LIEBERT CASSIDY WHITMORE

FIRE WATCH

News and developments in employment law and labor relations for California Fire Safety Management

MAY 2021

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FIRM VICTORIES

LCW Obtains Dismissal Of Police Officer's Whistleblower Retaliation Lawsuit.

LCW Partners **Jesse Maddox** and **Michael Youril** obtained summary judgment for a city against a former police officer's claim of whistleblower retaliation.

In February 2016, the city hired the officer subject to a one-year probationary period. The officer immediately joined the police officers' association. In December 2016, the officer attended an association meeting. At that meeting, the association discussed a loan it had made to a corporal, who was then-president of the association. The officer learned the loan was for the purchase of a personal vehicle.

During the meeting, the association's treasurer confirmed that the loan was proper under the association's bylaws and had been repaid. In response, the officer stated that the association was not in the business of making loans, and therefore the association's money should not be used to benefit one individual. The officer was one of many who expressed an opinion during the meeting that the loan was improper or illegal. The association's members agreed that the association would speak with an attorney to determine whether to remove the loan portion of the bylaws.

In January 2017, the chief of police terminated the officer's employment for falsely reporting his time worked, and then refusing to correct his time sheet when questioned about it by a superior officer. The officer then sued the city, alleging whistleblower retaliation in violation of Labor Code Section 1102.5. The officer alleged the chief terminated him in retaliation for speaking out about potential illegal association conduct. The officer alleged that the association's treasurer influenced the chief because of the officer's comments during the association meeting.

The city moved for summary judgment on the ground that the officer could not establish essential elements of a whistleblower retaliation claim. First, the officer could not show he made a protected disclosure of information to a government, a law enforcement agency, or a person with authority over the employee. Second, the city alleged the officer could not show a nexus between any alleged protected disclosure and his termination. Lastly, the city had a legitimate, non-retaliatory reason for terminating the officer (i.e., for failing to accurately report his time worked).

The trial court granted summary judgment for the city. The officer appealed, and the Court of Appeal affirmed.

The Court of Appeal held the officer did not make a protected disclosure of information because: 1) his comments were made to the association and its members; and 2) he did not disclose new information during the meeting, but merely opined that the loan was illegal based on the facts he learned from the association. As a result, the Court affirmed summary judgment for the city. Since

the Court of Appeal determined that the officer could not establish the essential elements of his whistleblower retaliation claim, it did not address the city's argument that it had a legitimate, non-retaliatory reason for terminating the officer's employment.

Note:

A summary judgment motion is a powerful tool that can save public agencies money by getting lawsuits dismissed before trial. LCW attorneys can help public agencies determine whether a case is appropriate for summary judgment.

California Supreme Court Denies Employee's Petition For Review of PERB Decision.

LCW Partner **Adrianna Guzman** and Senior Counsel **David Urban** secured a victory on behalf of a city when the California Supreme Court denied an employee's petition for review as to a Public Employment Relations Board (PERB) decision.

A police department employee filed an unfair practice charge against a city. The employee alleged that the city selected another applicant for a promotion because of the employee's Meyers-Milias-Brown Act (MMBA) activities. However, a PERB administrative law judge, and later PERB itself, determined that the city's decision to promote another applicant was not made to retaliate for the employee's collective bargaining-protected activities. PERB concluded the city proved that it acted because of non-discriminatory reasons in its hiring decision. After numerous appeals, the employee filed a petition for review with the California Supreme Court.

In challenging the employee's petition for review, LCW argued that the employee did not raise any issue as to "uniformity of decision", nor did the employee identify any "important question of law" for the Supreme Court to consider. Moreover, the employee's petition did not ask the Court to review whether the city had met its burden of proving an independent and adequate reason for not selecting the employee for the promotion. The Court ultimately agreed, and denied the employee's petition.

Note:

This case demonstrates how important it is for public agencies to have records that show a legitimate and non-discriminatory reason for promotions.

City Defeats Police Grievance Seeking MOU Overtime For Uniform Donning And Doffing.

LCW Partners **Brian Walter** and **Geoffrey Sheldon** and Associate Attorneys **Danny Yoo** and **Emanuela Tala** defeated a "class action" grievance arbitration on behalf of a city. The stakes were high as the grievance sought overtime pay going back four years prior to the filing of the grievance in November 2006 and continuing until the grievance was resolved plus interest, civil penalties, and attorney fees.

