MARIANNE REINHOLD (CSB 106568) and
AARON G. LAWRENCE (CSB 258813)
REICH, ADELL & CVITAN
A Professional Law Corporation
2670 N. Main Street, Suite 300
Santa Ana, California 92705
Telephone: (800) 386-3860
Facsimile: (714) 834-0762

Attorneys for Petitioner ORANGE COUNTY ATTORNEYS ASSOCIATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ORANGE COUNTY ATTORNEYS ASSOCIATION, Petitioner, vs. COUNTY OF ORANGE; BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE, Respondents.	Case No. 30-2013-00638110-CU-WM-CJC **PETITIONER'S REPLY IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE** **[Civ. Proc. Code § 1085]** Date: February 14, 2014 Time: 1:30 p.m. Dept.: C25

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

TABLE OF AUTHORITIES

Cases **Page(s)**

State Statutes

TABLE OF AUTHORITIES

Other Authorities **Page(s)**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Respondents attempt to rely on what they contend is the general cost-saving purpose of PEPRA, general principles of statutory construction, and on statutes that predate PEPRA to justify the specific actions that are challenged in this lawsuit. In doing so, they ignore the text of PEPRA provision on which OCAA primarily relies—a provision which explicitly states that it applies "[n]otwithstanding any other law," and which equally explicitly prohibits the actions taken by Respondents. As we have set forth in the prior briefing and explain further below, Section 31631(a) on its face provides that any requirement that employees pay increased "employee contributions" or pay any of the employer's contributions can only be implemented by mutual agreement between the exclusive bargaining representative, OCAA, and the employer, the County, which has been set forth in an MOU. An MOU is similarly necessary in order to require that members pay additional contributions under Section 31678.3(b). Respondents have violated these requirements by unilaterally removing a longstanding employer "Pick-Up" of a portion of the member contribution by the County thereby requiring that existing employees pay increased contributions as a result, and by simultaneously requiring that employees also pay a portion of the employer's statutorily required contribution by forcing the employees to continue paying a so-called "Reverse Pick-Up" of employer contributions—all in the absence of an agreement or MOU.

II. ARGUMENT

A. Respondents Violated Section 31631 by Removing the County Pick-Up and Requiring That Employees Pay a Portion of the Employer Contribution

i. Respondents violated Section 31631(a) by requiring members of the Attorney Unit to pay member contributions in the absence of an MOU

Gov. Code Section 31631(a), by its plain language applies "[n]otwithstanding any other law." And, as we have explained in pages 6-9 of our opening brief, it prohibits Respondents' conduct here. *See* Gov. Code § 31631(a). None of Respondents' arguments why this Court should allow this straightforward violation of Section 31631(a) withstands scrutiny.

1. Respondents claim that the language of Section 31631(b) preserving a county's authority "to change the amount of member contributions" somehow authorizes a public employer to require

employees to pay a particular "employee contribution" (the allocation of payment of "member" and "employer" contributions) under Section 31631(a). This claim is belied by the Legislature's deliberate choice of words ("employee contribution" in subsection (a) and "member contribution" in subsection (b)), as we have explained in pages 9-12 of our opening brief.[1] Moreover, Respondents' claim—that Sections 31581.1 and 31581.2 are "[t]he only relevant statutes" and "end this issue, entirely," [Respondents' Memorandum of Points and Authorities in Support of Opposition to Petition for Writ of Mandate ("Opp."), at 9-10; *see also* Opp., at 6-7]—disingenuously ignores the introductory clause of Section 31631(a) which provides that this section is applicable notwithstanding any other law, including Sections 31581.1 and 31581.2.[2]

Additionally, Sections 31581.1 and 31581.2 are not controlling as a result of Section 31631(b)'s preservation of authority "to change the amount of member contributions" because these sections don't address the "amount of member contributions," but instead address the employer's ability to "elect to pay" or "agree to pay" a portion of the "contributions required to be paid by a member . . ." Gov. Code §§ 31581.1, 31581.2; *compare* Gov. Code §§ 31620-31630 (statutes that involve setting the member contribution rate). Section 31631(b) cannot be interpreted to incorporate these sections because there is a plain conceptual difference between "chang[ing] the amount of member contributions" (Gov. Code §

