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RECEIVED
EMPLOYEE RELATIONS BOARD

8 *Attorneys for Respondent City of Los Angeles*

9 **CITY OF LOS ANGELES**

10 **EMPLOYEE RELATIONS BOARD**

11 ENGINEERS AND ARCHITECTS
12 ASSOCIATION,

) UERP NO. 1715

13 Petitioner,

14 vs.

) **EMPLOYER'S RESPONSE**

15 CITY OF LOS ANGELES,
16 DEPARTMENT OF PUBLIC WORKS,

17 Respondent.

18
19
20 **TO CLAIMANT AND HIS ATTORNEY OF RECORD:**

21 **EMPLOYER, CITY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS,**
22 answering CLAIMANT'S UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIM AGAINST
23 MANAGEMENT admits, denies and alleges as follows:

24 Pursuant to Employee Relations Board ("ERB") Rule 8.01, the parties met together
25 on or about November 26, 2008 concerning UERP No. 1715. The parties were unable to
26 resolve the outstanding issues. The City of Los Angeles denies that it has committed any
27 alleged unfair employee relations practice.

28 ...

1 In this Claim, the Engineers and Architects Association ("EAA" or "Claimant") claims
2 that the Department of Public Works of the City of Los Angeles violated § 4.860a (1) of the
3 Employee Relations Ordinance.

4 The City of Los Angeles ("City") has at all times attempted to remain neutral
5 regarding the organizing campaign being conducted by SEIU 721 among employees
6 currently represented by EAA. The City has repeatedly instructed its managers that they
7 are to remain neutral, and that any organizing activities must be conducted on personal
8 time.

9 In this case, EAA representatives were attempting to leaflet in a public counter area.
10 Public counter areas are places where Department of Public Works employees serve the
11 needs of the public. These are not areas which are open generally to the public for all
12 purposes – they are open to the public for limited purposes only. Consequently, these
13 were not appropriate areas in which EAA could conduct its organizing activities.
14 Accordingly, EAA representatives were asked to leave the area.

15 EAA is claiming that SEIU 721 was given preferential treatment when it was
16 permitted to use departmental facilities for a meeting. SEIU 721 has complied with City
17 rules concerning obtaining permission for the use of the facilities. EAA, on the other hand,
18 has not always complied with City rules concerning obtaining permission for the use of the
19 facilities, and has on occasion shown up unannounced, without first complying with the
20 City rules concerning notice and permission. On the occasions where SEIU 721
21 organizers failed to obtain prior permission, their organizers were asked to leave the
22 facility.

23 While the City has some duty of neutrality, its employees, even managerial
24 employees are not obligated to remain opinion less. An employer is permitted to hold and
25 express its views on employment-related matters without violating the MMBA, provided the
26 statements do not contain a threat of reprisal or force. *Rio Hondo Community College*
27 *District* (1980) 4 PERC Para 11089, PERB Decision No. 128, pp. 18-20; *Oxnard Unified*
28 *School District, Employer*, 1999 Cal. PERB LEXIS 43, 30, PERB Decision No. 1341E.

1 In a case involving allegations of interference, a violation will be found only when
2 the employer's acts interfere or tend to interfere with the exercise of protected rights
3 (*Carlsbad Unified School District* (1979) PERB Decision No. 897; *Novato Unified School*
4 *District* (1979) PERB Decision No. 210; *Regents of the University of California* (1983)
5 PERB Decision No. 308-H; *State of California (Department of Corrections)* (1980) PERB
6 Decision No. 127-S.) Here, the allegation is that the employer enforced a reasonable
7 restriction on the time, place and manner of EAA's organizing activity so as not to interfere
8 with the Department's delivery of service to the public.

9 No interference with EAA's rights, and no support for SEIU's campaign is shown by
10 the facts at issue.

11 For all the foregoing reasons, Respondent City submits that it has committed no
12 Unfair Employee Relations Practice and that this charge should be dismissed with
13 prejudice.

14
15 DATED: December 3, 2008

Respectfully submitted,

16 ROCKARD J. DELGADILLO, City Attorney
17 ZNA PORTLOCK HOUSTON, Senior
18 Assistant City Attorney
19 **JANIS LEVART BARQUIST,**
20 Deputy City Attorney

21 By: 

22 **JANIS LEVART BARQUIST**
23 Deputy City Attorney

24 Attorneys for Respondent City of Los
25 Angeles
26
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**PROOF OF SERVICE
(VIA VARIOUS METHODS)**

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 800 City Hall East, 200 North Main Street, Los Angeles, California 90012.

On **December 3, 2008**, I served the foregoing document(s) described as

EMPLOYER'S RESPONSE

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**Adam N. Stern, Attorney
LEVY STERN AND FORD
3660 Wilshire Blvd., Suite 600
Los Angeles, CA 90012**

BY MAIL - () I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid, or I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, 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 postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/or

BY PERSONAL SERVICE - () I delivered by hand, () I caused to be delivered via messenger service, or () I caused to be delivered via Document Services, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

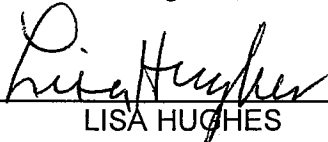
BY FACSIMILE TRANSMISSION - I caused the document to be transmitted to the offices of the addressee via facsimile machine at telephone number _____ on the date specified above at ____-a.m/p.m. The document was sent by fax from telephone number (213) 978-8315 and the transmission was reported complete and without error. A true copy of the Transmission Report is attached to the mailed or personal or both proof(s) of service.

BY OVERNIGHT COURIER - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up. Hand delivery was guaranteed by the next business day.

- Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

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

Executed on **December 3, 2008**, at Los Angeles, California.



LISA HUGHES