California Constitution. On April 29, 1991, the superior court ordered the State, the Controller and the Superintendent of Public Instruction to protect the right of the District's students to a full school term. The Court also authorized the Controller to make an emergency loan to the District for \$19 million. Part of the \$19 million came from moneys that had been previously appropriated to the Oakland Unified School District. The case was appealed to the California Supreme Court.

The Supreme Court affirmed the decision that the State had a constitutional duty to prevent the District from closing six weeks early. The Court held that the equal protection guarantees of Article I, Section 7, and Article IV, Section 16, of the California Constitution, require State intervention to ensure that fiscal problems do not deprive a local district's students of basic educational equality. However, the Court reversed the decision of the superior court which authorized the controller to make the \$19 million loan to the District, holding that it threatened the equal exercise of authority by the executive, legislative and judicial branches

of the government. The Court held that the superior court could not nullify a specific and valid exercise by the Legislature and Executive of its fundamental budgetary powers.

Note: The Court's decision did not suggest where the money to bail out a school district which cannot afford to continue to operate was to come from.

Butt v. State of California, 93 Daily Journal D.A.R. 152 (January 5, 1993).

Legislative News

Bill Amending County Employees' Retirement System Effective January 1

In a bill which went into effect on January 1, 1993, and which was inadvertently left out of our yearly legislative update published in December, the California Legislature has clarified the effect of the Brown Act with respect to 1937 Act Retirement System counties.

A.B. 2721 (Chapter 1047), adds Government Code § 23026, which provides that with respect to any county which has established a county employees' retirement system pursuant to the County Employees Retirement Law of 1937, that the board of supervisors shall make public, at a regularly scheduled meeting, all salary and benefit increases affecting represented and nonrepresented employees. The bill requires that notice of any increase shall be put on the agenda, as an item of business, at least 72 hours before the meeting. Further, the bill requires that notice shall occur prior to the adoption of the increase and that the notice shall include an explanation of the financial impact the proposed benefit change or salary increase will have on the funding status of the retirement system.

In the News

DOT Issues Proposed Regulations On Mandatory Alcohol Testing

On December 15, 1992, the Department of Transportation issued proposed regulations which mandate random alcohol testing for all transportation workers in safety-sensitive positions. The proposed regulations, which implement the Omnibus Transportation Employee Testing Act of 1991, were published in the Federal Register at 57 FR 59382. If the regulations become final they will subject an estimated seven million transportation workers to random alcohol testing. The proposed regulations provide that workers with a blood-alcohol level of .02 percent or higher would be barred from performing safety sensitive tests. The regulations also provide for pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up testing. We will keep you informed of further action by the DOT on these regulations.

Firm Activities

Newest Employment Relations Consortium

We are pleased to be able to let you know that the Coachella Valley ERC has been formed to become the fifteenth consortium. We welcome the Cities of Brawley, Cathedral City, Coachella, Desert Hot Springs, Hemet, Indian Wells, Indio, Palm Desert, Perris, San Jacinto, and the Town of Yucca Valley.

Consortium Workshops

January 13 - Bay Area ERC - Fremont, "The ADA - An Expanding Field of Employment Discrimination" and "Current Developments in Administering Employee Injuries and Disabilities"

Richard Kreisler and Doug Bray from the Workers' Comp. defense firm of Heisler and Bray.

January 13 - Coachella Valley ERC - Palm Desert, "Effectively Utilizing Performance Evaluation as a Management/Supervisory Tool" and "Write it Right" Reg Murphy

January 14 - San Diego ERC - El Cajon, "The 3R's for New Supervisors: Realities, Responsibilities and Relationships" Reg Murphy

January 15 - Napa/Solano/Yolo Counties ERC - Vacaville, "Conducting a Disciplinary Investigation" Larry Frierson

January 19 - San Gabriel Valley ERC - Glendora, "Write it Right" Reg Murphy

January 20 - Southeast Los Angeles County ERC - Bell Gardens, "The 3R's for Supervisors: Realities, Responsibilities and Relationships" Reg Murphy

January 21 - NorCal ERC - Concord, "Privacy Issues in the Workplace" and "Legal Update on Employment Law" John Liebert

January 27 - Ventura/Santa Barbara Counties ERC - Oxnard, "Selected Challenges for Supervisors: Part I" Reg Murphy

February 5 - Central Coast Personnel Council - Santa Barbara, "Leadership Essentials for Today's School Administrators" Reg Murphy

February 17 - Central Valley ERC - Hanford, "Hiring the Best Person for the Job" and "Addressing Disciplinary Situations Relating to Attendance Problems and Abuse of Paid Leave" Jeff Sloan

February 17 - Bay Area ERC - San Leandro, "Write it Right" Reg Murphy

February 18 - San Diego ERC - Coronado, "Civil Rights Act of 1991" Dan Cassidy

February 25 - Southeast Los Angeles County ERC - Lakewood, "Effectively Administering the Discipline Process" Linda Jenson

