CBM CARROLL, BURDICK & McDONOUGH

THE LABOR BEAT

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A NEW ADDITION TO THE CBM LABOR TEAM

Amber West joined CBM last June, working with the firm's Labor Group in its San Francisco Office. Her practice focuses on representing peace officers, firefighters, and other public sector employees during grievances, internal investigations, unfair labor practice disputes, and in arbitration and litigation. She provides both litigation and counseling services to address a broad range of employment issues facing public sector unions and employees. Ms. West has served as a staff attorney at the United States Court of Appeals for the Ninth Circuit, working regularly with all active and some senior-status judges. Previously, she also was a law clerk for an administrative law judge at the U.S. Department of Labor. Before attending law school, Ms. West was a Masters-level social worker and achieved the highest level of licensing in that field.

GOVERNOR BROWN SIGNS MAJOR PENSION REFORMS INTO LAW

By Jennifer Stoughton

On September 12, 2012, Governor Brown signed into law the California Public Employees' Pension Reform Act of 2013. Consisting of a staggering 60 pages, the Act makes several significant changes for public employee pensions. Here is a summary of the most significant changes:

- Caps pensionable salary for all new state and local members (hired after January 1, 2013) at the Social Security wage index limit ($110,100) for employees who participate in Social Security, or 120% of that limit ($132,120) if they do not. These compensation caps can adjust annually based on changes in the Consumer Price Index ("CPI").
- Gives the Legislature the right to modify the annual CPI adjustments to the compensation cap prospectively.
- Requires new employees to pay for at least 50% of (normal) pension costs and encourages current employees to reach that level through collective bargaining.
- Permits local employers to have their employees help pay for pension liabilities.
- Permits employers to continue to offer plans with lower benefits and develop plans that are lower cost and lower risk if certified by the system's actuary and approved by the Legislature.
- Changes pension rates:
  - Eliminates all 3% safety pension rates for future employees.
  - For future local fire and police employees: 3 percent at 50 changes to 2 percent at 50 with a maximum of 2.7 percent at 57.
  - For future local miscellaneous employees: 2.5 percent at 55 changes to 2 percent at 62; with a maximum of 2.5 percent at 67.
- Limits "pension spiking" by averaging the 3 years final compensation to calculate benefits. Pensionable income for new employees is restricted and excludes non-recurring items, uniform allowance, vacation cashouts, etc.
- Prohibits retroactive pension increases for all employees.
- Prohibits pension holidays for all employees and employers.
- Prohibits service credit purchases (air time) for all employees submitting applications after January 1, 2013.
- Felons convicted of certain crimes will forfeit pensions earned after the commission of the specified felonies.
- Excludes Judges, the University of California and charter cities that do not participate in the California Public Employees' Retirement System (CalPERS).
- Prohibits employers from providing to managers or unrepresented employees a better retirement or vesting schedule for retiree health benefits than employees covered by an MOU.

- Normal cost sharing for new state employees begins on January 1, 2013, and for existing employees a two-year phase-in commences on July 1, 2013.
- For current local employees, with respect to cost-sharing, MOUs in effect prior to January 1, 2013 cannot be impaired, required changes will not take effect until expiration of those agreements. Cost sharing will be negotiable, but changes cannot be imposed unilaterally (an agreement is required) until 2018. However, if no agreement is reached by January 1, 2018, that includes payment of at least 50% of the normal cost, the employer can unilaterally impose up to that amount or the statutory cap (whichever is less) after exhausting impasse procedures.
- Places some limits on post-retirement employment.

Because there are numerous questions concerning the legality of portions of this Act, especially regarding changes for current employees, as well as the impact on collective bargaining, we are in the process of developing litigation and bargaining plans for our clients to take into account the new landscape created by the Act.

CALIFORNIA COURT OF APPEAL RULES THAT PRIVATIZING MUNICIPAL FUNCTIONS OF A GENERAL LAW CITY IS UNLAWFUL EXCEPT UNDER NARROW CIRCUMSTANCES SPECIFIED BY STATE LAW

There is a lot of talk these days about the contracting out or privatization of services typically rendered for public agencies by public employees. With respect to public safety functions, the term of art is often "civilianization." The good folks on the City of Costa Mesa city council were at the spear tip of this movement, generating a ton of publicity (e.g., New Yorker, New York Times, and the Wall Street Journal articles) with their plan to privatize large swathes of the work historically done by city employees. Readers may recall the sad tale of one city employee jumping from a city building to his death upon receiving a pink slip from the City.