The grievance arbitration concerned the interpretation of an overtime provision in the memorandum of understanding between the city and the police union (MOU). The MOU provision stated, "All hours or portions thereof worked in excess of [regularly scheduled] work hours … shall be overtime including hours worked by an employee when on a regular day off, hours in lieu of a holiday or vacation pay."

The union claimed that the provision obligated the city to pay MOU (as opposed to Fair Labor Standards Act (FLSA)) overtime for time peace officers spent "donning" and "doffing" their uniforms and related safety gear. The union claimed its grievance was consistent with the city's past practice and its intent during the negotiations of the terms of the MOU.

The city claimed that the MOU overtime provision did not cover donning and doffing. To support its position, the city presented evidence that the city and union considered adding a provision to the MOU in 2009 to compensate officers for donning and doffing their uniforms, but the city ultimately rejected the provision. Also, the MOU provided for a cash payment for "the cost of uniform replacement, maintenance and other professional expenses," but was silent on the issue of donning and doffing uniforms.

The union argued that there was an established past practice to pay for donning and doffing. The arbitrator disagreed, noting that the city and union had been litigating this issue for years prior to his ruling on the union's grievance. That litigation proved the absence of any mutual agreement.

The union also argued that the city's previous rejection of a MOU provision that would compensate officers for donning and doffing did not undermine the parties' intent that officers be compensated for donning and doffing. The arbitrator disagreed and found that if the city intended to include compensation for donning and doffing as part of the MOU, it would have indicated as much in the MOU's various provisions concerning overtime and payments for uniforms. The arbitrator further noted that the union's view of the city's undisclosed intent during MOU negotiations did not determine the mutual intent of the parties.

Lastly, the union argued that even if the parties had no affirmative intent to compensate officers for donning and doffing, an intent should be inferred in order to maintain compliance with the definition of "hours worked" under California law. The arbitrator held that he was precluded

from addressing that argument because the union's grievance did not address the applicability of State law. The arbitrator declined to expand the grievance to consider external law.

For these reasons, the arbitrator found that the MOU's overtime provisions did not obligate the city to pay overtime for time officers spent donning and doffing their uniforms and related safety gear.

Note:

Wage and hour issues are often raised on behalf of a large category or class of employees and can subject public agencies to substantial liability. LCW attorneys regularly defend public agencies against allegations of unpaid overtime and can assist agencies to limit or eliminate liability.

PERSONNEL RECORDS

Police Department Was Not Required To Disclose Confidential Records To The Subject Officer Prior To Further Interrogation.

In December 2017, a citizen filed a complaint against officers from the Oakland Police Department (Department), alleging that the officers violated the citizen's rights while conducting a mental health welfare check. The Department's internal affairs investigation included an interrogation of each of the accused officers. The Department's investigation cleared the officers.

Following the Department's investigation, the Oakland Community Police Review Association (OCPRA), a civilian oversight agency with independent authority to investigate claims of police misconduct, conducted its own investigation into the citizen complaint. Before the OCPRA's interrogations of the officers, counsel for the officers demanded copies of all "reports and complaints" prepared or compiled by the Department's investigators pursuant to Government Code Section 3303(g), a provision within the Public Safety Officers Procedural Bill of Rights Act (POBR). Section 3303(g) provides that a public safety officer shall have access to a tape recording of his or her interrogation "if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential."

The OCPRA agreed to provide the officers with recordings and transcribed notes from their prior interrogations during the Department's investigation, but refused to produce any other materials. After interrogating each officer, the OCPRA completed its investigation and determined that the officers knowingly violated the complainant's civil rights.

The officers and their union filed a petition for writ of mandate, alleging that the City of Oakland (City) violated their procedural rights by refusing to disclose the requested reports and complaints prior to the officers' subsequent interrogations.

The trial court noted that the Fourth District of the California Court of Appeal examined a similar issue in *Santa Ana Police Officers' Association v. City of Santa Ana* (*Santa Ana*), and held that the POBR requires agencies to disclose complaints and reports to officers after an initial interrogation and "prior to any further interrogation." Relying on *Santa Ana*, the trial court granted the petition and ordered the City to disregard the officers' interrogation testimony in any current or future disciplinary proceedings. The City appealed, and the First District of the California Court of Appeal reversed and remanded the matter to the trial court for further proceedings.

