

No. S239958

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CAL FIRE LOCAL 2881 (formerly known as CDF Firefighters), *et al.*

Petitioners and Appellants,

v.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
(CalPERS)

Defendant and Respondent,

and

THE STATE OF CALIFORNIA,

Intervener and Respondent.

On Review From The Court Of Appeal For the First Appellate District,
Division Three, Civil No. A142793

After An Appeal From the Superior Court For The State of California,
County of Alameda, Case Number RG12661622, Hon. Evelio Grillo,
Presiding Judge

SUPPLEMENTAL BRIEF OF PETITIONERS AND APPELLANTS

MESSING ADAM & JASMINE LLP

Gary M. Messing, Bar No. 75363

gary@majlabor.com

*Gregg McLean Adam, Bar No. 203436

gregg@majlabor.com

Jason H Jasmine, Bar No. 215757

jason@majlabor.com

Yonatan L. Moskowitz, Bar No. 306717

yonatan@majlabor.com

235 Montgomery St., Suite 828

San Francisco, California 94104

Telephone: 415.266.1800

Facsimile: 415.266.1128

RECEIVED
OCT 05 2018
CLERK SUPREME COURT

Attorneys for Petitioners and Appellants CAL FIRE Local 2881, et al.

Petitioners file this Supplemental Brief in compliance with Rule 8.520, subd. (d) in order to call this Court’s attention to new authority not available in time to be included in Petitioners’ prior briefing.

The relevant new authority is Senate Bill (“SB”) 1085 (2017–2018 Reg. Sess.). SB 1085 is appropriately raised in a supplemental brief because it was approved by the Governor and chaptered by the Secretary of State on September 28, 2018, and was therefore unavailable before Petitioners’ Reply Brief was filed on January 22, 2018, or when their Consolidated Answer to Amici Curiae was filed on April 23, 2018. (Cal. Rules Court, rule 8.520(d) [“A party may file a supplemental brief limited to . . . new legislation, or other matters that were not available in time to be included in the party’s brief on the merits.”])

SB 1085 directly refutes arguments made by the Governor as Intervener/Respondent in the merits briefing filed before this Court.

SB 1085 created Government Code section 3558.8, subd. (e), which permits public employees to earn “full service credit” during time they spend not working for the State because they are serving their labor unions as stewards or officers. This undermines the Governor’s argument that withdrawing the offer to purchase Additional Retirement Service Credit (“ARSC”) was “critical to restor[e] the severed link between pension benefits and public service.” (Ans. Br. at p. 45.) Petitioners are not arguing that representation of fellow employees on a union-leave sabbatical is not

public service. On the contrary, where our labor relations statutes recognize the integral part “peaceful employer-employee relations” play in ensuring labor peace (Ralph C. Dills Act, Gov. Code § 3512; see also Meyers-Milias-Brown Act, Gov. Code § 3500), such endeavors are quintessentially public service.

But in its Answer Brief, the State adopted the trial court’s claim that ARSC had “broke[n] the link between work performed and benefits earned,” and rejected Petitioners’ argument that ARSC was but one of many instances in which pension system credit was accumulated without performing work for the State. (Ans. Br. at pp. 45-46 [citing JA 392])

The link had never been severed, and the recent decision to create new, alternative means to accrue service credit demonstrates that the Governor’s litigating position is purely opportunistic. The theory of a pension system does not require that pension service credit be exclusively linked to time spent working for the State – there are any number of service-credit enhancements that the Legislature has created to which employees can earn vested rights. (See SB 1085 [creating Gov. Code § 3558.8 sub. (e)]; Petitioners Opening Br. at pp. 11-12, [citing Gov. Code §§ 21032, 21033, 21020, 21024, 20898, 20902.5].) The Legislature created these opportunities for pension service enhancements – be they ARSC, military service credit, union leave credit, or any other credit cited above –

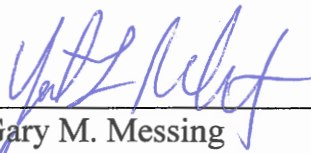
because the Legislature believed they were, on balance, beneficial to the State.