On Friday, August 17, 2012, a ruling by the Fourth District Court of Appeal became the proverbial pin that popped that balloon. In a comprehensive opinion, *Costa Mesa City Employees' Assoc. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, the appellate court upheld a preliminary injunction issued by the Orange County Superior Court preventing the City of Costa Mesa from privatizing many of its municipal functions and laying off a large portion of its workforce. The Court of Appeal found that the threatened layoffs would likely cause irreparable harm to the impacted workers and that such harm outweighed any potential financial harm that delaying the City's outsourcing plan would cause to the City. More importantly, the Court agreed with the Costa Mesa City Employees' Association ("CMCEA") that California law prohibits private contracting for the performance of a general law city's municipal functions, except where such contracting is specifically authorized by statute or is for services that cannot be performed by city employees. The case was handled by Silver Hadden Silver Wexler + Levine Partner **Richard Levine,** CBM Labor Partner **Jonathan Yank,** and Appellate Partner **Gonzalo Martinez**.

Some background: On March 1, 2011, the City Council of Costa Mesa approved an outsourcing plan to contract out for a variety of city services, including jail operations, special event safety, street sweeping, graffiti abatement, animal control, information technology, graphic design, reprographics, telecommunications, payroll, employee benefit administration, building inspection, and park, fleet, street and facility maintenance. Thereafter, the City issued layoff notices to approximately 200 civil service employees stating that, unless rescinded, the layoffs would become effective in September 2011.

CMCEA sued in the Orange County Superior Court, asserting that the City's outsourcing plan would violate California Government Code sections 37103 and 53060 ("the special services statutes"), which permit private contracting only for "special services and

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advice in financial, economic, accounting, engineering, legal, or administrative matters." The Superior Court issued a preliminary injunction, finding: (1) that the City's layoff notices threatened imminent irreparable harm to CMCEA's members that outweighed any potential harm to the City; and (2) that the Association was likely to prevail on its claim that the City's planned actions would violate the special services statutes. The City filed an appeal, arguing (among other things) that the special services statutes were only intended to exempt special services from competitive bidding requirements, not to restrict private contracting.

After briefing and oral argument, the Court of Appeal issued a detailed opinion affirming the trial court's decision in full. The Court roundly rejected the City's arguments, noting that prior "cases make clear that courts will not hesitate to invalidate a service contract between a local agency and a private entity if the contract involves services that are not considered special." After noting that a "general law city" like Costa Mesa only has such private contracting authority as has been granted by the legislature, the Court stated: "There is no indication the Legislature intended to allow the City to outsource any of the other services at issue in this case. Nor is there any evidence the City's workforce is incapable of providing any of those services." Based on these conclusions, the Court of Appeal determined that the Superior Court was correct in issuing a preliminary injunction to prevent the City from moving forward with its privatization plan.

Subsequently, the City asked the California Supreme Court to reverse the decision of the Court of Appeal, and the League of California Cities asked that it be depublished (so it would not apply to other jurisdictions). The Supreme Court rejected both requests.

This is an extremely important case in establishing limitations on public entities' ability to privatize government functions at a time when many public employers are seeking to do so primarily for political purposes, rather than based on sound financial reasoning. Although the special services statutes at issue in this case do not apply to charter cities and counties, civil service provisions and limitations on contracting delineated in city and county charters are equally enforceable in court.

LABOR GETS A BIG WIN IN WISCONSIN

By Jennifer Stoughton

Finally, there is some good news out of Wisconsin. Wisconsin Governor Scott Walker's attempts to strip away collective bargaining rights and do away with public sector unions altogether through the passage of the 2011 "Budget Repair Bill," ("the Act") have been well documented in the media. Among other things, the Act was intended to strip away the rights of general public employees to collectively bargain for anything other than wages, eliminate mandatory dues and fair share fees, require annual recertification by an absolute majority of union members, and prohibit the voluntary withholding of union dues from an employee's paycheck. In our last edition of the Labor Beat, we reported that a federal court found that the Act's elimination of collective bargaining rights was constitutionally-permitted, but it struck down the portions of the Act that would require annual recertification and prohibited voluntary withholding of union dues from an employee's paycheck.

