

ORIGINAL FILED

JUL 23 2010

**LOS ANGELES
SUPERIOR COURT**

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Corporation
2 Warren S. Kinsler State Bar No. 103265
Joshua E. Morrison State Bar No. 191440
3 12800 Center Court Drive, Suite 300
Cerritos, CA 90703-9364
4 Telephone: (562) 653-3200 • (714) 826-5480
Facsimile: (562) 653-3333

5 Attorneys for Respondent
6 LOS ANGELES COMMUNITY COLLEGE DISTRICT
(erroneously also sued as Joint Labor/Management Benefits Committee)

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

11 CALIFORNIANS AWARE, a non-profit
corporation, and
12 RICHARD P. MCKEE, an individual

13 Petitioners,

14 v.

15 JOINT LABOR/MANAGEMENT BENEFITS
16 COMMITTEE, an advisory committee to the
Board of Trustees of the Los Angeles
17 Community College District, and
18 LOS ANGELES COMMUNITY COLLEGE
DISTRICT, a local public agency,

19 Respondents.

CASE NO. BS 124856

Judge: David P. Yaffe
Dept. 86

**[Proposed] ORDER AND JUDGMENT
DENYING PETITION FOR WRIT OF
MANDATE**

[Fee Exemption: Gov. Code § 6103]

Date: June 30, 2010
Time: 9:30 a.m.

Petition Filed: February 5, 2010

23 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

24 The Petition for Writ of Mandate, An Injunction, And Declaratory Relief ("Petition")
25 filed by Petitioners, CALIFORNIANS AWARE and RICHARD P. McKEE, pursuant to Code of
26 Civil Procedure § 1085, came on regularly for hearing on June 30, 2010 at 9:30 a.m., in
27 Department 86 of the above-captioned court, the Honorable David P. Yaffe, Judge presiding.

28 Dennis Winston, Esq. and Joseph Francke, Esq. appeared for Petitioners

[Proposed] ORDER AND JUDGMENT DENYING PETITION FOR WRIT OF MANDATE

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CERRITOS, CA 90703-9364
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1 CALIFORNIANS AWARE and RICHARD P. McKEE.
2 Joshua E. Morrison appeared for Respondent LOS ANGELES COMMUNITY
3 COLLEGE DISTRICT (erroneously also sued as Joint Labor/Management Benefits Committee).

4 After full consideration of the parties' pleadings, exhibits, and all papers submitted in
5 support of and in opposition to the Petition, including all evidence, and having heard and
6 considered the oral arguments of counsel:

7 **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

- 8 1. The Petition is **DENIED**;
- 9 2. Petitioners shall take nothing by way of their Petition;
- 10 3. Judgment is entered in favor of Respondents and against Petitioners;
- 11 4. The Los Angeles Community College District's Joint Labor/Management Benefits
12 Committee is not subject to the Ralph M. Brown Act. The Court's tentative ruling, as set forth in
13 the Court's minute order (attached hereto and incorporated herein as Exhibit "A"), is adopted as
14 the Court's Statement of Decision;

15 ~~5. Respondent is awarded costs in the amount of _____~~
16 *OBJECTION BY PLAINTIFFS TO AWARD OF COSTS BASED UPON*
17 *GOV T CODE § 54960.5 IS SUSTAINED*

18 **IT IS SO ORDERED AND ADJUDGED.**

19 DATED: July 23, 2010

David P. Yaffe

Honorable David P. Yaffe, Dept. 86

EXHIBIT "A"

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/30/10

DEPT. 86

HONORABLE DAVID P YAFFE

JUDGE

C. WASHINGTON

DEPUTY CLERK

HONORABLE #9

JUDGE PRO TEM

B. JAUREGUI, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR# 9095

Reporter

9:30 am

BS124856

Plaintiff DENNIS WINSTON (X)

Counsel JOSEPH FRANK (X)

CALIFORNIANS AWARE ET AL

VS

Defendant JOSHUA MORRISON (X)

JOINT LABOR/MANAGEMENT BENEFITS

Counsel

ET AL

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE;

Cause is called for trial.