---

[1] Additionally, when it is read in the context of Section 31631.5(b), Section 31631(b) cannot be read to sanction the use of impasse procedures by way of Sections 31581.1 and 31581.2. Sections 31631(b) and 31631.5(b) are identical, so these provisions are presumed to have the same meaning. *Scottsdale Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, (Ct. App. 2d Dist. 2005) 130 Cal. App. 4th 890, 899, 30 Cal. Rptr. 3d 606, 613 ("[I]f a word or phrase has a particular meaning in one part of a law, we give it the same meaning in other parts of the law."). Yet, Section 31631.5(a) expressly authorizes the use of impasse procedures, whereas Section 31631(a) expressly requires approval in an MOU. So the language contained in both Section 31631(b) and 31631.5(b) must have some purpose other than authorizing the use of impasse; that purpose is to preserve the public employer's the right to adjust the actuarially-determined "member contribution" rate.

[2] Respondents emphasize that the Legislature, by Assembly Bill 1380 (2013), expressly provided that Section 31581.2's provisions regarding employer payment of member contributions do not apply to new members. However, the most likely explanation for this cleanup language is that it is intended to reemphasize that employers are not permitted to "pick up" a portion of the contribution for new members required to pay 50% of the normal cost of benefits under Section 7522.30 and has no bearing on the obligations of employers towards existing employees.

63631(b)), and "elect[ing] to pay" or "agree[ing] to pay" a portion of that member contribution (Gov. Code §§ 31581.1, 31581.2). Sections 31581.1 and 31581.2 deal only with the latter.[3]

2. Despite the fact that the legislative intent cannot override a statute's plain language, Respondents contend that this court should not give effect to the plain language of Section 31631(a) because doing so assertedly is inconsistent with that legislative intent. *See People v. Walker* (2002) 29 Cal. 4th 577, 581, 59 P.3d 150, 152 ("[I]f the statutory language is not ambiguous, then we presume the Legislature meant what it said, and the plain meaning of the language governs." The legislative history is only applied if "the statutory language lacks clarity . . ."). "[T]he use of legislative history is illegitimate and ill advised in the interpretation of any statute-and especially a statute that is clear on its face . . ." *Zedner v. United States* (2006) 547 U.S. 489, 511 (Scalia, concurring).[4]

---

[3] Respondents contend that Sections 31581.1 and 31581.2 should apply because they are more "specific," notwithstanding that Section 31631(a) describes exactly what happened here. This doctrine "only applies when an irreconcilable conflict exists between the general and specific provisions." *Pacific Lumber Co. v State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 942-943 [38 Cal.Rptr.3d 220]. As we have explained in pages 11-12 of our opening brief, Sections 31581.1 and 31581.2 are not in conflict with Section 31631(a), and these provisions can be harmonized. Additionally, "the rule that a specific provision will control over a general provision is simply a tool for ascertaining and carrying out the intent of the Legislature . . ." *Arbuckle-College City Fire Protection Dist. v. County of Colusa* (2003) 105 Cal.App.4th 1155, 1166 [130 Cal.Rptr.2d 182]. A specification that one provision applies "[n]otwithstanding any other provision of law" is "strong evidence" that the Legislature intended that provision to control. *Id.* This introductory clause of Section 31631(a) indicates that this is the provision that should control in the event that the Court finds the provisions irreconcilable, and Respondents have offered no basis for finding Sections 31581.1 and 31581.2 to be more specific.