The Court of Appeal held that the plain language of Section 3303(g) only requires disclosure of tape recordings of an officer's interrogation prior to any subsequent interrogation of the officer. The statute does not specify when an officer's entitlement to the reports and complaints arises, but does grant an agency the ability to withhold these materials on confidentiality grounds under certain circumstances, including if disclosure would otherwise interfere with an ongoing investigation. Accordingly, the Court of Appeal held that stenographer's notes, reports, and complaints should be disclosed upon request, including prior to a subsequent interrogation, unless the investigating agency designates the material as confidential. The court noted that the agency can also de-designate a record previously deemed confidential when the basis for confidentiality no longer exists, such as the end of the investigation.

The Court of Appeal also concluded that mandatory disclosure of complaints and reports prior to any subsequent interrogation of an officer suspected of misconduct undermines a core objective of the POBR – maintaining the public's confidence in the effectiveness and integrity of law enforcement agencies by ensuring that internal investigations into officer misconduct are conducted promptly and fairly.

The Court of Appeal disagreed with the *Santa Ana* decision, reversed, and remanded the matter to the trial court to determine whether the City had a basis for withholding the requested reports and complaints due to their confidential nature.

Oakland Police Officers' Association v. City of Oakland, 2021 WL 1608876 (Cal. Ct. App., Apr. 26, 2021).

Note:

Although this decision concerns the rights of peace officers under the POBR, the Firefighters Procedural Bill of Rights contains similar language regarding a firefighter's pre-interrogation rights at Government Code Section 3253(g). This decision creates a split of authority between the First and Fourth Districts of the California Court of Appeal regarding an agency's duty to disclose investigation materials before a subsequent interrogation of the subject officer/ firefighter. LCW attorneys can help agencies navigate conflicting case law decided under the POBR, including disclosure requirements during an ongoing personnel investigation.

WAGE AND HOUR

California Supreme Court Broadly Defines "Public Works" In Prevailing Wage Law.

David Kaanaana and others were former employees of Barrett Business Services, Inc. (Barrett). Barrett contracted with the Los Angeles County Sanitation District (District) to provide belt sorters to operate the District's facilities. Belt sorters were responsible for removing non-recyclable materials from the conveyor belt, clearing obstructions, and sorting recyclables.

Kaanaana and other employees sued, claiming, among other things, that Barrett failed to pay them the "prevailing wage" they were owed under California law. They asserted that their recycling duties constituted "public work" under the California Labor Code, which states:

"[e]xcept for public works projects of . . . ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works." (§ 1771.)

This section of the California Labor Code applies to some categories of work performed under contract with public agencies, but not to work that a public agency performs using its own work force. After much litigation, the California Court of Appeal agreed with the employees and found that this recycling work was "public work" subject to prevailing wage law. Barrett appealed.

On appeal, the California Supreme Court also concluded that the employees were entitled to prevailing wages. In reviewing the language and legislative history of the Labor Code, the Court determined that the definition of "public work" had broadened over time to cover work beyond that associated with construction projects. The Court also reasoned that the goal of the prevailing wage law is to ensure that local contractors have a fair opportunity to work on public building projects that may otherwise be awarded to contractors hiring cheaper out-of-market labor. Accordingly, even though recycling duties are not specifically enumerated in the Labor Code, the Court concluded that the belt sorters' labor qualified as "public work."

Kaanaana v. Barrett Bus. Servs., Inc. 11 Cal.5th 158 (2021).

Note:

This case confirms the judiciary's trend to broadly define "public work." Public agencies who contract for work must be sure to determine whether the contract comes within California's prevailing wage laws.

LABOR RELATIONS

PERB Finds County Guilty Of Bad Faith Effects Bargaining Because Of Misrepresentations And Exploding Offer.

In November 2017, the Criminal Justice Attorneys Association of Ventura County (Association) filed an unfair practice charge alleging the County of Ventura unilaterally characterized accrued leave as taxable income. A few weeks later, the Association filed a second unfair practice charge accusing the County of bad faith bargaining during the meet and confer over changes to represented employees' paid leave plan. The parties consolidated both charges for the administrative hearing.

Following the hearing, an administrative law judge (ALJ) issued a proposed decision. The proposed decision found that the County violated its duty to bargain in good faith by unilaterally implementing its decision to withhold taxes on "constructive receipt income" without completing negotiations over the negotiable effects of that decision. In addition, the ALJ found that the County bargained in bad faith during its negotiations to amend the annual leave redemption plan. Specifically, the ALJ found that the County misrepresented its tax withholding plan and made an exploding offer without justification. The ALJ dismissed the Association's remaining allegations. The County filed exceptions to the proposed decision.