Speaking Engagements

January 11 - City of Sierra Madre, "Avoiding Harassment Liability in the Workplace" Richard Kreisler

January 19 - Huntington Beach Police Department, "Guide to Avoiding Harassment Liability in the Workplace" Linda Jenson

January 20 - Southern California Public Labor Relations Council - Lakewood, Linda Jenson

January 21 - Independent Cities Risk Management Authority - Carson, "Guide to Avoiding Harassment Liability in the Workplace" Linda Jenson

January 26 - City of El Centro and El Centro Regional Medical Center, "The ADA - An Expanding Field of Employment Discrimination," John Liebert and Alan Atlas

January 27 - League of Marin Counties, San Anselmo, "Guide to Avoiding Harassment Liability in the Workplace" Richard Kreisler

February 10 - City Managers Division of the League of California Cities, Monterey, "Approaches to Labor Take Backs" John Liebert

February 18 - The California Minority Aging Coalition, San Francisco, "Effectively Utilizing Performance Evaluation as a Management/Supervisory Tool" and "Effectively Administering the Discipline Process" Jeff Sloan

February 20 - Association of California School Administrators, San Bernardino, "Effectively Utilizing Performance Evaluation" Reg Murphy

February 24 - League of California Cities/Cal. State Ass'n of Counties Employee Relations Institute, San Francisco: John Liebert, Dan Cassidy, Larry Frierson, Linda Jenson and Reg Murphy will be participating in several of the sessions.

APPENDIX C

JOHN LIEBERT
DANIEL C. CASSIDY
LARRY J. FRIERSON
LINDA JENSON
BRUCE A. BARSOCK
JEFFREY SUGAN
RICHARD W. KRISLER
LINDA A. TRPOLI
MARIE CORLETT BLITS
DEBRA L. BRAY
MILDRED COLLINS
JESS J. GONZALEZ
ARTURO MORALES
CARMEN PLAZA DE JENNINGS
EDWARD B. REITKOPP
ALAN G. ATLAS
ROSARIO TOBIAS
PETER J. BROWN
JEFFREY LEACOX
SCOTT N. KIVEL
AMY P. PLEATMAN
W. MICHAEL BATTLE

OF COUNSEL
MELANIE M. POTUR CA
MARY L. DOWELL
VIRGINIA A. RIEGEL

REGINALD T. MURPHY
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LIEBERT, CASSIDY & FRIERSON **AFFIRMATIVE ACTION POLICY STATEMENT**

The firm of Liebert, Cassidy & Frierson is an equal opportunity/affirmative action employer which is committed to increasing the proportion of minority professional and para-professional employees within the firm. This commitment is reflected in the firm's outreach efforts, interview and selection procedures, track record and hiring goals, and its clerkship program and scholarship fund.

1. Outreach

To develop a representative pool of applicants for employment in para-professional and professional positions, the firm:

- (a) sends letters and firm resumes to minority bar associations and minority law student associations in the Los Angeles and San Francisco areas soliciting resumes from attorneys and law students interested in our practice of law;
- (b) participates in Minority Law Day Recruitment programs;
- (c) initiates personal contacts with law professors to advise them of the firm's interest in increasing its minority professional and para-professional employees, and to attempt to recruit minorities through informal channels;
- (d) encourages firm employees to advise friends and colleagues of this firm's interest in increasing its minority employees.

2. Interviewing and Selecting Candidates

In devising interview questions and selecting candidates, the firm takes great care to ensure that all questions relate to bona fide job requirements and do not adversely impact members of minority groups.

3. Hiring

In order to ameliorate the historical under-representation of minorities in the legal profession, the firm places particular emphasis on hiring minority applicants who are considered to be as qualified as non-minority applicants.

4. The Firm's Track Record and Its Goals

As of August 1, 1992,

- 51 percent of the firm's professional staff were females;
- 25 percent of the firm's partners were females;
- 29 percent of the firm's para-professional and professional staff were minorities; and
- 50 percent of the firm's support staff were minorities.

This level of minority representation in our professional staff is generally substantially higher than California law firms. Furthermore, the firm is committed to increasing its minority para-professional and professional employee percentage above these current levels, with a target of 25 percent minority representation in the firm's para-professional and professional ranks within the next five to eight years.

5. The Firm's Clerkship Program and Its Scholarship Fund

As part of its commitment to equal employment opportunity and affirmative action, the firm has a clerkship program. The firm is committed to using its best efforts to filling 50 percent of its clerk positions with minority law school students.

The firm also contributes annually toward a scholarship for minority students interested in labor and employment law who attend an accredited California law school.