Petition for writ of mandate is denied.

Petitioner purports to be a non-profit public benefit corporation, "whose mission includes the promotion and defense of the principles of open government." (Petition, paragraph 1). Respondent, a community college district and subordinate board and committee thereof, disclaims any information or belief regarding the nature of petitioner (Answer, paragraph 1); but does on contest petitioner's standing to bring this proceeding.

The proceeding is a petition for a writ of mandate pursuant to C.C.P. Section 1085, in which petitioner seeks to compel respondent Joint Labor/Management Benefits Committee (JLMBC) to conduct its business in compliance with the State's local entity open meeting law, known as the Ralph M. Brown Act, Government Code Section 54950 et seq.

The parties do not reveal any dispute between them as to the facts, and present to the Court purely an issue of statutory interpretation for the Court to decide in the first instance. The issue tendered to the Court, however, has previously been submitted to the Attorney General, and he has issued a pub-

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06/30/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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ET AL

NATURE OF PROCEEDINGS:

lished opinion (Op. Atty. Gen. 0-084, December 31, 2009) deciding that the JLMBC is not required to comply with the Ralph M. Brown Act. Attorney General opinions, while not binding upon the courts, are "entitled to considerable weight," especially on matters concerning the meaning of the Ralph M. Brown Act. FREEDOM NEWSPAPERS V. ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM, 6 Cal. 4th 821, 829 (1993).

The position advocated by petitioner would be much stronger if the issue involved only the interpretation of the Ralph M. Brown Act, an open meeting law, the very purpose of which is to make local entities conduct their business in public. The issue presented to the Court in this proceeding, however, requires the Court to interpret TWO legislative schemes, the Ralph M. Brown Act AND the Educational Employment Relations Act (EERA), Government Code Section 3540 et seq, the purpose of which is to require public school districts, including community college districts, to recognize and bargain collectively with labor unions representing the district's employees.

There is obvious tension between two legislative schemes because collective bargaining is traditionally done behind closed doors, and away from public scrutiny and participation.

The paramount object promoted by the EERA is

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Counsel

ET AL

NATURE OF PROCEEDINGS:

to get labor and management together so they can come to an agreement regarding employer-employee relations. In order to further that purpose, the parties are customarily entitled to be insulated from criticism as to how they got there.

How a Court is to resolve the tension between the two legislative schemes is made clear by the legislature itself, which expressly provides in the EERA, Government Code Section 3549.1(a), that meetings and negotiations between management and labor are NOT subject to the public meeting law, the Ralph M. Brown Act.

The attempts by petitioner to distinguish meetings conducted by the JLMBC from labor-management negotiations, are distinctions that make no difference. Labor and management have agreed to break their negotiations down into sub-groups, one of which is the negotiation of health benefits, a particularly complex subject. The JLMBC has been created by the parties to filter out the changes that are to be brought to the negotiating table by requiring some degree of consensus by both labor and management members of the JLMBC in order to submit a change to the board of trustees for its consideration (Master Benefits Agreement, Exhibit A to the petition, page 61, paragraph IV D and E). The activities of the JLMBC are part of the collective bargaining process and the intent of the legislature is that those activities are not to be done in public.

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ET AL

Defendant JOSHUA MORRISON (X)
Counsel

NATURE OF PROCEEDINGS:

Other contentions made by petitioners are also without merit.

Counsel for respondent are to submit a proposed judgment to this department within 10 days with a proof of service showing that a copy has been served upon opposing counsel by hand delivery or facsimile. The Court will hold it for 10 days before signing and filing.

Respondent has filed a request for a Statement of Decision. To the extent that such a statement is required, the tentative ruling of the Court, as incorporated into its minute order made this date, will constitute that Statement of Decision.

MINUTES ENTERED 06/30/10 COUNTY CLERK