[4] Respondents' reliance on *Santa Barbara County Taxpayers Assn. v. County of Santa Barbara* (1987) 194 Cal.App.3d 674, is misplaced because Santa Barbara does not stand for the proposition that the plain language of a statute should be ignored, but for the proposition that a statutory provision should not be read so literally as to frustrate the statutes' intent. Here, Respondents have oversimplified and mischaracterized the intent of PEPRA. As we have explained at pages 12-15 of our opening brief, Respondents' overgeneralized characterization of PEPRA as seeking solely to shift retirement costs from public employers to public employees is wrong. While a primary goal for PEPRA was to shift some of the cost of providing pension benefits to public employees, in particular for "new members," who are required to pay at least 50 percent of the normal cost rate, Gov. Code § 7522.30, the Legislature undeniably also intended to balance that goal against the interests of existing employees who have rendered years of service to their employers and who have longstanding agreements with their employers about how their pensions will be funded. To effectuate this balance, Section 31631(a) provided an important protection to existing employees "[n]otwithstanding any other law." Section 31631(a), along with leaving Section 31678.3 intact, provides a counterbalance to PEPRA's general cost shifting. While Respondents point only to the first sentence of point number 35 on page 6 of the Senate

Relying upon the Senate Floor Analysis, Respondents contend that Section 31631(a) was intended only to apply to member payments of a portion of the *employer* contribution. [Opp., at 8-9]. This argument has no basis in the language of the statute, which provides that it governs the requirement that members pay "all or part of the contributions ***of a member*** or employer, ***or both***." Gov. Code § 31631(a) (*emphasis added*). Further, the section is not about sharing the cost of additional benefits; it states that it is about requiring increased employee contributions "without a change in benefits."

3. Respondents claim that OCAA's reading of the plain language of Section 31631(a) would render it unconstitutional rests upon both a misrepresentation of the nature and effect of Section 31631(a) and a blatant misreading of the case law. As an initial matter, finding a statute duly enacted by the Legislature to be unconstitutional is an extreme step—a last resort that should not be undertaken lightly. *See* *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65, 195 P.2d 1 (courts should not decide a constitutional question "'unless such construction is absolutely necessary'"), *quoting* *In re Johnson's Estate* (1903) 139 Cal. 532, 73 P. 424 (1903). The extreme step of finding Section 31631(a) unconstitutional is not warranted.

First, it is important to be clear what Section 31631(a) actually does within the broader scheme of CERL and PEPRA. Section 31631(a) merely creates a procedure for determining the employer paid share of one particular fringe benefit for a limited group of employees, should a county choose to provide such particular benefits—and it *has no impact* on a county's ability to set the overall

---

Floor Analysis, [Respondents' Request for Judicial Notice, Ex. 1], a review of the entire document (including the second sentence of that very point) is consistent with the interpretation that the Legislature was also attempting to balance flexibility on one hand with protecting the rights of existing employees on the other. Indeed, the Legislature was at least as concerned with preserving *limits* on a governing body's ability to act unilaterally as it was with preserving that ability itself. Gov. Code § 31631(b) (preserving "any restrictions on that authority . . ."). *People v. Pieters* (1991) 52 Cal.3d 894, is also inapplicable. There, the Court considered whether more recently enacted "drug quantity" sentencing enhancements were impliedly excepted from an older general rule, notwithstanding that the drug quantity enhancements did not include an express exception to the rule. Unless excepted, these enhancements would be rendered nugatory and "devoid of meaning," so the Court applied drafter's oversight to preserve the literal meaning of a newly enacted statute by implying an exception to an earlier law. In contrast, here, Respondents ask the Court to ignore the plain language of a newly enacted statute in order to give effect to a statute which they contend is inconsistent with it.

compensation level of its employees.[5] Under Section 31631(a), if a county has elected to provide pension benefits to its existing employees and those employees are represented in a bargaining unit, the county must fund that benefit itself, or it can obtain an agreement from the employee representative for unit employees to fund all or part of the benefit.[6] Section 31631(a) notwithstanding, Respondents remain free to make use of the impasse procedures to set overall compensation. Moreover, when a county offers pension benefits, it has the option of convincing its employees (through their bargaining representative) to bear part of the cost of that benefit, or, if they are not agreeable to doing so, the county may achieve the same overall compensation level (i.e. cost) by reducing employees' salaries or reducing, modifying or eliminating the cost to the county of other fringe benefits to offset the cost of the county's share of any pension contributions. Additionally, Section 31631(a) is just one of many elements in a statutory formula that governs funding if a county provides CERL benefits.[7]

---

[5] Counties are not required to provide for retirement benefits under CERL; to do so, a county must affirmatively agree to subject itself to the law. Gov. Code § 31500.