Under the parties' Memorandum of Understanding (MOU), each employee accrued annual leave on a biweekly basis at a rate based on length of service. Employees could use annual leave hours for paid time off or redeem them for cash. Before August 2016, the County neither reported accrued annual leave hours as taxable income, nor withheld taxes based on such hours until employees either used them as paid time off or redeemed them.

However, in the summer of 2016, County Counsel met with the County's elected Auditor-Controller to express concerns about the tax implications of the redemption option in the County's annual leave plans. The Auditor-Controller subsequently conducted an investigation and sent a letter to all County unions indicating that the redemption option in the plan risked exposing both employees and the County "to unintentional tax consequences under a tax principle known as the 'constructive receipt doctrine.'" The Auditor-Controller noted that the County's MOUs could be amended to avoid this issue, but in the absence of an agreement, he was legally obligated to comply with federal tax laws and would begin reporting the annual leave plan benefits as taxable income in tax year 2017.

Representatives from the County's HR Department then sought to meet with each of the County's 10 unions, including the Association. While meeting with the Association, the County reiterated its position from the Auditor-Controller's letter: absent changes to the redemption plan, the County intended to start treating accrued leave eligible for redemption as constructively-received income. The County suggested reopening negotiations on the applicable MOU provision and presented three ideas for modifying the leave plan. However, the Association expressed concerns, and the meeting ended without any agreement. Thereafter, the County submitted its first written proposal including the three options discussed at the prior meeting.

After reviewing the County's proposal, counsel for the Association sent a letter to the County asserting that its leave plans did not trigger the constructive receipt doctrine because they already included substantial limitations on employees' ability to redeem leave hours. The County again requested to meet over changing the leave plan. The parties exchanged other proposals; however, they did not reach an agreement on the constructive receipt issue.

In January 2017, the parties began negotiations for a successor MOU. While they negotiated the redemption language in their annual leave plan on multiple occasions and issued numerous proposals, they were again unable to reach an agreement. When the Association asked questions to learn more about the County's constructive receipt tax implementation plan, the County's lead negotiator responded that except for a few minor exceptions, the County would only be reporting accrued leave hours as taxable constructive receipt income and that, for the most part, there would be no tax withholding.

On April 4, 2017, the County issued a proposal that expired on April 7, 2017. While there was some confusion as to which elements of the County's proposal would expire, the Association did not accept the proposal and the County withdrew it. The parties subsequently reached a tentative agreement for a three-year successor MOU, but the tentative agreement contained no provisions designed to address the constructive receipt issue. The Association ratified the tentative agreement in May 2017.

In September 2017, the Chief Deputy Auditor-Controller sent a letter to all employees whose unions had not agreed to modify their leave redemption plans. That letter said that the County would treat the value of accrued leave as constructively received income. The Auditor-Controller's Office later confirmed that it would be both reporting constructively received income and withholding taxes on that income from employees' paychecks.

The Association complained that the County had provided information during negotiations that contradicted the information received from the Auditor-Controller's Office. The Association then hired a law firm to explore litigation options regarding the constructive receipt dispute. The law firm requested that the County immediately suspend its planned withholding and maintain the status quo pending good faith discussions. However, the County implemented its plan and began withholding taxes on constructively received income beginning with employees November 24, 2017 paychecks. As a result, some employee's paychecks netted out to near zero. While the Association presented alternative proposals for the County consider, the County rejected them. The County continued to report accrued annual leave hours as a constructively received income and to withhold taxes on that income in the 2018 tax year.

The Public Employment Relations Board (PERB) first considered whether the County had negotiated in bad faith during its negotiations with the Association over amending the parties' leave redemption plan. The County argued that both items that the ALJ had found were in bad faith – its representations at the bargaining table and its exploding offer – were outside the statute of limitations period. PERB disagreed.

PERB regulations prohibit PERB from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. PERB noted that the Association only knew in September 2017 that the County had made misrepresentations at the bargaining table, a time which was within six months of the Association's November 2017 unfair practice charge. Further, while the Association knew about the County's exploding offer in April 2017, more than six months before the November 2017 charge, PERB considers conduct that occurs outside the statute of limitations period if there is also challenged conduct within the limitations periods. Thus, the Association's unfair practice charges were timely.