Now, in a case filed on behalf of Madison Teachers, Inc., a labor union representing employees of the Madison Metropolitan School District, and Public Employees Local 61, a labor union representing employees of the City of Milwaukee, a state court has struck down the Act in its entirety. Among other things, the Court found that the Act violated the Plaintiffs' free speech and associational rights because it imposed "significant and burdensome restrictions on employees who choose to associate in a labor organization" by limiting what local governments may offer employees who are represented by a union, solely because of that association. The Court also found that the Act violated equal protection principles because it

created two classes of employees, those represented by a labor organization and those who are not.

We have no doubt that this is not the end of litigation over the constitutionality of the Act. And while the most recent decision only impacts those local employees who brought the lawsuit, we hope it is a sign that the courts will ultimately find the Act to be unconstitutional.

CONDUCT UNDERTAKEN AS JOB STEWARD CANNOT BE GROUNDS FOR DISCIPLINE

By Jennifer Stoughton

The California Public Employment Relations Board ("PERB" or "the Board") recently ruled that an employer cannot discipline an employee for otherwise-lawful conduct undertaken as a union job steward. In PERB Decision No. 2282, the Board upheld an Administrative Law Judge's finding that the employer, the California Department of Corrections and Rehabilitation ("CDCR"), unlawfully retaliated against a job steward from SEIU by issuing a letter of instruction for "insubordination, discourteous treatment of employees, and willful disobedience" as a direct result of the employee's actions while representing SEIU members as a job steward. The letter of instruction also threatened to exclude the employee from future disciplinary meetings if her conduct were to recur.

The Board agreed with the ALJ that the job steward's conduct, which consisted mainly of a hostile attitude toward her supervisor in both meetings, did not exceed the bounds of protected activity because it was not so "opprobrious, flagrant, insulting, defamatory, insubordinate, or fraught with malice" that it caused "substantial disruption or material interference" with CDCR's operations. Thus, the Board approved the ALJ's Order to rescind, remove, and destroy the letter of instruction placed in the employee's file.

Although PERB has no jurisdiction over MMBA bargaining units comprised solely of peace officers (see Cal. Gov. Code § 3511) or solely of certain management employees (see Cal. Gov. Code § 3509(f)), courts generally defer to PERB's interpretation of the MMBA and other collective bargaining statutes. Therefore, this is an extremely important decision for all union-represented public employees in California.

THE HEARING OFFICER IN AN ADMINISTRATIVE APPEAL FROM TERMINATION HAS AUTHORITY TO GRANT A *PITCHESS* MOTION TO DISCLOSE PEACE OFFICER PERSONNEL RECORDS

By Jason Jasmine

As many of the readers of this article know, pursuant to Penal Code section 832.7, peace officer or custodial officer personnel records are confidential and may not be disclosed in any criminal or civil proceeding except by discovery under sections 1043 and 1046 of the Evidence Code. This is what is broadly known as a *Pitchess* motion or the *Pitchess* discovery procedure.

In *Riverside County Sheriff's Department v. Stiglitz* (2012) 209 Cal.App.4th 883, the Court was faced with the issue of whether a hearing officer presiding over an administrative appeal of the dismissal of a permanent county correctional officer had authority to grant a *Pitchess* motion. Here, the Court held that the hearing officer did have such authority.

The dispute arose when the officer asserted that the penalty of termination was disproportionate to her misconduct because other Department employees who had engaged in the same misconduct (falsifying time records) had received lesser discipline. The officer submitted a *Pitchess*-like motion seeking redacted (to conceal the identity of the other employees) disciplinary records of other specifically-named Department personnel who had been investigated or disciplined for similar misconduct.

The hearing officer granted the motion and ordered the Department to produce the requested records. The Department challenged that decision via a petition for writ of mandate. Based on the recent decision in *Brown v. Valverde* (2010) 183 Cal.App.4th 1531, the trial court granted the Department's petition, holding that there was no authority for the proposition that an administrative hearing officer has authority to consider *Pitchess* discovery motions.