[6] Importantly, this limitation applies only to existing employees; that is, employees who are not "new members," individuals who become a members of the pension system for the first time on January 1, 2013 or later, Gov. Code § 7522.04(f), whose contributions are governed by a separate section of the Code. *See* Gov. Code § 7522.30.

[7] CERL and PEPRA place numerous other meaningful constraints on how counties fund their pension systems. For example, Section 31631.5 provides that, beginning in 2018, employers may compel through impasse that existing members pay 50 percent of the normal cost of benefits, up to 14 percent above the applicable normal rate of contribution. Gov. Code § 31631.5; *see also* Gov. Code §§ 7507, 31453 (requiring actuarial evaluations); Gov. Code § 7522.10 (restricting payment of defined benefits, contributions of employers); Gov. Code §§ 7522.20, 7522.25 (imposing defined benefit formulas); Gov. Code § 7522.30 (funding formula for "new members" and prohibiting employers from paying any portion of the new members' contributions); Gov. Code § 7522.32 (governing final average earning and the determination of the benefit paid to new members); Gov. Code § 7522.56 (rules regarding the provision of pension benefits in the context of work performed after retirement); Gov. Code §§ 7522.35, 31461 (rules governing pensionable compensation and compensation earnable); and Gov. Code § 7522.46 (prohibiting employers from allowing the purchase of credits or "airtime"). Counties that choose to provide CERL benefits do not have the power to choose exactly what the benefit will look like or how it will be funded; they are required to follow the requirements of CERL and PEPRA. Each of these provisions places rules and limitations on the pension benefit that may be provided to employees or how that benefit is funded. Some of these rules proscribe what sort of benefit a county may choose to provide to its workers, while others require that a certain funding contributions be made by the employer or employee, or require that certain steps be taken before imposing particular contribution requirements. Section 31631(a) is not meaningfully different from these other restrictions, and this provision may not be found unconstitutional without undermining the entire statutory framework.

Second, Section 31631(a) is not the sort of wholesale delegation of authority that has been found to unconstitutionally interfere with a county's authority in other cases. Courts relying on Article XI, Sections 1(b) and 11(a) of the California Constitution have overturned statutory schemes that they viewed as delegating a governing body's powers to contract with their employees. *See County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 132 Cal.Rptr.2d 713; *County of Sonoma v. Superior Court* (Ct. App. 1st Dist. 2009) 173 Cal.App.4th 322.[8] However, these were not cases in which the Legislature set forth funding formulas for pension contributions, but rather wholesale limits on a county's ability to establish or determine the wages and benefits. In *County of Riverside*, 30 Cal.4th 278, the Court considered a constitutional challenge to Code of Civil Procedure Section 1299, *et seq.*, which required counties to submit to "binding arbitration of economic issues that arise during negotiations." The scope of arbitration included "economic issues, including salaries, wages and overtime pay, health and pension benefits, vacation and other leave, reimbursements, incentives, differentials, and all other forms of remuneration." *See* Code Civ. Proc. § 1299.3 (*held unconstitutional*). So, under that law, if the parties could not reach agreement, an entirely separate and independent body could set compensation as

