



Metropolitan Cases

AFSCME Local 1902 v. Metropolitan (MOU Hearing Officer Appeal)

On September 29, 2009, Hearing Officer Kenneth A. Perea issued his decision in response to an appeal of Metropolitan's denial of five consolidated grievances. The AFSCME grievances challenged the outcome of five individual job audits. The job audits, performed by Human Resources staff, concluded that five journey-level employees should remain classified as Maintenance Mechanic I's. At the hearing, AFSCME failed to meet its burden of establishing a violation of the AFSCME MOU. Accordingly, Mr. Perea upheld Metropolitan's denial of the grievances, and determined that the grievants have been correctly classified as Maintenance Mechanic I's for the relevant time period. The Legal Department represented Metropolitan in this matter.

Colorado River QSA Coordinated Cases (Sacramento Superior Court)

As previously reported, on April 2 the parties filed 18 dispositive motions aimed at limiting the scope of trial on the Quantification Settlement Agreement (QSA). Ten were filed by the "Category 1" parties (i.e., parties who support the QSA) and eight were filed by the "Category 2" parties (i.e., parties who oppose the QSA). Following hearings held on July 2, August 20 and August 27, the court denied all but one of these motions, largely on procedural grounds. One Category 2 party, Cuatro del Mar, has filed a petition for writ of mandate in the court of appeal challenging the judge's denial of its motion seeking summary adjudication, which relates to the constitutionality of certain funding commitments made by the State. However, Cuatro del Mar's writ did not seek immediate relief and, therefore, any response is likely to occur after the Phase I trial is complete, rendering the writ moot.

Currently, over 100 issues remain to be tried during Phase 1 of this litigation, which consists of three sub-phases: Phase 1A addresses the validity of the QSA and its related agreements; Phase 1B addresses CEQA claims related to the QSA Programmatic Environmental Impact Report (EIR); Phase 1C addresses CEQA claims related to the IID Transfer Project EIR. On September 28,

the parties filed opening trial briefs for each of these sub-phases. Opposition trial briefs are due on October 29. The current schedule for trial is as follows: Phase 1A is scheduled to start on November 9 and conclude by December 2; Phase 1B is scheduled for December 14 through 18; and Phase 1C is scheduled to start on January 4, 2010 and conclude by January 26, 2010. Any remaining unresolved claims or issues will be tried in subsequent phases, which have not yet been scheduled. (See General Counsel's April 2009 Monthly Activity Report)

Butte Environmental Council v. California Department of Water Resources (Alameda Superior Court)

On April 13, 2009, Butte Environmental Council, the California Sportfishing Protection Alliance and California Water Impact Network filed suit in Alameda Superior Court challenging the implementation of the 2009 Drought Water Bank. The complaint alleges that the Department of Water Resources and state officials failed to comply with CEQA in approving the Drought Water Bank. Initially, over 80 potential buyers and sellers, including Metropolitan, were named as real parties in interest. However, many of these parties have no involvement or interest in the Drought Water Bank and now have been dismissed. Currently, approximately 50 buyers and sellers remain parties to this lawsuit. On August 25, defendant California Department of Water Resources filed a demurrer (motion to dismiss) to the complaint. Metropolitan and other contractors joined in this demurrer. Opposition briefs were filed on September 15 and reply briefs were filed on September 22. A hearing was held on September 29, after which the court took the demurrer under submission. The next case management conference is scheduled for October 27. The focus most likely will be on determining the proper scope of the administrative record for this case. (See General Counsel's April 2009 Monthly Activity Report)



Lollett Jones-Boyce v. Metropolitan (Public Employment Relations Board)

