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COUNTY OF ORANGE

THE STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

ORANGE COUNTY EMPLOYEES ASSOCIATION, et al., Charging Party, v. COUNTY OF ORANGE, Respondent.	UNFAIR PRACTICE CHARGE Case No. LA-CE-934-M Case No. LA-CE-935-M Case No. LA-CE-944-M **STATEMENT OF EXCEPTIONS TO CHIEF ADMINISTRATIVE LAW JUDGE'S PROPOSED DECISION, DATED JUNE 16, 2014** (Filed concurrently with Brief in Support of Statement of Exceptions)

In accordance with PERB Regulation 32300, Respondent COUNTY OF ORANGE hereby submits limited exceptions to the proposed decision Chief Administrative Law Judge Shawn P. Cloughesy (ALJ) issued on June 16, 2015 in the above-referenced cases. The County respectfully requests the Board to reverse the proposed decision as to those findings and conclusions which found the County violated the Meyers-Milias-Brown Act, and to dismiss the Complaints and Unfair Practice Charges which issued in the above-referenced cases, with prejudice, as authorized under PERB Regulation 32320.

Under the governing law, the Board owes no deference to the inferences or conclusions of law contained in the proposed decision. Further, the erroneous findings, conclusions, and inferences in the proposed decision are prejudicial because they provide the foundation of the decision.

These limited exceptions are presented in the order in which they occur in the proposed decision, not necessarily in order of significance or level of error.

EXCEPTION NO. 1:

The County excepts to the ALJ's conclusion, at page 24 of the Proposed Decision that "It cannot be found that such a provision, standing alone without any reference to the 30-day non-negotiations time period, would lend to the domination of the bargaining process or unduly delay negotiations to the point that it negates the concept of mutuality and good faith."

This conclusion is excepted to because it mistakenly characterizes the "30-day public review period" as a "30-day non-negotiations time period" and ignores the fact that the Section 1-3-21(b)(2) neither prohibits nor precludes the County and the employees organizations from meeting and conferring "promptly" upon request. It simply sets forth a period of time that the County must allow for public review before the County considers its initial proposal to the employee organizations. There is no evidence in the record that the 30-day public review period was the equivalent of a 30-day non-negotiations period.

The portion of the record relied upon for this exception is Stipulated Exhibit 37, p. 3.

EXCEPTION NO. 2:

The County excepts to the ALJ's conclusion, at page 25 of the Proposed Decision that "The larger question is whether the 30-day non-negotiations period portion in the COIN ordinance (Section 1-3-21(b)(2)) violates the duty found in MMBA section 3505 for the parties to meet and confer 'promptly' upon request by either party."

This conclusion is excepted to because it mistakenly characterizes the "30-day public review period" as a "30-day non-negotiations time period" and ignores the fact that the Section 1-3-21(b)(2) neither prohibits nor precludes the County and the employees organizations from meeting and conferring "promptly" upon request. It simply sets forth a period of time that the County must allow for public review before the County considers its initial proposal to the employee organizations. There is no evidence in the record that the 30-day public review period was the equivalent of a 30-day non-negotiations period.

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Moreover, even if the 30-day public review period were the equivalent of a 30-day non-negotiations period, 30 consecutive days (which by definition, includes weekends) is not so long to constitute a failure to meet "promptly" upon request, especially in light of the need to provide sufficient time for public input, while also considering the Board of Supervisors' meeting schedules.

Moreover, this purported 30-day non-negotiation period only applies to consideration of the parties' initial proposals. It does not preclude the parties from engaging in negotiations regarding the development and use of ground rules, explaining/clarifying the initial bargaining requests or discussing information requests

The portion of the record relied upon for this exception is Stipulated Exhibit 37, pp. 2-3.

EXCEPTION NO. 3:

The County excepts to the ALJ's conclusion, at pages 25 and 26 of the Proposed Decision that "The Dills Act, which also has an obligation to meet 'promptly,' provides for a seven-day non-negotiations period and other labor relations statutes such as EERA, HEERA, and TEERA, which do not have a 'promptly' requirement, allow for a 'reasonable' period of time adopted by a board. In light of this pronounced disparity between a seven-day and a 30-day non-negotiations period, a 30-day non-negotiations period is inconsistent and contrary to the MMBA's obligation that the parties meet and confer 'promptly' upon the written request by either party."

