



**PUBLIC EMPLOYMENT RELATIONS BOARD
FACSIMILE TRANSMITTAL SHEET**

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DATE:

July 13, 2012

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RE:

CITY OF SAN DIEGO

NOTES/COMMENTS:

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STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

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Re: *San Diego Municipal Employees Association v. City of San Diego*
Unfair Practice Charge No. LA-CE-746-M
Deputy City Attorneys Association v. City of San Diego
Unfair Practice Charge No. LA-CE-752-M
AFSCME Local 127 v. City of San Diego
Unfair Practice Charge No. LA-CE-755-M
San Diego City Firefighters Local 145 v. City of San Diego
Unfair Practice Charge No. LA-CE-758-M
ORDER RE MOTION TO REVOKE SUBPOENAS OR OBTAIN
A PROTECTIVE ORDER

LA-CE-746-M
July 13, 2012
Page 2

Dear Counsel:

I have read and considered the responses to my July 12 proposed order on excusing production of e-mails sent and received through personal e-mail accounts while using City property during non-"customary work hours" (hereafter non-work time). The SDMEA asserts that Exhibit A (see pp. 9 through 11) establishes the ability of the City to identify and recover e-mails in personal e-mail accounts from City computers. The data print-out does sort website access (which would logically include personal e-mail service servers, e.g., "mail.aol.com"), number of "requests," "processing time," and quantity of data transmitted. I do not see that it demonstrates the ability of a City IT technician to sort by sender and receiver so as to permit the witness to review the log and recollect if a message might be relevant to the request, and then determine if it occurred during non-work time or work time. The subpoena duces tecum seeks evidence of communications, not misuse of City time or City property.

SMDEA notes that "acting as a 'private citizen' while on City-paid time using City-owned equipment" is the nexus to the complaint. Stated in the conjunctive this much is true. But as a guide to the search for communications, the proposed limiting order does not conflict. On the other hand, the City reads the limiting order too broadly when it asserts the order excuses it from "searching for or producing all personal e-mails accessed on City equipment" because the proposed order is limited to excluding personal e-mails (not bearing a city address tag) during non-work time. A witness should, without the aid of an IT technician, be able to review personal e-mail accounts, sort by sender and receiver and determine the time of transmission. My experience is that one service may be more efficient in sorting (i.e., providing an alphabetized listing of all e-mails by sender or recipient on one screen, but another sorting only person-by-person). The City has not shown the burden of the search as limited would be excessive. Therefore, the previously proposed order IS HEREBY ADOPTED.

Due to a pre-planned personal commitment I will not be able address pre-hearing matters on Monday, July 16, 2012. We will take up remaining pre-hearing matters beginning at 10:00 a.m. on July 17. I had earlier proposed we estimate the amount of time to set aside for this. If the parties wish to do that they may exchange estimates in my absence.

Sincerely,



Donn Ginoza
Administrative Law Judge

DNG:dng

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1330 Broadway, Suite 1532, Oakland, CA 94612-2514.

On July 13, 2012, I served the Letter regarding Case No. LA-CE-746-M, et al., on the parties listed below by

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 13, 2012, at Oakland, California.

C. Johnson
(Type or print name)


(Signature)