Moreover, PERB concluded that the County's exploding offer indicated bad faith. While an exploding offer is not a per se violation, a bargaining party shows bad faith under the totality of conduct test if it does not adequately justify a threatened change in position that is inherent in an exploding offer. Here, the County made an offer with an expiration date only three days later. While PERB credited the County's argument that the tax liability was a reasonable basis for not leaving its offer on the table throughout 2017, the County could not provide a clear reason for its exceedingly short, three-day deadline. Thus, PERB concluded that the County's inability to justify the tight timeline was intended at least in part to pressure the Association into reaching agreement on a successor MOU, which is not legally sufficient to justify an exploding offer.

Next, PERB found that the Association did not waive its right to bargain the effects of the County's decision to withhold taxes on constructively-received income. The duty to bargain in good faith extends to the implementation and effects of a decision that has a foreseeable effect on matters within the scope of representation. While the County argued that the Association waived its right to bargain following the September 2017 letter, PERB determined that the County did not provide the Association with clear notice of its decision to implement tax withholding based upon constructively received income until November 2017. Before November 2017, the County did not provide the Association with critical details that would have put the Association on notice of the County's intended change. In any event, even if PERB regarded the County's September 2017 letter as adequate notice, the Association repeatedly indicated its interest in bargaining over the impacts of the County's decision. For these reasons, the Association did not waive its right to effects bargaining.

Finally, PERB concluded that the County did not negotiate in good faith prior to implementing its tax withholding decision. As a result, PERB ordered the County to reimburse employees for any accountancy and/or professional fees incurred in relation to the County's implementation of its constructive receipt tax withholding decision.

County of Ventura, PERB Dec. No 2758-M (2021).

Note:

Because PERB had no reason to determine whether the County was right or wrong in its interpretation of the constructive receipt doctrine, and because some employees were able to obtain at least partial refunds of excess withholdings from the IRS and the CA Franchise Tax Board, PERB did not order the County to make employees whole for their additional tax liability or for other harms caused when employees sought to reduce their taxes by redeeming accrued leave.

BROWN ACT

Association's Brown Act Claims Dismissed Due To Unreasonable Litigation Delay.

Prior to 2018, the Julian Volunteer Fire Company Association (Volunteer Association) provided fire prevention and emergency services through a local fire district, the Julian-Cuyamaca Fire Protection District (District), to the Julian and Cuyamaca rural communities. In April 2018, the District's board of supervisors approved a resolution to dissolve the District and to be replaced by the County of San Diego (County) fire authority.

Two weeks later, the Volunteer Association sued the District, alleging the District's approval of the resolution violated the Brown Act. The Volunteer Association alleged that the District's board members secretly communicated through email and private meetings to discuss the dissolution prior to the formal negotiations. The Volunteer Association sought a writ of mandate ordering the District to vacate the resolution. The trial court scheduled a hearing in November 2018 to rule on the merits of the Brown Act claims. However, the Volunteer Association took the hearing off calendar in October 2018.

While the Volunteer Association's lawsuit was pending, the County and the San Diego Local Agency Formation Commission (LAFCO) conducted a mandatory review of the dissolution request, which included holding public hearings and a special election for residents affected by the request. In March 2019, the County announced the special election had resulted in a majority vote favoring the District's dissolution.

Following the election, the Volunteer Association filed an emergency motion asking the court to immediately enter judgment in favor of its Brown Act claims, without notifying LAFCO or the County of this request. The court entered judgment for Volunteer Association and issued a writ ordering the District to revoke its original dissolution resolution. The District then relied on this judgment to preclude LAFCO from certifying the special election results.

The County and LAFCO then intervened in the Volunteer Association's lawsuit and successfully moved to vacate the judgment and the writ. The County and LAFCO moved for judgment on the pleadings against the Volunteer Association. They argued that the lawsuit was untimely and that the Brown Act claims were barred by the laches doctrine, which applies if a plaintiff unreasonably delays in prosecuting its claims to the prejudice of the defendant. The trial court granted the motion solely on the grounds that the lawsuit was untimely and entered judgment against the Volunteer Association. The Volunteer Association appealed, and the California Court of Appeal affirmed on different grounds.

The Court of Appeal found that the Volunteer Association improperly waited to reschedule the hearing on its Brown Act claims until after the special election results were announced. In doing so, the Court of Appeal held that Volunteer Association unreasonably delayed since the alleged Brown Act violations occurred months before the special election. The Court noted the Volunteer Association presented no justification for the delay, such as the need to conduct discovery. The Court also found that the delay prejudiced LAFCO, the City and the general public, given the substantial costs and burdens of the completed special election. Based on this ruling, the Court affirmed the judgment against the Volunteer Association.