This conclusion is excepted to because it erroneously characterizes the seven-day time period set forth in the Dills Act to be the "maximum" amount of time allowed for public review, when it is actually the "minimum" amount of time that must be allowed. (Gov. Code § 3523, subd.(b).) This conclusion is also excepted to because it mistakenly characterizes the "30-day public review period" as a "30-day non-negotiations time period" and ignores the fact that the Section 1-3-21(b)(2) neither prohibits nor precludes the County and the employees organizations from meeting and conferring "promptly" upon request. It simply sets forth a period of time that the County must allow for public review before the County considers its initial proposal to the employee organizations. There is no evidence in the record that the 30-day public review period was the equivalent of a 30-day non-negotiations period.

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Even if the 30-day public review period were the equivalent of a 30-day non-negotiations period, 30 consecutive days (which by definition, includes weekends), is not so long to constitute a failure to meet "promptly" upon request, especially in light of in light of the need to provide sufficient time for public input, while also considering the Board of Supervisors' meeting schedules.

Moreover, this purported 30-day non-negotiation period only applies to consideration of the parties' initial proposals. It does not preclude the parties from engaging in negotiations regarding the development and use of ground rules, explaining/clarifying the initial bargaining requests or discussing information requests.

The portion of the record relied upon for this exception is Stipulated Exhibit 37, pp. 2-3.

EXCEPTION NO. 4:

The County excepts to the ALJ's conclusion at page 26 of the Proposed Decision that "Such bilateral negotiation of a reasonable non-negotiations period satisfying the 'promptly' requirement would be an example where the benefits to employee-employer relations of bargaining over this non-negotiations time period would outweigh the employer's need for unencumbered decision-making. Therefore the non-negotiations time period after the sunshine of an opening proposal falls within the scope of representation."

This conclusion is excepted to because it mistakenly characterizes the "30-day public review period" as a "30-day non-negotiations time period" and ignores the fact that the Section 1-3-21(b)(2) neither prohibits nor precludes the County and the employees organizations from meeting and conferring "promptly" upon request. It simply sets forth a period of time that the County must allow for public review before the County considers its initial proposal to the employee organizations. There is no evidence in the record that the 30-day public review period was the equivalent of a 30-day non-negotiations period.

Even if the 30-day public review period were the equivalent of a 30-day non-negotiations period, 30 consecutive days (which by definition, includes weekends), is not so long to constitute a failure to meet "promptly" upon request, especially in light of in light of the need to provide

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sufficient time for public input, while also considering the Board of Supervisors' meeting schedules.

Moreover, this purported 30-day non-negotiation period only applies to consideration of the parties' initial proposals. It does not preclude the parties from engaging in negotiations on such matters such as the development of ground rules, explaining/clarifying the initial proposals or discussing information requests.

The portion of the record relied upon for this exception is Stipulated Exhibit 37, pp. 2-3.

EXCEPTION NO. 5:

The County excepts to the ALJ's conclusion, at page 26 of the Proposed Decision that "The County should have negotiated over this non-negotiations time period as it therefore fell within the scope of representation."

This conclusion is excepted to because it mistakenly characterizes the "30-day public review period" as a "30-day non-negotiations time period" and ignores the fact that the Section 1-3-21(b)(2) neither prohibits nor precludes the County and the employees organizations from meeting and conferring "promptly" upon request. It simply sets forth a period of time that the County must allow for public review before the County considers its initial proposal to the employee organizations. There is no evidence in the record that the 30-day public review period was the equivalent of a 30-day non-negotiations period.

Even if the 30-day public review period were the equivalent of a 30-day non-negotiations period, 30 consecutive days (which by definition, includes weekends), is not so long to constitute a failure to meet "promptly" upon request, especially in light of in light of the need to provide sufficient time for public input, while also considering the Board of Supervisors' meeting schedules.

Moreover, this purported 30-day non-negotiation period only applies to consideration of the parties' initial proposals. It does not preclude the parties from engaging in negotiations on such matters such as the development of ground rules, explaining/clarifying the initial proposals or discussing information requests.

The portion of the record relied upon for this exception is Stipulated Exhibit 37, pp. 2-3.