The Court of Appeal, reviewing the matter independently because the dispute involved the meaning and application of relevant statutes, found that the due process rights of peace officers in disciplinary hearings requires that the hearing officer in such proceedings be afforded the ability to rule on *Pitchess* motions if the requested discovery is relevant to an officer's defense.

This ruling is a potential double-edged sword. On the one hand, it provides a greater likelihood of obtaining potentially exculpatory evidence that can help in defending peace officers accused of misconduct. On the other hand, it further erodes the confidentiality privileges afforded to peace officers.

BROAD INSTRUCTION TO MAINTAIN CONFIDENTIALITY DURING INVESTIGATION MAY BE UNLAWFUL

By Jason Jasmine

The National Labor Relations Board ("NLRB") recently issued a decision which, though not directly binding on the public sector, may end up having a big impact on public sector investigations. In *Banner Health System dba Banner Estrella Medical Center and James A. Navarro* (2012) NLRB Case 28-CA-023438, the NLRB dealt with an issue involving an internal workplace investigation, wherein the witnesses were given an instruction to maintain confidentiality. The NLRB held that such a blanket instruction violates the rights of employees to engage in "concerted activity" regarding their working conditions.

The holding only applies to blanket instructions. Thus, employers could still require confidentiality during an investigation, but must demonstrate that it is necessary to avoid fabricated or collusive testimony, destroying evidence, and the like. We believe this is a pretty easy burden for employers to meet, but it is an extra step which simply precludes the employer from issuing blanket orders in every case without some critical thought involved.

Technically this decision does not apply to the public sector, as it was decided under the National Labor Relations Act. Such decisions, however, are frequently relied upon — and ultimately applied — in the public sector. If a blanket confidentiality instruction is given, it may make sense for the employee or his/her representative to ask for the basis for the instruction. Even if such an order ends up being determined to be illegal, however, it is typically NOT a good idea to violate the order. Although you should always seek legal advice when faced with situations such as this, the typical mantra of "obey orders now, and grieve them later" would seem to apply here.

COURT OF APPEAL STRIKES DOWN ARBITRATOR'S SALARY INCREASE AWARD DUE TO LACK OF LEGISLATIVE APPROVAL

By Keith Domingo

Service Employees International Union ("SEIU"), Local 1000, and the California Department of Human Resources ("CalHR") (formerly the Department of Personnel Administration) negotiated two memoranda of understanding ("MOUs") that provided specified percentages for increased salary ranges pertaining to certain employee classifications working at the California Department of Corrections and Rehabilitation ("CDCR"), effective January 7, 2007. The MOUs were approved by the Governor and Legislature in September 2006.

During this same period of time, a federal receiver appointed to oversee medical care provided to inmates at CDCR petitioned a federal court to increase the salary ranges of the same employee classifications by a larger percentage than the parties negotiated in the MOUs. In October 2006, a federal court ordered the increases, effective retroactively to September 1, 2006.

A dispute later arose between SEIU and CalHR over how the increases should be implemented, with SEIU contending that the MOUs' increases should be applied to the salary increases effectuated by the federal receiver, while CalHR contended the agreed increases had been superseded by the larger court-ordered increases. When the parties submitted the

dispute to binding arbitration, as required by the MOUs, the arbitrator agreed with SEIU's interpretation and ordered that "[t]he employees at issue shall be made whole for all lost income and benefits." After the arbitrator's award was affirmed by the trial court, CalHR appealed on the asserted ground that the arbitration award unlawfully increased salaries above the levels approved by the California Legislature.

In *California Department of Human Resources v. SEIU* (2012) 209 Cal.App.4th 1420, the Court of Appeal agreed with CalHR, holding that, "to the extent the arbitrator ordered the State to implement the [federal receiver salary] increases on top of the MOU increases, the award violates public policy because it mandates a fiscal result that was not explicitly approved by the Legislature." The delegation of authority to interpret the MOUs could not vest the arbitrator with the power to authorize expenditures above those authorized by the Legislature.