---

[8] On the other hand, in the context of a locality's authority to establish employee compensation, courts have upheld the MMBA's procedural rules and limitations even though these affect how a public employer compensates its employees. *See People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 205 Cal. Rptr. 794 (charter city was required to comply with requirements of the MMBA in contracting with employees). For example, the MMBA prohibits an employer from unilaterally imposing terms and conditions of employment under certain conditions (for example, prior to reaching impasse). *See* Gov. Code § 3505.7. With or without Section 31631(a), public employers are faced with a host of procedural and substantive limitations in contracting with their workers. Furthermore, the notion that certain aspects of the employer-employee relationship can only be set by mutual agreement (and not by employer imposition at impasse) is hardly novel and is an integral part of existing labor law. It is "a per se violation of the duty to bargain to insist to impasse on a proposal and/or to impose terms that include non-mandatory subjects of bargaining. . . The category 'non-mandatory' subjects includes both 'permissive' subjects and 'illegal' or 'prohibited' subjects. Although not required to do so, parties may, by mutual agreement, bargain over and include in their agreements proposals involving permissive subjects. However, an employer may not insist on acceptance of a proposal containing a permissive subject . . ." *American Federation of State, County and Municipal Employees, Local 101 v. City of San Jose*, PERB Decision No. 2341-M (Dec. 6, 2013), at 43. Given this, it would be quite a big leap for this court to find that the addition of allocation of pension benefit payments for existing employees to the range of permissive subjects of bargaining already in existence renders Section 31631 unconstitutional.

to *all forms of remuneration*. The Court found that complete delegation of authority to be unconstitutional, while also emphasizing that the prohibition on "delegation" was a limited one:

> We agree that the Legislature may regulate as to matters of statewide concern even if the regulation impinges 'to a limited extent' . . . on powers the Constitution specifically reserves to counties (§ 1) . . . However, *regulating* labor relations is one thing; *depriving* the county entirely of its authority to set employee salaries is quite another.

30 Cal.4th at 287-88 (*emphasis in original*).[9] In County of Sonoma, 173 Cal.App.4th 322, the Court considered a revised version of the law, which maintained the arbitration panel's authority to establish overall compensation ("Economic issues, including salaries, wages, benefits, and all other forms of remuneration, fall within the scope of arbitration.") unless rejected by a unanimous vote of a governing body. The Court determined that the revised statute unconstitutionally interfered with the governing body's legislative powers and left it with merely a veto. Id., at 340-48. Each case involved the wholesale surrender of the governing body's ability to set all forms of remuneration to an independent body. Here, Section 31631(a)—which sets forth alternative formulas for funding only one optional element of overall compensation—cannot be said to unconstitutionally impinge upon the power of Respondents to establish the compensation of county employees in the same way as a law depriving Respondents of the final say in *all forms of remuneration*.

ii. Respondents violated Section 31631(a) when they required members of the Attorney Unit to pay a portion of the employer contribution without an MOU

In addition to affecting the ability to remove the Pick-Up of "all or part of the contributions of a member," Section 31631(a) also provides that in order to "require that members pay all or part of the contributions of a[n] . . . employer," such requirement "shall be approved" in an MOU. Gov. Code § 31631(a). Here, Respondents are "requir[ing] that members pay" a portion of the employer contribution—the so-called "Reverse Pick-Up." Respondents contend that they did not violate Section

[9] The Court also recognized case law holding that the Legislature could "regulate relations between local government entities and their employees . . ." 30 Cal.4th at 287, *citing* Baggett v. Gates (1982) 32 Cal.3d 128, 136, 185 Cal.Rptr. 232, 649 P.2d 874 (applying Public Safety Officers' Procedural Bill of Rights Act to chartered cities); People ex rel. Seal Beach Police Officers Assn. 36 Cal.3d 591 (applying MMBA to charter city).

31631(a) because the expired MOUs contained a perpetual promise to pay the Reverse Pick-Up, and that they did not impose this payment, the Association voluntarily undertook it.