Therefore, the Governor's argument that ARSC needed to be eliminated in order to restore faith in the pension system and to ensure that pensions were linked to time spent working for the State should not be credited.

DATED: October 5, 2018

MESSING ADAM & JASMINE LLP

By:



Gary M. Messing
Gregg McLean Adam
Jason H Jasmine
Yonatan L. Moskowitz
Attorneys for Petitioners and
Appellants CAL FIRE Local 2881,
et al.

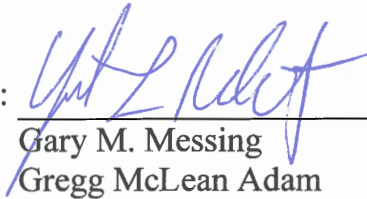
**CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA
RULES OF COURT RULE 8.504(d)(1)**

Pursuant to California Rules of Court Rule 8.504(d)(1), I certify that according to Microsoft Word the attached brief is proportionally-spaced, has a typeface of 13 points and contains 515 words.

DATED: October 5, 2018

MESSING ADAM & JASMINE LLP

By:



Gary M. Messing

Gregg McLean Adam

Jason H Jasmine

Yonatan L. Moskowitz

Attorneys for Petitioners and

Appellants CAL FIRE Local 2881,

et al.

00059624-1

PROOF OF SERVICE

**CAL FIRE Local 2881, et al. v. CalPERS (State of California)
California Supreme Court, Case No. S239958**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery St., Suite 828, San Francisco, CA 94104.

On October 5, 2018, I served true copies of the following document(s) described as **SUPPLEMENTAL BRIEF OF PETITIONERS AND APPELLANTS** on the interested parties in this action as follows:

See also attached SERVICE LIST OF AMICI CURIAE

Matthew G. Jacobs, General Counsel
Preet Kaur, Senior Staff Counsel *
CalPERS
Lincoln Plaza North
400 Q Street
Sacramento, CA 95814
Ph: (916) 795-1054
Email: preet.kaur@calpers.ca.gov

*Counsel for California Public
Employees' Retirement System
(CALPERS), Defendant and Respondent*

Peter A. Krause, Legal Affairs Secretary
Rei R. Onishi, Deputy Legal Affairs
Secretary
Office of the Governor Edmund G. Brown,
Jr.
State Capitol, Suite 1713
1315 10th Street
Sacramento, CA 95817
Ph: 916.445.2873
Email: Rei.Onishi@gov.ca.gov

*Counsel for The State of California,
Intervener and Respondent*

Office of the Court Clerk
Alameda County Superior Court
1225 Fallon Street
Oakland, CA 94612


Office of the Court Clerk
California Court of Appeal
First Appellate District, Division 3
350 McAllister Street
San Francisco, CA 94102

BY HAND DELIVERY

BY FIRST CLASS MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and in the attached Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Messing Adam & Jasmine LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.

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

Executed on October 5, 2018 at San Francisco, California.


Kelli R. Bremer

SERVICE LIST OF AMICI CURIAE

**CAL FIRE Local 2881, et al. v. CalPERS (State of California)
California Supreme Court, Case No. S239958**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

Peter Warren Saltzman
Arthur Wei-Wei Liu
Leonard Carder
1330 Broadway, Suite 1450
Oakland, CA 94612

Attorneys for:
International Federation of
Professional and Technical
Employees Local 21 : Amicus
curiae
Amalgamated Transit Union Local
1555 : Amicus curiae
Amalgamated Transit Union Local
1225 : Amicus curiae
Alameda County Management
Employees Association :
Pub/Depublication Requestor
Operating Engineers Local Union
No. 3 : Amicus curiae
International Brotherhood of
Electrical Workers Local 1245 :
Amicus curiae
Physicians' and Dentists'
Organization of Contra Costa :
Amicus curiae

Stephen H. Silver
Rains Lucia Stern St. Phalle & Silver, P.C.
1428 Second Street, Suite 200
Santa Monica, CA 90401