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EXCEPTION NO. 6:

The County excepts to the ALJ's conclusion, at page 27 of the Proposed Decision that "For the Board of Supervisors to declare that it will publicly disclose all bargaining proposals during negotiations is to exercise dominance over this ground rule area (confidentiality/non-confidentiality) and to unilaterally dictate the setting in which negotiations may occur."

This conclusion is excepted to because it ignores the fact that the Brown Act, Government Code sections 54950 – 54963, mandates that local agencies, such as the County Board of Supervisors, keep its citizens informed, and precludes the County Board of Supervisors from determining what the public should or should not know. It also ignores the fact that while the Government Code section 54957.6 allows the Board of Supervisors to meet in closed session with its designated labor negotiators, it does not require that it do so. In fact, since Government Code section 3505 places the duty to meet and confer directly on the governing body, and neither the Brown Act nor the MMBA requires the governing body to designate labor negotiators, the Board of Supervisors could even decide to conduct the negotiations itself. (Gov. Code §3505.) Because collective bargaining with exclusively recognized representatives is not one of the grounds upon which a governing body can meet in closed session, any such negotiations would, by law, have to occur in an open public meeting. (See Gov. Code § 54950, et seq.)

Unlike Government Code section 3549.1 of the EERA, which exempts "[a]ny meeting and negotiating discussion between a public school employer and a recognized or certified employee organization" from the open meeting requirements of the Brown Act, "unless the parties mutually agree otherwise," the MMBA contains no provision that explicitly exempts negotiations from the Brown Act. The County raised these Brown Act arguments in its Closing Brief but the Proposed Decision provides no analysis or rationale of the merits of those arguments, even though these particular Government Code provisions are identified and cited in the Proposed Decision as "Statutory Provisions."

In addition to the arguments raised in its Closing Brief, the portion of the record relied upon for this exception is:

1. Stip. Ex. 11, p.12;

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2. Stip. Ex. 12, pp.9-10

3. Stip. Ex. 20, p.16.

EXCEPTION NO. 7:

The County excepts to the ALJ's finding, at pages 27 and 28 of the Proposed Decision that "By the Board of Supervisors adopting Section 1-3-21(c)(2),(3), and (6) of the ordinance, it exercised dominance in this area of the ground rules without any consideration of other confidentiality proposals of grounds rules, especially as those types of ground rules are the equivalent of a mandatory subject of bargaining and therefore within the scope of representation."

This conclusion is excepted to because it ignores the fact that the Brown Act mandates that the County Board of Supervisors keep its citizens informed, and precludes the County Board of Supervisors from determining what the public should or should not know. It also ignores the fact that while the Government Code section 54957.6 allows the County Board of Supervisors to meet in closed session with its designated labor negotiators, it does not require that it do so. In fact, since Government Code section 3505 places the duty to meet and confer directly on the governing body, and neither the Brown Act nor the MMBA requires the governing body to designate labor negotiators, the Board of Supervisors could even decide to conduct the negotiations itself. (Gov. Code §3505.)

Because collective bargaining with exclusively recognized representatives is not one of the grounds upon which a governing body can meet in closed session, any such negotiations would, by law, have to occur in an open public meeting. (See Gov. Code § 54950, et seq.)

Unlike Government Code section 3549.1 of the EERA, which exempts "[a]ny meeting and negotiating discussion between a public school employer and a recognized or certified employee organization" from the open meeting requirements of the Brown Act, "unless the parties mutually agree otherwise," the MMBA contains no provision that explicitly exempts negotiations from the Brown Act.

The County raised these Brown Act arguments in its Closing Brief but the Proposed Decision provides no analysis or rationale of the merits of those arguments, even though these particular Government Code provisions are identified and cited in the Proposed Decision as

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"Statutory Provisions."

In addition to the arguments raised in its Closing Brief, the portion of the record relied upon for this exception is:

1. Stip. Ex. 11, p.12;
2. Stip. Ex. 12, pp.9-10
3. Stip. Ex. 20, p.16.

EXCEPTION NO. 8:

The County excepts to the ALJ's conclusion, at page 30 of the Proposed Decision that "the County refused to bargain over the non-negotiation time period in Section 1-3-21(b)(2) and the public disclosure of ongoing negotiations in Section 1-3-21(c)(2),(3), and (6). As stated earlier, these matters are the equivalent of a mandatory subject of bargaining and therefore fall within the scope of representation."