Julian Volunteer Fire Company Association v. Julian-Cuyamaca Fire Protection District, 62 Cal.App.5th 583 (2021).

Note:

While litigation is often a lengthy process, this decision shows that some delays are improper if they prejudice the party being sued.

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New to the Firm

Richard Daniel Seitz is an Associate in the Los Angeles office of LCW, where he advises clients on all aspects of labor and employment law, retirement and labor relations issues. He is experienced in law and motion and appellate practice and works with the firm's public sector clients on discipline issues, retirement and labor relations matters, and compliance with state and federal COVID-19 laws and regulations.

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Brian R. Dierzé is an Associate in the Los Angeles office of LCW where he advises clients on all aspects of labor and employment law. Brian is skilled in contract review, in-depth research into legal and legislative issues and provides guidance to LCW public sector clients.

He can be reached at 310.981.2731 or bdierze@lcwlegal.com.

Joel Guerra is an Associate in LCW's Sacramento office, where he advises clients on all manner of employment-related matters. He is experienced in defending harassment, discrimination, retaliation, and wrongful termination claims; appearing before administrative tribunals and state court writ departments to resolve disability retirement claims; and settling wage and hour class, collective, and representative actions.

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LCW

LABOR RELATIONS CERTIFICATION PROGRAM

The LCW Labor Relations Certification Program is designed for labor relations and human resources professionals who work in public sector agencies. It is designed for both those new to the field as well as experienced practitioners seeking to hone their skills.

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June 9, 2021 | 10:00 - 11:00am
Register online here!

Firm Publications

To view these articles and the most recent attorney-authored articles, please visit: **www.lcwlegal.com/news.**

Partner **Brian P. Walter** was quoted in the April 6 issue of *WorldatWork's Workspan Daily* section in a piece highlighting potential increases in lawsuits involving employees who spend "off the clock" time taking part in health screening and/or other tasks designed to help ensure a safe workplace.

In a recent KFI News segment with reporter Corbin Carson, Partner **Mark Meyerhoff** discussed whether police officers have First Amendment rights that allow them to make comments on social media. While police officers do indeed have personal free speech rights, Mark shared that there is a significant difference between personal free speech and speech of public concern. He indicated that statements about the public should not cause a level of disruption that impacts the officer's department (i.e. offensive comments or those that advocate violence), and that new laws call for more diversity/bias training and expanded background checks to avoid hiring officers that engage in behavior that may negatively impact their departments.

Managing Partner **Scott Tiedemann** recently discussed details of the high-profile Kelly Thomas case with KFI News reporter Corbin Carson. As attorney for the City of Fullerton, which prevailed, Scott said it has taken nine years of lawsuits and appeals to uphold terminations of police officers involved in the use of force against Thomas. "It's really hard in the moment when there are protests—hundreds … thousands of people protesting saying 'The officers need to be fired,'" said Scott. "If you cave into that pressure and you don't do things right on the front end, you can find yourself years later having your decisions overturned." Scott explained that procedural mistakes can cost millions in back pay and rob the public of the justice they are demanding in this type of case, and he shared that the last two police officers involved in this case recently abandoned their lawsuits in which they unsuccessfully tried to be reinstated to their positions in law enforcement.

Partner **Mark Meyerhoff** recently took part in a KNX 1070 Newsradio segment with reporter Craig Fiegener in which Mark discussed a new law that will require public safety applicants for employment in California to be screened for implicit or explicit biases. This law will go into effect in January 2022 and puts pressure on public safety departments to determine how best to conduct such screening. Mark also discussed the issue of public safety departments limiting the private speech of police personnel that is so prevalent amidst high-profile social and political issues.

Management Training Workshops

Firm Activities

Consortium Trainings

May 5 **"Finding the Facts: Employee Misconduct & Disciplinary Investigations"**
Bay Area ERC | Webinar | Shelline Bennett

May 5 **"Finding the Facts: Employee Misconduct & Disciplinary Investigations"**
Central Valley ERC | Webinar | Shelline Bennett

May 5 **"Workplace Bullying: A Growing Concern"**
Humboldt County ERC | Webinar | Erin Kunze

May 5 **"Workplace Bullying: A Growing Concern"**
Monterey Bay ERC | Webinar | Erin Kunze

May 6 **"Leaves, Leaves and More Leaves"**
Gateway Public ERC | Webinar | T. Oliver Yee