Attorneys for:
Los Angeles Police Protective
League : Amicus curiae
Ventura County Deputy Sheriffs'
Association : Amicus curiae
California Association of Highway
Patrol : Amicus curiae
Garden Grove Police Association :
Amicus curiae
California Statewide Law
Enforcement Association : Amicus
curiae
Orange County Employees'
Association : Amicus curiae

Karen Peckham Hewitt
Jones Day
4655 Executive Drive, Suite 1500
San Diego, CA 92121

Glenn E. Rothner
Rothner Segall & Greenstone
510 S. Marengo Avenue
Pasadena, CA 91101

Timothy T. Coates
Greines Martin Stein Richland, LLP
5900 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90036

Los Angeles County Professional
Peace Officers' Association :
Amicus curiae
Association for Los Angeles Deputy
Sheriffs : Amicus curiae
Deputy Sheriffs' Association of
Santa Clara : Amicus curiae
Fresno Deputy Sheriffs' Association
: Amicus curiae
Coalition of Santa Monica City
Employees : Amicus curiae
Antioch Police Officers'
Association : Amicus curiae

Attorneys for:
California Business Roundtable :
Amicus curiae

Attorneys for:
American Federation of State
County and Municipal Employees :
Amicus curiae
American Federation of Teachers :
Amicus curiae
National Education Association :
Amicus curiae
Service Employees International
Union : Amicus curiae
California Faculty Association :
Amicus curiae
California Federation of Teachers :
Amicus curiae
California Teachers Association :
Amicus curiae

Attorneys for:
Los Angeles County Employees
Retirement Association : Amicus
curiae

Brian J. Bartow
Scott Stephen Brooks
California State Teachers' Retirement
System
P.O. Box 15275
Sacramento, CA95851-0275

Attorneys for:
California State Teachers'
Retirement System : Amicus curiae

Marianne Reinhold
Reich Adell Crost & Cvitan
2670 N. Main Street, Suite 300
Santa Ana, CA 92705

Attorneys for:
Orange County Attorneys
Association : Amicus curiae
Orange County Managers
Association : Amicus curiae

Jonathan M. Coupal
Howard Jarvis Taxpayers Assn
921 11th St #1201
Sacramento, CA 95814; and

Attorneys for:
Ventura County Taxpayers
Association : Amicus curiae
Howard Jarvis Taxpayers
Association : Amicus curiae

Bradley Alan Benbrook
Benbrook Law Group, PC
400 Capitol Mall, Suite 1610
Sacramento, CA 95814

Kenneth H. Lounsbery
Alena Shamos
Lounsbery Ferguson Altona & Peak, LLP
960 Canterbury Place, Suite 300
Escondido, CA 92025

Attorneys for:
City of Pacific Grove : Amicus
curiae

Linda M. Ross
Renne Sloan Holtzman Sakai LLP
350 Sansome Street, Suite 300
San Francisco, CA 94104

Attorneys for:
League of California Cities :
Amicus curiae

Joshua Evan Morrison
Anthony Paul DeMarco
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive South, #300
Cerritos, CA 90703

Attorneys for:
Association of California School
Administrators : Amicus curiae

Daniel M. Kolkey
Gibson Dunn & Crutcher
555 Mission Street, Suite 3100
San Francisco, CA 94105

Attorneys for:
Pacific Research Institute : Amicus
curiae

Isaac Sean Stevens
David E. Mastagni
Mastagni Holstedt, APC
1912 I Street
Sacramento, CA 95811

Attorneys for:
Deputy Sheriffs' Association of
Alameda County : Amicus curiae
El Dorado County Deputy Sheriff's
Association : Amicus curiae
Ontario Police Officers'
Association: Amicus curiae
Sacramento Police Officers
Association: Amicus curiae
Sacramento County Deputy
Sheriff's Association : Amicus
curiae

Bruce Goldstein
Office of the Sonoma County Counsel
575 Administration Drive, #105A
Santa Rosa, CA 95403

Attorneys for:
County of Sonoma : Amicus curiae

Dennis Bunting
Office of the Solano County Counsel
675 Texas Street
Fairfield, CA 94533

Attorneys for:
County of Solano : Amicus curiae