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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. 1720

13 Petitioner,

14 vs.

EMPLOYER'S RESPONSE

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

17 Respondent.

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

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

23 Pursuant to Employee Relations Board ("ERB") Rule 8.01, the parties met together
24 on or about October 27, 2008 concerning UERP No. 1720. The parties were unable to
25 resolve the outstanding issues. The City of Los Angeles denies that it has committed any
26 alleged unfair employee relations practice.

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1 In this Claim, the Engineers and Architects Association ("EAA" or "Claimant") claims
2 that the Los Angeles Department of Public Works violated § 4.860a (1) of the Employee
3 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 while representing the City, and that any organizing activities must
8 be conducted on personal time. The City has repeatedly instructed its employees that the
9 City e-mail system should not be used for union organizing. However, individual
10 supervisors are members of the units at issue in this campaign. Consequently, the City
11 cannot forbid these individuals from exercising their own individual right to seek
12 information or hold opinions.

13 In this case, EAA alleges that the City violated its obligation to remain neutral
14 because one employee, Charlie Mims, allegedly on his own time discussed the organizing
15 campaign with three individuals. None of the three individuals referenced in the charge
16 are employed by the same hiring authority as Mr. Mims. None of these individuals are
17 subordinate employees to Mr. Mims. Attached hereto as Exhibit A are printouts from
18 Cityfone showing that the named individuals do not work for Contract Administration – the
19 hiring authority by whom Mr. Mims is employed (there are 4 City employees named
20 "Alipio" and since EAA fails to include this individual's full name, it is not possible to say
21 with specificity which "Alipio" they mean – however none of these individuals are in Mr.
22 Mim's chain of command.)

23 The City denies that Mr. Mims pressured anyone to support SEIU or to sign an
24 authorization card, or that he was intimidating towards any other employee. Mr. Mims is
25 aware that the City is neutral in this campaign, and that he is to refrain from promoting his
26 personal support or opposition to any of the union activities while on City time.

27 ...

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1 Mr. Mims' activities did not compromise City neutrality or commit it to supporting
2 any particular union.

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

9 Isolated statements made without the knowledge or support of the employer cannot
10 support a finding of coercion or a violation of employer neutrality. *Utrad Corp. v. NLRB*,
11 454 F.2d 520, 524 (7th Cir. 1971). Where, as here, there is a history of supervisory
12 involvement and membership in unions, continuation of that participation by individual
13 members does not compromise employer neutrality, nor does it support the claim that this
14 participation is on behalf of the employer. *State Of California (CSEA AND CCOA)*, 6
15 PERC (LRP) P13,043 (1982) (Decision finalized at Memorandum Opinion, 6 PERC (LRP)
16 P13,048).

17 In a case involving allegations of interference, a violation will be found only when
18 the employer's acts interfere or tend to interfere with the exercise of protected rights
19 (*Carlsbad Unified School District* (1979) PERB Decision No. 897; *Novato Unified School*
20 *District* (1979) PERB Decision No. 210; *Regents of the University of California* (1983)
21 PERB Decision No. 308-H; *State of California (Department of Corrections* (1980) PERB
22 Decision No. 127-S.) Here, the evidence is that a single employee shared his own
23 personal opinion with other employees who may have an interest in the campaign.

24 No interference with EAA's rights by the City is shown by the facts at issue.

25 ...
26 ...
27 ...
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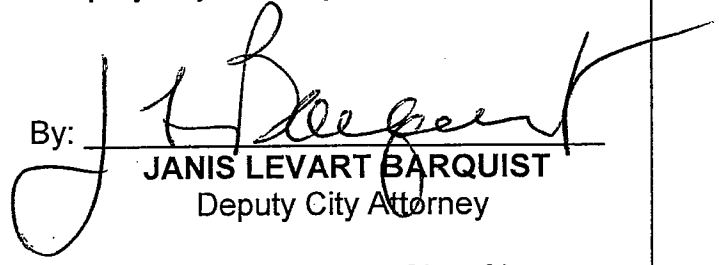
1 For all the foregoing reasons, Respondent City submits that it has committed no
2 Unfair Employee Relations Practice and that this charge should be dismissed with
3 prejudice.

4 DATED: November 13, 2008

Respectfully submitted,

5 ROCKARD J. DELGADILLO, City Attorney
6 ZNA PORTLOCK HOUSTON, Senior
7 Assistant City Attorney
8 **JANIS LEVART BARQUIST,**
9 Deputy City Attorney

10 By:



11 **JANIS LEVART BARQUIST**
12 Deputy City Attorney

13 Attorneys for Respondent City of Los
14 Angeles



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Name SKARIN, RONALD P
Work Phone (213) 482-0045 (213) 792-5574
Class PR INSPECTOR (4226)
Dept (Fund/Div) Building & Safety, Dept of (0405/580)
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 LOS ANGELES, CA, 90012
Mail Stop/Station 115 Fax
E-Mail Address RON.SKARIN@LACITY.ORG
Pager Cellular
S390 UserID Z09RPS Regular
 Days Off
Telecommute Days Shift 07:30 - 05:00
 Times

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If this employee's information is not correct, please contact the employee via their email address or the CityFone Administrator for Building & Safety, Dept of listed below:

Name	Phone	Mail Stop	Email
BERUMEN, MARIA T	(213) 482-6726	115	MARIA.BERUMEN@LACITY.ORG

EXHIBIT A



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Name FORTMAN, RICHARD
Work Phone (213) 482-0345
Class PR INSPECTOR (4226)
Dept (Fund/Div) Building & Safety, Dept of (0405/580)
Location 221 N FIGUEROA ST 4TH FLOOR, Room 400
 LOS ANGELES, CA, 90012
Mail Stop/Station 115 Fax (213)252-3917
E-Mail Address RICHARD.FORTMAN@LACITY.ORG
Pager Cellular (213)923-6068
S390 UserID Z09RRFA
 Regular 1st-Fri
 Days Off
Telecommute Days Shift 07:00 - 04:30
 Times

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If this employee's information is not correct, please contact the employee via their email address or the CityFone Administrator for Building & Safety, Dept of listed below:

Name	Phone	Mail Stop	Email
BERUMEN, MARIA T	(213) 482-6726	115	MARIA.BERUMEN@LACITY.ORG



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Name	Phone	Dept (Fund-Div)	Location	Mail Stop	Text Messaging
<u>ALIPIO, ANTONIO S</u>		SAN (7011/919)			
<u>ALIPIO, ELVIRA B</u>	(213)972-5906	LADOT (8501/171)	100 S MAIN ST 10TH FLOOR	725	Email
<u>ALIPIO, JAVIER C</u>	(213)252-3354	LADBS (0406/516)	3550 WILSHIRE BLVD 18TH FLOOR Room 1800	115	Email Cellular
<u>ALIPIO, JOHN M</u>	(323)224-3541	LAHD (3906/100)	2215 N BROADWAY	958-5	Email

Number of employees returned by search= 4

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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 November 13, 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. (XX) 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.

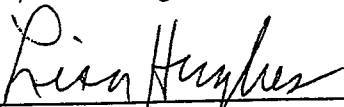
BY FACSIMILE TRANSMISSION - I caused the document to be transmitted to the offices of the addressee via facsimile machine at telephone number _____ on the date specified above at ____ -a.m/p.m. The document was sent by fax from telephone number (213) 978-8315 and the transmission was reported complete 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 November 13, 2008, at Los Angeles, California.



LISA HUGHES