May 6 **"The Disability Interactive Process"**
NorCal ERC | Webinar | Danny Y. Yoo

May 6 **"Difficult Conversations"**
North San Diego County ERC | Webinar | Stacey H. Sullivan

May 6 **"Leaves, Leaves and More Leaves"**
San Mateo County ERC | Webinar | T. Oliver Yee

May 12 **"Addressing Workplace Violence"**
Coachella Valley ERC | Webinar | Erin Kunze and Arti Bhimani

May 12	**"Iron Fists or Kid Gloves: Retaliation in the Workplace"** North State ERC | Webinar | Michael Youril and Yesenia Carrillo
May 12	**"Difficult Conversations"** Orange County ERC | Webinar | Stacey H. Sullivan
May 13	**"Nuts and Bolts: Navigating Common Legal Risks for the First Line Supervisor"** East Inland Empire ERC | Webinar | Heather Coffman
May 13	**"The Art of Writing the Performance Evaluation"** LA County HR Consortium | Webinar | I. Emanuela Tala
May 13	**"Leaves, Leaves and More Leaves"** San Diego ERC | Webinar | T. Oliver Yee
May 19	**"Leaves, Leaves and More Leaves"** Central Valley ERC | Webinar | Che I. Johnson
May 19	**"Leaves, Leaves and More Leaves"** Gold Country ERC | Webinar | Che I. Johnson
May 20	**"The Future is Now - Embracing Generational Diversity & Succession Planning"** Mendocino County ERC | Webinar | Kristi Recchia
May 20	**"The Future is Now - Embracing Generational Diversity & Succession Planning"** Sonoma/Marin ERC | Webinar | Kristi Recchia
May 20	**"The Future is Now - Embracing Generational Diversity & Succession Planning"** West Inland Empire ERC | Webinar | Kristi Recchia
Jun. 2	**"The Art of Writing the Performance Evaluation"** Humboldt County ERC | Webinar | I. Emanuela Tala
Jun. 2	**"Maximizing Supervisory Skills for the First Line Supervisor - Part 1"** Monterey Bay ERC | Webinar | Kristi Recchia
Jun. 2	**"Managing the Marginal Employee"** NorCal ERC | Webinar | Erin Kunze
Jun. 2	**"The Art of Writing the Performance Evaluation"** North State ERC | Webinar | I. Emanuela Tala
Jun. 2	**"Maximizing Supervisory Skills for the First Line Supervisor - Part 1"** Orange County ERC | Webinar | Kristi Recchia
Jun. 2	**"The Art of Writing the Performance Evaluation"** San Gabriel Valley ERC | Webinar | I. Emanuela Tala
Jun. 3	**"The Art of Writing the Performance Evaluation"** North San Diego County ERC | Webinar | Stephanie J. Lowe
Jun. 3	**"The Art of Writing the Performance Evaluation"** San Mateo County ERC | Webinar | Stephanie J. Lowe
Jun. 3	**"Legal Issues Regarding Hiring"** West Inland Empire ERC | Webinar | Melanie L. Chaney

Jun. 10 **"A Guide to Implementing Public Employee Discipline"**
Bay Area ERC | Webinar | Kevin J. Chicas

Jun. 10 **"A Guide to Implementing Public Employee Discipline"**
Imperial Valley ERC | Webinar | Kevin J. Chicas

Jun. 10 **"Advanced FLSA"**
San Diego ERC | Webinar | Elizabeth Tom Arce

Jun. 16 **"The Art of Writing the Performance Evaluation"**
Gold Country ERC | Webinar | I. Emanuela Tala

Jun. 16 **"Maximizing Supervisory Skills for the First Line Supervisor - Part 2"**
Monterey Bay ERC | Webinar | Kristi Recchia

Jun. 16 **"Maximizing Supervisory Skills for the First Line Supervisor - Part 2"**
Orange County | Webinar | Kristi Recchia

Jun. 16 **"Introduction to the FLSA"**
Sonoma/Marin ERC | Webinar | Lisa S. Charbonneau

Jun. 16 **"The Art of Writing the Performance Evaluation"**
South Bay ERC | Webinar | I. Emanuela Tala

Customized Trainings

May 5 **"Performance Management/Evaluation and Coaching"**
City of Ontario | Webinar | Kristi Recchia

May 5 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
ERMA | Reedley | Michael Youril

May 6 **"Ethics in Public Service and Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Delano | Delano | Michael Youril