As an initial matter, Respondents ignore the fact that the "Reverse Pick-Up" was an integral part of a bargain providing for reciprocal pickups. Thus, under MOU provision "G" ("Employer 'pick-up' of employee retirement contributions after June 24, 2005"), the parties agreed both that: (G.1) the employees would pay the difference in normal contribution rate and the additional contribution under Section 31678.3(d) in connection with the 2.7% at 55 benefit; and (G.2) "[t]he County will continue to pay" the Pick-Up. [*See* Tevlin Decl. Ex. C, Art. XXII, Sec. 1, G]. The two pick-ups are clearly linked. These MOUs represent bargained-for exchanges, with each element having been weighed against everything else to achieve a final package. By cherry picking the parts of the tradeoff they liked—despite the fact the parties linked the reciprocal Pick-Ups in the MOUs—Respondents are attempting to disrupt that careful balance. Petitioner never agreed to continue paying the Reverse Pick-Up of the employer contribution if the County ceased paying its Pick-Up of the member contribution.

The County's argument also ignores the fact that, when the pension benefit was increased, the were two parts of the increased cost: (1) the difference between the contributions under the Old Formulas and New Formula going forward, and (2) the cost of "past service liability" in connection with past service now being pensioned at a higher rate. [Tevlin Decl., ¶ 12]; *see also* Gov. Code § 31678.3(d) (regarding requirement that employees "pay a portion of the contributions attributable to past service liability, that would have been required if the benefits specified in the resolution . . . had been in effect" during their past service). The only reference to a payment obligation surviving the expiration of the agreement does not describe the Reverse Pick-Up generally. Rather, relying on Section 31678.3(d), it more narrowly describes the agreement to pay 0.54% in connection with past service liability. [Tevlin Decl., Ex. C, Art. XXII, Sec. 1.F.3]. According to Tevlin, this is only one component of the overall Reverse Pick-Up, with the other being the difference between the County's employer contributions under the Old and New Formulas. [Tevlin Decl., ¶¶ 12, 14]. So, to the extent there was any agreement to

make payments beyond the term of the MOU, it applied only to the portion of the Reverse Pick-Up attributable to past service liability.[10]

Finally, the expired MOUs *do not* say how long past the expiration any ongoing payment obligation extends. The only reference to time is to the 30-year amortization period in regards to the past service liability element of the Reverse Pick-Up. There is not clear language in the MOU itself indicating that the parties intended for a never-ending payment obligation, rather than that these payments would be part of the "status quo" that would be maintained after expiration of the collective bargaining agreement but before the parties reached a new agreement and before impasse. *See generally Int'l Assn. of Firefighters Local Union 230 v. City of San Jose* (Ct. App. 6th Dist. 2011) 195 Cal. App. 4th 1179, 1195, 125 Cal. Rptr. 3d 832, 844 (2011) ("[W]hen a collective bargaining agreement or MOU expires the parties generally are required to maintain the status quo under the terms and conditions of the expired agreement during the period in which the parties continue to bargain in good faith on a new agreement . . .").[11] A better reading is that, to the extent that Petitioner agreed to continued payments, this agreement extended only to the interim period between MOU expiration and impasse, at which point, labor law controls. Under normal circumstances, labor law would allow implementation of the last, best, and final offer, *see* Gov. Code § 3505.7, here, however, the law exempts these particular payments from the terms and conditions that may be unilaterally imposed. *See* Gov. Code § 31631(a).[12]

---

[10] Respondents rely upon a self-serving statement in an Agenda Staff Report, [Tevlin Decl., Ex. D (incorrectly identified by Respondents as Ex. E)], to claim that they were "assured" of perpetual employee payments. This is an internally-created, self-serving document. Additionally, as we set forth in our evidentiary objections, filed concurrently, this document is inadmissible parol evidence submitted to contradict or add to the terms of the written MOUs in addition to being hearsay as to what sorts of assurances might have been given.

[11] It would make sense for the parties to expressly set forth a continuing obligation for employees to make continued payments after expiration because the case law under the MMBA centers on an *employer's* continuing obligations after expiration of an MOU. *E.g. City of Fresno v. People ex rel. Fresno Firefighters, IAFF Local 753* (Ct. App. 5th Dist. 1999) 71 Cal. App. 4th 82, 100, 83 Cal. Rptr. 2d 603, 614 (discussing scope of city's obligation to maintain status quo until impasse). Even the case cited by Respondents, *International Broth. v. City of Redding* (2012) 210 Cal.App.4th 1114, concerned whether an *employer* was required to provide a *benefit* post-expiration.