On September 29, 2009, the California Public Employment Relations Board (PERB) affirmed dismissal of an unfair labor practice charge filed by former employee Lollett Jones-Boyce. Ms. Jones-Boyce filed the charge on November 28, 2007, alleging that Metropolitan violated the Myers-Milias-Brown Act (MMBA) by placing her on paid administrative leave and later terminating her employment and health benefits in retaliation for her “exercising rights guaranteed under the MMBA.” Ms. Jones-Boyce’s employment ended on November 5, 2007, pursuant to the terms of a Board-approved Confidential Settlement Agreement signed on April 20, 2007. Under the agreement – which resolved a discrimination lawsuit – Metropolitan placed Ms. Jones-Boyce on administrative leave and ended her employment once the leave expired. On December 6, 2007, Metropolitan notified Ms. Jones-Boyce that her District-paid medical coverage would terminate, and that by law she could elect to continue her coverage. Despite Ms. Jones-Boyce amending her charge eight times, PERB’s Board agent dismissed the charge on October 17, 2008 for failure to state a prima facie case of retaliation. The agent determined Ms. Jones-Boyce did not engage in protected activity, and that the District’s actions in implementing the settlement agreement are not adverse actions under the MMBA. This month the full PERB Board affirmed the Board agent’s dismissal. The Legal Department represented Metropolitan in this matter. (*Metropolitan Water*

District of Southern California (Sept. 29, 2009) PERB Decision No. 2066-M.) (See General Counsel’s October 2008 Monthly Activity Report)

Andrew James Ellsworth, Jr. v. Metropolitan, et al. (Los Angeles County Superior Court)

On September 8, 2009, Metropolitan employee Andrew Ellsworth filed a complaint in Los Angeles County Superior Court against Metropolitan and four employees. Plaintiff alleged eight causes of action: discrimination based on race, national origin, ancestry, and age in violation of the Fair Employment and Housing Act (FEHA); wrongful failure to promote in violation of public policy; harassment based on race, national origin, ancestry, and age in violation of FEHA; retaliation for opposing discrimination and harassment in violation of FEHA; disability discrimination and failure to accommodate in violation of FEHA; failure to engage in the interactive process in violation of FEHA; failure to prevent harassment, discrimination, and retaliation in violation of FEHA; and defamation. All causes of action are asserted against Metropolitan, and the harassment and defamation causes of action are also asserted against the individual defendants. Plaintiff has not yet served the summons and complaint on all of the defendants. Metropolitan’s Legal Department is providing legal representation for all defendants in the case, and the Legal Department has retained an outside investigator who is investigating the allegations.

Matters Involving Metropolitan

FERC Action on Proposed PG&E and SCE Rate Increases

On September 30, 2009, the Federal Energy Regulatory Commission (FERC) released orders on the recent Pacific Gas & Electric Company (PG&E) and Southern California Edison (SCE) transmission revenue requirement (TRR) filings. Both utilities sought increases of over 20 percent in their TRRs. Many parties, including Metropolitan, the State Water Contractors, and the Department of Water Resources, protested the filings. In its orders, the FERC concluded that the TRRs as filed are likely unjust and unreasonable, suspended the rates for the statutory maximum period of five months and

ordered hearings. The five-month suspension of the rates is expected to result in savings of roughly \$2.3 million on State Water Project energy costs.



Matters of Interest

Legal Department Staffing Update

Two attorneys joined the Legal Department in August, filling two vacant attorney positions. Rebecca Sheehan is located in Metropolitan's Sacramento office and will work on Bay-Delta and other resources matters. Mark Parsons will be working on energy matters. We are very pleased to have both of these attorneys join the Legal Department staff.

Rebecca Sheehan was formerly employed by Kronick, Moskovitz, Tiedemann & Girard, where she handled environmental litigation and served as outside counsel for the State Water Contractors. Prior to that, she was employed by the California Farm Bureau Federation in their Natural Resources and Environment Department.

Mark Parsons was employed as a Deputy City Attorney in Riverside. In that capacity, he provided advice and counsel to the Public Utilities Department on rate-making issues, power supply contracts, and other utilities matters. He was previously employed by the Thompson Coburn law firm, where he represented municipal clients in complex litigation and settlement discussions before the FERC and federal appellate courts.