



Metropolitan Cases

AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

On September 11, 2008, AFSCME filed a Public Employment Relations Board (PERB) unfair practice charge against Metropolitan. The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) and PERB regulations in or around June 2008 by failing to comply with a claimed policy of providing per diem amounts or actual expense reimbursement for employees who traveled on union release time or on union business. Metropolitan opposed the charge by denying the existence of such a policy, and by stating Metropolitan has complied with the applicable travel expense language contained in the AFSCME MOU and Metropolitan's Administrative Code. On March 20, 2009, PERB issued a complaint alleging Metropolitan violated the MMBA and PERB regulations by not complying with the claimed policy. An informal settlement conference has been scheduled for April 30. In the interim, the Legal Department will file an answer to the complaint denying any violation of law. (See General Counsel's September 2008 Activity Report)

AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

On February 27, 2008, AFSCME filed a PERB unfair practice charge alleging Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by purportedly discriminating against and interfering with an employee's protected concerted activity. In March 2008, Metropolitan filed a position statement, requesting the charge's dismissal. In July 2008, PERB denied the dismissal request and issued a complaint alleging Metropolitan violated the MMBA by purportedly discriminating against and interfering with an employee's protected self-representation, and by purportedly interfering with AFSCME's right to represent employees. In July 2008, Metropolitan filed its answer, denying any violation of any law. In August 2008, the parties held an informal conference before PERB, but were unable to resolve the matter. In January 2009, the parties conducted a two-day formal hearing (an administrative trial) before a PERB

Administrative Law Judge, and presented witnesses and documentary evidence. The parties served closing briefs on March 6, 2009 and the matter is now under submission to the Administrative Law Judge for his decision. The Legal Department has represented Metropolitan in this matter. (See General Counsel's January 2009 Activity Report)

Barrows v. Southern California Gas Company (Los Angeles Superior Court)

On March 9, 2009 Metropolitan was served with a Complaint for Damages alleging dangerous condition of public property and negligence. Metropolitan is among ten government and private utilities owners and/or maintainers of a surface street and subsurface facilities named as defendants. Plaintiff Keith Barrows alleges that a substantial defect in the roadway at 1901 North Sepulveda Blvd. in Los Angeles caused him to lose control of his motorcycle and sustain substantial personal injuries. Metropolitan's Sepulveda Feeder underlies the location of the alleged roadway defect. As yet, there is no evidence that shows a causal connection between the Sepulveda Feeder and the roadway defect.

Metropolitan v. XO Communications (Orange County Superior Court)

On June 29, 2004, Metropolitan was notified that water was collecting on the street surface above the location of Metropolitan Orange County Feeder ("OCF") pipeline at Bristol and Sunflower. Metropolitan responded and eventually, after shutting down the OCF several times, found that it was leaking directly where a bank of seven 1.5" communications conduits intersect with the pipeline. Although there is no direct evidence, there is strong circumstantial evidence that the conduits were installed by way of horizontal boring, and that the drill bit used for the boring struck the top of the OCF and damaged it in such a way as to eventually cause the subject leak – probably after many years of corrosion.

After the OCF was repaired, Metropolitan field personnel, relying on representations from the City of Costa Mesa, believed that the contractor that performed the boring procedures, perhaps as early



as 1993, was XO Communications (“XO”). Through Legal Department’s investigation and discovery, however, it became clear that there is a lack of evidence that XO owned the conduit, let alone that it performed the boring operations that damaged the OCF. And since filing the lawsuit, City records have been thoroughly checked and there is simply nothing on file that shows who owns the conduit.

Based on responses to our discovery, we determined that a pipeline installation company named Arizona Pipeline, Inc. was probably the contractor that installed most of the communications conduits for XO (actually for XO’s predecessor – a company called Nextlink) in the early 1990s when fiber optic cables were being installed in the relevant area of Orange County.

However, subsequent discovery revealed that as between XO and Arizona Pipeline, there is no one that has a memory of installing the relevant conduit

and there are no records that such conduit was installed by or for XO.

We also obtained by subpoena the records from Underground Service Alert in an attempt to find an entity who submitted a notice that it was going to excavate in the location of the conduit or the OCF. While there have been literally dozens of other excavations in the general area, including excavations by XO, there are none in the specific location of OCF.

Based on the above, we concluded that it was doubtful that Metropolitan would prevail at trial – scheduled to begin April 13, 2009.

Total cost of repairs, using mostly Metropolitan forces, was \$339,624. However, the Post Shutdown Report apportions out \$109,866 as “reimbursable” costs. Given the state of evidence in this case after a full course of litigation by in-house counsel, we secured a settlement of \$12,000.

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State Water Contractors v. California Department of Fish & Game (Sacramento Superior Court)

On March 25, 2009, the State Water Contractors filed suit in Sacramento Superior Court challenging the Department of Fish & Game’s CESA 2081 permit for the take of longfin smelt by the State Water Project (SWP). The complaint alleges that the export restrictions imposed on SWP by the 2081 permit have no reasonable relationship to any harm to longfin smelt caused by SWP operations, and are arbitrary and capricious and not supported by the best available science. Metropolitan staff will continue to assist the State Water Contractors and their attorneys in the conduct of this litigation.

California Water Impact Network & California Sportfishing Protection Alliance v. Department of Water Resources, State Water Resources Control Board & U.S. Bureau of Reclamation (Sacramento Superior Court)

Plaintiffs dismissed this action on March 6, 2009. Their complaint, filed December 1, 2008, had alleged that Department of Water Resources and Bureau of Reclamation export

operations have caused numerous negative impacts on the Delta ecosystem and that the State Board has failed to enforce California law against the projects. (See General Counsel’s November 2008 Activity Report)

Department of Water Resources and Bureau of Reclamation Petition For Temporary Joint Place of Use (State Water Resources Control Board)

On March 20, 2009, the Department of Water Resources and Bureau of Reclamation jointly filed with the State Water Resources Control Board a petition to add the others’ service area as a place of use. Under California law, a water right permit issued by the State Board must specify the area in which the water will be delivered. With a few exceptions, the service areas of the State Water Project and Central Valley Project do not overlap and the water from the projects cannot be delivered into the others’ service area. Consequently, whenever a contractor of one of the projects wants to transfer to or exchange water with a contractor of the other project, a petition must be filed with the State Board. Because of the administrative burdens and other considerations, this requirement has often discouraged transfers and



exchanges. The joint petition requests a temporary change in place of use for two years allowing each project to deliver transferred and exchanged water to the other project's service area. This will facilitate transfers and exchanges for supply and water quality purposes during the current dry conditions and, if successful, could serve as a template for a longer-term petition.