In reaching this decision, the Court of Appeal applied a rule set forth in *California Statewide Law Enforcement Assn. v. Department of Personnel Administration* (2011) 192 Cal.App.4th 1, noting "it is not sufficient that the Legislature was aware CalHR could agree with [the union] to make the [salary increase] retroactive. The Legislature has to (1) be informed explicitly that CalHR and [the union] did enter into such an agreement, (2) be provided with a fiscal analysis of retroactive application of the agreement, and (3) with said knowledge, vote to approve or disapprove the agreement and expenditure." In the instant case, while the Legislature was advised that the federal receiver salary increases "could potentially impact" the cost summaries it relied on in approving the MOUs, "Legislative awareness of an ambiguity does not equate to approval of benefits in excess of those explicitly presented to and approved by the Legislature. The MOUs did not unambiguously describe how the [federal receiver salary increases] were to mesh with the MOU [salary increases], and the Legislature did not explicitly approve "maximum" salary ranges above the amounts stated in the MOUs."

AMENDMENT TO GOVERNMENT CODE PROVISIONS MANDATING FACT-FINDING (APPLIES TO MMBA JURISDICTIONS ONLY)

By Amber West

In September, Governor Brown signed into law Assembly Bill 1606 ("AB 1606"), amending impasse procedures for employee associations invoking the right to request fact-finding pursuant to the Meyers-Milias-Brown Act ("MMBA"), Government Code Section 3505.4. Previously, the deadline for an employee association to request fact-finding was within 30 days following appointment of a mediator pursuant to the parties' agreement or 30 days after the selection of a mediation process pursuant to local rules. Now, parties must submit their differences no sooner than 30 days and no later than 45 days.

The legislation also clarified portions of the MMBA codified in Government Code sections 3505.5 and 3505.7 by providing that: (1) the right to request fact-finding cannot be waived; and (2) parties not subject to mediation processes are entitled to request fact-finding no later than 30 days following written notice of declaration of impasse by one of the parties.

It remains unclear whether fact-finding applies solely to "main table" negotiations or also to impact bargaining and other negotiations within the term of an MOU. For a more detailed analysis of fact-finding as a tool for labor associations, please see the April 2012 volume of Labor Beat for the article, *Impasse Resolution Procedures Mandated for Collective Bargaining*, by CBM partners **Gary Messing** and **Gregg Adam**. As a reminder, please note the article does not incorporate the time line changes discussed in the foregoing paragraphs.

ALASKA SUPREME COURT RECOGNIZES "UNION REPRESENTATIVE-MEMBER" PRIVILEGE UNDER THAT STATE'S COLLECTIVE BARGAINING LAW

By Gregg Adam

A potentially important decision came out of the Alaska Supreme Court in late July. The Court in *Peterson v. Alaska*, Sup. Ct. No. S-14233 (July 20, 2012)

recognized a "union relations privilege" under Alaska's collective bargaining laws. The court concluded that the privilege may protect Alaska state employees and their union representatives from disclosing confidential communications relating to disciplinary matters or grievance proceedings.

The decision arose out of a wrongful termination lawsuit filed by an Alaska state employee who had been terminated for failing to disclose a felony conviction in his job application. Following an unsuccessful grievance, the employee sued the State. The State, in turn, subpoenaed his union representative to appear for a deposition and to produce all written communications between the union, which handled the original grievance, and the employee's attorney, who was handling the lawsuit.

The Supreme Court initially rejected an argument that the communications involving the union were covered by the attorney-client relationship. The court held that the union representative serves members of the union collectively and is not part of the ethical relationship between a union member and his/her personal attorney.

But the Court concluded that it had the authority under Alaska law to recognize new privileges. Accordingly, relying the reasoning of cases arising under the National Labor Relations Act and under New York law, the Court found that Alaska's Public Employment Relations Act contains an implicit "union relations" privilege. The privilege applies to: "communications made: (1) in confidence; (2) in connection with representative services related to anticipated or ongoing disciplinary or grievance proceedings; (3) between an employee (or the employee's attorney) and union representatives; and (4) by union representatives acting in official representative capacity." The Court believed that recognizing this privilege would permit the union and its members to function without harassment or undue interference from the state and would uphold the strong public interest in encouraging employees to communicate fully and frankly with their union representative.