This conclusion is excepted to because it mistakenly characterizes the "30-day public review period" as a "30-day non-negotiations time period" and ignores the fact that the Section 1-3-21(b)(2) neither prohibits nor precludes the County and the employees organizations from meeting and conferring "promptly" upon request. It simply sets forth a period of time that the County must allow for public review before the County considers its initial proposal to the employee organizations. There is no evidence in the record that the 30-day public review period was the equivalent of a 30-day non-negotiations period.

This conclusion is also excepted to because it ignores the fact that the Brown Act mandates that the County Board of Supervisors keep its citizens informed, and precludes the County Board of Supervisors from determining what the public should or should not know. Further, it ignores the fact that while Government Code section 54957.6 allows the County Board of Supervisors to meet in closed session with its designated labor negotiators, it does not require that it do so. In fact, since Government Code section 3505 places the duty to meet and confer directly on the governing body, and neither the Brown Act nor the MMBA requires the governing body to designate labor negotiators, the Board of Supervisors could even decide to conduct the negotiations itself. (Gov. Code §3505.) Because collective bargaining with exclusively

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recognized representatives is not one of the grounds upon which a governing body can meet in closed session, any such negotiations would, by law, have to occur in an open public meeting. (See Gov. Code § 54950, et seq.)

Unlike Government Code section 3549.1 of the EERA, which exempts "[a]ny meeting and negotiating discussion between a public school employer and a recognized or certified employee organization" from the open meeting requirements of the Brown Act, "unless the parties mutually agree otherwise," the MMBA contains no provision that explicitly exempts negotiations from the Brown Act.

The County raised these Brown Act arguments in its Closing Brief but the Proposed Decision provides no analysis or rationale of the merits of those arguments, even though these particular Government Code provisions are identified and cited in the Proposed Decision as "Statutory Provisions."

This conclusion is further excepted to because neither OCEA, OCAA, nor IUOE ever requested to bargain the 30-day public review period or the public disclosure of ongoing negotiation provisions contained in the COIN ordinance. Instead, they only demanded to meet and confer over the ordinance itself. Moreover, when the County explained its reason for believing the ordinance was not subject to meet and confer, none ever identified any particular provisions of concern or identified any particular impacts on the negotiation process. Given that the ALJ found several provisions of the ordinance not to fall within the scope of representation, the County's insistence that the ordinance was non-negotiable was reasonable, and it was the unions' responsibility to specify the areas of concern.

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In addition to the arguments raised in its Closing Brief, the portion of the record relied upon for this exception is:

1. Stip. Ex. 11, p.12;
2. Stip. Ex. 12, pp.9-10
3. Stip. Ex. 20, p.16.
4. Stipulated Exhibit 37, pp. 2-3.
5. Stipulated Exhibits 18, 19, 23, and 35.

Dated: July 13, 2015

LIEBERT CASSIDY WHITMORE

By: _____
Adrianna E. Guzman
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.**

On July 13, 2015, I served the foregoing document(s) described as **STATEMENT OF EXCEPTIONS TO CHIEF ADMINISTRATIVE LAW JUDGE'S PROPOSED DECISION, DATED JUNE 16, 2014** in the manner checked below on all interested parties in this action addressed as follows:

Public Employment Relations Board Attn: Appeals Unit 1031 18th Street Sacramento, CA 95811 Fax: (916) 327-7960	**BY U. S. MAIL** Donald L. Drozd, General Counsel Orange County Employees Association 830 North Ross Street Santa Ana, CA 92701
BY FAX & OVERNIGHT MAIL Marianne Reinhold REICH, ADELL, CROST & CVITAN 2670 North Main Street Suite 300 Santa Ana, CA 92705	**BY U. S. MAIL** Adam N. Stern, Esq. (SBN 134090) THE MYERS LAW GROUP, A.P.C. 9327 Fairway View Place, Ste. 100 Rancho Cucamonga, CA 91730

☑ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☑ **(BY FACSIMILE)** I am personally and readily familiar with the business practice of Liebert Cassidy Whitmore for collection and processing of document(s) to be transmitted by facsimile. I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number 310.337.0837 to the facsimile number(s) listed above. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.

☑ **(BY OVERNIGHT MAIL)** By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service, FedEx, for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.

Executed on **July 13, 2015**, at Los Angeles, California.

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

Erlinda Bernabe

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