APPENDIX D

LIEBERT, CASSIDY & FRIERSON

WORK FORCE UTILIZATION

FEBRUARY 3, 1993

JOB CATEGORIES	OVERALL TOTALS (sum of Columns B thru K)	NUMBER OF EMPLOYEES									
		MALE					FEMALE				
		White (not Hispanic)	Black (not Hispanic)	Hispanic	Asian or Pacific Island	American Indian or Alaskan	White (not Hispanic)	Black (not Hispanic)	Hispanic	Asian or Pacific Island	American Indian or Alaskan
A	B	C	D	E	F	G	H	I	J	K	
Officials & Managers	5	4					1				
Professionals	20	9	1	2			6		1	1	
Technicians											
Sales Workers											
Office & Clerical	19	1	2	2			8	4	1	1	
Craft Workers (specify)											
Operatives (semi-skilled)											
Laborers (unskilled)											
Service Workers											
TOTALS	44	14	3	4			15	4	2	2	

LIEBERT, CASSIDY & FRIERSON

WORK FORCE UTILIZATION

FEBRUARY 1, 1992

JOB CATEGORIES	OVERALL TOTALS (sum of Columns B thru X) A	NUMBER OF EMPLOYEES											
		MALE					FEMALE						
		White (not Hispanic) B	Black (not Hispanic) C	Hispanic D	Asian or Pacific Island E	American Indian or Alaskan F	White (not Hispanic) G	Black (not Hispanic) H	Hispanic I	Asian or Pacific Island J	American Indian or Alaskan K		
Officials & Managers	4	3					1						
Professionals	18	9	1	1			5		1	1			
Technicians													
Sales Workers													
Office & Clerical	14		2	1			6	3	1	1			
Craft Workers (specify)													
Operatives (semi-skilled)													
Laborers (unskilled)													
Service Workers													
TOTALS	36	12	3	2			12	3	2	2			

WORK FORCE UTILIZATION

FEBRUARY 1, 1991

JOB CATEGORIES	OVERALL TOTALS (sum of Columns B thru K)	NUMBER OF EMPLOYEES									
		MALE					FEMALE				
		White (not Hispanic)	Black (not Hispanic)	Hispanic	Asian or Pacific Island	American Indian or Alaskan	White (not Hispanic)	Black (not Hispanic)	Hispanic	Asian or Pacific Island	American Indian or Alaskan
A	B	C	D	E	F	G	H	I	J	K	
Officials & Managers	4	3					1				
Professionals	19	8	1	2			6		1	1	
Technicians											
Sales Workers											
Office & Clerical	16		1	1	1		6	5	1	1	
Craft Workers (specify)											
Operatives (semi-skilled)											
Laborers (unskilled)											
Service Workers											
TOTALS	39	11	2	3	1		13	5	2	2	

WORK FORCE UTILIZATION

FEBRUARY 1, 1990

JOB CATEGORIES	OVERALL TOTALS (sum of Columns B thru K) A	NUMBER OF EMPLOYEES										
		MALE					FEMALE					
		White (not Hispanic) B	Black (not Hispanic) C	Hispanic D	Asian or Pacific Island E	American Indian or Alaskan F	White (not Hispanic) G	Black (not Hispanic) H	Hispanic I	Asian or Pacific Island J	American Indian or Alaskan K	
Officials & Managers	4	3					1					
Professionals	17	6		1			8	1		1		
Technicians												
Sales Workers												
Office & Clerical	11						6	4		1		
Craft Workers (specify)												
Operatives (semi-skilled)												
Laborers (unskilled)												
Service Workers												
TOTALS	32	9		1			15	5		2		

LIEBERT, CASSIDY & FRTERSON

WORK FORCE UTILIZATION

FEBRUARY 1, 1989

JOB CATEGORIES	OVERALL TOTALS (sum of Columns B thru K)	NUMBER OF EMPLOYEES									
		MALE					FEMALE				
		White (not Hispanic)	Black (not Hispanic)	Hispanic	Asian or Pacific Island	American Indian or Alaskan	White (not Hispanic)	Black (not Hispanic)	Hispanic	Asian or Pacific Island	American Indian or Alaskan
A	B	C	D	E	F	G	H	I	J	K	
Officials & Managers	4	3					1				
Professionals	16	5	1	1	1		8				
Technicians											
Sales Workers											
Office & Clerical	10						4	4		2	
Craft Workers (specify)											
Operatives (semi-skilled)											
Laborers (unskilled)											
Service Workers											
TOTALS	30	8	1	1	1		13	4		2	

LIEBERT, CASSIDY & FRIERSON

WORK FORCE UTILIZATION

FEBRUARY 1, 1988

JOB CATEGORIES	OVERALL TOTALS (sum of Columns B thru K) A	NUMBER OF EMPLOYEES									
		MALE					FEMALE				
		White (not Hispanic) B	Black (not Hispanic) C	Hispanic D	Asian or Pacific Island E	American Indian or Alaskan F	White (not Hispanic) G	Black (not Hispanic) H	Hispanic I	Asian or Pacific Island J	American Indian or Alaskan K
Officials & Managers	4	3				1					
Professionals	12	5				5		2			
Technicians											
Sales Workers											
Office & Clerical	11					6	4		1		
Craft Workers (specify)											
Operatives (semi-skilled)											
Laborers (unskilled)											
Service Workers											
TOTALS	27	8				12	4	2	1		