Notably, the Court rejected what has been considered the leading California authority on the issue, *American Airlines, Inc. v. Superior Court* (2003) 114 Cal.App.4th 881. That case involved a somewhat similar fact pattern with key differences that the Alaska court highlighted. In *American Airlines*, a union member had also filed a lawsuit after unsuccessfully bringing a grievance. During discovery in the lawsuit, the employee's union representative testified against the airline employer, based on communications to him by other union members. But the representative refused to divulge the names of the union members who had communications to him supported his testimony. The Court of Appeal ruled against him, refusing to find a privilege that protected the communications between the union representative and the complaining union members.

The Alaska court distinguished *American Airlines* because: (1) the Alaska collective bargaining law differed in important ways from the federal Railway Act at issue in *American Airlines*; (2) the speech in *American Airlines* was far broader than in *Peterson* which more narrowly involved processing a grievance; and (3) the Court viewed the union representative in *American Airlines* as functioning more as a percipient witness than as an advocate, with the latter conduct justifying the privilege and the former not.

Importance: This is an important issue for union representatives. It typically arises when litigation follows a dispute, and perhaps a grievance, that the Association has been involved in. Many non-lawyer union representatives in California assume that their communications and conversations with union members are protected. In California, typically it is not, with *American Airlines* usually cited as the controlling authority. The best course of action, if one expects a grievance to end up in litigation, is to have counsel involved in conversations and communications, in order to permit an assertion of attorney-client privilege. It is to be hoped that a suitable California case will be forthcoming that gives the California courts or perhaps the Public Employment Relations Board an opportunity to also

recognize some form of union representative-member privilege.

FEDERAL JURY ONCE AGAIN VINDICATES YOLO DEPUTIES

By Jason Jasmine

Three Yolo County Sheriff's Deputies were once again vindicated — this time by a federal court jury in a civil lawsuit — regarding their actions in defending themselves against Luis Gutierrez, a knife-wielding criminal suspect under the influence of large quantities of methamphetamines. As Gutierrez lunged at Sgt. Dale Johnson with a knife, Deputy Hernan Oviedo shot and killed Gutierrez.

The deputies had already been the subject of multiple investigations — administrative and criminal — by independent agencies, and were cleared every step of the way. This latest vindication will hopefully bring to an end the now 3½-year-old saga, during which the deputies have had their actions constantly second-guessed by individuals with little or no knowledge of the situation and the dangers faced by these deputies.

While one can sympathize with the family of Gutierrez, it has now been determined half a dozen times, by half a dozen different independent entities, that it was his own actions that led to his death and that the deputies acted appropriately.

CDF FIREFIGHTERS FILE AND SETTLE ANOTHER LAWSUIT

As you have read in previous issues, the CBM team of Labor Partners **Gary Messing**, **Gregg Adam,** and **Jonathan Yank**, and Associate **Jennifer Stoughton** recently settled a lawsuit for more than $15 million in payments to CDF Firefighters who were improperly underpaid for annual leave, vacation leave, and CTO. Cal Fire failed to pay departing firefighters the amounts that they would have received if they had used their leave time while employed, as required by Government Code § 19839. The firefighters were not cashed out for the value of their regularly-scheduled overtime that constituted their normal work weeks (Planned Overtime). That lawsuit not only resulted in a payout of over $15 million to retired members of the Bargaining Unit, including seasonal employees who separated and were cashed out every year at the end of their season, but it guarantees tens of millions of dollars more for firefighters with leave balances who are yet to retire.

While resolving that case with the State, CDF Firefighters and CBM discovered another obscure provision of the Government Code (§ 19991.4) that requires cashing out sick leave credits in the same manner (including planned overtime) when an individual separates on industrial disability retirement.

A complaint was quickly filed by Sacramento Labor Partner **Messing** and San Francisco Associate **Jennifer Stoughton** on June 19, 2012, so as to avoid losing claimants due to the running of the statute of limitations. Cal Fire and the California Department of Human Resources ("CalHR") (formerly the Department of Personnel Administration) reviewed the matter and quickly took steps to resolve this dispute. The settlement will result in the immediate payout of over $50,000 to employees who separated with a disability retirement and were cashed out since 2011, and will also provide payouts for individuals who are cashed out after June 19, 2012 and receive their sick leave cash out because they retire with an industrial disability retirement. Due to the cooperation of Cal Fire, CalHR, and particularly CalHR's legal department, the settlement has been rapidly prepared. The settlement agreement and other necessary court documents will be completed forthwith. We expect the settlement to be finalized by the end of the year.