[12] Even if the expired MOUs can be read to require continued payment indefinitely, Section 31631(a) nevertheless clearly requires an MOU to continue requiring employee payments. Labor law trumps the terms of a collective bargaining agreement in analogous situations. *See, e.g. Sheet Metal Workers' Int'l*

B. Respondents Violated Government Code Section 31678.3 by Requiring Members of the Attorney Unit to Pay the "Reverse Pick-Up" Without an MOU

Section 31678.3(d), like Section 31631(a), provides that in order for an employer to "require members to pay" particular contributions, such requirement must be approved in an MOU. The Reverse Pick-Up is expressly made pursuant to Section 31678.3(b), [Tevlin Decl., Ex. C, at 86]; so, there is no question that the Reverse Pick-Up is subject to the requirement of Section 31678.3(d). However, Respondents contend that imposing a continued obligation on the employees to pay this Reverse Pick-Up even after Respondents have ceased paying their Pick-Up of member contributions is justified because of the expired MOUs. To the extent that Respondents contend that there is no need for a current MOU in order to require employees to pay the past service liability portion of the Reverse Pick-Up under Section 31678.3(d), this is derivative of their argument that the initial agreement to pay survived the expiration of the MOUs, which we refute above. To the extent that this argument is not derivative, even if it were theoretically possible under Section 31678.3(d) to agree to perpetual payments of this past service liability portion of the Reverse Pick-Up, especially given the fact that both MOUs had a fixed term and that the County pick-up and Reverse pickup were parts of an integrated bargain, Respondents have not demonstrated that the parties intended such an agreement here.

III. CONCLUSION

Accordingly, Petitioner Association respectfully requests that the Court grant its request for writ of mandate

Respectfully submitted,

Dated: February 6, 2014

REICH, ADELL & CVITAN
A Professional Law Corporation

By: Marianne Reinhold
MARIANNE REINHOLD
Attorneys for Petitioner
SAN BERNARDINO COUNTY PUBLIC ATTORNEYS ASSOCIATION

Ass'n v. W. Coast Sheet Metal Co. (9th Cir. 1992) 954 F.2d 1506, 1509 (agreement becomes void prospectively as of the decertification of a Union).

PROOF OF SERVICE
(Code Civ. Proc. § 1013a(3))

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party of the within action; my business address is 2670 North Main Street, Suite 300, Santa Ana, CA 92705.

On February 6, 2014, I served the document described as **PETITIONER'S REPLY IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE.** I served the document on the persons below, as follows:

Bruce A. Barsook
Steve M. Berliner
Frances E. Rogers
LIEBERT CASSIDY WHITMORE
550 West C Street, Suite 620
San Diego, CA 92101
Tel: (619) 481-5900
Fax: (619) 446-0015
Email – bbarsook@lcwlegal.com; sberliner@lcwlegal.com; frogers@lcwlegal.com

☐ **BY MAIL:** I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of 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 an affidavit.

☑ **BY OVERNIGHT COURIER:** I sent such document(s) on the above date, by overnight delivery with postage thereon fully prepaid at Santa Ana, California.

☐ **BY FAX:** I sent such document by use of facsimile machine telephone number (714) 834-0762. The facsimile cover sheet and confirmation are attached hereto indicating the recipient's facsimile number and time of transmission pursuant to California Rules of Court Rule 2008(e). The facsimile machine I used complied with California Rules of Court Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused said envelope to be delivered by hand to the above addressee.

☐ **BY EMAIL:** I caused to be sent such document by use of email to the email addressee above. Such document was scanned and emailed to such recipient.

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

Executed on February 6, 2014, at Santa Ana, California.

RITA A. POLLARD