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Sent By U.S. Mail and Email

October 3, 2016

Jeffrey Michels, President CCCI
12345 El Monte Road
Los Altos Hills, CA 94022

**Re: Amicus Letter and Amicus Brief, and Marin Association of Employees v.
Marin County Public Employees' Retirement Association ("MCERA")**

Dear Jeffrey,

As discussed in my calls with you and Rich Hansen, a recent appellate decision opens the door to substantial reductions in faculty pension and retirement benefits. The case of *Marin Association of Public Employees v. Marin County Public Employees' Retirement Association* (MCERA) was decided on August 17, 2016. The lawsuit, brought by several Marin County public employee labor unions, sought to reverse actions taken by the Retirement Association to impair promised retirement compensation to future retirees.

In the decision, a California appellate court ruled that public employers could significantly reduce, to the verge of destruction, public employee pension and retirement benefits, based upon perceived (but not actual) fiscal necessity, before the employees retired. The Court also issued the unprecedented ruling that promised pension or retirement compensation could be reduced without providing, for each affected employee, a commensurate improvement in benefits.

The importance of this case is that the rights of public employees, including current faculty, to promised pension and retirement benefits have been placed in serious jeopardy. As I discussed in our call, we believe it is essential that numerous employee groups urge the Supreme Court to grant "review" of the appellate court decision, and seek to have it overturned.

On Sept. 26, 2016, the plaintiff unions filed a request for review with the CA Supreme Court, asking the court to take jurisdiction over and decide whether the appellate court got it right or wrong. The two legal questions presented by the unions petition are these:

1. Does the contract clause of the California Constitution require that modifications

- of public employee pension and retirement benefits that result in disadvantages to employees must be accompanied by comparable new advantages?
2. Did the petitioning unions state a claim for impairment of vested pension rights in violation of the contract clause based upon reductions to their pension benefits resulting from a new state law?

The plaintiff unions argued that the decision of the court of appeals was inconsistent with other decisions issued by the California Supreme court and the appellate courts. The petitioning unions cite more than 60 years of precedent which had been misinterpreted by the appellate court. The plaintiff unions also argued that the appellate court had dismissed settled law on invalid grounds, that the current law is irreconcilable with "today's fiscal realities."

As the plaintiff unions' petition explains, many commentators are "widely heralding" the decision as a "game changer" which will allow pension liabilities – and the contractual problems they arise from them – to be eliminated by "legislative fiat".

For three generations, the rule that any pre-retirement modifications to vested rights which result in disadvantages for employees must be accompanied by comparable new advantages to the individual affected employees, has stood as a bulwark against both employers' unilateral changes and negotiations pressure for unions to surrender contractually vested retirement benefits. That is why the MCERA decision is such a game-changer – if allowed to stand, it will destroy this legal bulwark.

As a result of the foregoing, the outcome of the plaintiff unions' request for review, and a final decision, will have far ranging ramifications for faculty and their bargaining agents. Amicus letters from interested parties which stress the adverse impact of the MCERA decision may prove very important in persuading the California Supreme Court to "grant review" of the decision. Likewise, Amicus curiae parties (friends of the court) can offer persuasive reasons as to why the Court should reverse the court of appeals. We feel our experience in handling the case of *Contra Costa Community College Retirees Association v. Contra Costa Community College District* and the result will be persuasive as it addressed the same issues present in MCERA.

These are the steps that now must be taken by interested parties such as CCCI or FACC:

1. Interested parties need to submit letter to the supreme court explaining why the court should take the case.
2. If the court accepts the case, the interested parties should then file requests to submit Amicus Brief, and Amicus Briefs in support of the plaintiff unions positions.

We are optimistic that the Supreme Court will grant review because of the significant conflict between the MCERA decision and more than a dozen earlier Supreme Court and appellate court rulings.

Our Amicus efforts will be strengthened if the number of individual unions that we represent is as large as possible. Thus, while CCCI can and should be an amicus party, it would be preferable if most if not all of CCCI's affiliate unions also joined as amicus parties. Then our brief would be submitted on behalf of the entire group. From talking with Rich it sounds as if FACCC might also be willing to participate, mitigating CCCI's and its unions' costs.

What we need in terms of financing is the following:

1. We estimate that the letter will take about 8 hours of work. We will charge \$265 per hour for my services, and \$235 per hour for Mr. Conway and Ms. Lim. We will cap the cost of the letter at \$2000. Legal assistants are billed at \$80 to \$100 per hour.
2. We estimate that the application to file an amicus brief and the amicus brief will take about 40 hours, with the same hourly rates cited above. We will cap this charge at \$10,000.

If these terms are agreeable then we request that the CCCI confer with us about how the charges should be divided among the individual unions, CCCI, and FACCC. From our standpoint, it is preferred that CCCI collects the charges assessed to each CCCI local, and remits payment for all.

As with our usual practices, we will bill CCCI for services each month, and send copies of the bill to each CCCI local, via the internet.

We look forward to assisting CCCI and its constituent locals, and FACCC in preparing the Amicus Letter and Application and Amicus Brief.

We propose to file the amicus letter within approximately two weeks. Assuming the Court grants review, our application to file an amicus brief and amicus brief will be due based on a schedule that can be determined only after the Supreme Court grants review. We anticipate the amicus application and brief will be due in December or January.

If these terms are acceptable, we will need the signature of CCCI and each of the local unions that will also be a party.

Please call me if you have any questions.

Very truly yours,

/s/ Robert J. Bezemek
Robert J. Bezemek

cc: Rich Hansen

Agreement

CCCI and the local unions signing below hereby agree to these terms and conditions.

Dated: _____

By: _____

Dated: _____

By: _____