CBM LABOR REPRESENTATIVE OVERTURNS TERMINATION AND OBTAINS FULL BACK PAY FOR FIREFIGHTER/PARAMEDIC

The tiny town of Chester, California is home to a small Fire District staffed by hard working firefighters and paramedics. The District had initially terminated one of the firefighter/paramedics for allegedly violating certain technical rules regarding patient care. CBM Labor Representative **Howard Lewis**, with the oversight of Sacramento Labor Partner **Jason Jasmine**, persuasively argued: (1) that the rules the firefighters/

paramedic was alleged to have violated called for the exercise of subjective judgment; (2) that the decisions of this employee were not objectively incorrect; (3) that this employee was a strong employee with no prior discipline; and (3) ultimately that there was no just cause for discipline of any sort — let alone termination.

The Board of Directors of the District overturned the termination — and awarded full back pay. The employee is, needless to say, thrilled with the results and has been returned to work without incident.

CDF FIREFIGHTERS' STATE RETIREE DIRECTOR RAY SNODGRASS SELECTED FOR LEADERSHIP AWARD

By Jason Jasmine

At the 2012 International Association of Fire Fighters ("IAFF") Convention held in Philadelphia Pennsylvania, CDF Firefighters, IAFF Local 2881, member Ray Snodgrass was awarded the IAFF Local Leadership Award. Ray was one of 8 selected to receive this award out of 116 nominations from all the locals of the IAFF representing over 230,000 IAFF members in the United States and Canada.

Ray was selected by unanimous vote of the IAFF Executive Board. The Local Leadership Award was established in 2008 as a method of recognizing members that have served their local union for more than 15 years in a leadership position. Each nomination must be approved by the member's home local and approved by the IAFF Executive Board.

Ray became involved in CDF Firefighters in the early 1970's. He was first elected to the CDF Firefighters Executive Board in 1978. He served 3 years as the State Treasurer. He was elected as General President at the CDF Firefighters' annual convention and served in 1981 and 1982. During his tenure as General President, CDF Firefighters negotiated the first MOU as a result of passage of the Dills Act which provided collective bargaining rights for state employees. Ray and the Executive Board worked hand in hand with then Chief Counsel (and CBM partner) Ron Yank to write and negotiate this first MOU.

In addition, Ray and the Executive Board (again using the assistance of Ron Yank) negotiated the Affiliation Agreement with the California Professional Firefighters and the IAFF. Under Ray's leadership, the CDF Firefighters affiliated with the California Professional Firefighters and the IAFF in July of 1982 and instantly became one of the largest locals in the entire IAFF.

Ray also served as the Immediate Past President sitting on the CDF Firefighters' Executive Board of Directors. He also was elected as the State Supervisorial Director on two different occasions and later was elected as the District 8 Vice President, also on the CDF Firefighters' Executive Board.

Ray was appointed by Governor Gray Davis to the Chief Deputy Director of Cal Fire in May, 2003 and served in that capacity until July 1, 2004. At that point, Ray retired with 37 years of service in Cal Fire.

Not long after his retirement, Ray was elected as the State Retiree Director of CDF Firefighters and once again joined the CDF Firefighters' Executive Board of Directors. Ray continues to serve in this position.

THE LABOR BEAT

IMPORTANT NOTICE TO ASSOCIATION BOARD MEMBERS

CBM updates its Association Board Member list quarterly. To assist us in keeping accurate, up-to-date names of members and their positions on Association Boards, we would ask you kindly to fill out the form and mail it to our San Francisco office to:

Carroll, Burdick & McDonough LLP
44 Montgomery Street, Suite 400
San Francisco, California 94104
Attention: Joan Gonsalves

If you would like to begin receiving the Labor Beat electronically, please contact **Joan Gonsalves** at **jgonsalves@cbmlaw.com**.

In your request, please note whether you would like to receive both hard copy and an electronic version, or an electronic version only.

CBM thanks all of you for your help.

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