May 6 **"Supervisor's Guide to Understanding Employee Rights Regarding Labor, Leaves and Accommodations"**
ERMA | Webinar | Lisa S. Charbonneau

May 10 **"Maximizing Supervisory Skills for the First Line Supervisor"**
City of Stockton | Webinar | Che I. Johnson

May 11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
County of San Luis Obispo | Webinar | Stephanie J. Lowe

May 17 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Palo Alto | Palo Alto | Jack Hughes

May 18 **"Maximizing Performance Through Evaluation, Documentation, and Corrective Action"**
City of Stockton | Webinar | Che I. Johnson

May 18 **"Preventing Workplace Harassment, Discrimination and Retaliation and Ethics in Public Service"**
San Ramon Valley Fire Protection District | Webinar | Morin I. Jacob

May 19 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fremont | Webinar | Jack Hughes

May 19 **"Progressive Discipline and Discipline Appeals, Including Skelly"**
City of Ontario | Webinar | Leighton Henderson

May 19 **"Ethics in Public Service"**
County of Placer | Webinar | T. Oliver Yee

May 19 **"Ethics in Public Service"**
County of San Luis Obispo | Webinar | Stephanie J. Lowe

May 19 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
San Ramon Valley Fire Protection District | Webinar | Heather R. Coffman

May 24 **"2021 Ontario Fire Department-Wide Training"**
City of Ontario | Ontario | J. Scott Tiedemann

May 24 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Stockton | Webinar | Shelline Bennett

May 26 **"Social Media Training"**
City of Burbank | Webinar | Danny Y. Yoo

May 26 **"Brown Act" and "Social Media"**
City of National City | Webinar | Stacey H. Sullivan

May 28 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Stockton | Webinar | Shelline Bennett

Jun. 2 **"PBOR & FBOR"**
City of Ontario | Webinar | Laura Drottz Kalty

Jun. 7 & 11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Stockton | Webinar | Shelline Bennett

Jun. 11 **"Freedom of Speech and Right to Privacy"**
Labor Relation Information System - LRIS | Las Vegas | Mark Meyerhoff

Jun. 16 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Hesperia | Hesperia | Christopher S. Frederick

Jun. 16 **"Hiring and Personnel Issues"**
City of Ontario | Webinar | Leighton Henderson

Jun. 29 **"Labor and Meet and Confer"**
City of Ontario | Webinar | Kristi Recchia

Seminars/Webinars

May 11 **"Are Your Exempt Employees Really Exempt?"**
Liebert Cassidy Whitmore | Webinar | T. Oliver Yee

May 12 **"Labor Relations Academy: Communication Counts!: Part 1"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & Jack Hughes

May 19 **"Labor Relations Academy: Communication Counts!: Part 2"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & Jack Hughes

Jun. 17 **"Labor Relations Academy: The Rules of Engagement: Issues, Impacts & Impasse: Part 1"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & Peter J. Brown

Jun. 24 **"Labor Relations Academy: The Rules of Engagement: Issues, Impacts & Impasse: Part 2"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & Peter J. Brown

Speaking Engagements

May 14 **"Labor Relations and Negotiations"**
California State Association of Counties (CSAC) Faculty Meeting | Webinar | Richard S. Whitmore & Richard Bolanos

May 14 **"Gender Identity Bias in the Workplace"**
County Counsels' Association of California (CCAC) Spring Civil Law & Litigation Speaking Engagement | Webinar | Morin I. Jacob

May 26 **"Defining Board & Staff Roles and Relationships"**
Special District Leadership Academy (SDLA) Day 1 | Webinar | Mark Meyerhoff

May 27 **"Defining Board & Staff Roles and Relationships"**
SDLA Day 2 | Webinar | Mark Meyerhoff

Jun. 17 **"Disability Accommodations in the Post COVID World"**
Southern California Public Agency Risk Management Association (PARMA) Chapter Meeting | Anaheim | Jennifer Rosner

Jun. 29 **"General Manager Performance Evaluation and Contracts"**
California Special Districts Association (CSDA) General Managers Leadership Summit | Olympic Valley | Shelline Bennett

Fire Watch is published monthly for the benefit of the clients of Liebert Cassidy Whitmore.
The information in *Fire Watch* should not be acted on without professional advice. To contact us, please call 310.981.2000, 415.512.3000, 559.256.7800, 619.481.5900 or 916.584.7000 or e-mail info@lcwlegal.com.